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**TUNA POLITICS IN OCEANIA:  
THE EFFECTIVENESS OF COLLECTIVE  
DIPLOMACY**

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pursuant to the terms and conditions  
of Ph.D. candidature at ANU

**STATEMENT OF AUTHENTICITY**

**I declare that this thesis is the result  
Of my own original work  
And all sources have been acknowledged**

A handwritten signature in cursive script, reading "Katherine M Anderson", written over a horizontal dotted line.

**Katherine M Anderson**

**22 August 2002**



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## ABSTRACT

The island states of Oceania enjoyed remarkable success in collective diplomacy in the 1980s and early 1990s. In this time, their co-operative efforts achieved wide-ranging success in multilateral negotiations with the global community. This was especially the case in relation to the conservation and management of the region's fisheries resources. The island states collectively achieved significant multilateral instruments in this area. Beginning in the late 1990s, collective diplomacy became less effective in the fisheries sector, as evidenced by developments associated with the negotiations for the *Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific* (WCPF Convention). The rise in effectiveness of collective diplomacy appeared to occur at a time when the power of small states was in question; and decline when it might be expected they could maintain momentum.

This thesis seeks both to establish this rise and decline in the effectiveness of collective diplomacy and to offer an explanation for this unexpected change.

To gain an understanding of the explanations associated with this rise and decline, the thesis looks at the interplay between global developments and regional developments. In particular, in the period characterised by rising effectiveness, explanations include strong indigenous leadership, the region's Cold War climate, the regional co-operation between the Oceanic states, the unity of the region at multilateral negotiations, the preparedness of external powers to support regional initiatives and changing global environmental norms. Alternatively, during the period of declining effectiveness, explanations include the end of the Cold War and the pre-eminence of the neo-liberal agenda, the region's leadership, the level of cohesion and unity within the Forum Fisheries Agency (FFA), the role of external forces, national interests and changes in the global tuna economy.

The thesis argues that unity among seemingly disparate, isolated small states/microstates brings with it a capacity to defy those who dismiss the region's power in its dealings with the global community. While only one factor among several, nevertheless unity can play a pivotal role in achieving outcomes. Overcoming national interests and competing demands is not an easy task in an environment of increasingly stringent economic resources. If the region is to meet head-on the challenges associated with globalisation, then unity must be their objective.



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## GLOSSARY OF ABBREVIATIONS AND TERMS

ACP	Asian, Caribbean, and Pacific
ADB	Asian Development Bank
Fish Stocks Agreement	<i>Agreement for the Implementation of the Provision of the United Nations Convention on the Law of the Sea Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (also known as The United Nations Implementing Agreement, or the UNIA)</i>
AOSIS	Alliance of Small Island States
APEC	Asia-Pacific Economic Cooperation (forum)
Apia Convention	<i>Convention on Conservation of Nature in the South Pacific (1986)</i>
<i>Arabushi</i>	Semi-processed form of <i>katsuobushi</i> . The tuna is loined and Trimmed, then laid on trays for smoking (Ashenden and Kitson 1987: 238).
ASEAN	Association of Southeast Asian Nations
ATA	American Tunaboat Association. Now known as the United States Tuna Foundation
CARICOM	Caribbean Community and Common Market ( <i>formerly</i> Caribbean Free Trade Association)
CARIFTA	Caribbean Free Trade Association
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
CCSBT	Commission for the Conservation of Southern Bluefin Tuna ( <i>also Convention for the Conservation of Southern Bluefin Tuna</i> )
CMT	Customary Marine Tenure
COFI	Committee on Fisheries (FAO)
CRGA	Committee of Representatives of Governments and Administrators (Secretariat of the Pacific Community)
Driftnet Fishing Convention	<i>Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific Ocean (1989)</i>
DWFNS	Distant Water Fishing Nations ( <i>also</i> known as fishing states)
EEZ	Exclusive Economic Zone
ENSO	El Niño-Southern Oscillation
EU	European Union ( <i>formerly</i> European Community, or 'EC')
FADS	Fish Aggregation Devices
FAO	United Nations Food and Agriculture Organisation
FEMM	Forum Economic Ministers Meetings
FFA	South Pacific Forum Fisheries Agency
FFC	South Pacific Forum Fisheries Committee
FIC	Forum Island Countries
GRT	Gross Registered Tonnes
IATTC	Inter-American Tropical Tuna Commission
ICCAT	International Commission for the Conservation of Atlantic Tunas ( <i>also International Convention for the Conservation of Atlantic Tunas</i> )
IMF	International Monetary Fund
IOTC	Indian Ocean Tuna Commission
IWC	International Whaling Commission

JACADS	Johnston Atoll Chemical Agent Destruction System
<i>Katsuobushi</i>	Flaked tuna which is used in soup. The skipjack are cleaned, gutted and beheaded, then boiled and boned. The fish is then dried in sheds and smoked for several weeks (Peattie 1988: 139).
<i>Katsuwonus pelamis</i>	Skipjack
LAFTA	Latin American Free Trade Association
Longline fishing	A mainline, measuring as much as 130 kilometres in length, to which branchlines with baited hooks are attached. By attaching buoys to the mainline, a series of catenaries (also known as baskets) are formed. The longline can go as deep as 300 metres (Campbell and Nicholl 1994: 89).
Magnuson Act	<i>Magnuson Fishery Conservation and Management Act (1976)</i>
MCS	Monitoring, Control and Surveillance
MSY	Maximum Sustainable Yield
Melanesia	Regional grouping of Oceanic states/territories which includes New Caledonia, Vanuatu, Solomon Islands and Papua New Guinea. Fiji is aligned with Melanesia, as well as being historically and culturally linked to Polynesia.
MHLC	Multilateral-High Level Conference on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific
Micronesia	Regional grouping of Oceanic states/territories which includes Guam, the Northern Mariana Islands, Palau, the Federated States of Micronesia, Marshall Islands, Nauru and Kiribati
MSG	Melanesian Spearhead Group
MTC	Minimum Terms and Conditions
Multilateral Fisheries Treaty	<i>Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (1987)</i> . Also known as the U.S. Multilateral Treaty.
NATO	North Atlantic Treaty Organisation
OFP	Oceanic Fisheries Program, Pacific Community
PAFCO	Pacific Fishing Company Ltd, Fiji
PFL	Pacific Forum Line
PIPA	Pacific Island Producers Association
PNA	Parties to the Nauru Agreement ( <i>Nauru Agreement Concerning Co-operation in the Management of Fisheries of Common Interest</i> )
Pole and line fishing	Bamboo poles, unbaited barbless hooks and live bait are used. When tuna are sighted, the live bait is released and water is sprayed on the surface (Veitayaki 1994: 38).
Polynesia	Regional grouping of Oceanic states/territories which includes the Cook Islands, Tonga, Samoa, American Samoa, Tuvalu, French Polynesia, Wallis and Futuna, Tokelau and Niue. Fiji has historical and cultural Polynesian ties, but is also aligned with Melanesia.
Purse seine fishing	A seine is a "wall of webbing used to encircle fish" (Veitayaki 1994: 41).
Republic of Korea	<i>also referred to as 'South Korea' or simply 'Korea'</i>
<i>sashimi</i>	Raw fish
SBT	Southern Bluefin Tuna



SCTB	Standing Committee on Tuna and Billfish, Secretariat of the Pacific Community)
SIDS	Small island developing states
SOPAC	South Pacific Applied Geoscience Commission
SPAR	South Pacific Albacore Research Group
SPARTECA	South Pacific Regional Trade and Economic Cooperation
SPC	Pacific Community ( <i>formerly</i> South Pacific Commission)
SPEC	South Pacific Bureau for Economic Cooperation
SPNFZ	<i>South Pacific Nuclear Free Zone Treaty</i> (1985)
SPOCC	South Pacific Organizations Coordinating Committee
SPREP	South Pacific Regional Environment Programme
SPREP Convention	<i>Convention for the Protection of the National Resources and Environment of the South Pacific Region</i> (1986)
STL	Solomon Taiyo Ltd
TAC	Total Allowable Catch
Tarawa Declaration	Ban on driftnet fishing, and management regime for albacore tuna, adopted by the Forum in 1989
The Forum	Pacific Islands Forum ( <i>formerly</i> South Pacific Forum)
<i>Thunnus alalunga</i>	Albacore
<i>Thunnus albacares</i>	Yellowfin
<i>Thunnus obesus</i>	Bigeye
UNCED	United Nations Conference on the Environment and Development
UNCLOS	<i>United Nations Convention on the Law of the Sea</i>
UNIA (the Fish Stocks Agreement)	<i>Agreement for the Implementation of the Provision of the United Nations Convention on the Law of the Sea Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks</i> (also known as The United Nations Implementing Agreement)
USP	University of the South Pacific
U.S. Multilateral Treaty	<i>Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America</i> (1987), also known as the Multilateral Fisheries Treaty
WCPO	Western and Central Pacific Ocean
WCPF Convention	<i>Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific</i>
Wellington Convention	<i>Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific</i> , (1991)
VMS	Vessel Monitoring System



**Figure Intro.1**  
**The States/Territories of the SPC Region, including**  
**Exclusive Economic Zones (EEZ)**



*Source:* Secretariat of the Pacific Community, 2002.



## INTRODUCTION

This thesis examines the effectiveness of some of world's smallest states in confronting some of the world's most powerful in relation to their most prized shared resource, tuna. Since the late 1970s the small post-colonial states of Oceania<sup>1</sup> have engaged in collective diplomacy<sup>2</sup> aimed at controlling the activities of powerful states affecting their region. They have jointly opposed French nuclear testing, French colonialism, Japanese Government plans to dump low-level nuclear waste in the Pacific Ocean, north of the Ogasawara Islands, and United States' plans to store waste chemical weapons in concrete igloos on Johnston Island. They have also engaged in collective diplomacy to gain better terms for trade and aid with the European Community, Australia and other donors. Their most sustained efforts at collective diplomacy have been focused on controlling the practices of the powerful fishing states seeking to exploit their shared fishing resource. They have pursued this through the Forum Fisheries Agency (FFA) over several decades of multilateral negotiations.

The Oceanic membership of the FFA attaches great importance and value to their tuna fisheries as a major natural resource of the region. For example, the tuna fishery represents 70 per cent of Samoa's export earnings, 60 per cent of the Federated States of Micronesia's export earnings, 40 per cent of Tuvalu's export earnings and 30 per cent of Solomon Islands' export earnings (Aqorau 1998: 12). Fishing states also attach great importance and value to Oceania's tuna resource. For example, Oceania provides 30 per cent percent of Japan's *sashimi*<sup>3</sup> market (Australian Department of Foreign Affairs and Trade [DFAT] 2000). Purse seine<sup>4</sup> tuna fleets harvest approximately 774,000 tonnes per annum in the Western and Central Pacific Ocean (WCPO) region, with between 70-75 per cent of this catch caught in the Exclusive Economic Zone (EEZ) of Oceanic states, making the global canned tuna industry highly dependent upon the region's tuna resource (FFA 1998: 89).

For more than two decades, Oceania's tuna industry has benefited from and been strengthened by the effectiveness of collective diplomacy. Over this time, the FFA membership implemented EEZ conservation and management measures for the region's tuna fishery in spite

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<sup>1</sup> For the purposes of this thesis, Oceania does not include Australia or New Zealand. In line with the Secretariat of the Pacific Community's (SPC) geographical boundaries of the region, Oceania's twenty-two island states and territories extends from Papua New Guinea to the west, north to the Commonwealth of the Northern Mariana Islands and south-east to Pitcairn Island. While Oceania includes 7,500 islands spread over thirty million square kilometres, only 500 islands are inhabited, occupying 2 per cent of the total land and sea area. Online < <http://www.spc.org.nc> date accessed 20.3.2001. See Figure 1.1 on page 1a of the Introduction.

<sup>2</sup> 'Collective diplomacy' is a term coined by Greg Fry in his (1994) article "International Cooperation in the South Pacific: From Regional Integration to Collective Diplomacy".

<sup>3</sup> Raw tuna is known as *sashimi*. Appendix B provides a more detailed look at *sashimi*.

<sup>4</sup> Purse seine is a method of tuna extraction. It "involves placing a net around a school of fish and closing the net at the base" (Veitayaki 1995: 41). See Appendix B for more detail on purse seine and other tuna harvesting methods.



of opposition by big and powerful fishing states.<sup>5</sup> This outcome is puzzling, given that it might be expected that small states are powerless in their relations with strong states, particularly over control of a resource as important as fish.<sup>6</sup> After two decades of cumulative success, however, the ability of the FFA membership to achieve the objectives of collective diplomacy appears to be in decline. This again is puzzling, given that after two successful decades it might be expected that collective diplomacy would continue to be effective.

These puzzles lead to the central question guiding this thesis: why has the effectiveness of collective diplomacy risen when we would expect failure, and declined when we would expect success? There are many secondary questions which this thesis will examine that flow from this central question. For example, in considering the strong indigenous leaders who emerged during Oceania's decolonising period, the question arises as to the extent to which leadership can affect the outcome of collective diplomacy. Further questions are: How much influence do Australia and New Zealand enjoy? Are there other external factors, both positive and negative, that exert influence on the outcomes of collective endeavours? Does the level of regional cohesion affect the outcomes? How important are national interests?

By 'collective diplomacy' I simply mean the joint efforts of states to engage in diplomacy with others external to the group aimed at promoting their shared interests. In this case the states are all from one region; thus they represent a regional interest, and their collective diplomacy can be seen as a form of regional co-operation. Collective diplomacy may be focused on influencing one powerful actor such as when the South Pacific Forum seeks to influence the European Community on economic assistance policy or France on nuclear testing, or it may be concerned with putting up a joint position in multilateral forums, such as in the Multilateral High Level Conference on the Conservation and Management of Highly Migratory Fish Stocks in Western and Central Pacific (MHLC) or at the negotiations to conclude the *United Nations Convention on the Law of the Sea* (UNCLOS).<sup>7</sup> Collective diplomacy may also be involved when the Oceanic states seek to set up their own multilateral arrangements governing global actors, such as the finalisation of various regional and sub-regional regulatory regimes on tuna fishing in the region.<sup>8</sup>

In evaluating the effectiveness of collective diplomacy in relation to the fisheries resource the thesis will judge these joint efforts against the objectives that Pacific leaders have claimed for this activity. There are four particular objectives: the tuna fishery's sustainability;

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<sup>5</sup> Chapter Three provides a complete discussion of the FFA's regional and sub-regional conservation and management arrangements.

<sup>6</sup> The realist theoretical school believes that a hegemonic balance of power provides influence and leadership in the international system. Under this system, small, militarily weak states accept the security offered by powerful states or a hegemonic power (see, for example, Keohane 1986).

<sup>7</sup> Throughout this thesis, UNCLOS is used to denote that Convention, rather than CLOS, or LOS.

<sup>8</sup> I am grateful to Greg Fry, Director of Studies, Graduate Studies in International Affairs, Australian National University, for his analysis of collective diplomacy (personal communication 31.7.02).

fair return to the region from fishing states; domestication of the tuna industry; and indigenous control of the tuna industry.

One interpretation of the meaning of ‘sustainability’ links it to ecology, “... (esp. of development) which conserves an ecological balance by avoiding depletion of natural resources ... that can be sustained” (The Australian Concise Oxford Dictionary 1997). Sustainability was a crucial aspect of the region’s pre-colonial marine exploitation, given Oceania’s predisposition to droughts, cyclones and tsunamis (McDaniel and Gowdy 2000). In pre-colonial times, judicious methods governed extraction of terrestrial and marine resources, giving the island communities a conservation and management ethic that has underpinned, for the most part, their attitude towards resource exploitation. Family, village or chiefly systems governed these methods and ensured long-term food security in a region made vulnerable by climatic conditions. Conservation and management ethics included: closed areas; closed seasons; setting free a portion of the catch; holding excess catch in enclosures; banning the catch of small fish; restricting inland lagoon fishing, taking sea birds and/or their eggs; turtle egg bans; taking turtles on the beach, taking their eggs and frequenting favourite spots on turtle nesting beaches (Johannes 1978: 353). These ethics underpinned a custodial attitude towards marine resource sustainability (Ruddle 1989b: 71). Sustainability of marine resources was a central component in the establishment of the FFA.<sup>9</sup>

The Oceanic states also demand a fair return to the region from fishing states extracting the resource. During the pre-colonial era, marine resources were controlled at the community level. By employing judicious measures, a fair return to the community’s members was ensured. While this was not perceived in monetary terms, the community’s needs were met through the sustainable exploitation of marine resources. In contemporary times, negotiating a fair return is a focal point of the region’s bilateral and multilateral fisheries access arrangements. For example, during 1999, the Oceanic states received approximately US\$60.3 million in license fees (FFA 2000).<sup>10</sup> This represents a 402 per cent increase in license fees from the \$15 million reported in 1983 (Clarke in FFA 2000). Through the establishment of sub-regional groupings, like the Parties to the Nauru Group (PNA), the region has worked collectively to strengthen conservation and management measures and in doing so, increased the level of return.

In pre-colonial times the tuna resource was domesticated. Customary control by communities, chiefs or families extended outwards to the reefs and seawards (Ruddle 1989b: 71). In contemporary times, the region aims to increase the levels of domestication of the tuna industry, which has primarily been controlled by fishing states. The finalisation of regional instruments such as *The Federated States of Micronesia Arrangement for Regional Fisheries Access* (the FSM Arrangement) has helped to encourage the development of a local tuna

<sup>9</sup> See comments made by Sir Michael Somare, Prime Minister of Papua New Guinea, when presenting a paper in support of the establishment of a regional fisheries organisation at the Seventh South Pacific Forum, 26-28 July 1976.



industry (see Aqorau and Bergin 1997b).

In contemporary times, the region strives for indigenous control of the tuna industry. Again, in pre-colonial times, marine resources were controlled through families, chiefs or communities. Judicious indigenous control was essential to a group of island communities which received up to 90% of their animal protein from fish (Johannes 1978: 350). A rationale behind the emergence of the South Pacific Forum and collective diplomacy was the indigenous control of economic and political developments (see Fry 1994). Through the finalisation of various multilateral instruments, the FFA has attempted to achieve that goal.

The judgement concerning the degree of effectiveness of collective diplomacy in achieving these objectives will primarily be made on the basis of an analysis of multilateral treaty outcomes. The collective diplomacy of the Oceanic states has mainly taken place in a multilateral context. It has generally involved the negotiation of treaty provisions in relation to a significant number of usually very powerful states such as the United States, Japan, China and France. The focus of the analysis thus becomes the negotiation and outcomes of the various fisheries treaties of the 1980s and 1990s culminating in the various rounds of the MHLC negotiations. Of course it is not sufficient simply to note the achievement of a treaty commitment consistent with the objectives of the aims of Oceanic collective diplomacy. Part of that analysis necessarily involves determining whether collective diplomacy on the part of the Oceanic states produced this successful outcome, or whether this was due to other factors, for example, the Chair's independent action, or whether a powerful state, such as the United States was supportive of the FFA's efforts. In other words, how do we know that collective diplomacy made a difference? The analysis is also necessarily concerned with an evaluation of whether the achieved treaty commitment translates to a policy change on the ground, particularly in relation to the activities of fishing states.

In turning to the question of how we should understand the change in the level of effectiveness of Oceanic collective diplomacy in the fisheries sector I propose to consider several contributing factors. The first concerns the level of cohesion and strength of leadership in the regional institution responsible for collective fisheries diplomacy in this region, the FFA. Second, there is the question of the global and Asia/Pacific strategic context within which the region's tuna economy operates and the global/Asia/Pacific political economy of the tuna industry. Third, there is the changing global regimes/international law context, for example, the *United Nations Convention on the Law of the Sea* (UNCLOS) or the MHLC process. Fourthly, there are the various factors in the conference room on the day affecting how the politics of the negotiations are played out, such as agenda setting and the role of the Chair within a process such as the MHLC. Finally, there is the changing economic dependence of the Oceanic states.

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<sup>10</sup> This compares to the value of the landed fish, which was approximately US\$1.9 billion (FFA 2000).

Despite the importance of this industry, the only major work on the *politics* of Oceania's tuna economy was written in 1980 (Kent). As this was only a year after the region established the FFA, Kent was not able to evaluate the organisation's ability to achieve its objectives. Another study, an edited two-volume work by Doulman (1987a, 1987b), provides individual contributions on many aspects of the region's tuna industry, but these contributions are a compilation of separate issues which are not integrated and analysed from the perspective of the effectiveness of the collective efforts of Pacific states.<sup>11</sup> There have also been significant journal collections by individual observers or in collaboration. For example, Bergin (1988, 1993, 1994a, 1994b, 1997), Aqorau (2000a, 2000b, 2002), Aqorau and Bergin (1997a, 1997b, 1998), Aqorau and Lili (1993). Apart from these sources, the lack of interest is puzzling, given the importance of Oceania's tuna industry to the region and to the global tuna economy. This may be a reflection of the fact that there has not as yet been the demise of a commercially important fishery in the region as in the crisis of Canada's Grand Banks cod stocks in 1994.<sup>12</sup>

As this thesis focuses on the politics of multilateral negotiations and treaty-making this imposes some obvious limitations on the analysis, particularly in relation to the more recent ongoing negotiations that remain politically sensitive. These multilateral negotiations take place in-camera, and the politics of multilateral negotiations and treaty-making make it difficult to access restricted information after the event. Therefore, some of the material is anonymously sourced from interviews with officials, and reports from people attending regional meetings needs to be treated confidentially. Access was granted to archive material from regional organisations, such as the FFA and the Australian Department of Foreign Affairs and Trade (DFAT); as well as interviews with officials from national governments, regional and international fisheries organisations and the tuna industry.

An observer at the negotiations from MHLC3 onwards, Dr Sandra Tarte of the University of the South Pacific, wrote reports on each of the negotiating rounds MHLC3-7. Tarte was also an observer at the Forum Fisheries Committee (FFC) meetings held around the MHLC negotiations. As the MHLC and FFC meetings were closed to outsiders, Chapters Six and Seven benefit from Tarte's observations. Further documentary evidence in relation to the

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<sup>11</sup> Apart from the works by Kent and Doulman, there has been other major work undertaken in relation to aspects of Oceania's tuna fishery. For example Aqorau's (1998) PhD thesis examines the legal implications for the region of various multilateral fisheries instruments, including the Fish Stocks Agreement; Campbell et al's (1989) compilation of papers from a conference on the economics of fisheries management in Oceania; Campbell and Owen's (1994) edited work on Papua New Guinea's tuna industry with general articles of relevance to the region; Doulman's 1984 PhD thesis on Papua New Guinea's fisheries sector; Herr's (1989) work on the FFA and its operations; Jack's (2001) Masters of International Law thesis on the WCPF Convention, (*The Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Central and Western Pacific*); Lodge's (1996) Master of Science thesis on the Review of the Palau Arrangement; Sutherland's (1985) Masters of International Law thesis on Oceanic regional fisheries co-operation; Sutherland and Tsamenyi's (1992) legal perspective on fisheries co-operation in Oceania; and Tarte's (1998a) work on Japan's fisheries aid policies in Oceania. There are two books written on the national fishing industries of two Oceanic states. These are Teiwaki's (1988) work on Kiribati and Veitayaki's (1995) work on Fiji.

<sup>12</sup> For a history of cod fishing, see Kurlansky (1999).



negotiations is provided by the official reports of each of the negotiating rounds as well as FFC reports. Members of the Asian fishing state delegations were not prepared to be interviewed. As the negotiations to conclude fisheries conservation and management measures for the WCPO were sensitive, these decisions were respected. However, any future research on this subject should strive to obtain the perspectives of the Asian fishing states. This will enable a comparative analysis of the concerns and issues of all parties with an interest in the WCPO's tuna resource.

The approach followed for fieldwork interviews differed, depending on who was being interviewed. Two types of approach were taken because in evaluating the effectiveness of collective diplomacy, the perceptions of the influence of various external factors and national interests, vary between states and individuals. A structured style was used to interview Australian or New Zealand government, non-government or industry officials, with a series of questions designed to elicit a focused account and analysis of a particular meeting or process. Many of these interviews were frank; though several officials and organisations requested anonymity or edited their quotes when provided with relevant extracts from the thesis.

Interviews with indigenous fisheries officials were more open-ended. This was a deliberate strategy and reflected cultural sensitivities in the interviews with Oceanic officials. The interviews commenced with the writer setting out an overview of the subject matter, linking it to the contemporary concerns of the region. The official was then given time to consider the overview and evaluate those concerns to the region. During this time, I remained quiet, allowing the official to formulate a considered judgement. After having done so, the official responded with perceptions, ideas and analysis of the subject. On some occasions, Oceanic officials were prepared to criticise specific national governments, but generally this occurred when others had aired those criticisms publicly.

The thesis is organised from Chapter Three as a chronological development of the collective diplomacy of Oceanic states in relation to a series of multilateral instruments, with Chapters One and Two providing necessary theoretical context and historical background. Chapter One locates the thesis within the literature on regional co-operation at the global and regional levels. Chapter Two provides a survey of Oceania's pre-colonial and colonial experiences as well as examining the early history of tuna fishing by the major fleets in the region.

Chapter Three explores the negotiations to conclude the *United Nations Convention on the Law of the Sea* (UNCLOS, 1982) and the participation of the independent Oceanic states. The Chapter illustrates that through these negotiations the region proclaimed EEZs over 200-nautical miles and committed itself to the establishment of the FFA. Furthermore, to protect the interests of the Oceanic states against the demands of the fishing states, when the FFA was established, it comprised (and still comprises) only the region's independent states, as well as

Australia and New Zealand. Hence, the FFA is not considered an Article 64 (UNCLOS) organisation, as that regime calls for co-operative fisheries management and conservation between interested coastal and fishing states. The Chapter argues that the range of regional and sub-regional arrangements implemented by the FFA demonstrates some effectiveness in collective diplomacy. This is indicated by the acquiescence (albeit reluctantly) of fishing states to abide by those conservation and management measures.

The expansion of the purse seine industry and with it, the emergence in 1980 of the United States as a regional fishing power, changed the dynamics of the industry. The United States fleet's defiance of the UNCLOS led to confrontation in the region, which lasted until the *Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States* (Multilateral Fisheries Treaty) was concluded in 1987. That Treaty was finalised to govern the fishing activities of the United States' fleet. The Multilateral Fisheries Treaty has had a profound effect on the region's attempts to rehabilitate the poor operating standards of the major fishing states, thereby strengthening the resource's sustainability, demonstrating the effectiveness of collective diplomacy. The Treaty has also facilitated a fairer return to the region for its tuna, an objective of collective diplomacy.

Chapter Four continues the chronological study of the activities of fishing states in the region, as well as examining joint ventures and the domestic tuna industry between the 1980s and the mid-1990s. From the 1980s, the tuna industry concentrated on three main extraction methods: purse seine; longline and pole-and-line. Specific tunas were targetted using these methods. For example, the four commercially important species of skipjack (*Katsuwonus pelamis*), albacore (*Thunnus alalunga*), yellowfin (*Thunnus albacares*) and bigeye (*Thunnus obesus*).<sup>13</sup> The Chapter demonstrates the importance of the region's tuna industry to the global tuna economy, both for fresh or frozen tuna and the canned tuna industry between 1980 and the mid-1990s. In so doing, the Chapter illustrates how foreign fleets have maintained their control of the region's tuna industry, thus undermining indigenous attempts at domestication or control during this period. While there were joint ventures, these favoured the foreign partners and were not as successful as would have been expected, given the rich tuna stocks in the region.

The development of joint ventures and domestic tuna industries has been encouraged at the regional level, through the FFA, which receives support through a variety of sources, such as the United Nations Food and Agriculture Organisation (FAO), United Nations Development Programme and other donors. Therefore, donor funding, regional objectives and the development efforts of joint ventures and domestic tuna industries are linked and demonstrate an important aspect of the role and effectiveness of collective fisheries diplomacy.

Chapter Five examines the role played by the Oceanic states at the negotiations to conclude the *Agreement for the Implementation of the Provisions of the United Nations*

<sup>13</sup> These various extraction methods and tuna species are discussed in Appendix B.



*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.*<sup>14</sup> After the UNCLOS was finalised, fishing states moved their operations to the high seas to circumvent conservation and management measures put in place by coastal states, as well as to avoid paying fishing access fees. This created pressure on straddling fish stocks and highly migratory fish stocks and resulted in armed conflict over Grand Banks ground-fish stocks between Canada and Spain in 1995.<sup>15</sup> Because of the shortcomings of the UNCLOS regarding straddling and highly migratory stocks, the Fish Stocks Agreement was concluded to govern high seas fishing activities. The Chapter analyses the importance of that Agreement to the WCPO, but demonstrates how, in supporting the Agreement's finalisation, that it became a double-edged sword. On the one hand, the Fish Stocks Agreement protected those high seas areas adjacent to EEZs in the WCPO. On the other hand, however, the region's support for that Agreement indicated a willingness to enter into some form of co-operative arrangement with fishing states for the conservation and management of highly migratory fish stocks, such as tuna.

This willingness resulted in the FFA staging a meeting between fishing and Forum Fisheries Committee (FFC) states,<sup>16</sup> known as the Multilateral High-Level Conference on South Pacific Tuna Fisheries (MHLC).<sup>17</sup> Chapter Five also examines the first two negotiating rounds (MHLC1 and MHLC2) and the willingness of both fishing and FFC states to adopt, with acclaim, the Majuro Declaration. The conservation and management prescriptions of the Fish Stocks Agreement were incorporated into the Majuro Declaration. This outcome demonstrated the effectiveness of collective diplomacy, because fishing states were willing to take on board the conservation and management measures of the Fish Stocks Agreement contained within that Declaration. That they did so appears mischievous, given their disruptive attitudes towards supporting these measures at subsequent MHLC negotiating rounds.

Chapter Six examines the MHLC3 and the MHLC4 negotiations as well as fishing state operations, joint ventures and the domestic tuna industry since the mid-1990s. It is demonstrated that at the MHLC3 and the MHLC4, the FFC bloc maintained the momentum it had gained during the Fish Stocks negotiations and in finalising the Majuro Declaration. This momentum resulted in a draft negotiating text for the *Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific* (WCPF Convention) at the end of the MHLC4 negotiations. The draft WCPF Convention reflected the region's

<sup>14</sup> Referred to in this thesis as the Fish Stocks Agreement (or Fish Stocks negotiations). Also known as the UNIA (the United Nations Implementing Arrangement).

<sup>15</sup> Day 1995, Munro 1995, O'Reilly Hinds 1995, Roughgarden and Smith 1996 among others, provide useful discussions on the Grand Banks controversy.

<sup>16</sup> The Forum Fisheries Committee (FFC) comprises all member states of the FFA. It meets yearly, or more frequently, as needs arise. It met regularly both immediately before and during the MHLC negotiating rounds.

<sup>17</sup> The six subsequent negotiating rounds were known as The Multilateral High-Level Conference on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific (also known as the MHLC).

conservation and management concerns. This positive result was due to: the FFC Chair's leadership abilities; the willingness by the Oceanic states to support the regional good over national interests; the co-operative stance taken by the FFC bloc; the Conference Chair's willingness to take on board the region's concerns; as well as a lack of unified action by the fishing states.

In the Chapter's analysis of fishing state operations, it is argued that new players to the region, such as Spain, will be no more of an advocate of domesticating the tuna industry than those traditional fishing states operating in the region. As regards joint ventures and the domestic tuna industry, it seems that little progress has been made for several reasons; including the difficult economic climate of the global tuna economy. Once more, during a period highlighted by achieving some objectives of collective diplomacy, this analysis demonstrates that meeting some of these objectives did not result in other objectives being reached, such as domestication.

Chapter Seven examines the last three negotiating rounds, the MHLC5, the MHLC6 and the MHLC7. The Chapter also contains an evaluation of the new Convention, a discussion on the role of fishing states and an overview of the interim regime. For a variety of reasons explored in this Chapter, it is argued that the FFC bloc's unity was undermined at the MHLC 5 and the MHLC6. Some reasons include: poor FFC leadership; animosity between individuals from different FFC states and the FFA Secretariat; the determination of members of the Parties to the Nauru Agreement (PNA) to speak out individually on issues of specific relevance to them; the ability of fishing state delegations to nurture divisions within the FFC bloc; and a greater willingness by the Conference Chair to accede to the demands of the fishing states. By the MHLC7 negotiating round, the region could not afford to give way on any of the draft articles. The Chapter shows, however, that at the MHLC7 negotiations, the Oceanic states were persuaded by Australia's FFC Conference Chair, as well as members of Australia's delegation, New Zealand and the United States to accept a chambered voting system that may be to their detriment at the yet-to-be-established WCPF Commission's negotiating table.

The Chapter concludes that the resulting WCPF Convention suggests a lessening in the effectiveness of Oceanic collective diplomacy. Some provisions appear to go against the region's objectives, for example, transshipment, the observer program, and the precautionary approach. It is important to remember that funding for the WCPF Commission will come largely from fishing states and that the implementation of highly controversial measures such as the observer program will be predicated on the external funding provided by fishing states. Moreover, the contentious allocation issue has been left for the WCPF Commission. It is argued that this decline in effectiveness is mainly due to the lack of cohesion in the FFC bloc at MHLC5 and the MHLC6.



In spite of these shortcomings, it should not be denied that, as far as multilateral negotiations go, the WCPF Convention is a real achievement for the island states/microstates of Oceania. While MHLC1 took place in December 1994, when preliminary views were explored, the serious side of the negotiations to conclude this Convention occurred from the signing of the Majuro Declaration at MHLC2 in June 1997 to the MHLC7's conclusion in September 2000. This profound achievement of multilateral diplomacy should be acknowledged, particularly given the resources demanded of island states/microstates to maintain their level of participation at the negotiations.

Nevertheless, the thesis argues that since the late-1990s, there has been a decline in the effectiveness of collective diplomacy, after two decades of cumulative achievement. Given the watered-down prescriptions of the WCPF Convention, the sustainability of the tuna resource is not assured. Negotiating fairer access deals from fishing states is also uncertain, for while a newcomer, such as Spain, is prepared to pay slightly more than Japan for access, its notorious record in the global tuna economy precludes Spain being deemed a 'good actor'<sup>18</sup> of fishing operations in the region. The domestication of the tuna industry has not been achieved, and indigenous control is questioned, given the yielding by the Oceanic states over a chambered voting system.

There are parallels to be drawn from the experiences of collective diplomacy more generally in the Pacific. Collective diplomacy was effective during the Cold War years, given the willingness of foreign powers to support the region financially in exchange for the region's pro-Western stance. Rather than continue to reward and foster those states loyal to western geopolitical aims, the neo-liberal reform agenda, which has been endorsed by the development-orientated international banking sector and donor states, has introduced conditionality as a feature of aid or loan provisions. Furthermore, in the case of Oceania, these funds have been channeled through a multilateral institution, the Pacific Islands Forum, making that organisation responsible for the implementation of region-wide neo-liberal reforms.

Sutherland (2000) argues that external forces and in particular donors are imposing these reforms. Furthermore, the reforms are not inclusive. If the general populace has not been included and a regional body has implemented these imposed reforms, then the effectiveness of collective diplomacy is rendered ineffective. This demonstrates a weakened leadership capacity within the region to stand up to the demands of the donor community. This argument has application to collective diplomacy generally and to collective fisheries diplomacy specifically.

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I first came across this term in an article written by David Balton (2000).

The thesis concludes that for all the above reasons, the region has undergone a rise in the effectiveness of collective diplomacy when we would expect a decline, and a decline in collective diplomacy when we would expect a rise. These conclusions also apply to its subset, that of collective fisheries diplomacy. This variation in effectiveness reflects a range of global, regional and local factors or conditions that can impact on the success or otherwise of collective diplomacy by the Oceanic states. The region's ability to exercise that control has been particularly dependent upon cohesion and unity of the Oceanic group and this in turn has depended on the quality of leadership, and the global geopolitical and economic context.

## CHAPTER ONE

### Understanding collective diplomacy

In developing a theoretical framework for understanding the changing level of effectiveness of Oceanic collective diplomacy I examine two literatures. The first is literature concerned with understanding regionalism. As explained in the previous chapter, the joint diplomatic efforts of Oceanic states are a form of regionalism. Here I show that the regionalism literature and in particular the so-called 'new regionalism' debate is very limited in explaining the effectiveness of collective diplomacy at the regional level in Oceania. There are however some theoretical studies that do provide openings for thinking about this issue. In particular, I focus on Andrew Axline's (1994) approach as providing a useful way into this area. Axline's work was initially exciting, as he had applied his theories of regionalism to developing regions of the world. However, Axline did not raise the concept of collective diplomacy between developing states and it transpired that Axline had more in common with other regional theorists and the idea of 'new regionalism', an idea not useful to the Oceanic experience. The Chapter concludes that Axline and other regional theorists advancing 'new regionalism' provide an appropriate rather than a sufficient framework to answer the central question of this thesis.

The second area of literature I explore is that concerned with collective diplomacy in Oceania. These studies of areas of joint diplomacy such as in relation to nuclear testing, dumping, colonialism, and trade, provide some useful general propositions about where to look for explanations of the effectiveness of collective diplomacy in the Pacific context. They therefore provide a useful starting point in thinking about their relevance to the fishing resource sector. In particular they signal the range of global regional and local factors that impact on the success or otherwise of collective action among the small states of the Pacific in relation to powerful global processes.

Overall I am concerned with developing a many-layered explanation that takes account of changing global, regional and local conditions. The critical theory approaches to multilateralism, such as that of Robert Cox,<sup>1</sup> that see outcomes as historically contingent, provide a better understanding than those approaches which develop a static view of the possibilities of joint action by small states in multilateral fora.

Before turning to these two literatures, I need to comment on why an area that may at first seem to be relevant, is not, because it addresses a different set of questions - that of regime

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<sup>1</sup> See Cox with Sinclair (1996), *Approaches to World Order* for a range of useful critical theory essays and articles.



theory.<sup>2</sup> Regime theory is concerned with understanding the power of international regimes, such as the fishing regime in Oceania. For example, whether power should be seen in realist terms as derived from a hegemon, or as having some independence as a social norm accepted by states. This thesis, on the other hand, is concerned with explaining the effectiveness of collective diplomacy in establishing such a regime in the first place.

## **Section one: The Regionalism Debate**

### *Part one: Physical features*

Before examining the theoretical explanations surrounding the regionalism phenomena, it is necessary to look at the debate concerned with how the physical features of the 'region' are constituted. This is needed because the physical shape of regionalism may be a determinant in effective regional initiatives. It has been argued that a region comprises peoples who are bound by "homogeneity, or homogeneity plus interdependence plus geographical separateness" (Russett 1973: 184).

Because of arguments over geographic and selective membership, Nye (1973: 81) considers that a regional organisation is based on "geographical contiguity". Further, he (1973: 81-82) defines as "quasi regional", an organisation which comprises both regional and non-regional members as being one concerned with "geographical contiguity or a geographical area of concern". As well, a macroregional<sup>3</sup> area incorporates a "vast region" and a microregional area comprises a more diminutive region (Nye 1973: 82).

Following Nye's approach, some of the Oceanic regional organisations could be considered 'quasi regional', as membership also includes non-regional states, for example, the Pacific Community (SPC).<sup>4</sup> Others, however, could be considered geographically contiguous regional organisations, with no outside membership, for example, the Forum family of organisations. As well, in the case of Oceania, its vast geographical boundaries define its organisations as 'macroregional'.<sup>5</sup> This raises the question of whether these distinctions made a difference in achieving the objectives of collective diplomacy? Chapter Three argues that by confining the membership of the Forum Fisheries Agency (FFA) to the independent Oceanic

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<sup>2</sup> Regime theory is not useful to this thesis as it concentrates on an anarchic international system where hegemony/balance of power issues and social norms determine the formation of regimes. I am not looking at why states adhere to regimes, but rather how we understand power over time, instead of the more static approach, such as that taken by regime theorists, for example, realists such as Krasner (1983, 1985), or liberal institutionalists, such as Keohane (1984) and Keohane and Nye (1989).

<sup>3</sup> To compartmentalise the term macroregional, it is a vast organisation "where the maximum distance between members' capitals is one-fourth to one-half that of the "global" United Nations (i.e. 3100 to 6200 miles)" (Nye 1973: 82). Microregional comprises an organisation "where the maximum distance between members' capitals is less than one-eighth that of the United Nations (i.e., less than 1500)" (Nye 1973: 82). While Nye (1973: 82) concedes that these divisions are "arbitrary", he argues for their necessity in the construction of typologies.

<sup>4</sup> From 1947 to 1998, the SPC stood for the South Pacific Commission. From February 1998, the organisation's name became the Pacific Community, but retained the same acronym.

<sup>5</sup> The Oceanic region extends over an area of more than thirty million square kilometres. The ocean comprises ninety-eight per cent of this area (SPC 2001).

states, plus Australia and New Zealand, the objectives of collective diplomacy could be achieved.

Payne and Gamble (1996: 2) provide another interpretation of regionalism's physical attributes. They believe it to be a "state-led or states-led project designed to reorganise a particular regional space along defined economic and political lines." In this way, regionalism is linked to the pressures of global production, which results in all states, both strong and weak, choosing either an offensive or defensive strategy as a means of countering these global forces.

Grugel and Hout (1999: 10) also argue in favour of a states-led strategy, specifically economic, in response to global change. Moreover, they suggest that these strategies are changeable, affected by actors or global conditions. While advancing state-centric leadership in the advancement of regionalism, Payne and Gamble (1993: 6-13) nonetheless espouse the social forces construct inherent in Robert Cox's reflectivist analysis of historical structures (see Cox 1981).

Hurrell (1995) also takes up the idea of social forces playing a role in the geographical features of regionalism. According to Hurrell, a regionalist strategy can also emerge for reasons such as common culture or religious traditions. Further, while some states may seek to formalise regionalist initiatives, others may be happy to create a "looser structure" of meetings and rules (1995: 41). This is an interesting concept and raises the question of whether, because of a lack of legal identity, (because of its non-formal structure), the initiative can have authority, either regionally or internationally. This point has relevance to the discussion in Section two below on the South Pacific Forum, an organisation founded without a formal treaty, thus having no legal personality (see Fry 1994, Herr 1994).

The above explanations provide a preparatory framework to conceptualise the physical attributes of regionalism. It can be described as a group of like-minded (or homogeneous) states concerned with a geographically separate set of common interests to advance a specific goal or goals. From these explanations, the physical features of regionalism and its structures can be understood not only as a state-led ideology, but also as social forces with a united approach to a common culture or religion.

### *Part two: Why and how do states co-operate?*

The question of why or how states co-operate is relevant only in so far as it affects the outcome of regional initiatives. For example, can regionalist ventures give greater strength and power to its members, than they would otherwise enjoy and is strength and/or power an integral component of success in their endeavours? Observers argue that states will co-operate if the benefits outweigh the costs (see among others Axline 1994a, Gamble and Payne 1996). Therefore, states appear to weigh-up the advantages versus the disadvantages of regional co-operation before making a decision.



It is argued that moves to form integrative bonds between states are often prompted by “a triggering political event” (Hettne 2000: xxvi). This suggests that, on occasion, the decision to establish a regional organisation can be politically motivated, rather than economically driven. This raises the question of whether the distinction between the political and economic imperatives behind the establishment of regional organisations can affect their shape and direction and with it, the chances of meeting their objectives and whether other imperatives can be at work here. For example, can regional organisations be established because of an environmental trigger, or as Axline (1994a) and others believe, because of a social trigger? Fry (1979, 1981, 1991 and 1994) suggests it can, and argues that an overarching objective of Oceania’s collective diplomacy was the indigenous control of its organisations. It follows that states may use collective diplomacy to strengthen their development policies. There are, clearly, a variety of reasons why states decide to co-operate.

Gamble and Payne (1996: 250) believe that costs and benefits calculations lead to a “wider context” of how co-operation as a state-led project is achieved and includes “the historical residues of past social interaction and the emergent patterns of current social interaction”. These two features can both constrain and provide opportunity. Can either support or restrict the objectives of collective diplomacy? In this way, can the history of cultural, ideological, political, economic or social inter-state relations have a bearing on the effectiveness of collective diplomacy? Chapter Two examines Oceania’s pre-colonial history of inter-island contact and argues that there was a sense of belonging to a wider community through tributary systems, inter-island marriages and maritime warfare.

The brief examination of why and how states co-operate provides useful ideas to consider when charting the rise and decline of the effectiveness of collective fisheries diplomacy in Oceania. These ideas include: costs and benefits; a triggering political event; the promotion of economic, political, social or environmental issues; bringing about indigenous control; strengthening development policies; and the importance of historical relations, for example, ideological, political, economic and social interaction. Whilst these ideas may explain why states co-operate, they do not explain the influence of other factors, such as geo-politics, leadership and the market situation on the effectiveness of the co-operation between states. Furthermore, these ideas look at how and why states co-operate.<sup>6</sup> This thesis is concerned with the effectiveness of that co-operation. To look at the propositions about effectiveness, we need to look at collective diplomacy.

### *Part three: Axline and his theory of regional co-operation*

A promising line of enquiry is to examine the propositions regarding collective diplomacy. One promising theorist has established a theoretical framework governing the political economy of

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<sup>6</sup> See, among others: Corkran (1976); Falk (1995); Falk and Mendlovitz (1973); Payne and Gamble (1996); Grugel and Hout (1999); Herr (1976, 1990, 1994); Hettne (1999, 2000); and Oman (1994).



regionalism in the developing world. Axline (1994a: 5), as an observer of regional co-operation in developing states, provides:

... an approach to regional cooperation that focuses on the issues and actors involved in a process of regional negotiations over the creation of benefits, the distribution of those benefits, and attempts to redefine relations between the region and the outside.

Axline contends that there have been four generations of regional co-operation until the 1990s. The first generation emerged with the European Economic Community (EEC) and included the Latin American Free Trade Association (LAFTA) and the Caribbean Free Trade Association (CARIFTA). The second generation moved towards industrialisation for economic development and integration and import substitution. The latter initiative was significant in Latin America in relation to the LAFTA, CARIFTA and the Central American Common Market (CACM). These two generations of regional economic initiatives by the Latin American countries involved larger economies, with a greater degree of industrialisation than the states of Oceania. Nevertheless, import substitution was an integral component of the manufacturing sector of Fiji's economy (see Chandra 1994). As was the case with the South Pacific Forum (SPF), Caribbean co-operation, the CARIFTA was also economically driven.<sup>7</sup>

According to Axline (1994a: 4), the third generation of regional co-operation and regional institutions proliferated in a climate of "collective self-reliance" until the 1980s. During this third generation of change, there was a greater realisation of how regional co-operation worked within the global structure. The awakening of indigenous assertion occurred from the mid-1960s in Oceania. This indigenous movement was aware of the region's position within the global political economy through its experiences at the SPC. The "double oil price shock, increasing debt burden, and contraction of world-wide trade" marked the beginning of the fourth generation of regional co-operation from the mid-1980s (Axline 1994a: 4). This fourth generation of change was buffeted by the end of the Cold War and would be challenged by the new political order from the 1990s. Axline (1994a: 5) believes that during the early 1990s, in answering the challenge posed by this new order, regional organisations "regrouped" and "relaunched" regional co-operation on a different basis. As this thesis demonstrates, however, this period merely marked a change in relations between Oceania and the global political economy. There was no regrouping or relaunching of its regional organisations.

According to Axline, the emergence of a 'New World Order' in the 1990s has changed the face of that fourth generation of regional co-operation. Along with changing ideals of the post-Cold War international political economy, there has been a shift in thinking regarding

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<sup>7</sup> That said, the Anglo-American Caribbean Commission was founded in 1942 and it subsequently became known as the Caribbean Commission in 1946 (Corkran 1976: 19). While the early aims of the South Pacific Forum included economic integration, the lack of a regional industrial base quashed these ideas (see Fry 1994).

development policy.<sup>8</sup> Axline believes that regional co-operation has been primarily concerned with economic and political issues. This argument is complementary to the view that security issues can relate to political, economic and environmental considerations.<sup>9</sup> States will generally agree to co-operate if it means that their national goals will be better served and that the “perceived opportunity cost” relating to “relative costs and benefits of different options” is favourable (Axline 1994b: 23). A common regional position can then be taken on such diverse issues as “exploitation of resources, protection of the environment, regional demilitarization, coordination of foreign aid, etc” (Axline 1994b: 23).

Determining such benefits and costs might be subjective, not just because of national positions, but also because of the motives of individual actors. The reasons behind an individual’s motives can include practical consideration of the policy concerned, rancour over the objectives of the organisation or specific issues under negotiation, or leverage being applied by, for example, external forces. Therefore, Axline’s argument in relation to a state’s view of relevant economic, social or political factors needs to be extended to include the sometimes contrary roles played by individual actors.

Because regional organisations in the developing world are drawn from “small, economically underdeveloped and militarily weak” states, Axline (1994b: 26) contends that they are exposed and vulnerable to global forces. This worked in their favour during the Cold War years, as the two rivals competed for friends within the developing world. A further external factor is that of “multinational corporations, intergovernmental and nongovernmental organizations” (Axline 1994b: 26). Axline believes that the influence exerted by this group can be understood in terms of their specific interest in the region. For example, economic interests can include their access to markets or resources and maintenance of investment possibilities. Because of these factors, an important test is whether the regional organisation has “survived institutionally, and as a functioning organization” (Axline 1994b: 29). Hence, this influences the organisation’s ability to attain goals and meet the interests of its members.

Before reading Axline (1994), it had occurred to me that the Oceanic region had undergone a rise and decline in its collective diplomacy achievements. That made Axline’s theory of the four generations of regional co-operation and other theorists’ views of ‘new regionalism’ and the supposed decline and then rise in regional co-operation at odds with what had occurred in Oceania. Even though this thesis argues that Axline’s (1994) four generations of regional co-operation is not relevant to Oceania’s experiences, it is referred to it throughout the thesis to demonstrate how Oceania’s history of regionalism is so markedly different from that of

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<sup>8</sup> The term “developmental regionalism” has been coined to analyse why regionalism may assist developing states (Hettne 2000: xxix-xxx). These include “sufficient size argument ... viable economy argument ... credibility argument ... effective articulation argument ... social stability argument ... resource management argument ... peace dividend argument” (Hettne 2000: xxix-xxx).

<sup>9</sup> See Buzan (2000) for a discussion on traditional security theory and his argument regarding the new security agenda of the international economy and the environment.



other developing regions, such as South America. Furthermore, Axline's (1994) 'four generations' theory provides a framework of regional co-operation among developing states, which makes it interesting to work out why and how Oceania's experiences have been dissimilar. It is made more interesting by the fact that a rise and decline in Oceania's effective collective diplomacy had been at odds with prevailing theories of regionalism.

## **Section two: Collective Diplomacy in Oceania**

As we have seen, the general regionalism literature does not directly assist us in understanding the effectiveness of collective diplomacy. A more promising line of enquiry or set of ideas can be derived from the limited literature on the general collective diplomacy experiences of Oceanic states.<sup>10</sup> This section examines the global, the regional and the local conditions which help explain effectiveness. For example, the role of Australia and New Zealand in their relations with the Oceanic states; the history of leadership in Oceania and how important it has been to effectiveness; the relations between the Oceanic states and the broad, geo-political community; ideas of equity in the region; and how national interests can affect the success or otherwise of effectiveness of collective diplomacy. Perhaps the most important feature of this thesis, as demonstrated in this Section, is change over time and how that change is reflected in shifts in relations between states.

The Oceanic region, which comprises small states/microstates, represents a collection of recently decolonised states.<sup>11</sup> The fact that most of a regional grouping of territories achieved independence within twenty-five years of each other helped to create a decolonising bond of shared experiences (Fry 1979: 18). These states fall within three generalised groups: Polynesia to the East and South, Melanesia to the West, and Micronesia, to the North.<sup>12</sup> Historically, there have been differences of opinion between Melanesia and Polynesia over their hierarchical position in the region.<sup>13</sup> These differences are explored in part two of this section. Competition over the location of the headquarters for regional organisations, the varying economic needs of

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<sup>10</sup> The work of Greg Fry is used extensively in this thesis, as he is the foremost theorist on collective diplomacy in Oceania. As such, he is also used as a checklist against which to evaluate fisheries diplomacy.

<sup>11</sup> Under the Lomé Convention, for example, a sovereign small state, or microstate, has a population of fewer than five million people. There are 89 states falling within this category. Of this total, 48 states are populated by fewer than 1.5 million (Sutton 1998).

<sup>12</sup> Polynesia includes the Cook Islands, Tonga, Samoa, American Samoa, Tuvalu, French Polynesia, Wallis and Futuna, Tokelau and Niue. Fiji has both Polynesian and Melanesian influences, but historically and culturally has been more aligned with Polynesia. Melanesia includes New Caledonia, Vanuatu, Solomon Islands and Papua New Guinea. Micronesia includes Guam, the Northern Mariana Islands, Palau, the Federated States of Micronesia, Marshall Islands, Nauru and Kiribati.

<sup>13</sup> Crocombe (2001: 18) takes the traditional three-way geographical split in Oceania one split further. He believes that Melanesia is divided into Central Melanesia (the Pidgin-speaking grouping of Papua New Guinea, Solomon Islands and Vanuatu); fringe Melanesia (West Papua, New Caledonia and Fiji), Polynesia and Micronesia. In addition to Crocombe's geographical split regarding a Pidgin-speaking Melanesian identity, Fry (1979: 10) argues that language has also divided the region, for example, the divisions that exist between English-speaking Oceania and French-speaking Oceania.

the Oceanic states, and differences of opinion between those states with tuna fish stocks and those without tuna fish stocks all help to colour regional unity.<sup>14</sup>

According to one observer, Oceanic regionalism is caught up with:

the paradox of increased bargaining power with the developed world, conflicting national interests among partner-states and distributional conflicts over costs, benefits and other outcomes of cooperation” (Neemia 1986: 17).

Further, national interest and cost benefits affect Oceania’s regional organisations. They can be influenced by factors such as “... personal relationships among national leaders, perceived commonalities vis-à-vis other participant nations and historical or geographical ties which bind several nations together” (Neemia 1986: 112). That said, as Fry (1991: 170-171) argues, the advantages of regional co-operation include legitimacy, international instruments and cohesive diplomacy that works to “affect the grand strategy of great powers”. Apart from internal factors, there have also been external forces influencing regional co-operation. These forces have been driven by Cold War strategic security concerns or economic or political benefit.

### *Part one: Collective Diplomacy to 1980*

This part evaluates the rise of collective diplomacy from decolonisation to 1980. This includes examination of the SPC and of the South Pacific Forum (the Forum).<sup>15</sup> Other regionalist landmarks such as the Pacific Island Producers Association (PIPA), Air Pacific, the Pacific Forum Line (PFL) and the University of the South Pacific (USP) are also discussed. Commentators, such as Neemia (1986) argue that the primary reason for the SPC’s establishment was the maintenance of metropolitan influence and power within Oceania.<sup>16</sup> This went hand-in-hand with post-World War II concerns to block communist influences in the region. In addition, Australia and New Zealand were looking ahead to a withdrawal of the United Kingdom’s colonial involvement in the region that would secure both countries more power and influence over the island states.<sup>17</sup> Other commentators concur with this, believing that both New Zealand and Australia wanted a say in the post-World War II environment regarding security and by setting up the SPC it established a “regional power structure” (Fry 1993: 228).<sup>18</sup> The ‘Colonial Club’<sup>19</sup> controlled the organisation, its budget and its work

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<sup>14</sup> See Chapter Three.

<sup>15</sup> The South Pacific Forum changed its name to the Pacific Islands Forum at the October 1999 Forum meeting.

<sup>16</sup> Fry (1979: 60) has noted that the colonial powers wanted to limit United Nations scrutiny of constitutional developments in their colonies and saw the establishment of the SPC as a way of achieving this. Colonial powers active in the region at the time included Australia, New Zealand, United Kingdom, France, the United States and the Netherlands. The Netherlands was included, owing to its colonial outpost of West Papua. Herr (1976: 77) notes that Portugal was not included, although it controlled Timor at that time, and in spite of Mr H.V. Evatt’s (Minister for External Affairs, Australia) belief in Timor’s importance to the region.

<sup>17</sup> As early as 1944, Mr H.V. Evatt determined that Australia should chart its own foreign policy interests in the region and “never again” to allow others to control its interests (Herr 1976: 73).

<sup>18</sup> See also Fry 1991 and Herr 1994.



program. The imperial powers' vision was clouded by a paternalistic desire for regional order that influenced the design and implementation of the SPC's programs (Fry 1993: 229).<sup>20</sup> Fry (1979: 66) notes that the SPC's founders wanted indigenous participation at the South Pacific Conference. Article IX, Section 27 of the SPC's Agreement states that:

In order to associate with the work of the Commission representatives of the local inhabitants of, and of official and non-official institutions directly concerned with, the territories within the scope of the Commission there shall be established a South Pacific Conference with advisory powers as a body auxiliary to the Commission.  
(Commonwealth of Australia 1997)<sup>21</sup>

France and the Netherlands, however, were not happy about indigenous involvement at the Conference. The United Kingdom believed those indigenous delegates from the Solomon Islands and the Gilbert Islands were "too primitive" and sent its own officials to Conferences (Herr 1979: 97). Despite these colonial attitudes, indigenous delegates gained valuable experience in the workings of a regional co-operative body (Fry 1979). That experience led to indigenous demands for control of the SPC. According to Fry (1994), a crucial aspect of indigenous involvement in the SPC was that these delegates represented the founding leaders of the independent states of the region. These leaders included Ratu Mara<sup>22</sup> of Fiji (granted independence in 1970), Tupua Tamasese Lealofi IV of Western Samoa (granted independence in 1962, now known as Samoa) and Albert Henry of the Cook Islands (granted self-determination in 1965). These three delegates played a significant role in campaigning for indigenous control of the SPC and of future regional organisations.<sup>23</sup>

In 1962, indigenous delegates to the Fifth South Pacific Conference chafed at their inability to discuss an important regional dispute between the Netherlands and Indonesia over the future of West Papua. West Papua was separated from the region without the other territories being given the right to protest (Herr 1976: 190-191). Fry (1979: 70) notes that a catalyst for indigenous awareness occurred during the mid-1960s. At the Sixth South Pacific Conference in Lae in 1965, Ratu Mara led an indigenous assertion of the right for a more significant role in the organisation. At that time, Ratu Mara was the Member for Natural

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<sup>19</sup> The Colonial Club comprised those colonial powers that set up the South Pacific Community and included Australia, New Zealand, France, United Kingdom, the United States and the Netherlands.

<sup>20</sup> See also Alley 1996.

<sup>21</sup> At the SPC's 25<sup>th</sup> anniversary, a retrospective was provided of the projects undertaken since its inception. Health: Tuberculosis, Eosinophilic meningoencephalitis; Leprosy; Eye Diseases; Maternal and Child Health; Nutrition; Filariasis; Fish Poisoning; Medicinal Plants; Public Health Statistics. Social Development: Community Development; South Pacific Literature Bureau; Population Studies; Home Economics; Youth Work; Audio-Visual Aids; South Pacific Games; Community Education; Language Training; Urban Local Government; South Pacific Arts Festival; Community Education Training Centre. Economic Development: Development of Transportation; Business Management Training; Co-operatives; Agricultural Extension; Cash Cropping; Village Agriculture; Development of Regional Trade; Fisheries; Tourism; Forestry; Tropical Pastures; Control of Pests, Weeds, and Diseases (Corkran 1976: 127).

<sup>22</sup> His full title is Ratu Sir Kamisese Mara.

<sup>23</sup> Two other indigenous leaders were also involved, but played a less significant role. They were Prince Tu'ipelehake of the Kingdom of Tonga (Brother to the King of Tonga. Tonga was never formally colonised) and Hammer De Roburt, President of Nauru (independent since 1968) (Fry 1994).

Resources in the Fiji government and, as Fry (1979: 70) notes, a prime force behind the 1965 creation of PIPA. Described later as a 'rebellion', the actions of the indigenous delegates at the Lae conference led to significant change in the power balance within the SPC. This more inclusive style of participation in the SPC would challenge "the assumptions and values underlying the European approach to regionalism" (Fry 1979: 70).

It is apparent from regional observers that those indigenous forces surrounding the South Pacific Conference and the SPC were encouraged by Ratu Mara.<sup>24</sup> In his push for the SPC's politicisation, other indigenous leaders supported Ratu Mara, and the 1965 Sixth Conference marked a move towards an indigenous style of regionalism (Herr 1976: 191-192). This indigenous style of regionalism "asserted new values based on a different ideological and cultural perspective" and envisaged the Oceanic states controlling the regional organisations, with "minimum interference in the region by outside powers" (Fry 1979: 72).

A further effort to bring about indigenous involvement in regional affairs occurred with PIPA's establishment. PIPA was set up to strengthen co-operation between banana growers and their trade relations with New Zealand. The banana-producing states of Tonga, Fiji and Western Samoa (and later the Cook Islands, Niue and the Gilbert and Ellice Islands) underwent what Neemia (1986: 26) calls "some lasting lessons in regional cooperation".<sup>25</sup> These lessons included the realisation that

confining membership to island countries would mean a severely limited budget and an 'association of the weak' and, secondly, that it was essential to have working relations with other international organizations including receiving aid from such organizations to enable regional organizations to carry out their work programme. (Neemia 1986: 26)

The membership of PIPA comprised only the Polynesian states, apart from the Micronesian Gilbertese, thus it was primarily a Polynesian endeavour (Fry 1979: 96). It is Herr's (1994: 284) contention that Fiji, Tonga and Western Samoa "were forced to go outside the SPC's framework to pursue their economic ambition of higher commodity prices for their agricultural exports". This argument is disputed by Fry (1981: 463), who notes that the work PIPA undertook could have been carried out by the SPC, however a regional organisation was established at the insistence of Ratu Mara, thus making it "an exercise in self-determination". Hence, PIPA was an important landmark in the drive for indigenously-controlled regional organisations. Neemia (1986) believes PIPA was pivotal in the founding of the Pacific Forum Line (PFL), with the proposal to establish the PFL agreed to at the 1971 PIPA meeting in Tonga. Herr (1994: 285-286) claims that PIPA's brief was confined to the improvement of banana prices. On the other hand, by 1971 Fry (1979: 102) argues that PIPA's brief included "technical committees,

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<sup>24</sup> Herr (1976: 191-192) believes that there was a further reason for his actions. The United Nations was pushing the United Kingdom to grant Fiji early independence in the mid-1960s. Ratu Mara believed that such an occurrence could spark racial confrontation between indigenous Fijians and Indo-Fijians. Hence, by trying to politicise the SPC, he hoped to protect Fiji from the United Nations.

<sup>25</sup> The Gilbert and Ellice Islands seceded in 1976 and became Kiribati (independent in 1979) and Tuvalu (independent in 1978) respectively.



discussions on shipping, bulk purchasing, regional copra processing and the pest and disease survey”.

Because of this, PIPA’s establishment can be credited with being the region’s first indigenously controlled regional organisation and was, it is argued, an important stepping stone to further indigenous regional initiatives. Furthermore, PIPA’s discussions regarding the establishment of the PFL and the range of its brief, politicised the organisation, thus giving its indigenous membership the encouragement to pursue their own regional political (and economic) solutions. It is useful to remember that Polynesian society is hierarchically-structured and therefore the establishment and running of a regional Polynesian organisation would not have seemed an alien concept (see Hoadley 1992, among others). The fact that PIPA did achieve more than was envisaged is a reflection of the pre-colonial inter-island links that forged an open attitude to other communities in the region.<sup>26</sup>

By the 10<sup>th</sup> South Pacific Conference in 1970, Ratu Mara was preoccupied with Fiji’s impending independence. He proposed “an integrated package of six projects for regional co-operation to the Conference”, all of which were focused on Fiji (Herr 1976: 230-231). Therefore, Ratu Mara’s perception of regionalism was clearly linked to Fiji’s own development.<sup>27</sup> The imperial powers realised that Ratu Mara’s promotion of a “politically motivated comprehensive regional organization” did not include them (Herr 1976: 235). Rather, the small states/microstates “felt the need to pool (not “surrender”) their sovereignty in a political regional organization” (Herr 1976: 235). Imperial powers, such as France, did not want the SPC politicised and preferred to encourage the establishment of a second regional organisation. These preferences were related to France’s nuclear testing program in the region as well as calls for the independence of its regional colonies.<sup>28</sup>

Leadership was a driving force in the SPC achieving its objectives. One indigenous leader in particular has stood out in this regard: he was Macu Salato of Fiji, the SPC’s Secretary-General from 1975-1979. Kiste (1998: 69) remarks that Salato was “an effective advocate for the SPC’s commitment to development at the grass-roots”. Throughout this thesis, it is demonstrated that leadership can play a crucial role in achieving objectives. Salato had an inclusive style of leadership, which enfranchised people at the grassroots, rather than excluded them.

By the late-1960s, indigenous leaders were frustrated in their attempts to voice their concerns about France’s nuclear testing program in the Pacific at the only regional body, the

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<sup>26</sup> See Chapter Three.

<sup>27</sup> Crocombe (2001: 612) notes that Ratu Mara was “educated earlier and further” than other indigenous leaders of the time and that during the 1970s, Ratu Mara “was skilfully hijacking the lion’s share” of regional co-operation. See also Hoadley (1992: 55).

<sup>28</sup> At that time France had, and still has, three dependent territories in the region. They are New Caledonia, French Polynesia and Wallis and Futuna.

SPC.<sup>29</sup> Fry (1979: 103) believes that during this period “institutional developments can be seen as important expressions of the Islanders’ desire to assert indigenous control over regional decision-making and activity”. The establishment in August 1971 of the South Pacific Forum (the Forum) gave the leaders of the region’s independent states a venue for political free speech.<sup>30</sup>

Australia and New Zealand were invited to become founding members of the Forum in 1971. Commentators such as Fry (1994) point out that island leaders such as Ratu Mara believed that region’s sphere of influence would be expanded if it included these two developed states in the Forum. Further, given the Polynesian identity within New Zealand, and its close ties with Oceania, the decision was influenced by that country’s “empathy with the islands region” (Fry 1994: 140).<sup>31</sup> The Forum included only those independent states of the region, whereas the SPC included all independent states and dependent territories. What the Forum maintained, however, was the geographical boundaries forged by the SPC.<sup>32</sup> These boundaries “... defined for further generations who was in, and who was out of, ‘the region’ ” (Fry 1991: 173). By denying membership to those colonial powers with interests in the region such as France and the United States, the Forum was exclusionary, but this is what set the organisation apart from the SPC.

As Herr (1994) points out, the Forum was not founded by way of a formal treaty. As it has had no legal personality, members have not been legally bound to meet. In spite of this lack of legal personality, however:

The South Pacific Forum is the apex of regional cooperation in the South Pacific in that representation is almost always at the level of Head of Government. There is no higher regional authority. Its institutional structure includes links with most inter-governmental regional organizations in the Pacific at the present time. (Neemia 1986: 26)

What the Forum did have was strong indigenous leaders. As Fry (1979: 121) notes, by 1971 Ratu Mara was Prime Minister of Fiji and he was being careful not to appear to control the regional agenda. In spite of this, his role as Oceania’s ‘front man’ had begun to irritate other indigenous leaders. They compared him unfavourably with the Western Samoan and Tongan leaders, who were seen to have a “more traditional Polynesian political style” (Fry 1979: 121). As discussed above, leadership is an integral component in regional co-operation. The thesis

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<sup>29</sup> Before 1963, France conducted its nuclear tests in Algeria. France commenced its first testing program in French Polynesia on 3 July 1966. France concluded its round of testing in 1975 and thereafter suspended its testing in 1992. It resumed nuclear testing in 1995 and, bowing to international pressure, concluded its nuclear testing program in 1996 (Ross 1993, Firth and von Strokirch 1997).

<sup>30</sup> At the first Forum meeting, held in Wellington, New Zealand in August 1971, Heads of Government from the Cook Islands, Fiji, Nauru, Tonga, Western Samoa and New Zealand attended. The Minister for External Territories, Mr Charles Barnes, attended from Australia (Herr. 1976: 311).

<sup>31</sup> Australia and New Zealand are members of all of the region’s institutions. These include the Noumea-based Pacific Islands Secretariat (SPC), 1947; the Suva-based South Pacific Applied Geoscience Commission (SOPAC), 1984; the Honiara-based Forum Fisheries Agency (FFA), 1979; the Apia-based South Pacific Regional Environmental Program (SPREP), 1990; and the co-ordinating body of the South Pacific Organizations Coordinating Committee (SPOCC), 1988 (Fry 1994: 137).

<sup>32</sup> See figure Intro.1.at p 1a of the Introduction.



demonstrates that a failure in leadership can have ramifications for achieving outcomes in collective diplomacy.<sup>33</sup>

Within three months of the Forum's establishment, the membership agreed that a meeting of trade officials should be convened to discuss "the possibility of establishing an economic union for the area" (Fry 1979: 110). These integration ambitions led to the establishment of the South Pacific Bureau for Economic Co-operation (SPEC) in 1972.<sup>34</sup> SPEC's creation was seen as a vehicle to strengthen the export capabilities of member states, but it evolved as the Forum's Secretariat.<sup>35</sup> SPEC absorbed the functions of the PIPA, its membership agreeing that SPEC comprised the same membership group, but with a wider capacity for activity (Fry 1979: 102).<sup>36</sup>

Apart from the integrative objectives or otherwise of the regional leadership, there was also the strategy of collective diplomacy with the wider global political economy where a strong united front by the Oceanic states had positive results. At the first Forum meeting in August 1971, leaders expressed their regret at France's atmospheric nuclear testing program in the region. It was the first joint action by the Forum. By the end of that August, France had agreed to halt its atmospheric tests. Ogashiwa (1991: 11) has argued that the widespread protests, including those by the Forum, had "contributed to the pressure" (see also Corkran 1976: 177). A Resolution drafted by the Forum regarding its opposition to nuclear testing resulted in a meeting at the United Nations in 1972. The Resolution was subsequently tabled in the General Assembly and adopted in November 1972 (Ogashiwa 1991: 11-12). Ogashiwa (1991: 14) believes that while France has never agreed with the dangers of nuclear testing, its decision to move its tests underground was influenced by world opinion, including that of the Forum. France has been committed to maintaining a presence in the Oceanic region. The cessation of atmospheric testing by the United Kingdom in Australia or the United States in Micronesia may have made France's decision less difficult.

Fry (1979: 167-168) illustrates another example of the region's use of collective diplomacy. This relates to the former Yaounde Convention, which controlled economic relations between the previously African colonies of France, Belgium and Italy and the EEC.<sup>37</sup> In 1973, those eligible Oceanic states were invited, along with those eligible African and

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<sup>33</sup> See in particular Chapter Seven.

<sup>34</sup> One of SPEC's first activities was to undertake a review of the Caribbean's CARIFTA, to establish whether such a free trade area could be appropriate for Oceania (Corkran 1976: 104).

<sup>35</sup> See Herr (1994).

<sup>36</sup> Neemia (1986) notes that SPEC's mandate developed into areas previously managed by the SPC, for example, fisheries and environmental management. This was linked with concerns within the region regarding United States and French influence within the SPC over issues such as fisheries and nuclear testing (1986).

<sup>37</sup> Those independent Oceanic states which were members of the Commonwealth were eligible to join this club after the United Kingdom joined the EEC in 1973. The former United Kingdom colonies of the Caribbean were also included, thus making it the ACP group (Africa, Caribbean and Pacific).

Caribbean states, to conclude a new instrument, the Lomé Convention.<sup>38</sup> It was clear that to achieve the region's objectives, it would be necessary to have a united approach to the negotiations. Thus, a senior SPEC official headed the Pacific Group Secretariat in Brussels. It was only disbanded on conclusion of the negotiations. Ratu Mara was the spokesperson for the Pacific Group, and Fry argues (1979: 167-168) that his efforts helped to secure an export utilisation scheme for the region. In his analysis of the region's objectives of the Lomé Convention, Neemia (1986: 80) believes that SPEC's most beneficial role was its co-ordination of aid from the EEC under the Lomé Convention. The success of Ratu Mara and SPEC over these Lomé negotiations would have encouraged the region in the development of its objectives. It was also an early indicator for them of the power that unity has in multilateral negotiations.

A further example of the region's achievements in collective diplomacy concerned those Oceanic states with United Nations membership. Their efforts included the decolonisation of Oceanic territories and issues of concern to small island developing states, as well as the United Nations Law of the Sea conference (Fry 1979: 171-172). The Oceanic states of Fiji, Papua New Guinea, Tonga and Western Samoa attended UNCLOS III and they were active on issues relevant to the region. For example, they promoted the preference for an Exclusive Economic Zone (EEZ) over other suggestions.<sup>39</sup> Fiji also led the campaign for the rights of archipelagic states (See also Teiwaki 1988, Veitayaki 1995. Also discussed in Chapter Three).

Regional meetings have helped to develop and foster a regional identity. This identity has in turn given the Oceanic states a degree of cohesion and unity, which has enhanced their bargaining power and influence at international negotiations. A way of ensuring a feeling of equal participation has been the rotation of yearly meetings between the Oceanic states, thus allowing small island states/microstates to feel as though they are equal players.

However, achieving the objectives of collective diplomacy have also been hindered for a range of reasons, for example, national rivalries. This was particularly the case with Fiji's role in evolving regional co-operation during the late-1960s and early-1970s regarding the University of the South Pacific, SPEC, the SPC Community Education Centre and Air Pacific. In addition to these Suva-based organisations, several United Nations agencies established their regional base in Suva (Fry 1979: 240). To other Oceanic states it appeared that regionalism was based in Fiji, apart from the metropolitan-influenced SPC, based in New Caledonia. Linked to this was the dominant role assumed by Fiji and, in particular Ratu Mara, over a range of regional activities.

Another divisive factor in promoting collective diplomacy has been the differences between the Melanesian and Polynesian groups. Fry (1979: 253) proposes that:

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<sup>38</sup> At the time, those qualifying Oceanic states were Western Samoa, Fiji and Tonga.

<sup>39</sup> Other ideas included the custodial/preferential school or historical access beyond the territorial sea (see Chapter Three).



Differences based on culture and appearance are reinforced by geographical separation and by the fact that the Melanesian states have only recently enjoyed substantial constitutional development whereas the main Polynesian states were the first Islands groups to gain political independence.

After gaining independence and membership of the Forum, the Melanesian states voiced their criticisms regarding the regional movement's slow pace of progress. These comments were in addition to Melanesian resentment regarding the superior attitude of the Polynesians towards them, the inference being that they were "inferior, unsophisticated, and even primitive" (Fry 1979: 254).

There were differences between the two groups. The Polynesian states achieved independence earlier than the Melanesian states. Polynesian society is hierarchical and homogeneous, characterised by hereditary aristocracies "supported by a priestly caste and elaborate mythologies and artforms" (Hoadley 1992: 15). On the other hand, Melanesian society is fractured, with many different local languages and characterised by "more diverse, dispersed and individualistic patterns of tribal and family organisations" (Hoadley 1992: 15). The Melanesian states of Papua New Guinea, Solomon Islands and Vanuatu do, however, share a common language, Pidgin. Melanesian society was also most affected by the blackbirding activities of Australian traders, by "land alienation" and by a lack of institutional readiness for independence (Neemia 1986: 112-113). Cultural differences between the two groups were also emphasised by the early colonisers. For example, Polynesians were considered superior to Melanesians because of their hierarchically-organised society and because of their lighter skin. Melanesians, on the other hand, were known as headhunters and cannibals, creating the perception that they were savage and hostile (Scheyvens 1999: 51).

Linked to these divisive factors has been the disparity in economic development across the Oceanic region. As Fry (1979: 258) notes, not only have there been differences in the economic base between the states, but there are also differences in the range of economic capabilities of these states. Thus, the size of Fiji or Papua New Guinea's economy has been bolstered by the fact that they have enjoyed a wider range of activity than say, for example, Kiribati or Niue (Fry 1979: 258). These economic differences have had an impact on the varying needs of the Oceanic states. For example, the needs of Fiji's more dynamic economy brought it into conflict with other Oceanic states when it campaigned for accounting and engineering chairs at the University of the South Pacific in 1975 (Fry 1979: 259).

Finally, the motives of the metropolitan powers and how they influenced the success or otherwise of collective diplomacy during this period require some examination. Commentators such as Fry (1979) highlight four reasons behind the support by Australia and New Zealand of regional co-operation in Oceania. First, it was hoped that the provision of economic development, would make the region less vulnerable to the advances of the Soviet Union. Second, it portrayed a united region, signalling that it was there where decisions were made.



Third, the provision of financial assistance ensured Australia and New Zealand could influence regional decision-making. Australia and New Zealand hoped in return to engender loyalty from the region (Fry 1979: 285-287).

It is Fry's (1979: 297) conclusion that regionalism during this period became increasingly dependent on the involvement of the metropolitan powers, particularly Australia and New Zealand. Even while the Oceanic states were promoting indigenous control and expansion of regional organisations, they were becoming increasingly dependent on the external funding and expertise required to fulfil their program requirements. This served Australia and New Zealand well because by strengthening regional co-operation through financial assistance, the Oceanic region would remain orientated towards the West, an important Cold War reality (Fry 1979: 297). Hence, Neemia's (1986: 5) belief that:

[T]he donors' motives in giving aid are far from wholly compassionate or humanitarian. Most aid is intended to promote the donor's interest whether commercial, economic, political or strategic.

From the region's perspective, Neemia (1986: 111) argues that there is an evaluation made by a national government of "tangible measures and non-quantifiable terms" of issues such as control (1986: 111). Second, that evaluation is applied to the other participants to analyse whether they are "equitably distributed" (1986: 111). Because of the variables of a range of issues, Fry (1994: 169) believes that there are questions not only of equity, but also whether an individual state could have achieved a "cost effective result outside the regional scheme". For example, the integration schemes such as "tertiary education, civil aviation and shipping indicated the kinds of tensions that would have pulled more ambitious regional schemes apart" (Fry 1994: 169). National interests could be taken into account once the region moved away from ideas of integration and more towards collective diplomacy. Nevertheless, even with collective diplomacy endeavours, the need for unity still required that the regional good should prevail over national interests, for example, the *South Pacific Nuclear Free Zone* (SPNFZ) negotiations.

In conclusion, the economic integration ideas which characterised the earlier years of regional co-operation were not feasible for several reasons. One reason was the lack of industrialisation in the region (apart from Fiji). A further reason was that trade within the region was minimal; as many states had the same products or processing facilities were not available. The disagreement within the region regarding a single regional airline was regionalism's first discordant note. By this time, Fiji's promotion of regional co-operation was being perceived by other states in the region as Suva-centric, with accompanying control over all aspects of the region's organisations. The decision to pool the region's shipping resources was another failure for those high-level integration proponents, but nevertheless did achieve a limited degree of integration. The University of the South Pacific, however, did achieve a high degree of integration. What the exercises in integration illustrated were the difficulties of resolving the

national interest, the costs and benefits associated with specific integration policies, and notions of equity. Where the region was starting to see success, was in the area of collective diplomacy, whether at the United Nations or in negotiations with the EEC. Thus, it was in the area of collective diplomacy where the region would reach its objectives between 1980 and the mid-1990s.

*Part two: Collective Diplomacy from 1980 to the mid-1990s*

From the accounts of regional observers, the period from 1980 to the mid-1990s was distinguished by effectiveness in collective diplomacy. The Forum Fisheries Agency (FFA) was established in 1979 and thereafter finalised a raft of regional and sub-regional fisheries conservation and management instruments on behalf of its membership. During the 1980s, the region's objectives included: the finalisation of the SPNFZ 1985 (the SPNFZ); the *Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America* in 1987 (Multilateral Fisheries Treaty); and the *Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific* in 1989, (the Driftnet Convention). From 1990 to the mid-1990s, several initiatives were finalised. These included two regional conventions which entered into force in 1990. The first was the *Convention for the Protection of the National Resources and Environment of the South Pacific Region* in 1986 (the SPREP Convention). The second was the *Convention on Conservation of Nature in the South Pacific* (the Apia Convention). The region enjoyed collective diplomacy initiatives at the Fish Stocks negotiations (1992-1994);<sup>40</sup> at the Earth Summit (United Nations Conference on Environment and Development – UNCED) in June 1992 and its work thereafter to implement Agenda 21; and the region's collective efforts to halt French nuclear testing, which was accomplished by January 1996. Part two examines what regional observers have said about some of these collective diplomacy efforts. Collective diplomacy in relation to those fisheries achievements listed above will be discussed in the forthcoming Chapters.

The South Pacific Regional Environment Programme (SPREP) was established in 1982. SPREP's role was to develop "regional environmental policies and standards" (Tsamenyi 1999: 471). By 1990, both the SPREP Convention and the *Convention on Conservation of Nature in the South Pacific* (the Apia Convention) had entered into force. South and Veitayaki (1999: 33) note that the SPREP Convention was "a major achievement for the region because of the difficult policies that needed to be implemented". The SPREP Convention, for example:

makes provisions for preventing, reducing, and controlling pollution from vessels, land-based sources, sea-bed activities, atmospheric sources, dumping and storage of toxic and hazardous wastes and testing of nuclear devices, as well as environmental damage caused by mining and coastal erosion. (South and Veitayaki 1999: 33)

<sup>40</sup> *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*. Known in this thesis as the Fish Stocks Agreement, or the Fish Stocks negotiations. Also known as the UNIA (United Nations Implementing Agreement).



These provisions were to be undertaken in accordance with the London Dumping Convention.

The SPREP membership<sup>41</sup> has been active on issues relating to climate change, hence its active participation at the Rio Conference in 1992, at which the *United Nations Framework Convention on Climate Change* (the Climate Convention) was opened for signature (Davis 1996: 2). One specific way the SPREP membership was able to exert some influence at the conferences was through the Alliance of Small Island States (AOSIS).<sup>42</sup> According to Davis (1996: 2), the AOSIS group played a “key role” at the Climate Convention’s negotiations, “driven by self-preservation and an acute sense of injustice”. Thus, it was able to “significantly influence the Climate Convention despite the limited economic and political clout of its individual member states” (Davis 1996: 2-3). The SPREP membership undertook collective action within a larger group, AOSIS. Davis (1996: 3) believes that a strong component of AOSIS unity was leadership, noting for example, the “gifted” vice Chair of AOSIS, Ambassador Tuiloma Neroni Slade of Samoa, at the 1995 Berlin Climate Convention conference.<sup>43</sup> Nevertheless, as Bergin and Michaelis (1996: 59) point out, the AOSIS bloc was unable to sway Australia’s refusal to accept its proposal for a reduction in carbon dioxide emissions at that Berlin conference.

The proposal for a South Pacific nuclear-free zone (SPNFZ) was first raised at the Forum by a New Zealand Labour government in 1975.<sup>44</sup> It should be recalled that one of the main reasons behind the Forum’s establishment was the inability of the region’s indigenous leadership to voice their protests regarding French nuclear testing at the SPC. It was not until 1983, with the re-election of an Australian Labor government, that the idea was revived, the primary purpose being the isolation of France (Alley 1996: 53). Australia’s proposal for the SPNFZ Treaty had gained Forum approval by 1984 (Fry 1985: 16). The Treaty was opened for signature at the 1985 Rarotonga Forum.

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<sup>41</sup> The SPREP membership includes all independent states and dependent territories of Oceania, as well as Australia, France, New Zealand and the United States (South Pacific Regional Environment Programme 1997).

<sup>42</sup> The AOSIS group in Oceania comprises Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga Tuvalu and Vanuatu. In the Caribbean: Antigua and Barbuda, Bahamas, Barbados, Belize, Cuba, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago. In the Atlantic Ocean: Cape Verde, Guinea-Bissau, and Sao Tome and Principe. In the Indian Ocean: Comoros, Maldives, Mauritius and the Seychelles. In the Mediterranean: Cyprus and Malta. Singapore is the South China Sea member. Observers include American Samoa, Guam, the Netherlands Antilles, Niue and the U.S. Virgin Islands (Davis 1996).

<sup>43</sup> Ambassador Slade is now the Chair of AOSIS. He is also the Permanent Representative of Samoa to the United Nations and concurrently Ambassador to the United States of America and High Commissioner to Canada. He is based in New York. A lawyer by training, Ambassador Slade was formerly Attorney-General of Samoa (1976-1982). Before his current appointment (since March 1993) he was a senior legal adviser with the Commonwealth Secretariat in London from 1983 to 1992 (Climate Institute 2001).

<sup>44</sup> In that same year, Fiji, Papua New Guinea and New Zealand achieved endorsement from the United Nations for a South Pacific Nuclear Free Zone. The Resolution of General Assembly “was adopted by a vote of 110 to 0, with 20 states abstaining, including all of the nuclear powers except China” (Dorrance 1992: 43).



While it would seem the region was united in its nuclear-free zone quest, the truth was otherwise. Australia's stand was more moderate than that of New Zealand, and the Oceanic states were split down a Melanesian/Polynesian divide.<sup>45</sup> The Melanesians were more radical on the issue, while the Polynesians were prepared to compromise; most of them not even wanting a Treaty for fear of dismantling regional security arrangements (Fry 1986: 64). Thus, Australia and the Polynesians had to compromise with New Zealand and the Melanesians.<sup>46</sup> Ogashiwa (1991: 64) notes that the SPNFZ has been "criticized as partial, ineffective and incomprehensive ...[but] it is rather successful from the viewpoint of regional cooperation". Thus, the SPNFZ is an example of a successful regional outcome by the Forum (see also Fry 1985: 18).<sup>47</sup> This outcome would have pleased a sceptical Ken Piddington<sup>48</sup> (1985: 52) whom, when writing of the Forum's first fifteen years, was not optimistic of the region's co-operative ability to pull off what he termed the "huge complexity" of such negotiations.

The SPNFZ had the desired effect of halting Japan's plans to dump nuclear waste material in the region (Fry 1985: 18). Protests by the Forum and by individual Oceanic states since 1980 regarding Japan's "experimental" nuclear dumping proposals for the Marianas Trench, resulted in Japan slowing down its plans (Aldridge and Myers 1990: 12). It was the SPNFZ, however, that ended any further consideration of the proposals (Ogashiwa 1991: 19). As well, pressure by Oceanic states such as Kiribati and Nauru, in conjunction with some western European states, sought revision of the London Dumping Convention. At its September 1985 meeting, the London Dumping Convention agreed to "suspend all sea disposal of radioactive materials pending further studies" (Power 1986: 458).

One of the most vexed issues that the region has struggled with since first protesting against France's nuclear testing program has been its cessation. While it appears there was minor success through the Forum's intervention back in the early 1970s to stop France's atmospheric testing program, its program recommenced in 1994, this time underground (see Ogashiwa 1991). Piddington (1985: 48) noted that in spite of "fifteen years of sustained protest" by the Forum up until 1985 when his report was published, France had refused to reconsider its program. After twenty-five years of 'sustained protest' by the Forum, the region did see a successful conclusion to its relentless collective diplomacy on this issue. France concluded its

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<sup>45</sup> At the time, the Micronesian entities of Palau, Marshall Islands and Federated States of Micronesia were still Trust Territories of the United States. The Northern Mariana Islands was in a Commonwealth Covenant with the United States (since 1975) and had no responsibilities for defence or foreign affairs. As a point of interest, however, Palua had the world's first nuclear-free Constitution, drafted by the Trust Territory's Constitutional Convention in 1979 (Aldridge and Myers 1990: 55-56).

<sup>46</sup> The Lini Government in Vanuatu, while endorsing the SPNFZ, did not sign, stating that it wanted a stronger treaty (Power 1986: 46). Vanuatu's actions can be linked to its colonial past. It has "loathed foreign interference" (Ogashiwa 1991: 62).

<sup>47</sup> One observer has raised the issue of the Forum's legal personality. Power (1986: 457) notes that complaints regarding SPNFZ violations can go to the Forum, however, "constitutionally it lacks executive power, much less supranational authority". This was discussed above at pages 14 and 23.

<sup>48</sup> Ken Piddington, a New Zealand national, helped to establish the Forum Secretariat, the Forum Line and the South Pacific Regional Environment Program.

nuclear testing program in January 1996 (see also Firth and von Strokirch 1997, Alley 1996).<sup>49</sup> According to one observer, the role of the Forum was crucial in facilitating this outcome (Interview, Ross, October 2000).<sup>50</sup> Another observer has remarked that while the Forum's efforts to stop nuclear testing "grew marginally" during the Cold War era, "they intensified with its departure" (Alley 1996: 53).

A further example of the Oceanic states' use of collective diplomacy in the environmental arena concerned the United States government's plan to "use Johnston Island as a site for the incineration of its chemical weapons" (Fry 1994: 162). The United States had previously stored its chemical weapons in Germany (East-West Center 1990: 39). Continued Oceanic protests regarding the Johnston Atoll Chemical Agent Destruction system (JACADS) led to President Bush inviting Oceanic leaders to Honolulu for a summit in October 1990. The summit's focus was the United States' relationship with the region. It was not just the JACADS project itself that raised the ire of Oceanic leaders, but also the fact that it had been "developed without consultation with Pacific nations, and the inclusion of materials from Europe in addition to those in the Pacific is a particular irritant" (Kiste 1991: 11). At the Honolulu summit, President Bush conceded that:

...we plan to dispose of only the chemical munitions from the Pacific Theatre currently stored at Johnston Atoll, any obsolete materials found in the Pacific Islands, and those relatively small quantities shipped from Germany ... these munitions will be destroyed safely, on a prioritized schedule, and that once that destruction is completed, we have no plans to use Johnston Atoll for any other chemical munitions purpose, or as a hazardous waste disposal site. (East-West Center 1990: 8)

This concession would seem to signal success for the region's collective diplomacy efforts. However, as Fry (1994: 163) notes, the use of the words "no plans" could allow the United States to change its mind, should circumstances dictate.

From 1980 to the mid-1990s were halcyon days for Oceanic regional co-operation. This has been demonstrated in the range of objectives related to collective diplomacy, rather than the integration policies of the earlier era of regional co-operation. Many of these objectives were focused on the region's environmental concerns and demonstrate how environmental objectives can be a driving force for collective diplomacy. During this period, there was a growing realisation within the region of the power of unity in international negotiations. Australia and New Zealand encouraged that unity as a means of securing regional stability, as well as a pro-West stance. By the mid-1990s, however, the neo-liberal reform agenda had become a dominant feature of both Australia and New Zealand's relations with the Oceanic states. No longer could the region expect to benefit from the dynamics of the Cold War environment.

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<sup>49</sup> France, United Kingdom and the United States signed the SPNFZ (or the Treaty of Rarotonga) in Fiji on 25 March 1996 (Zwirn 1996: 19). The Soviet Union (1986) and China (1987) have signed and ratified the SPNFZ (Dorrance 1992: 45 and Forum Secretariat 1997).

<sup>50</sup> Ken Ross is a senior official with the Bureau of External Affairs, Wellington, New Zealand.



*Part three: Collective Diplomacy from the mid-1990s to 2001*

The focus of regional studies since the mid-1990s concentrates on the inter-connected issues of the neo-liberal reform agenda and security. Part three examines what regional observers have said about collective diplomacy from the mid-1990s to 2001. The neo-liberal reform agenda, with its catch-cry of ‘good governance’, has preoccupied the Oceanic states since the mid-1990s. One observer has commented that:

The increased pace and scope of reforms that occurred in the islands from the mid-1990s onwards cannot be explained outside the context of the donor-driven regional reform agenda. (Sutherland 2000: 460)

The range of donors includes states such as the United Kingdom, France, Japan, Germany, Australia, New Zealand and the United States. It also includes those development orientated banking institutions such as the Asian Development Bank, the World Bank and the International Monetary Fund (IMF).

By 1995, with the region’s reform agenda focused on the fisheries, forestry and tourism sectors, the World Bank won an ally in Australia and through this alliance had persuaded the Forum to lead the regional reform agenda.<sup>51</sup> Their aim was to bring about regional economic security, in an era defined by competing interests, rather than the bipolar Cold War geopolitical standoff (see Fry 1999). Among other initiatives, the Forum established the Forum Finance Ministers Meetings (FFMM). The FFMM’s ideology would be driven by:

the need to adopt a global perspective in regard to the development of economic policies, in particular ensuring the achievement of maximum sustainable economic returns on the region’s resources, enhancing development of the private sector, responding to changing global economic conditions, increasing the level of value-added production, and developing regional approaches to international trade. (1994 Forum Communiqué)<sup>52</sup>

How effective has the Forum and the FEMM been in guiding the region through this regional reform agenda? It has been argued that it is too soon to tell but “that there is no turning back” (Sutherland 2000: 475). In order to meet the challenges of globalisation, the donor community must “apply pressure” to the Oceanic states (Sutherland 2000: 475) as future funding requirements would be conditional on instituting the reform agenda. Firth (2000: 188) has commented that the region has no choice but to “embrace policies of economic liberalization”. That said, the Oceanic states “should fear” those features that form part of the global economy (Firth 2000: 188). For example, free trade, the technological revolution and electronic commerce, and the mobility of capital (Firth 2000: 188).<sup>53</sup>

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<sup>51</sup> According to Sutherland (2000: 464), the groundwork was undertaken at the August 1994 Brisbane Forum. The Hon. Gordon Bilney, Australia’s Minister for Pacific Island Affairs, had focused the meeting on these very issues (as well as regional airlines), by adopting, for the first time, a theme for the Forum meeting, ‘Managing Our Resources’ (1994 Forum Communiqué).

<sup>52</sup> The FFMM membership was widened at the 1996 Forum meeting to include those Forum ministers with economic responsibilities. The new group is known as the FEMM (Sutherland 2000: 467).

<sup>53</sup> For an alternative view, see Encontre (1999: 269), who argues that small island developing states (SIDS) will benefit from trade liberalisation. Encontre does concede, however, “the extent to which SIDS will be



Therein lies the rub. While regional elites have supported the donor community's demands to impose a regional reform agenda, the general populace has been excluded from the process.<sup>54</sup> Part of the regional reform agenda includes the highly emotive issue of land tenure. This issue is region-wide and without being privy to the reform process, the general populace has been alarmed at losing control over what is a backbone to their cultural identity, custom and security (see Hunt 1998: 129-132).<sup>55</sup> As Sutherland (2000: 476) notes:

Reductions in government expenditure will inevitably affect the capacity of the state to deliver, particularly on its welfare functions. As cost recovery principles take effect, the poor, the weak and the low-paid will become increasingly disadvantaged, also heightening the risk of social disaffection and political instability. Private sector growth may well occur but is unlikely to be large enough to absorb the swelling ranks of the unemployed.

Foreseeing a positive regional outcome thus becomes questionable. The elite have been co-opted and therefore lacked strength in their collective negotiations with the donor community. If the general population has been excluded in any discussion or involvement in decision-making by the regional leadership, then the legitimacy of these processes is doubtful. The crucial point argued by Sutherland (2000: 459) regarding the regional reform agenda is that the process has been "driven primarily by external forces, particularly donors". From Sutherland's analysis it is determined that the agenda has not been effective for two reasons. First, that the process was not inclusive and second, that it was an agenda imposed on the region by global forces.

It is clear that from the mid-1990s to 2001 there has been a radical departure from the previous eras of integration policies and collective diplomacy in Oceania. Instead, the post-Cold War fixation of donors and the development-banking sector of the need by the region to adopt the attributes of the neo-liberal reform agenda has resulted in a decline in the effectiveness of collective diplomacy. It is argued that because the reforms demanded of the region by donors and banks were imposed and not inclusive, regional co-operation was undermined. What does this mean for my sub-set of broader processes and propositions relating to collective fisheries diplomacy? Has this sector also witnessed a period of decline? The following Chapters demonstrate that this sector has also declined.

This Chapter has examined theories about regionalism at the global and regional levels in an effort to understand how we can apply it to collective diplomacy in the fisheries sector. Such an examination helps to explain the specific tasks of this thesis. These tasks are twofold.

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able to benefit from these developments will depend on their capacity to manage the transition to situations of greater competition in the global economy".

<sup>54</sup> When Port Moresby's general populace discovered that the Papua New Guinea government was about to accede to World Bank and IMF strictures and privatise government institutions, as well as reform traditional land tenure, riots ensued in which four protestors died (Healy 2001). This outcome is at variance with Macdonald's (1998: 39) analysis of the earlier financial crisis in Papua New Guinea in 1996-1997, after which the government backed away from its rejection of World Bank conditions. Macdonald believes that the crisis "led to a public appreciation of the issues involved and of the necessity for reform".

<sup>55</sup> See Crocombe (2001, Chapter 11) for a discussion on the complexity of land tenure in Oceania.



First, to search for the reasons why the effectiveness of collective fisheries diplomacy in Oceania had more than two decades of cumulative success, which went against conventional understandings of the role of small states/microstates in their relations with larger and more powerful states. Second, in the light of the region's history of co-operative outcomes, to understand why, in Oceania's more recent history, the effectiveness of collective diplomacy has declined.

The Forum membership realised its collective force on a range of issues, during an era that global regionalism observers alternatively argued was highlighted by a decline in collective diplomacy. Thus, Oceanic regionalism went against the grain of regionalism experiences elsewhere in the world, making a study of Oceanic regionalism different to what we might expect. By the mid-1990s, the region could be proud of its achievements in collective diplomacy.

Analysis of the region's reform agenda since the mid-1990s suggests that leadership is an important ingredient in collective diplomacy. If the leadership within the region has not involved the general populace in the imposed process of reform can collective diplomacy occur? Supporters of 'new regionalism' argue that the 1990s has seen a resurgence in regional co-operation after its failures of the 1970s and the 1980s and after this 'new regionalism' is all-inclusive – the political, economic, social and environmental sectors. What this Chapter has demonstrated, however, is that Oceanic regionalism had embraced these sectors in the 1970s and the 1980s, thus making the region ahead of its time. The strong leadership displayed by indigenous figures in the 1970s and 1980s is also an important aspect of collective diplomacy. For example, leaders such as Ratu Mara and Macu Salato of Fiji, Tupua Tamasese Lealofi IV of Samoa and Albert Henry of the Cook Islands. Has the quality and strength of leadership within the region undergone a decline? From interviews with observers, such as Ross (2000), this would appear to be the case.

Neemia (1986) suggests that equity is a further issue for the regional level that also has application at the global level. How important is equity? Does it have the ability to split regional unity in relation to fisheries co-operation? Could individual perceptions over equity cause a decline in collective fisheries diplomacy? Are there other issues, some more important than others? For example, were external forces influential in affecting collective diplomacy? Australia and New Zealand subsidised regional organisations and their objectives as a means of encouraging stability and pro-West leanings. If Australia and New Zealand's approach has shifted from a time when their support and funding was unquestioned, to a time when support and funding are conditionally provided, then surely such change has the capacity to erode collective diplomacy? If collective diplomacy becomes conditional, then collective diplomacy could decline. Does this have application to collective fisheries diplomacy? The thesis will

demonstrate that there are clear parallels to be drawn between the experiences of collective diplomacy in general and collective fisheries diplomacy in particular.

This Chapter highlights the multi-layered framework which will be used throughout this thesis. To explain effectiveness, it is necessary to examine the global, the regional and the local conditions which help explain effectiveness. These conditions include the role of Australia and New Zealand in their relations with the Oceanic states; the idea of leadership and its importance to the goal of effectiveness; the issue of equity between developing states; the interaction of the Oceanic states with the wider geo-political community; and the importance of national interests. Crucial to these conditions is the thesis's focus on change over time, rather than a static approach, which gives no account of shifts in relations between states.



## CHAPTER TWO

### **Pre-UNCLOS tuna exploitation in Oceania: a short history**

I-Kiribati used the ocean and its resources for a variety of purposes. The sea was a provider of food, a source of spiritual and physical satisfaction, an arena for recreation, a medium for travel and adventure and a source for other basic necessities such as medicine and construction. The traditional uses of ocean resources are very much alive, though some have been lost or become superseded in the inevitable process of social change (Teiwaki 1988: 3).

This Chapter provides an overview of Oceanic pre-colonial and colonial settlement, with a specific focus on indigenous resource management, as well as fishing state operations and domestic fisheries involvement to 1980. In pre-colonial times, subsistence fishing was, for the most part, carried out judiciously in accordance with prevailing cultures. Contact with Europeans brought changes, including the introduction of a money economy, which led to islander communities selling their fish and other products, such as copra, for cash (McDaniel and Gowdy 2000). This has been called Oceania's first era of globalisation, as it entered the global political economy (Firth 2000). This globalising trend was reinforced by the decision of the imperial powers to annex Oceania, the result being a heightened degree of influence and control by European traders and settlers of their commercial interests (Firth 2000).

The late-1920s marked the emergence of Oceania's involvement in the global tuna economy with the introduction of small-scale pole and line skipjack fishing operations by Japanese interests in Micronesia (Peattie 1988). Technological advances in tuna fishing, accompanied by a growing demand for tuna products and shifts in global weather patterns had, by the 1970s, led to the growing interest of other foreign fishing fleets (Fujinami 1987, Matsuda 1987, Doulman 1987d, Riepen 1987).<sup>1</sup>

The Chapter is split into three sections. The first section examines the pre-colonial objectives surrounding conservation and management of fisheries resources, that is; sustainability, a fair return, domestication and indigenous control. Demonstrating these historical objectives is crucial to the work of this thesis because it illustrates that in contemporary times the people of the Oceanic region are merely trying to reclaim the control they once had over an important natural resource. The second section looks at the growth in commercial operations by the major fishing states from the 1920s through to 1980. This section illustrates the control that the fishing states exerted over the tuna resource's commercial exploitation as the Oceanic communities were absorbed into the global tuna economy. The third section charts the parallel history of Oceania's domestic tuna industry and the development of joint ventures. What emerges from this section is how the limited infrastructure and resources of the region were no competition against the investment capacity of the fishing states.

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<sup>1</sup> The fishing states with operations in Oceania during this period were China, Taiwan, Japan, Republic of Korea (Korea) and, by 1980, the United States.

The Chapter endorses Epeli Hau'ofa's (1994, 1998) argument that while outsiders may view Oceania as a disparate group of isolated islands the reality was far different in pre-colonial times, when inter-island voyages linked the island cultures of Oceania. This pre-colonial period marked the emergence of an informal regional identity. Once commercial tuna fishing operations commenced, however, Oceania's abilities to control such a fiercely contested pelagic resource were limited and their pre-colonial conservation and management culture was diminished by fishing state operators with no sense of a conservation or management ethic.<sup>2</sup> The necessary infrastructure and investment required ensured that during the colonial and decolonisation eras, powerful fishing states controlled the global tuna economy, leaving Oceania unable to halt the exploitation of its tuna resource.

### **Section one: Pre-colonial Oceania**

Oceanic crossings from Asia to Greater Australia began 50,000 years ago, when Papua New Guinea was part of the Australian mainland. The crossings were made on bamboo rafts, which are still used today in Asia and in Fiji and Papua New Guinea. The raft evolved into dugout canoes 8,000 to 10,000 years ago and from there into outriggers. These rafts and canoes were essential to the South East Asian and Oceanic hunter and gatherer cultures. The outriggers were used by the islanders for exploratory sea voyages to other islands in Oceania to establish settlements. Tuna fishing by islanders was made possible by ocean-going outriggers and the fishing techniques of the Manus Island people, situated off the northern coast of New Guinea, illustrates how tuna have been harvested for thousands of years, using deep-sea outriggers.<sup>3</sup>

The Melanesians, who originated from the same stock as the Australian aborigines, migrated from New Guinea across to New Ireland 33,000 years ago and down to Buka in what is now the Solomon Islands 29,000 years ago. A second wave of migration from Asia occurred 4,000 years ago and settlements sprang up in Vanuatu, Fiji and New Caledonia. These Lapita migrants brought with them pottery technology and they explored other uninhabited islands such as Tonga and Samoa, where their pottery making died out. This new culture became what we now term as Polynesian and it dispersed over the next 2,000 years to include the Society islands (Tahiti and Moorea) and Hawai'i. The last great voyage undertaken by Polynesian migrants, around AD900, was to settle New Zealand. Melanesians started to migrate to the region now known as Micronesia 3,000 years ago (Crocombe 2001, Denoon et.al. 2000, Irwin 1996, Thorne and Raymond 1989. See also Bowdler 1997, Spriggs 1997 and Tyron 1997). According to Crocombe (2001: 47), the western Micronesians may be related to people from the southern Philippines and eastern Indonesia, however, Palauans may also be related to people from the Sepik area of Papua New Guinea.

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<sup>2</sup> Pelagic fish are "(of marine life) belonging to the upper layers of the open sea" (The Australian Concise Oxford Dictionary, Third Edition).

<sup>3</sup> Among many others, see Crocombe 2001, Denoon et.al. 2000, Irwin 1996, Thorne and Raymond 1989.



To the islanders of these three main cultural groupings of Melanesia, Polynesia and Micronesia, there were no borders.<sup>4</sup> The sea was also their home. For example, there is evidence that the Tongans, “who were among the greatest navigators”, undertook yearly sea voyages to Fiji, Samoa and ‘Uvea (Crocombe 2001: 48). D’Arcy (1997: 77) argues that there were several groups within Oceania that “exercised political influence on their archipelagos because of their naval strength”. These groups included “Bau in Fiji, Manono in Samoa, the Ha’apai group in Tonga and the Roviana Lagoon in the Solomons” and D’Arcy (1997: 77) believes that these groups deserve further investigation as states that ruled over the seas, or “thalassocracies”. Inter-island trade flourished, although Crocombe (2001: 48-48) notes that a phase of bad weather around 1300 could have resulted in “the loss of long-range voyaging skills”, as traditions in long-range voyages did not recur after that time.<sup>5</sup> Nevertheless, the inter-island money network (which was still in use early in the twentieth century), linking Palau with Yap and “all the islands of the Carolines as far east as Truk, a distance of roughly 1,500 kms” appears to go back as far as 1200 (Berg 1992: 150-151).<sup>6</sup>

Fish remained the islanders’ staple source of protein. The inhabitants of Melanesian islands blessed with large lagoons relied on reef fish, or in-shore fisheries. As a necessity, Micronesian and Polynesian islands with smaller lagoons ventured out beyond the reef in search of pelagic fish, such as tuna. This necessity for fish meant that for many communities in Oceania there was no difference between tenure of the land and the claiming of terrestrial resources and tenure of the sea and the accompanying right to its resources. Because it was bound by custom, it gave the right to extraction a “custodial, rather than possessive attitude of people towards their resources” (Ruddle 1989b: 71). Customary control by communities, chiefs or families extended outwards to the reefs and seawards.<sup>7</sup> Indeed, the social hierarchy of sea rights in some Oceanic communities has depended on the “chronological order in which their ancestors settled on an island ... or in a village” (Ruddle 1989b: 71). This social hierarchy was instrumental in overseeing, for the most part, judicious extraction of the region’s fisheries resources;<sup>8</sup> however, there were instances of very non-environmentally-friendly activities.<sup>9</sup> Overall though, Johannes (1978: 356) believes that Oceania’s “marine conservation measures, when applied judiciously, served the purposes for which they were designed”.

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<sup>4</sup> Polynesia means ‘many islands’, Micronesia means ‘tiny islands’ and Melanesia means ‘black islands’ (Kiste 1994: 6).

<sup>5</sup> This ‘phase’ of bad weather around 1300 comprised a “wet period, presumably associated with an abnormally high frequency of tropical cyclones ... a prolonged period of catastrophic rainfall”, lasting for around one hundred years. The “human behavioural changes” among the people of Fiji and Hawaii could well have been caused by the devastation of agricultural terracing (Nunn 1993: 11).

<sup>6</sup> This tribute system comprised stone and shell money.

<sup>7</sup> These traditional fishing rights are more correctly termed ‘customary marine tenure’, or CMT.

<sup>8</sup> Johannes (1978: 353) lists the following conservation methods of the indigenous Oceanic peoples. These include: closed areas; closed seasons; setting free a portion of the catch; the holding in enclosures of the excess catch; bans on catching small fish; restrictions on inland lagoon fishing; restrictions on taking sea birds and/or their eggs; fish trap restrictions; turtle egg bans; bans on taking turtles on the beach; and bans on frequenting favourite spots on turtle nesting beach.

Oceania's weather conditions made storage of food crops difficult. The region regularly endured (and continues to endure), droughts, cyclones and *tsunami*, which annihilated fragile food crops and livestock.<sup>10</sup> In pre-colonial times, the islanders fished by hand-line or a short-line-and-fishing-pole in the mangroves, lagoons, reefs and offshore (seaward, beyond the reef). For example, Teiwaki notes that

The sea was an integral part of the I-Kiribati culture. The relatively infertile and inhospitable atoll environment and the ubiquity of the surrounding ocean, with its potentially useful resources, virtually compelled the I-Kiribati to turn towards the sea to satisfy his material and psychological needs (1988: 1).

In Nauru too, men went "in outrigger canoes beyond the reef to catch the prized bonito<sup>11</sup> and yellowtail" (McDaniel and Gowdy 2000: 24).<sup>12</sup> The importance of fish to the islanders can be measured by the fact that they received up to 90% of their animal protein from fish, Johannes (1978: 350) noting that there were three catalysts that had an irrevocable impact on this traditional conservation and management culture. First was the move to "money economies". Second was the disintegration of "traditional authority". Third was the "imposition of new laws and practices by colonial powers". No longer was Oceania shielded from outside forces by its perceived isolation. These catalysts marked Oceania's gradual integration into the global political economy.

Contact with the outside world occurred from the mid-1700s, when missionaries, traders, whalers and beachcombers arrived in Oceania.<sup>13</sup> It seems that the early Europeans were astounded by the prowess of the indigenous canoes, some of which were over thirty metres in length and which were able to "sail rings around their own more ponderous vessels" (Irwin 1996: 43). Trade flourished in such diverse areas as whaling, beche de mer (sea-slugs/sea cucumbers), tortoise shell, sandalwood, copra, planters, labor recruiters and shark fins.<sup>14</sup> As contact increased between the region and European, Chinese and Japanese traders, Oceania "became more integrated with the main international trade routes". Coaling stations were also established in the region with the advent of steam-powered shipping in the second half of the nineteenth century (Browne and Scott 1989: 1).

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<sup>9</sup> For example: catching porpoises for their teeth; letting much of the meat rot; the use of poisons throughout Oceania; discarding excess fish, or wasting, including at feasts; unrestrained turtle egg collection; and breaking up coral to extract the fish (Johannes 1978: 355).

<sup>10</sup> McDaniel and Gowdy (2000: 66) point out that Oceanic states, such as Nauru, are mainly affected by La Niña weather patterns and its resultant droughts.

<sup>11</sup> Bonito is a tuna-type tropical fish with mackerel-like stripes (Australian Concise Oxford Dictionary).

<sup>12</sup> It is noted by McDaniel and Gowdy (2000: 24) that it was taboo for women to ocean fish and women were also forbidden from eating "[S]peared fish and those caught in traps along the reef".

<sup>13</sup> In isolation, Spain established colonial rule in Guam in 1565 and in the Northern Mariana Islands in 1668 (Hezel 1995).

<sup>14</sup> For example, whalers were in regular contact with the islands of Rendovo and Simbo in the Solomon Islands. During the mid-1800s, "[S]everal thousand Polynesians were working at any one time on the whalers" (Crocombe 2001: 56, 62).



The imperialist expansion into Oceania from the late nineteenth century occurred at the insistence of settlers, who wanted protection of their business activities (Firth 2000: 181).<sup>15</sup> The islands were divided into French, Dutch, Spanish, German and British possessions. Colonial governments needing cash to meet the demands of running their administrations hastened their integration into the global political economy. For example, settlers exported sugar, copra, tobacco, rubber and coffee. Minerals such as phosphate, gold and nickel were also mined and exported (Firth 2000: 184). As Firth (2000: 184) comments, these developments caused upheavals in Oceania, as men in their thousands left to work on plantations elsewhere in Oceania or Queensland in the fifty years leading up to 1914. Worse however, according to Crocombe (2001: 63), was

the Peruvian slave trade which, between 1862 and 1864 took 3,843 Polynesian and Micronesian slaves from Easter Island, Tuamotu Islands, Cook Islands, Tokelau and Kiribati, to Peru. Few survived the new diseases, malnutrition and maltreatment. The British and French navies stopped the trade in 1864. The last ship was told to return its passengers to Kiribati, whence they had been taken, but the captain dumped them in the northern Cook Islands where their descendents live today.<sup>16</sup>

Approximately 60,000 indentured Indians were imported to the emerging colonial society in Fiji to work on the sugar plantations. This society eroded the authority of traditional life by transferring power to new systems (Crocombe 2001: 63). These new systems included the cash economy and acceptance by the islanders of the new systems was not willing, but essential. It has been said that early in the twentieth century, Nauruans laughed when they saw “the white man who fished when he was not hungry. But soon, some Nauruans were fishing to sell their catch to foreigners” (McDaniel and Gowdy 2000: 133). Until 1962, when Western Samoa<sup>17</sup> became independent, the colonial authorities maintained economic and political control over their jurisdictions, accompanied by a gradual devolvement of administrative functions to indigenous officials (Browne and Scott 1989: 2-3).<sup>18</sup>

Section one examined the pre-colonial settling of Oceania, including accounts of inter-island contact, which helped to construct a sense of informal regional identity. The Oceanic settlers linked culture to fishing and illustrated for the most part a conservation ethic to conserve and manage the ocean’s resources. This ethic is linked to those objectives that the Oceanic region strives to regain in contemporary times, that is; sustainability, a fair return, domestication and indigenous control. Inter-island trade did create a bartering economy, including stone and shell money. Through indigenous participation in a cash economy, however, a disintegration of

<sup>15</sup> Brown and Scott (1989: 2) believe a further reason for the establishment of colonial administrations was the uncertainty felt by Australia and New Zealand regarding “the growing power of France and Germany”.

<sup>16</sup> Other examples of Oceanic population movement in the 1800s were the “Solomon Islanders, Ni-Vanuatu, Tuvaluans and I-Kiribati who worked in Fijian plantations, or the Solomon Islanders, New Guineans and Micronesians who worked in Samoa. Cook Islands who went to work in Tahitian plantations or guano mines in the Line Islands. I-Kiribati working in Hawai’i, Fiji and Tahiti, Niueans in Tonga and Samoa, Tuvaluans in Samoa and Fiji, Micronesians in Hawai’i and Samoa, as well as the phosphate mines of Angaur, Nauru and Banaba” Crocombe (2001: 63, 64).

<sup>17</sup> Known now as Samoa.

<sup>18</sup> See Appendix A for a breakdown and history of colonial interests in Oceania.

traditional authority and the imposition of colonial laws and practices, Oceania was gradually integrated into the global political economy.

## **Section two: Foreign commercial tuna operations from the 1920s to 1980**

Japan started small-scale pole-and-line activity in Micronesia by the late-1920s, however, it was not until the 1930s that Japan's commercial tuna harvesting began, in large part to satisfy a growing demand at home for processed tuna products (Peattie 1988: 139). Before this, Japan's tuna industry had been concentrated around its coastal and offshore zones (Bergin and Haward 1996: 13). By the 1960s, the Republic of Korea (Korea) and Taiwan had joined Japan in commercial tuna operations in Oceania, with the United States fleet operating in the region by 1980.<sup>19</sup> This section outlines the history of each of these major fishing states in the region in the decades to 1980.<sup>20</sup> This historical examination demonstrates that the capital resources required to fund longline or purse seine operations precluded the participation of Oceanic societies.

### *Japan*

In any bilateral or multilateral fishing negotiations in Oceania, Japan always argues that historical catch levels should be taken into consideration when calculating catch limits (Tarte 1999a: 11). This is because Japan has the longest record of any fishing state for tuna operations in the region, which have helped to supply a Japanese diet reliant on fish as an important source of protein since ancient times. Prehistoric skipjack remains have been found in shellmounds excavated from northeastern Honshu. While Shoguns in times past paid high prices for fast delivery of skipjack during its peak time of late spring to enjoy eating the fish raw, it is nowadays considered "the basic food of the poor of Japan" (Borgstrom 1964: 46). By the 1880s, Japan had founded its first fisheries training school and its fishermen were encouraged by the government to operate offshore, Fujinami (1987: 58) noting that

With government financial support, the first engine was installed on a skipjack pole-and-line vessel in 1903, the first refrigeration equipment in 1907 and the first radio in 1918 (1987: 58).

At the conclusion of World War I, Japan was granted "trusteeship over 14,000 islands including the Marianas, Carolines and the Marshall Islands" of the Oceanic region north of the Equator (Waugh 1994: 14).<sup>21</sup> By late 1928, an Okinawan settler in Chuuk (on the island of Wonei) had commenced operations with one boat and ten crew to harvest and process bonito (Hezel 1995:

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<sup>19</sup> Other fishing in Oceania is undertaken by regional coastal states. For example: Australia, New Zealand, Indonesia, the Philippines and France (active in New Caledonian and French Polynesian waters) (SPC Yearbook 1998).

<sup>20</sup> Russia is not included in this assessment, as its fishing in the region did not start until 1985, when Kiribati negotiated an access agreement with Russia (Riepen 1987: 171).

<sup>21</sup> The islands known as the Carolines included Palau and those islands comprising the Federated States of Micronesia which were separate entities until the 1986 Compact of Free Association, (1986). The Federated States of Micronesia, a federation, comprises the four states of Yap, Chuuk, Pohnpei and Kosrae. The capital, Palikir, is located on the island of Pohnpei.



186). Other small-scale commercial operations had followed by 1930. Full-scale commercial operations by Japanese pole and line fishing vessels did not begin until the early 1930s, after at least eight years of research had been undertaken by the Japanese colonial administration on the extent of Micronesia's marine resources (Peattie 1988: 138). Having established the extent of the resource, an influx of Japanese fishermen and fishing companies ensued.

While some of the fish caught was sold at local fish markets, the majority of the catch was processed into *katsuobushi* for Japan's domestic market.<sup>22</sup> By 1937, not only were there "fifteen hundred Japanese ... employed in the fishing industry" of Chuuk, (Hezel 1995: 187) but *katsuobushi* had become the "fourth largest commodity by volume exported from Micronesia" (Peattie 1988: 139).<sup>23</sup> By the late 1930s, there were more than three hundred Japanese vessels fishing in the Carolines, employing 3,000 Japanese, with the fishing sector earning approximately three million yen a year (Hezel 1995: 188, 195).<sup>24 25 26</sup> This growing success story of the Japanese tuna industry in Micronesia faded with the onset of World War II when the Micronesian region bore the brunt of much severe fighting between Japan and the allied forces.<sup>27</sup>

After World War II, Japan lost its Micronesian territories to the United States and it was forbidden from fishing beyond the MacArthur Line (Borgstrom 1964, Waugh 1992).<sup>28</sup> To help alleviate food shortages which lasted well into the 1950s, the Japanese government allowed general fishing licenses to be transferred to offshore or distant water licenses (Fujinami 1987: 58). In spite of the resistance by the United States government, General MacArthur, who was the head of the Supreme Command of Allied Powers (SCAP) in Japan, encouraged the rebuilding of Japan's fishing vessels to bolster self-sufficiency in foodstuffs. By the 1950s, Japan's prewar fleet levels had been regained (Scheiber 1998: 4). The restrictions of the MacArthur Line were lifted in 1952 and by the early 1960s, the Japanese fleet was fishing for

<sup>22</sup> *Katsuobushi* is flaked tuna much used as flavouring in soup (Hezel 1995: 186). Making *katsuobushi* is a "laborious process", which involved cleaning, gutting and beheading the skipjack, which was then boiled and boned. After this, the fish was dried in sheds and smoked for several weeks until it "became hard as wood". The product was then shipped to Japan where it was shaved "into the family soup" (Peattie 1988: 139). The finished product was also known as "skipjack stick" (Borgstrom 1964: 86).

<sup>23</sup> Peattie (1988: 139) adds that more than 2,000 tonnes of *katsuobushi* were exported annually to Japan by 1937. As an aside, the other principal exports included sugar, phosphate and copra (Peattie 1988: 150).

<sup>24</sup> Waugh (1992: 172) believes that by the late 1930s, "nearly 8,000 Japanese fishermen" were fishing in the waters of Micronesia. Doulman (1987b: 36) puts the figure of Japanese tuna fishermen in Micronesia by 1938 at in excess of 7,600.

<sup>25</sup> By the end of the 1930s, there were almost 20,000 resident Japanese in Palau (Hezel 1995:203). By 1940 Japanese settlers totalled 77,000, compared with the static Micronesian population (since 1935) of approximately 50,000. The Japanese population in Micronesia reached its peak in 1942, when 96,000 were recorded as settlers (Peattie 1988: 160).

<sup>26</sup> The Showa 14 (1939) Exchange rate per 100 yen: average US\$27(.505) New York, Source: Honpo Keizai Tokei vol. 8 (ISBN4-906330-35-5). Compiled by Nihon Ginko Chosakyoku. Many thanks to Ms Shinozaki, National Library of Australia, who provided this information to Toshio Takagi, Japanese Collection Librarian, Menzies Library, Australian National University (by email communication 4.3.2001).

<sup>27</sup> The Japanese navy and army had bases in Micronesia (Peattie 1988: 257).

<sup>28</sup> Scheiber(1998: 4) notes of "the limits placed on Japanese fishing recovery by the "MacArthur Line" (the line demarcated in the Northern Pacific which served as a limit upon how far out to sea the deepwater fishing fleets were permitted to sail)".



tuna once more in the Western and Central Pacific Ocean (WCPO) region. Japan established bases in Federated States of Micronesia, Fiji, Palau, Papua New Guinea, American Samoa, French Polynesia, Vanuatu and the Solomon Islands (Fujinami 1987: 60, Doulman 1987b: 36). The growing demand for tuna products in Japan resulted in the industry's worth soaring in comparison to the world average and the Japanese fleet expanded accordingly (Fujinami 1987: 59). During this period, the fleet targetted longline albacore fishing, for processing at tuna canneries in American Samoa, Hawai'i and the West Coast of the United States (Waugh 1994: 14, Doulman 1987b: 36). Fujinami (1987: 59) observes that the

enlargement and enhancement of Japan's tuna fleet were facilitated by technological advances in boatbuilding, fish detecting, vessel positioning, navigation, land-to-ship communication, and postharvest handling.

With success came competition and tuna longline vessels from Taiwan and Korea entered the WCPO for a share in the resource's profits.

The newcomers concentrated on longline albacore fishing and Japan, consequently, began to specialise in the high-value *sashimi* product (Doulman 1987b: 36). This was made possible by improvements in the new ultra-low freezing technology (ULT) system that upgraded Japan's distant water fleet and obviated the need for expensive island bases as the catch had to be landed in Japan for delivery to the market (Fujinami 1987: 60). The pole and line Japanese fleet was still concentrated on tuna for the canned market and while prices rose during the 1960s and into the 1970s, there was often a shortage of baitfish.<sup>29</sup> By 1976, as a result of erratic baitfish supplies and the "demonstrated labor and fuel efficiency of purse seine fishing", the Japanese fleet commenced large-scale purse seine operations in the WCPO (Doulman 1987b: 37, Waugh 1992: 173).<sup>30</sup>

In that same year, the face of global fisheries began to change radically as coastal states commenced extended jurisdiction claims over their offshore waters, known as their Exclusive Economic Zones, (EEZ). Japan claimed its EEZ in 1977 and felt the repercussions for its fleet operating

in the coastal waters of over 50 states in the Pacific and Indian Oceans, Southeast Asia, North America, Central and South America, Europe and Africa. However, operations in most of these areas were relatively unimportant in comparison with tuna operations in the Pacific Ocean (Fujinami 1987: 61).

The claims for extended EEZ jurisdictions by coastal states "anticipated the outcome of the conference" of the 1973-1982 UNCLOS III negotiations (Akehurst 1991: 180). Japan realised that to maintain access to coastal states' fishing zones, it would be necessary to "conclude access agreements with them to exploit their tuna resources" (Fujinami 1987: 61). In 1978, Japan concluded access arrangements with Papua New Guinea, Kiribati and Solomon Islands (Tarte 1998a: 90). In 1981, these arrangements were extended to the Marshall Islands, Palau and

<sup>29</sup> Baitfish is a small fish harvested from island lagoons.

<sup>30</sup> The fleet had also been hard-hit by global oil price increases (Fujinami 1987: 61).



the Federated States of Micronesia (Tarte 1998a: 91). The associated costs for Japan, along with rising fuel charges, increased vessel prices and vessel maintenance disbursements, higher operational expenditure and an altered pattern of food consumption, necessitated the restructuring of Japan's tuna vessels, which was completed by 1981-82 (Fujinami 1987: 61).

Japan's decision to recognise a coastal state's extended jurisdiction was motivated by self-preservation. It was nevertheless greeted favourably in Oceania, in comparison to the actions of the United States (see below). At that time access fees amounted to around three percent and, (in spite of the continued over-fishing and illegal fishing which was endemic at that time), it represented a sizeable outlay for the Japanese tuna industry, which had never before paid to fish in the EEZ of the region. It was one of the main reasons for the restructuring of the tuna fleet and it changed forever the *modus operandi* of Japan's fishing operations in Oceania.

This brief examination of Japan's fishing history in Oceania demonstrates the importance of these fishing grounds to Japan as a result of growing demands in its domestic market. *Sashimi* does not have a long history in Japan, its popularity emerging with the ULT advances in the 1960s. Once consumers had acquired the taste for *sashimi*, however, demand increased rapidly. Statistically, male, middle-aged men consume the most tuna, "as a 'treat' to be enjoyed with *sake*" (Owen and Troedson 1994: 236). After retirement, however, women and men consume similar amounts of tuna (Owen and Troedson 1994: 236, see also Bergin and Haward 1996: 28-30). Consumer demand for tuna in Japan has continued to grow due in large part because it has an ageing population. Given the importance of tuna to the Japanese market, its industry has been concerned to ensure stability and regulation of imports, a growing feature of Japan's tuna trade. Japan has been keen to maintain good relations with its Oceanic partners, for example, agreeing to pay access fees in the light of EEZ declarations by the island states. It has not been considered a generous exchange, due, in large part, to the Japanese government's insistence on tying aid programs to those countries with which it has fisheries access arrangements.

#### *Republic of Korea (Korea)*

Korea had begun commercial long-line operations in Oceania by 1957, second only to Japan (Riepen 1987: 166), Haward and Bergin (1996: 82) noting that "[F]rom the late 1950s, Korea's distant water tuna fishery developed in parallel with Japan". The Korean and Japanese fleets competed for albacore caught in the area between Kiribati and the Cook Islands and destined for the "canning light meat packs" markets of the United States and Europe (Waugh 1989: 328). Japan was the chief recipient from the late 1950s when Korea's tuna production started to expand. This was "fostered by Japanese interests keen to maximise Korea's relatively lower

costs” (Haward and Bergin 1996: 21). The expansion of Korea’s fleet was “dramatic”, growing from “none in 1955 to 30 in 1965 to a maximum of 200 in 1975 (Riepen 1987: 167).<sup>31 32</sup>

When the global canned albacore market slumped in the mid-1970s, the Korean fleet moved from longline to purse seine operations, funded by Japanese companies as well as the purchase of second hand Japanese vessels (Haward and Bergin 1996: 59). Korean purse seine fishing started in 1979 when Dongwon Industries bought a second-hand boat from Spain (Haward and Bergin 1996: 59), however, the Koreans have generally used United States-built purse seine vessels and utilised helicopters to spot tuna aggregations (FFA 1988: 94). It suited Japanese trading companies to encourage Korea’s purse seine expansion because of limits placed on purse seine vessel licences by the Japanese government (Schurman 1998: 114). From the early-1980s, Korea also entered the *sashimi* market, a move made possible by Korea’s lower operating costs, in comparison with Japan, and because the Korean fleet had been previously contracted and financed by Japanese trading companies (Doulman 1987b: 38). As Comitini (1987: 265) has remarked, however, the Korean longline fleet had achieved independence from Japanese trading companies by the 1980s.

Korea’s lower operational costs have resulted in higher access fees for the Oceanic states, a consideration when analysing costs and benefits to the region. In addition, Japanese imports of Korean tuna have undercut those of the Japanese fleet. Thus, the Japanese tuna industry has faced a multi-faceted attack on its industry. First, it had to share the fishing grounds, and then it had to compete with access fee levels and competition in the marketplace. All of these factors were to impact on the future viability of the Japanese purse seine fleet.

### *Taiwan*

The tuna industry in Taiwan dates back to the Japanese occupation in the early 1900s, “when small longliners were used to catch tuna in the surrounding seas” (Ho 1995: 59). The industry was “entirely controlled by the Japanese” and it was not until the early 1960s that expansion of Taiwan’s distant water fishing operations commenced (Ho 1995: 59). At that time, the government approved the importation of second-hand longline boats and the World Bank provided loans for longline vessel construction. The Taiwanese longline fleet commenced operations in the WCPO in 1963, targetting albacore and yellowfin for the canned tuna industry (Haward and Bergin 2000: 35, Riepen 1987: 169). Aside from this, there has been a local market in Taiwan for *sashimi* since the mid-1950s, which has been “dominated by fresh chilled product” (Haward and Bergin 1996: 125).

By 1973, Taiwan’s Oceanic fleet had risen to around 200 vessels, however, because of oil price increases and the crash of the albacore market, Taiwan’s longline industry started

<sup>31</sup> The SPC Yearbook, alternatively, notes that there were 2 vessels in 1958, 33 in 1965 and 253 in 1975. The SPC figures show that 1976 was the peak year with 257 vessels (1998: 35).

<sup>32</sup> Kent (1980: 60) notes that the expansion of Korea’s longline industry was also accomplished “with the cooperation of United States tuna processors”.



declining from the mid-1970s. While Japan had made ULT operations for longliners available to Taiwan from the 1960s, it was not until the early 1980s that Taiwan's ULT ventures expanded (Haward and Bergin 1996: 140, Riepen 1987: 169). Like Korea, Taiwan's operational costs are less than Japan's and the Taiwanese fleet has been frequently contracted and financed by Japanese trading companies (Doulman 1987b: 38).

Taiwan's purse seine industry started in 1980-81 with vessels imported from Japan. As with Korea, Japanese industry was keen to support expansion of Taiwan's purse seine fleet because of limits placed on purse seine licences by the Japanese government (Schurman 1998: 114). Taiwan's purse seine fleet development was also helped by its economic boom, brought about by expansion of capital into vessel construction "among other activities" (Schurman 1998: 114). It also followed the United States practice of using helicopters to spot fish aggregations. Like the Korean purse seine fleet, the Taiwanese purse seine fleet "has close ties with U.S. processors" (Doulman 1987d: 141). It is clear that, like Korea, Taiwan's longline fleet was dependent on the Japanese market and Taiwan's purse seine fleet was dependent on the United States market.

### *United States*

The American Tunaboat Association (ATA) has been a powerful lobby group since its inception in 1921 as the American Fishermen's Protective Association in San Diego. It has involved itself with promotion of that country's tuna industry by

fostering the exploration and development of new fisheries, conducting research, improving the technology of fishing, seeking legislation favorable to the tuna industry, and participating in international negotiations for licensing agreements (Felando 1987: 93).

Members of the ATA had two forays into the waters of the WCPO during the 1930s, which confirmed the region's rich tuna stocks. ATA tuna boats were requisitioned for service during World War II and supplied fish to United States troops stationed in the region (Felando 1987: 93).

After World War II, the ATA supported tuna research and survey programs in the region, which resulted in the Van Camp cannery being established in American Samoa and in operation by 1953. It is still in operation. By 1957, the first tuna purse seiner was developed and within five years, 97 former "bait boats had been converted to seiners, 3 newly built seiners had entered the fleet, and 8 military vessels had been converted to seiners" (Felando 1987: 99).<sup>33</sup> These conversions were considered necessary if the United States fleet wanted to remain competitive in the face of cheap Japanese tuna imports (Doulman: 1987d: 134). By 1972, the United States fleet had made extensive exploratory fishing trips to the region. After observing

<sup>33</sup> While American technology had spearheaded development of purse seiners earlier last century, it was not until 1925 that fishermen started using purse seiners in the Eastern Pacific and not until the 1950s that a more aggressive attitude was taken to expanding this fleet (Doulman 1987d: 134).

Japanese fishing methods, decisions were made regarding alterations to the purse seine nets to suit better the fishing conditions in a region where the “water was clear and the thermocline deep” (Felando 1987: 101). The United States fleet decision to move into western Oceania was given impetus because of the “onset of the 1980-81 El Niño” (Doulman 1987d: 138).

Purse seine activity in New Zealand and Papua New Guinea waters during 1974-1975 spearheaded the United States tuna industry’s expansion into the WCPO and by 1980, the ATA was in negotiation with the governments of Palau, the Federated States of Micronesia and the Marshall Islands. It was the first multilateral arrangement “of its kind” (Felando 1987: 103), however, as Doulman (1987b: 46) notes, all negotiations between the island states and the United States were undertaken with the ATA. While coastal states globally had begun asserting EEZ by 1977, the United States remained isolated, asserting that “coastal nations did not have exclusive rights over highly migratory species while they were within their EEZs” (Van Dyke and Nicol 1987: 106).<sup>34</sup> This position led to confrontation in Oceania in the 1980s, when the United States fleet continued to harvest tuna within a coastal state’s 200-mile EEZ without agreement.<sup>35</sup>

This section has charted the history of fishing state participation in Oceania’s tuna fisheries from the 1930s to 1980. While historically Japan has been the focal point of operations, particularly regarding the fresh or frozen *sashimi* market, the United States canned tuna market has also been very reliant on supplies from the region. Japan provided support for the development of the Taiwanese and Korean fishing industries to ensure stability of supply to its domestic market of fresh and chilled tuna. What this section highlights is the interconnectedness and dependency of Japan and the United States on supplies of longline and purse seine caught tuna from Oceania. It was only after 1977, however, that the states of the region were able to declare an EEZ and try to negotiate for access fees. Set by the Japanese at three percent, these fees could not be considered a fair return, given the lack of regulatory machinery to curtail illegal fishing activities. In addition, the Oceanic states were denied any control over the sustainability of the resource, a pre-colonial objective of their custodial responsibilities.

### **Section three: Domestic commercial tuna operations and joint ventures to 1980**

Oceania’s canned tuna industry has changed dramatically from its inception during the 1950s, with observers suggesting that the industry

has metamorphosed from a vertically integrated industry in which the two primary tuna consuming nations (the USA and Japan) produced tuna for their own home markets, into one which is increasingly global and competitive, and characterized by the economic independence of the actors located at different points along the ‘commodity chain’ (Schurman 1998: 120).

<sup>34</sup> Under pressure, however, from its own fishing industry for protection of the United States EEZ, Congress passed the 1976 Magnuson Fishery Conservation and Management Act (the Magnuson Act). The Act did exclude tuna, but resulted in concerns by Americans of Japan’s bluefin tuna fishing around New England’s waters (Van Dyke and Nicol 1987: 109).

<sup>35</sup> This is examined in more detail in Chapter Three.



While Schurman refers to the “economic independence of the actors”, I would suggest that the industry has evolved into economic interdependence, given Japan’s reliance on the stability of tuna imports, and the United States’ need for a steady supply of tuna for its canned tuna market. The fact that Japanese industry had invested in Korea’s and Taiwan’s fleet expansion also suggests an interdependent relationship.

In the 1960s, the global demand for canned tuna outstripped the availability of raw tuna supplies. To combat this, United States tuna processing companies (Bumble Bee, Van Camp and Star-Kist) developed strategies that would not only secure supplies, but would also secure processing and distribution into the 1970s (Schurman 1998: 121). During the 1960s and the 1970s, multinational corporations, attracted by the robust fishing stocks in Oceania, indirectly financed or directly initiated ventures, though

as a general rule, the multinationals minimized their financial exposure in the region so that they could relocate their operations at little or no financial loss should market conditions change – as they did for the canning industry in the early 1980s – or should cheaper alternative raw materials become available (Doulman and Kearney 1987: 27).

Until 1980, the production and market-base for a specific tuna product was undertaken by the same state. For example, United States tuna boats caught the tuna that was processed in United States canneries and consumed by Americans. In the same way, Japanese vessels caught the majority of its domestic requirements (Hudgins and Fernandez 1987: 289). Since 1980, Hudgins and Fernandez believe this situation has been irrevocably altered. The “sophisticated international environment” means

tuna consumed by U.S. consumers may have been harvested in the western Pacific, transshipped to Thailand, canned in a plant leased to a multinational. Tuna harvested by the Japanese fleet may be shipped or traded worldwide by *maguro shosha*, specialist tuna-trading companies (Hudgins and Fernandez 1987: 289).

Until the 1980s, three United States corporations and ten Japanese corporations were involved in Oceania’s joint venture tuna industry. The Japanese were “single investors, joint-venture partners, or consortium participants” (Doulman and Kearney 1987: 30). United States involvement centred on its territory of American Samoa because of the security for United States investors. The United States has had what is referred to as a “go-it-alone” style (Doulman and Kearney 1987: 31). These differences demonstrate the

commitment of the Japanese corporations to their ventures in the region ... more long term and more closely aligned with the interests of Pacific island countries (Doulman and Kearney 1987: 28).

This said, there is no doubt that Japanese ventures in the region were primarily concerned with their own national interests and costs and benefits. Any benefits to the Oceanic states would have assisted their cause, but would not have driven it. The rising costs associated with fuel prices, the introduction of access fees, the added competition of Korean and Taiwanese vessels and increased levels of catch, led to United States companies selling boats and the Japanese fleet

moving to decentralise. “From this point on, harvesting tuna for the cannery business became a poor, if not losing, proposition” (Schurman 1998: 121-122).

The seemingly infinite stocks of tuna led Oceanic governments and entrepreneurs to make decisions about establishing domestic tuna operations that would prove disastrous. As Waugh (1989: 333) argues, “Tuna fishing and processing is a highly-capital intensive business, best suited to the larger capital-rich countries”. From the 1970s, in an effort to bring about greater local participation in the tuna industry, Oceanic states lobbied for investment, “supported by – mostly – foreign loans, grant funds, payments in kind and local public equity capital” (van Santen and Muller 2000: 13). This resulted in the Oceanic states competing with each other for

investment in vessels, processing plants, transshipment facilities and general port infrastructure. These investments competed head-on with well established, global tuna industries (Waugh 1989: 333).

In spite of this situation, by the early 1980s, some Oceanic states were participating in purse seine harvesting for canned tuna operations. The situation was compounded by the poor growth figures for Oceania from the early 1980s (Schurman 1998: 128). As well as poor growth figures, Oceanic states suffered from “lack of capital, expertise, freehold land and infrastructure” (Cartwright 1999: 7), resulting in “public sector vested interests” propping up those domestic ventures (van Santen and Muller 2000: 13). While there has been a level of competition between the Oceanic states for a share in the tuna industry, there has also been inter-state co-operation, Doulman and Kearney (1987: 16) noting that

[A] striking feature of fishing and processing arrangements in the Pacific islands region is the extent to which several countries are cooperating in the development of their respective tuna industries. For example, the Fiji cannery is, or has been, supplied with tuna from fleets based in Kiribati, Papua New Guinea, Tonga, and Tuvalu in addition to its own fleets.

There are reasons why some of the Oceanic states were more successful than others in establishing domestic or joint venture operations. Some states are not geographically suited to tuna operations, for example, Niue, whose rugged cliff coastlines precludes commercial fishing operations (Kent 1980: 46). Other states lack the rich fishing grounds required for profitability, for example, the Cook Islands or Nauru (Kent 1980: 18, Doulman and Kearney 1987: 16). For others like French Polynesia, the “deep clear waters have low levels of nutrients” (Kent 1980: 21).

During the period up to 1980, most tuna operations were longline, with purse seine fishing only emerging in the latter stages. A complicating factor for longline fishing is the requirement for baitfish, which is harvested in the lagoons of baitfish-rich states, such as Papua New Guinea, Fiji or the Solomon Islands. States such as Kiribati, Samoa and Tonga were hampered in the development of a longline skipjack industry because of their lack of baitfish supplies (Kent 1980, Teiwaki 1988). Kiribati, however, did establish a milkfish farming



research program as an alternative to baitfish (Johannes 1989: 96). Other reasons for the lack of commercial tuna fishing development in, for example, Kiribati, included the impact on local fishermen and the lack of indigenous involvement (Teiwaki 1988: 53-58). This lack of indigenous involvement has clear implications for the lack of indigenous control or domestication of the industry. This illustrates where costs and benefits have been analysed as not being in the national interest, for example, the negative impact for local fishermen.

Several island states were attractive to foreign and domestic investors. These were states with good supplies of baitfish, rich fishing grounds, good economic climate for investment and a comfortable political environment. Nevertheless, tuna operations in these states have not been immune to failure or difficulty. These states included American Samoa, Fiji, Papua New Guinea, the Solomon Islands and Vanuatu. Their tuna operations will be examined individually. This examination is important because it demonstrates that these operations were controlled by external forces, thus resulting in a lack of indigenous control or true domestication of the tuna industry.

#### *American Samoa*

The geographical proximity of American Samoa to rich albacore, bigeye and yellowfin fishing grounds was a primary reason for establishing tuna cannery operations there. As a United States territory, it has a "privileged position with respect to United States import duties" (Kent 1980: 15-16). Hence, its canned tuna can enter the United States market duty-free.<sup>36</sup> While the first tuna cannery built at Pago Pago in 1949 was abandoned, the Van Camp company later purchased it, and canning operations had begun by 1954. Star Kist commenced its operations in Pago Pago in 1963 (Schug and Galea'i 1987: 197).<sup>37</sup> The American Samoan government's aim was to ensure that its nationals would not only work in the canneries, but also harvest the tuna. The Van Camp company provided a longline vessel in 1961 and American Samoans crewed as trainees. Because of "long fishing trips and rigorous working conditions", however, the American Samoans lost interest and the project was dismantled in 1963 (Schug and Galea'i 1987: 197). By the 1970s, the two canneries employed approximately 1,200 people, mostly from Samoa and Tonga, but Korean and Chinese resident aliens also worked in the canneries (Kent 1980: 16).

American Samoa's competitive tuna processing operations were made possible by the advantageous customs regime, which allows preferential access to the United States domestic canned tuna market. In turn, this access provided long-term security to the United States tuna fleet, given the fall-off in tuna supplies in the eastern Pacific and the move to rich fishing grounds in the WCPO, close to American Samoa's processing operations. It also maintained a

<sup>36</sup> Exports from American Samoa could enter the United States duty free "if the foreign component value of the product is less than 50 percent of its market value" (Schug and Galea'i 1987: 192).

<sup>37</sup> Star-Kist became a wholly-owned subsidiary of H.J. Heinz Company in 1963 and the Van Camp Sea Food Company was bought by Ralston Purina Company (Schug and Galea'i 1987: 192).

stable supply of canned tuna to the world's largest canned tuna market. In addition to these economic considerations, it was seen as a safe political regime, which encouraged the expansion of the United States' canned tuna industry.

### *Fiji*

Fiji's colonial ruler, the United Kingdom, guided the domestic tuna industry before its independence in 1970. By 1963, Fiji had established a pole and line fleet to harvest skipjack (Doulman and Kearney 1987: 10). In February of that year, the Pacific Fishing Company, Ltd (PAFCO) was established at Levuka as a freezing and transshipment base for longliners in Oceania. Japanese interests owned the majority of the company, with 16.7% "subscribed locally by private interests in Fiji (Kent 1980: 19, see also Veitayaki 1995: 56).<sup>38</sup> The PAFCO cannery, set up by C. Itoh, was in operation by 1974 (Hunt 1999: 574).<sup>39</sup> In 1975, the Ika Corporation, a wholly-owned Fijian company was established, geared to "improving skipjack tuna processing by assisting the nation to meet PAFCO fish demands" (Veitayaki 1995: 57). It had its own pole-and-line boats, crewed by Fijians and supplying, by contract, its catch to the PAFCO cannery (Kent 1980: 20-21). Waugh believes that while the Corporation, using its own and other chartered vessels, supplied tuna to PAFCO for processing, it has not proved a successful venture (Waugh 1986: 28). From the above, it can be seen that local interests in PAFCO amounted to only 16.7% of the joint venture. This resulted in PAFCO being controlled by foreign interests. Indigenous control or domestication was not achieved.

### *Papua New Guinea*

Papua New Guinea's tuna industry was controlled by its Australian colonial administration before its 1975 independence. A pole and line fleet was established in 1970 to harvest skipjack (Doulman and Kearney 1987: 10). By 1977 Papua New Guinea was "described as the world's third largest producer of skipjack, but this changed dramatically by late 1977, when "catch rates declined sharply" (Kent 1980: 30). Before its 1981 collapse, the fleet's expansion reflected "strong international demand for canning material, extensive and accessible baitfish resources, and year-round tuna fishing conditions" (Doulman and Kearney 1987: 14-15). During the early 1970s, joint ventures "developed rapidly", between colonially-administered Papua New Guinea, three Japanese companies and one American – Star-Kist Papua New Guinea Pty Ltd (Kent 1980: 30).<sup>40</sup> The failure of the domestic pole and line fleet provides an example of how, in this case, climatic conditions adversely affect the ability of a newly-independent Oceanic state to assert indigenous control and domesticate an important natural resource. While Kent (1980: 30) notes that joint ventures "developed rapidly" in the 1970s, a closer look at the ownership of

<sup>38</sup> This included 33.3% subscribed by C. Itoh & Company of Osaka, 25% by Nihon Ryokoku Kaisha of Tokyo and 25% by Banno Company of Osaka (Kent 1980: 18).

<sup>39</sup> Due to heavy losses, in 1987 it was taken over by the Fijian government (Hunt 1999: 574).

<sup>40</sup> The three Japanese ventures included Kyokuyo Co. Ltd, Kaigai Gyogo Kabushiki Kaisha, Hokoku Marine Products Co. Ltd, Nippon Suisan Kaisha Ltd, C. Itoh & Co. Ltd (Kent 1980:31).



these ventures suggests that ownership and therefore control, rested firmly with the external partners.<sup>41</sup> The establishment of joint ventures did not mean joint management or control.

### *Solomon Islands*

The United Kingdom controlled the Solomon Islands tuna industry until its independence in 1978. The Taiyo Fishing Company of Japan conducted a survey in the Solomon Islands in 1971, which resulted in a joint venture being signed between the Solomon Islands Government and the Company in 1972.<sup>42</sup> The Japanese parent company, Taiyo Gyogyo was

established in the 1880s as a family firm and has evolved into the world's biggest fishing multinational with many subsidiaries and joint venture agreements (Barclay and Wakabayashi 2000: 2).

Because of overcapitalisation by domestic skipjack operations in Japan, Taiyo Gyogyo, among others, had started looking for investment opportunities abroad (Barclay and Wakabayashi 2000: 2). From the Solomon Islands government's perspective a joint venture could be a way of "generating foreign exchange income" and that "fisheries must be 'right' for an island nation in the western Pacific" (Hughes 1987: 205). Following the survey, Solomon Taiyo was established to facilitate "the processing and marketing of skipjack tuna" and a shore base at Tulagi was opened in 1973. A *katsuobushi* plant was established in 1974 at the Tulagi facility, with a daily processing capacity of four tonnes (Doulman and Kearney 1987: 21). The company established a second base at Noro in New Georgia Island in 1976, with a brine freezer, cold storage plant and an *arabushi* processing plant.<sup>43</sup> The Noro tuna cannery opened in 1980 (Kent 1980: 36).

From the mid-1970s, Solomon Islands' officials "became more active in managing and directing STL" (Hughes 1987: 211). This included employing more local crew, improving shore living conditions and negotiating baitfish agreements with customary owners. Difficulties were experienced with cultural clashes between employees, which included the murder of one worker (Hughes 1987: 211). The joint venture gave Taiyo "a base in the Pacific, a good supply of baitfish and an effective means of competing with other Japanese companies operating out of Fiji, Papua New Guinea and Vanuatu" (Waugh 1986: 12). There is no doubt that an analysis of the costs and benefits associated with the Solomon Taiyo cannery came out in the Japanese company's favour. There has been controversy over the years regarding the supply of baitfish with local communities complaining about the levels of baitfish taken from lagoons, their principal subsistence fishing grounds. It has been the most criticised aspect by Solomon

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<sup>41</sup> For example, Gollin Kyokuyo (Niugini) Pty Ltd was 100% owned by Kyokuyo Co Ltd of Japan and Gollin Investment Pty. Ltd. of Australia. Carpenter Kaigai (Papua New Guinea) Pty. Ltd. was 75% owned by Kaigai Gyogo Kabushiki Kaisha and 25% owned by W.R. Carpenter P.N.G. Ltd. New Guinea Marine Products Pty. Ltd. was 100% owned by Japanese Interests. Star-Kist Papua New Guinea Pty. Ltd. was 100% owned by Star-Kist Inc., California (Kent 1980: 31).

<sup>42</sup> This survey had come about through what Hughes describes as a "chance meeting with a Solomon Islands official" (1987: 205).

<sup>43</sup> *Arabushi* is a semi-processed type of *katsuobushi*. The tuna is loined and trimmed, then laid on trays for smoking (Ashenden and Kitson 1987: 238).

Islanders of the joint venture (Barclay and Wakabayashi 2000: 5). Baitfish agreements with customary owners (as noted above) did help alleviate this irritation.

For the Solomon Islands, the joint venture enabled exploitation of “deeper-water species such as yellowfin, albacore ... and in addition, to obtain better use of canning facilities in the off-season when skipjack catches were slumping” (Waugh 1986: 12). Solomon Taiyo has not, however

greatly contributed to the transfer of technology, management skills and technical skills, nor has it greatly contributed to the training of Solomon Islanders (Waugh 1986: 12).

With this deficiency in mind, a private company, the National Fisheries Development Limited (NFD) “was established in 1977 to encourage localization of the skipjack fishing industry – that is, to increase participation and control by Solomon Islanders” (Kent 1980: 37, see also Waugh 1986: 12). The NFD bought a boatyard at Tulagi and, with an Asian Development Bank (ADB) loan, organised the construction of fishing boats.<sup>44</sup> Solomon Taiyo has an interest in NFD, which was contracted to supply its tuna catch to Solomon Taiyo for processing (Kent 1980: 7, Waugh 1986: 12).

The Solomon Taiyo joint venture represents the most committed operation of its kind in Oceania. In spite of increased local involvement in the venture, however, it was still controlled by Japanese interests. Furthermore, by maintaining an interest in NFD, Solomon Taiyo could also control its tuna operations. By not being involved with the loan for construction of the fishing boats, however, Solomon Taiyo could benefit from whatever fish NFD harvested without financial commitment.

### *Vanuatu*

Control of Vanuatu’s tuna industry rested with the British and French Condominium, until its independence in 1980. A joint venture involving Japan, the United Kingdom and the United States interests established the South Pacific Fishing Company (SPFC) in 1957 at Palekula in Southeast Espiritu Santo. Initially, the major shareholders were Mitsui and Company holding 76% and the Vanuatu government holding 9% (Riepen and Kenneth 1989: 131). The Company

provided a land base for freezing, for cold storage of the catch from longliners operating in the area and for shipment to markets and canneries in the United States, Japan and Europe (Kent 1980: 28).

To start with, the base housed approximately twenty Japanese longliners, harvesting albacore for the white meat tuna market in the United States (Riepen and Kenneth 1989: 131). The Palekula base provided “unloading and transshipping wharves, a 2508 tonne cold store, two slipways, workshops, a fishing gear store and fuel bunkering facilities” (Philipson 1989: 25). Philipson goes on to note that the Koreans took over from the Japanese in 1967 and then the

<sup>44</sup> The ADB was reportedly very keen to become involved. It saw the project as “a way to increase lending both to the fisheries sector and to the Pacific islands and as a counter to what it felt was excessive dependence on Japanese technical support in fisheries development” (Hughes: 1987: 209).



Taiwanese took over in 1975 (see also Riepen and Kenneth 1989: 131). The Santo venture was affected by American Samoa's tuna prices, with Santo's tonne per tuna price being set to the American Samoan price by 1975 (Kent 1980: 28, Philipson 1989: 25). It is estimated that the facility had "a total freezer capacity of 6,000 tonnes" and was "capable of handling 25,000 tonnes of tuna per annum" (Doulman and Kearney 1987: 18). By the late 1970s, the facility was in decline.

Vanuatu's domestic industry was the least successful of the states under review in this section. This was due to the less-rich fishing grounds of Vanuatu's EEZ in comparison to Fiji, Papua New Guinea or the Solomon Islands, two of whom are Parties to the Nauru Agreement (PNA) members.<sup>45</sup> As well, Vanuatu provided transshipping facilities, whereas American Samoa, the Solomon Islands and Fiji each had processing capacity. Because of Papua New Guinea's rich fishing grounds, processing plants in the region, for example, in Fiji, could be well-supplied. For these reasons, Vanuatu never achieved the success of the other states evaluated in this section.

It is clear to see why some states were advantaged in the search for joint ventures or more likely to attract investment. For example, rich fishing grounds, proximity to processing, good port facilities, and stable governments. Apart from American Samoa, the states in this discussion were colonies and former colonies of the United Kingdom and had in place developed government infrastructure and flourishing settler populations.<sup>46</sup> American Samoa, as a territory of the United States, also had a stable government and a secure economic environment from which the United States tuna fleet could benefit.

This Chapter aimed to fulfill several tasks. The first was to outline the pre-colonial era's indigenous conservation of fishing and illustrate how, through supplying fish to settler communities for example, the island communities entered the western cash economy. Through pre-colonial inter-island contacts the region developed a sense of informal regional identity which would serve them well when they later became involved with formal regional co-operative endeavours. This pre-colonial discussion demonstrates how the four objectives of effective regional co-operation that dominate contemporary analysis of the region's tuna resource originates in pre-colonial. Sustainability of fisheries was ensured through a conservation ethic that governed marine resource extraction. A fair return to island communities by way of future resource protection was ensured through judicious control. The extraction of marine resources was domesticated and under indigenous control.

The second task was to outline the activities of fishing states operating in the EEZ of the Oceanic states. This examination demonstrated how major fishing states, such as Japan and the

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<sup>45</sup> The PNA is a sub-regional group within the FFA, whose members have rich tuna grounds. PNA members include Papua New Guinea, Palau, Marshall Islands, Federated States of Micronesia, Kiribati, Nauru, Solomon Islands and Tuvalu.

<sup>46</sup> That said, Vanuatu was a condominium, with the United Kingdom and France sharing responsibility.

United States were dependent upon Oceania's tuna resource for supplying the fresh or frozen domestic *sashimi* market in Japan, or for the canned tuna market in the United States. In addition, the entry by Korea and Taiwan into the region's tuna industry signalled to Japan that while it could not compete with the lower operating costs of either of these two states, it could control their operations by providing financial assistance. By doing so, Japan could ensure the stability of its tuna imports.

The third task was to establish how, through the development of joint ventures and domestic participation, the indigenous marine culture which had prevailed for many centuries was diminished. It was through interaction in the global tuna economy, for example, that the region became part of the globalising era. This interaction necessitated the development of a money economy, a disintegration of traditional authority through involvement in the commercial sphere and the introduction of new laws and practices designed to integrate the island communities with prevailing attitudes elsewhere in the world. Those Oceanic states with rich tuna stocks were not in control of joint ventures or other fishing state operations active in their EEZ. Rather, fishing states exerted control over their activities by being the dominant shareholders. The development of joint ventures in Oceania is interesting because it highlights the more conservative approach taken by the United States tuna canning industry in comparison to the more development-focused approach of the Japanese. Furthermore, the Oceanic states lacked the capital infrastructure necessary to develop a strong, vibrant domestic industry capable of competing with the fishing states.

While the examination of the domestic industry stops at 1980, it is evident that these newly-emerging independent states thought they could see costs and benefits associated with their desire to participate in what appeared to be an infinitely wealthy resource. For those states with tuna stocks, access to processing facilities, good port facilities and a strong stable government, there seemed some likelihood that joint ventures or domestic participation could pave the way for the development of a long-term industry. The idea that the Oceanic states could participate fully in their tuna industry was a dream that came with independence. Those four objectives of effective regional fisheries co-operation that preoccupy the contemporary aspirations of the region have re-emerged from the colonial era and owe their existence to their pre-colonial conservation ethic. This Chapter has demonstrated how the island communities lived with this conservation ethic and how it was lost after their integration within the global tuna economy. The forthcoming chapters demonstrate how the region has striven to regain that ethic through collective diplomacy aimed at asserting control of the tuna resource in the face of the activities of powerful fishing states.



## CHAPTER THREE

### Oceanic states in ascent

From Chapter Two's examination of fishing state activities it is clear that until the late-1970s, their activities were largely unchallenged by the island states. The vessels came and they fished at will. Freedom of the high seas meant that the sea's resources were free for all, *res nullius*, apart from the three-mile territorial limit, and even that could be bridged unopposed, if the fish schools were closer to shore.<sup>1</sup> When it became clear during the *United Nations Convention on the Law of the Sea* (UNCLOS) III negotiations (1973-1982) that developing coastal states would press for inclusion of 200-nautical mile Exclusive Economic Zones (EEZs), the story of tuna fleet operations in Oceania irrevocably became more complex.

The UNCLOS negotiations were important to the regional debate on the need to establish an organisation to co-ordinate the activities of tuna fleets in the region and to provide assistance to individual member countries in their negotiations with fishing states. The establishment of the Forum Fisheries Agency (FFA) in 1979 and the finalisation of the UNCLOS in 1982 occurred within a climate of Cold War geopolitics and the continuing decolonisation of Oceania. Between 1980 and the mid-1990s, the FFA finalised a series of multilateral treaties designed to achieve the objectives of collective fisheries diplomacy. This Chapter concludes that the establishment of the FFA and the finalisation of the UNCLOS were seminal events that allowed a re-emergence of that pre-colonial conservation ethic which had been repressed during the colonial years of fishing state activities.

The Chapter is split into four sections. The first section provides a perspective on global pre-UNCLOS fishing and examines the UNCLOS negotiations up until the finalisation of UNCLOS III. This section demonstrates the dogged position of the fishing/maritime states regarding the freedom of the high seas, pre-UNCLOS. It was through their participation at UNCLOS III negotiations that the newly-independent Oceanic states realised the possibilities of co-operative action. The second section examines the history of the FFA. This section demonstrates the cumulative achievements in the effectiveness of collective fisheries diplomacy, made possible by the emerging UNCLOS regime. The third section examines various FFA-initiated regional and sub-regional instruments. These include the negotiations to conclude the United States multilateral fisheries treaty with the FFA member-states and its grounding in Cold War politics. These multilateral treaties and instruments were finalised to help the FFA reach those objectives, for example, sustainability, a fair return, domestication and indigenous control. It is not enough to finalise those treaties and multilateral arrangements. Such arrangements have to contain substantive provisions to support conservation and management objectives and have to be capable of enforcement or have a likelihood of influencing behaviour.

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<sup>1</sup> See discussion below at section three on the defiance of 200-nautical mile EEZ and 12-nautical mile territorial sea by the United States tuna fleet in Oceania until the mid-1980s.

The fourth section studies the region's co-operative efforts to conclude the Driftnet Fishing Convention and illustrates the emerging environmental norms that helped the region to achieve its objectives in relation to collective fisheries diplomacy. The region's failure to finalise albacore management arrangements with Japan, Korea and Taiwan is also examined. Such a failure represents an example of the conditions that can limit successful achievements. The Chapter demonstrates specifically how the region's involvement at the UNCLOS III negotiations, the establishment of a regional fishery organisation, the FFA, and the implementation of regional and sub-regional agreements, supported the region's effectiveness in collective fisheries diplomacy.

### **Section one: The United Nations Convention on the Law of the Sea (UNCLOS)**

While the concept that the sea was free to all had appeared in the *Institutes and Digest* of the Byzantine Emperor, Justinian, published in 533AD, by 1598 Alberico Gentili had introduced the concept of territorial waters. It was left to Hugo Grotius, a Dutch jurist and the father of international law, (1583-1645), to define marine customary law in 1609 (Gosselin 1988: 43, Cicin-Sain and Knecht 1998: 68). Grotius believed that

state practice had since developed allowing states to forbid foreigners fishing at their coasts, to cannon shot, or even beyond (Gosselin 1988: 43).<sup>2</sup>

Thus, there were "two distinct jurisdictional regimes; the territorial sea and the high seas" (McRae and Munro 1989: 97). Within the territorial sea, a state had absolute ownership of its resources, whereas the high seas were "open to all" (McRae and Munro 1989: 97).<sup>3</sup> In the United Kingdom, James I instituted that country's "first formal act of maritime sovereignty" in 1609, which required foreign boats to seek and be given approval for annual fishing licences in order to curtail overfishing by foreign vessels (Gosselin 1988: 45). This act of maritime sovereignty prevailed during an era of

imperial maritime powers ... namely, the Dutch and the British [who] had the military might to protect the right of their commercial vessels to sail unrestrained throughout the oceans (Van Dyke 1993: 14).<sup>4</sup>

By 1860, however, multilateral agreements had become a frequent necessity to help solve "pressing communal problems" (Gosselin 1988: 71). One of the most important of these multilateral agreements was the 1882 *North Sea Fisheries Convention*, concluded between the

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<sup>2</sup> United States Secretary of State, Thomas Jefferson asserted in 1793 that the state had jurisdiction to "the distance of a cannon shot from the shore within one marine league, or three miles" (Gosselin 1988: 73). "The three-mile limit was supposedly set by the distance which an eighteenth-century cannon could reach" (Keohane and Nye 1989: 91).

<sup>3</sup> The development of the concept of the freedom of the seas was in direct defiance of a papal bull decreed by Pope Alexander VI in 1493, which stated that "all lands west of the Azores would be Spain's and all lands east of that line ... would appertain to Portugal. Soon, Spain was claiming exclusive navigation rights to the western Atlantic Ocean (challenging the exploratory voyages of the English) and Portugal was claiming the same rights for the South Atlantic and Indian Oceans" (Cicin-Sain and Knecht 1998: 68).



United Kingdom, Denmark, France, Holland, Spain, Norway and Germany. This Convention was “the earliest international agreement regulating fishing activity conducted solely on the high seas” and “remained in force until 1964” (Gosselin 1988: 85-86).

The maintenance of *res nullius* came under increasing scrutiny, particularly in the post-World War II environment. Fishing states were called upon to exercise “reasonable use ... with due regard for the interests of other nations” (Sutherland 1985: 1). By 1951, the supremacy of the maritime powers was shaken by the Anglo-Norwegian Fisheries Case (*United Kingdom v. Norway*). The International Court of Justice (ICJ) found in Norway’s favour for a four-mile fisheries zone, “exclusively for use by its own people” (Gosselin 1988: 184). The United Kingdom had argued for a three-mile limit and reacted with alarm to the ICJ’s decision (Gosselin 1988: 184, Harris 1991: 354-362).<sup>5</sup> By 1952, several South American states, including Chile, Ecuador and Peru had asserted 200-nautical mile zones, in spite of objections by the United States.<sup>6</sup> The American Tunaboat Association (ATA) negotiated with these states and concluded “mutually acceptable regulations lasting until the 1960s” (Gosselin 1988: 232).

The first United Nations Conference on the Law of the Sea (UNCLOS I) was held in Geneva in 1958 and it adopted four conventions. These were: *The Convention on the Territorial Sea and the Contiguous Zone*; the *Convention on the High Seas*; the *Convention on the Continental Shelf*; and the *Convention on Fishing and Conservation of the Living Resources of the High Seas* (Churchill and Lowe 1981: 14).<sup>7</sup> In spite of the adoption of the four Conventions, the Conference’s inability

to agree on a maximum breadth for the territorial sea meant no agreement could be reached on major issues such as parameters of exclusive or preferential fishing rights (Gosselin 1988: 338).

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<sup>4</sup> Smith (2000: 14) notes that in the Dutch maritime economy of the 16<sup>th</sup> and 17<sup>th</sup> century, “industrialisation began first of all in fisheries, commercial shipping, naval activity and associated areas such as fish processing and shipbuilding”.

<sup>5</sup> See also Akehurst (1991: 8, 33).

<sup>6</sup> While the South American states had “negligible continental shelves”, their assertion of a 200-nautical mile zone had come about from the proclamation in 1945, by the United States President, Truman, that “the resources of the extensive continental shelf of the United States were national property” (Churchill and Lowe 1983: 3). Because of President Truman’s proclamation, African states too declared “territorial seas of 50 or 200 miles, endangering the freedom of navigation of navies as well as commercial fleets” (Mann Borgese 1996: 3). President Truman’s proclamation ended the period since the 1600s of “stability” in the concept of freedom of the seas (Cicin-Sain and Knecht 1998:69). The Truman proclamation resulted in an “alarming” increase in fishing disputes between the United States fleet and South American states, for example “[I]n 1947 Peru arrested its first U.S. tuna vessel; by 1954, 20 tuna vessels had been seized by Peru, Ecuador, Columbia, El Salvador and Panama ... and between 1979 and 1983, a total of 79 vessels were seized by a diverse range of countries including Canada, Costa Rica, Mexico, Venezuela, Columbia, Papua New Guinea and Ecuador, resulting in fines totalling in excess of US \$13 million” (Waugh 1989: 31-32). This was also known as “gunboat diplomacy” (Keohane and Nye 1989: 102, but see also pages 93-94).

<sup>7</sup> The *Convention on Fishing and Conservation of the Living Resources of the High Seas* came into force in March 1966. A coastal state had jurisdiction over its territorial sea and, outside of that, fishing states had freedom of access (Kent 1980: 68). This Convention, however, was considered to be “too weak to prevent further overfishing” (Mann Borgese 1993: 23). The Geneva UNCLOS negotiations became known as the Geneva Conventions.

Because of this inability, a second conference, UNCLOS II, was convened in 1960 not only to address this issue, but “also the associated question of fishery limits” (Churchill and Lowe 1981: 14).<sup>8</sup> It was also realised that states were able to “pick and choose among the four conventions”, which produced a “fragmented system” (Mann Borgese 1993: 23). The UNCLOS II conference failed, by one vote, to “adopt a compromise formula providing for a six-mile territorial sea, plus a six-mile fishery zone” (Churchill and Lowe 1981: 14, Gosselin 1988: 353).<sup>9</sup>

H.E. Ambassador Arvid Pardo of Malta made the plea for a further conference in November 1967 at the United Nations General Assembly. Pardo “drew the attention of an incredulous world community to the vast resources at the bottom of the deep sea” [calling for] “a resolution declaring the seabed and its resources to be the common heritage of humanity” (Mann Borgese 1993: 26 and 1996: 4).<sup>10</sup> Pardo’s vision of a common heritage “sounded egalitarian enough to attract” the attention of the Group of 77 (G77) (Friedheim 1987: 86),<sup>11</sup> a group established in 1964 by seventy-seven developing countries.<sup>12</sup> These developing coastal states believed that by holding another conference, they could gain recognition of 200-nautical mile EEZs. This had implications particularly for fishing states, such as the United States, whose vessels continued to insist on their right to fish to the limit of the three-mile territorial sea

<sup>8</sup> See also Akehurst (1991: 168).

<sup>9</sup> After the conclusion of UNCLOS II, Norway declared a twelve-mile fisheries zone, stating that it was “valid under customary international law, at least for countries whose coastal population was highly dependent upon fisheries”. New Zealand claimed a twelve-mile fisheries zone in 1965, with Australia following suit in 1967 (Gosselin 1988: 377).

<sup>10</sup> In support of Pardo’s plea, the General Assembly passed a Resolution in 1970, the “Declaration of Principles Governing the Sea-Bed and Ocean Floor and the Subsoil Thereof, Beyond the Limits of National Jurisdiction (Res. 2749, XXV), in support of the common heritage principle” (Kent 1980: 158). More than a century ago, “the *Challenger* expedition discovered the presence of potato-sized nodules scattered across large areas of the sea bed, mainly beyond the geological continental shelf at depths of around 3,500 metres” (Churchill and Lowe 1983: 155). The nodules included cobalt, manganese and nickel. As well, component metals include titanium, palladium, platinum and gold. There are important concentrations of these nodules in the central Pacific, between Hawai’i and Micronesia (Wenkam 1974: 104). To claim an EEZ, an island must be inhabited. It has been important therefore to lay claim to uninhabited islands. The United States has done so, to many islands either uninhabited or those which have been uninhabited for most of time. These islands include Johnston Island, Kingman Reef and Palmyra Island (all south of Hawai’i). Other uninhabited islands under dispute include the Spratlies and the Paracels, Clarion Island, and Clipperton Island. Clipperton, an island with “potentially-rich zone of polymetallic nodules” has been disputed between France and Mexico (For an in-depth analysis of this dispute, see Van Dyke and Brooks 1979).  
<sup>11</sup> It may have sounded egalitarian to some, but to others the idea was farcical:

“A bunch of bleeding hearts at the United Nations introduced a resolution which everybody laughed at initially to give the deep seabed beyond the Continental Shelf to the United Nations so that they could lease it and use the proceeds to buy javelins for the people of Ghana. I guess I would say that if you have the skill, guts and intelligence to go beyond the present legal limit of the Continental Shelf as defined in the Convention, go to it, until you run head on into somebody. Then you can sit down and talk about it. If you turn the seabed over to the United Nations, which has no respect for private property, which is bankrupt and cannot govern its own finances and which does not know the meaning of sanctity of contract, it would be abhorrent. We will resist this effort ... “(The *Ocean and the Investor*, (1969) New York: Dean Witter & Co. p 121 in Kent 1980: 159).

<sup>12</sup> The G77 is a coalition of Third World states which “provides the means for the developing world to articulate and promote its collective economic interests and enhance its joint negotiating capacity on all major international economic issues in the United Nations system” (see <http://www.g77.org/>).



(Friedheim 1987: 86).<sup>13</sup> It was also argued that the Geneva Conventions had been “overtaken by events, both scientific and political” (Harris 1991: 348). For example, maritime developments such as new technology for exploratory mining of the seabed and continental shelf, over-fishing and pollution concerns.<sup>14</sup>

During the 1960s, the maritime capabilities of the Soviet Union had increased and it wished, along with the United States to preserve “the ocean status quo”, namely freedom of the high seas (Friedheim 1987: 85). In spite of their Cold War differences, the two superpowers shared a common goal; their military activities required “unimpeded transit passage through straits used for international navigation” (Friedheim and Akaha 1984: 13). By 1970, however, a growing band of newly independent members of the United Nations had begun calling publicly for a review of the 1958 UNCLOS. These calls led to UNCLOS III being convened in 1973.

The Conference had two main groups, the developing states, who “were clearly in the avant-garde of innovation”, and the developed, maritime states, “in defense of the status quo” (Mann Borgese 1996: 5). The former group was known as the Group of 77 (G77) that tried, in finalising the Convention document, to “ensure that non-mining states would benefit from resources extracted from the deep sea-bed” (Miller 2000: 236).<sup>15</sup> Not just this, however, but the aim of the G77, in NIEO terms, was to insist upon “a redistribution of benefits from North to South” (Friedheim and Akaha 1984: 12). Friedheim and Akaha (1984: 12) point out that developing states felt the prevailing international political economy disadvantaged them, as they were reliant on Northern economies. For example, the North supplied “high-priced industrial products” and that the South supplied “the relatively cheap raw materials” (Friedheim and Akaha 1984: 12).

The second group, that of developed states, was concerned that the “limits of national jurisdiction had to be stabilized to protect the freedom of navigation of the great naval powers” (Mann Borgese 1993: 23).<sup>16</sup> It was a time of change as the supremacy of the maritime powers was being eroded. This erosion was evidenced, for example, by the delays at UNCLOS III

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<sup>13</sup> These were mainly the Latin American States of Chile, Ecuador and Peru.

<sup>14</sup> Sutherland (1985: 2) notes that there were “[C]onflicting political considerations, limited institutional authority, disagreements about catch allocations, problems of enforcement” which militated against “international co-operation”. The biggest issue, however, was still the “traditional high seas philosophy”.

<sup>15</sup> Cox (1979 376-378) has analysed the NIEO and its origins from the 1973 Algiers conference of the nonaligned states. At the first level, the NIEO is a “series of specific demands and considerations embodied in ... official documents adopted by international conferences”. At the second level, it is “a negotiation process ... between countries of North and South”. At the third level, it is a “debate about the real and desirable basic structure of world economic relations”. At the fourth level it concerns “the form of knowledge appropriate to understanding these issues” (1979: 376-378). The proposals to establish an NIEO was discussed at a special session of the United Nations in 1975 which “generated an intragovernmental debate about policies towards the Third World in general” (Keohane and Nye, 1989: 35, 36). Put simply, the NIEO debate centred on “the distribution of power among states, with the developing countries pursuing a more favourable distribution of power (Oman and Wignaraja 1991: 111).

<sup>16</sup> The traditional maritime states were also concerned to halt what they termed “creeping jurisdiction” (Friedheim 1987: 85).

caused by consensus decision-making, rather than by majority voting to confirm decisions as had previously occurred at UNCLOS I and II.<sup>17 18 19 20</sup>

Early into the UNCLOS III negotiations, agreement was reached (and endorsed by both the Soviet Union and the United States) regarding the rights of coastal states over resources within an Exclusive Economic Zone of 200-nautical miles from the territorial sea baseline (an EEZ).<sup>21</sup> Both Cold War superpowers were willing to concede EEZ rights as a trade-off for international navigation rights (Friedheim and Akaha 1984: 13). This agreement was important to the Oceanic states, given their vast sea area.<sup>22</sup> The two superpowers also agreed with the implementation of a 12-nautical mile territorial sea and a “formal affirmation of rights of movement through straits and archipelagos” (Friedheim 1987: 91).

The conference’s negotiations on the issue of highly migratory fish stocks and straddling fish stocks hit a stumbling block in 1981 when the United States’ Reagan Administration declared its intention of undertaking a “policy review of the entire draft Convention” (Friedheim 1987: 104). The United States maintained that highly migratory fish stocks, for example, should not fall within the Convention’s ambit. Rather, they should be considered separately and should be managed through an appropriate international organisation. It took the United States a year to review the draft Convention, during which time the other conference participants had strengthened their positions and were positively disposed towards finalising the negotiations, with or without the United States (Friedheim 1987: 104).<sup>23 24</sup>

<sup>17</sup> The developed countries had approached the UNCLOS III negotiations with the belief that traditional forms of voting procedures would apply, however, “when they perceived the hostility of a substantial majority to traditional international law, they quickly embraced the notion of decision by consensus or near consensus” (Friedheim 1987: 88).

<sup>18</sup> There were also difficulties at UNCLOS III regarding seabed mining (Akehurst 1991: 169, Churchill and Lowe 1981: 16-17). The seabed mining issue, under Part XI of the UNCLOS, was a major impediment for the United States and other developed states. To satisfy the developed states, it was renegotiated as the *Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982* in 1994 (Part XI Agreement).

<sup>19</sup> There are global consortiums interested in the extraction of seabed minerals. Companies from the United States, the United Kingdom, France, Canada, Japan, Belgium and Italy are involved. The 1958 Convention agreed that the seabed minerals issue was “subject to the general principle of the freedom of the seas” (Churchill and Lowe 1983: 157). While the majority of developed Western states have affirmed this view, it is not the view of the developing states, which comprise the majority of members at the United Nations. While the developed states wished this issue to proceed slowly at UNCLOS III, developing states had an alternative view. They wished the issue to be moved quickly through the negotiation process to not only secure “agreed principles but ... an international organisation with wide powers to regulate sea-bed mining” (Churchill and Lowe 1983: 158).

<sup>20</sup> Mann Borgese (1996: 6-7) argues that the Part XI Agreement was in “flagrant violation of international law ... [and] it creates an International Seabed Authority which is not viable. For example, the chambered voting system allows the industrialised members to block Council decisions, as well as other “contradictions and weaknesses which will be hard to live with”.

<sup>21</sup> The definition of baseline under UNCLOS III is the same as was negotiated for the 1958 Geneva *Convention on the Territorial Sea and the Contiguous Zone*, that is “the normal baseline is the low-water line” (Kent 1980: 151).

<sup>22</sup> See map of the region at Figure 1.1, page 1a of the Introduction.

<sup>23</sup> Some observers have said that the 1982 UNCLOS “represents a constitution for the world’s oceans. Not only are the rights of nations relative to the ocean and its resources carefully spelled out, but also the duties and obligations of nations are made clear” (Cicin-Sain and Knecht 1998: 71).

<sup>24</sup> As at August 2002, the United States is yet to ratify the UNCLOS.



So what was achieved at the UNCLOS III? Achievements include: a twelve nautical mile territorial sea, extending from the territorial sea baseline;<sup>25</sup> a contiguous zone, with an outer limit of 24 nautical miles from the territorial sea baseline;<sup>26</sup> a 200-nautical mile exclusive economic zone, with jurisdiction over non-highly migratory species, extending from the territorial sea baseline;<sup>27</sup> a continental shelf with an outer limit of 200 nautical miles from the territorial sea baseline, or beyond, to the outer edge of the continental margin – see Article 76, UNCLOS; and the high seas to lie beyond the EEZ or continental shelf (UNCLOS 1982).<sup>28</sup>

There are crucial issues under the UNCLOS in relation to the EEZ activities of fishing states in Oceania. One of the most important issues relating to fisheries access and management is that of the distinction between sovereignty and sovereign rights.<sup>29</sup> The distinctions between ‘sovereignty’ and ‘sovereign rights’ are complex. The following is offered as an interpretation. Sovereignty means a state has exclusive rights, legal supremacy and powers over its lawful jurisdiction. Alternatively, sovereign rights prescribe control over a specific issue as a consequence of sovereignty. For example, Australia's sovereignty over its territorial sea means it has the sovereign right to exploit its resources as it sees fit, or as may be allowed under international law.<sup>30</sup> Another important issue under the UNCLOS is the requirement that coastal states finalise fishing access arrangements with fishing states if their domestic harvest of the fish stocks is less than the Maximum Sustainable Yield (MSY).<sup>31</sup> Both of these issues had ramifications for the Oceanic states through their declarations of EEZs.

The issue of highly migratory stocks was not resolved at UNCLOS III; it was only referred to under Article 64, which notes that<sup>32</sup>

The coastal State and other States whose nationals fish in the region for the highly migratory species ... shall co-operate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of

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<sup>25</sup> While the coastal state has sovereignty over this zone (including airspace), it does allow for the right of innocent passage by foreign vessels.

<sup>26</sup> A contiguous zone is an area beyond the territorial sea where the coastal state may exercise its rights regarding customs, immigration, or sanitary laws.

<sup>27</sup> A coastal state has sovereign rights of exploration, exploitation, conservation and management of the living or non-living natural resources.

<sup>28</sup> The high seas “may be used freely by the ships of all nations”. A vessel on the high seas is subject to international law and to the laws of the specific Flag State. While traditional flag states have rules and regulations regarding the operations of vessels flying its flag, flags of convenience (FOC) states have fewer scruples. For example, FOC vessels can be used to avoid paying taxes or minimum wages, or defy rules regarding “ships’ lights, safety regulations, the slave trade, compulsory insurance, ‘pirate’ radio stations, pollution and the conservation of fisheries” (Akehurst 1991: 182). See also Van Fossen (1992) for a specific study on Oceanic FOCs.

<sup>29</sup> See Akehurst (1991: 15-19 and Churchill and Lowe (1983: 130-132) for discussions on sovereignty and sovereign rights.

<sup>30</sup> I was grateful for advice on this issue from Judith Swan, (Consultant, SwanSea Oceans Environment Inc., Nova Scotia) and Mark Gray (Executive Officer, Department of Foreign Affairs and Trade, Canberra).

<sup>31</sup> My thanks to Lorraine Elliot (Fellow, Australian National University) for her suggestion that the issues of MSY and the distinction between sovereignty and sovereign rights be made more explicit in this thesis.

<sup>32</sup> Munro (1989: 21) notes that “[T]o distant water fishing nations engaged in harvesting tropical tuna, the claim that coastal states should be able to lay claim to tuna resources off their coasts seemed particularly radical. The tuna fisheries had, after all, been developed by distant water fishing nations and were still dominated by them”.

optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone. In regions for which no appropriate international organization exists, the coastal State and other States whose nationals harvest these species in the region shall co-operate to establish such an organization and participate in its work.

The developing coastal states at UNCLOS III believed that highly migratory fish stocks (including tuna), were “simply some among many transboundary resources” (Munro 1989: 21). Alternatively, fishing states, headed by the United States criticised this approach, claiming that highly migratory fish stocks “should continue to be regarded as international common property and should be managed by international organisations” (Munro 1989: 21).<sup>33 34</sup> The United States later conceded the rights of the Oceanic states over highly migratory stocks with the finalisation of the Multilateral Fisheries Treaty in 1987 (see section three below).

A major criticism levelled at the Convention by Arvid Pardo is that the Convention document does not encompass an holistic, overarching system, which includes “scientific research, the development and transfer of technology, transport on sea and on land, processing, trade, and marketing” (Kent 1980: 151). It is instead focussed narrowly on production (Kent 1980: 151). Furthermore, while developing coastal states believed they would gain from an extended 200-nautical mile EEZ, it is larger developed states that have been the major winners. For example: the United States gained 2,222,000 square miles; Australia gained 2,043,300 square miles;<sup>35</sup> Indonesia gained 1,577,300 square miles; New Zealand gained 1,409,500 square miles;<sup>36</sup> and Canada gained 1,370,000 square miles (Kent 1980: 154).

In the Western and Central Pacific Ocean (WCPO), the United States has claimed a vast area, thanks to Hawai’i, and United States control over the islands of Midway, Wake, Palmyra, as well as a “string of uninhabited atolls” (Dolman 1985: 59). France, with its dependencies of French Polynesia, New Caledonia and Wallis and Futuna, has gained a combined extended jurisdiction in excess of seven million square kilometres (Dolman 1985: 59). That said, Japan was a big loser, as “nearly half of its marine fisheries production has been from the coastal waters of other nations” (Kent 1980: 154). Until 1974 Japan opposed the concept of an EEZ. At that time, Japanese domestic politics were dominated by the needs of its distant water fleet for unencumbered access to the EEZ of other coastal states in as far as their three-mile zones. The bulk of Japan’s fish supply (approximately 43.7% in 1974) came from those coastal states’ waters (Friedheim and Akaha 1984: 4). It is not surprising, therefore, that Japan “was the sole opponent of the 200-nautical mile exclusive economic zone proposal” at the UNCLOS III negotiations in 1974 (ABARE 1988: 282). That said, while Japan publicly opposed the

<sup>33</sup> What the United States wanted “was an IATTC-type organisation in which distant water fishing nations would share, if not dominate, the management of the resource” (Munro 1989: 21). (IATTC: Inter-American Tropical Tuna Commission)

<sup>34</sup> The issue of highly migratory fish stocks was later tackled in the *Agreement for the Implementation of the Provisions of the United Nation 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* (the Fish Stocks Agreement). See Chapter Four.

<sup>35</sup> Australia claims Norfolk Island, Lord Howe Island and the Macquarie Islands (Dolman 1985: 59).

<sup>36</sup> New Zealand claims Kermadec Islands, Chathan Islands, Auckland and other islands (Dolman 1985: 59).



introduction of 200-nautical mile EEZ enclosures, privately various ministries and industry knew that Japan's isolation was not tenable (Fukui 1984: 47). The reason Japan maintained its public stance was because

They could plausibly tell the angry fishermen, when the inevitable occurred, that they had done all they could to prevent the EEZ's [sic] and were not responsible for the problems that would result from worldwide adoption of such zones (Fukui 1984: 47)<sup>37</sup>

Not only was Japan isolated on its anti-EEZ position, but it was also forced into accepting the regime for a number of reasons. For example: the Soviet Union, the Republic of Korea and China had arrested Japanese vessels for entering their 200-nautical mile EEZs; the increased competition with Japan's EEZ by the Soviet Union and the Republic of Korea; and the denial of access to their EEZs by the United States and the Soviet Union (see ABARE 1988, Friedheim and Akaha 1984).

Attendance at the UNCLOS III negotiations was restricted to those independent Oceanic states that had either the economic resources or suitably qualified personnel able to attend. For example, while Kiribati achieved independence in 1979, it was felt the negotiations were too advanced and too technical for its officials to participate and domestic issues both leading up to and immediately following independence precluded attendance (Teiwaki 1988: 60).<sup>38</sup> The Oceanic states of Fiji, Papua New Guinea, Tonga and Western Samoa did attend and played an active role in relevant aspects of the negotiations.<sup>39</sup> Fiji's senior representative to the UNCLOS III negotiations was H.E. Ambassador Satya Nandan, who chaired the negotiations for the Fish Stocks Agreement and who later became the Director of the International Seabed Authority in Jamaica (Veitayaki 1995: 18).<sup>40</sup>

The United States Trust Territories of Micronesia were not independent states at the time of the UNCLOS III negotiations. It was apparent to those territories that their interests diverged from those of the United States. While Micronesia did attend the UNCLOS III negotiations, it "did not achieve the full contracting party status" it had requested, but was rather accorded observer status "with no right to vote" (Kent 1980: 44).<sup>41 42</sup>

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<sup>37</sup> There were other complicating factors behind Japan's quandary over the EEZ regime. When Japan introduced its 200-nautical mile fishing zone in 1977, because of shared access, it excluded "South Korean, Chinese and Taiwanese boats and large areas west of Japan from the restrictions" (ABARE 1988: 282). Japan shares EEZ claims to the East China Sea with the Republic of Korea, the People's Republic of China and the Republic of China. There are considerable oil reserves in the East China Sea (Friedheim and Akaha 1984: 10). This makes any negotiations and claims very sensitive.

<sup>38</sup> Before 1979, the United Kingdom had represented Kiribati at the UNCLOS III negotiations.

<sup>39</sup> Fiji was the very first state to ratify the UNCLOS III (Veitayaki 1995: 18).

<sup>40</sup> Nandan also chaired the negotiations between 1997-2000 to conclude the *Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific* (WCPF Convention).

<sup>41</sup> An important side effect of Micronesia's attendance at the UNCLOS III negotiations was the realisation of the "practical importance of retaining authority over foreign affairs" (Hezel 1995: 360). It resulted in the United States agreeing in 1978 that the Compact should be amended to reflect Micronesian control over foreign affairs.

<sup>42</sup> By October 1977, the Congress of Micronesia had passed legislation for 200-nautical mile EEZ around its islands. Suddenly, "[L]and poor Micronesia had become ocean-rich", giving the Micronesian islands rights "to nearly two million square miles of sea (Hezel 1995: 360).

Together with Tonga and Western Samoa, Fiji promoted the preference for an EEZ arrangement over other suggested arrangements at the UNCLOS negotiations.<sup>43</sup> With New Zealand's support, they drafted a proposal regarding the importance to Oceania of an EEZ arrangement (Teiwaki 1988: 72-73). The Oceanic states had two major concerns in their pursuit of EEZs. The first concern related to growing populations, the accompanying stress on inshore fish stocks and attempts by island governments to persuade them to fish further out to sea. The second was a growing unease at the increasingly 'high tech' nature of fishing state vessels competing with artisanal fishermen (Leaney 1994: 160).

The draft proposal on an EEZ arrangement was incorporated into the Convention and gave the Conference an insight and "appreciation of the special needs of the South Pacific islands" (Kullenberg 1999: 851). Thus, the EEZ regime has been crucial to the pursuit of equality in the oceans, because they "cover about 8% of the earth's surface, 25% of global primary productivity and 90% of the total fish catch" (Kullenberg 1999: 851). Not least, however, as many of the Oceanic states were not yet independent or represented at the conference, the arguments put forward regarding EEZ jurisdiction at the UNCLOS negotiations by New Zealand, Fiji, Tonga and Samoa "[E]pitomised the underlying communal spirit and togetherness characteristic of the islands of the South Pacific region" (Teiwaki 1988: 72).

Another contribution made by the Oceanic delegates at the conference related to the special concerns of archipelagic states.<sup>44</sup> As Teiwaki (1988: 81) notes, this matter had been a controversial one, between "the archipelagic states and the maritime powers since the Hague Conference of 1930".<sup>45</sup> Maritime powers such as the United Kingdom and the United States protested that the claims of archipelagic states "would result in areas which had previously been high seas or territorial seas becoming internal waters" (Teiwaki 1988: 81). This had relevance to areas around the Philippines and Indonesia that were traditional shipping corridors (Teiwaki 1988: 82). At UNCLOS III, the archipelagic states of Fiji (led by Satya Nandan), the Philippines and Indonesia, as well as Mauritius, joined forces to negotiate a suitable text regarding the special rights of archipelagic states. After intense negotiations between the archipelagic states, the United States and the Soviet Union, agreement on the text was reached, "with the exception

<sup>43</sup> These included a custodial/preferential arrangement a view liked by Canada and the United States. Another view was the right of a coastal state to "extend its fisheries jurisdiction beyond the limits of its territorial sea", but that the coastal state had to take into consideration "historic" access of fishing states (McRae and Munro 1989: 99). This latter option was the basis of the *Fisheries Jurisdiction Case (United Kingdom v. Iceland)*. These disputes were known as the "cod wars" (see Akehurst 1991: 180, Churchill and Lowe 1983: 270, 293, Keohane and Nye 1989: 96). This third view was preferred by Japan and the Soviet Union (Leaney 1994: 161).

<sup>44</sup> Article 46 of the UNCLOS stipulates that an " 'archipelago' means a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such".

<sup>45</sup> The Hague Conference was the result of years of reports on issues, such as "territorial waters, piracy, exploitation of marine resources, and the legal status of State-owned merchant ships". Unfortunately, however, the Conference was not able to agree on "a convention on territorial waters. Nevertheless, the



of the Philippines” (Teiwaki 1988: 82, Veitayaki 1995: 18). In this way, the participation by the Oceanic states at the UNCLOS III negotiations made a difference. Furthermore, their participation gained them valuable experience in multilateral negotiations.

It is interesting to reflect on why the United States and Japan gave way on the EEZ issue, which would change forever the way fishing was undertaken in the region. First of all, the United States did not agree, at that conference, to the rights of coastal states over highly migratory fish stocks. The United States did agree to 200-nautical mile EEZs, for very clear reasons, as illustrated above. It gained sovereign rights over vast sea areas, based on Hawai’i and its other islands in the Pacific – Palmyra, Wake and Midway. As regards Japan, it had important (and politically strong) coastal fishing industries that would have lobbied hard for an EEZ. In addition, Japan was also reliant on fishing access to other coastal states.

Section one charted the history of the negotiations to conclude the UNCLOS. The history demonstrates the shifts in global norms in relation to the rights of coastal states over the rights of the traditional maritime powers for unfettered access to waters in as far as three miles. There was no consideration by fishing states regarding conservation and management measures when fishing in close to the shores of a coastal state. It took nine years of negotiations to conclude UNCLOS III and while some of the measures reflect the rights of coastal states, the regime also accords increased jurisdiction to developed coastal states with the resource capacity required to manage their extended zones.

The section outlined the involvement of newly independent Oceanic states at the UNCLOS III negotiations and how they worked co-operatively to have their concerns addressed in the Conference’s text. There is no doubt that the UNCLOS III experience gave them an opportunity to develop co-operative abilities. These negotiations were an important step in the region’s plans to establish a regional fisheries organisation to help manage and conserve their marine resources. There were fears in Oceania about fish stocks being over-exploited by the blatant harvesting of tuna by foreign fleets fishing, in some cases, just beyond the reef.<sup>46 47</sup> The conclusion of UNCLOS regime marked a seminal event in the region’s abilities to re-introduce that pre-colonial conservation ethic that had guided marine exploitation.

## **Section two: The history of collective fisheries diplomacy in Oceania**

At the South Pacific Forum meeting in Nauru in 1976, two papers were presented for consideration by delegates regarding Law of the Sea issues, one by the Prime Minister of Papua

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articles drawn up by the Conference surfaced at UNCLOS I (Churchill and Lowe 1983: 13-14). See also Keohane and Nye (1989: 93).

<sup>46</sup> See the South Pacific Forum’s “Summary Record” of its 1976 meeting (South Pacific Bureau for Economic Co-operation).

<sup>47</sup> See the discussion in Chapter Three, regarding the activities of the United States fleet. Also see Friedheim and Akaha (1984: 4) regarding Japan’s ‘need’ for access to coastal states’ waters in as far as the three-mile zone.

New Guinea and the other by the Prime Minister of Fiji.<sup>48</sup> Papua New Guinea's paper, entitled "Environmental Conservation in the South Pacific", was notable because it connected fisheries issues with environmental conservation.<sup>49</sup> The paper also highlighted the importance of co-operation and co-ordination of the independent island states, and emphasised a "common purpose" of Forum States (Paragraph 19, Summary Record of the Seventh South Pacific Forum 1976: 3).<sup>50</sup> Under Agenda Item 6: Law of the Sea, the Fijian Prime Minister tabled a paper concerning the UNCLOS negotiations. It mentioned the "possible establishment of a South Pacific Regional Fisheries Organisation" (Paragraph 47, Summary Record of the Seventh South Pacific Forum 1976: 7).<sup>51</sup> The Forum meeting adopted a declaration which highlighted "the importance they attached to developments taking place at UNCLOS III" as well as initiating a meeting to discuss these issues further (Sutherland 1985: 13-14).<sup>52</sup> Herr (1994: 287) believes that the EEZ concept "had a magnetic attraction" for the Oceanic states particularly those that lacked land-based natural resources.

That "magnetic attraction" translated into a meeting that took place in October 1976 at which Member states tabled three decisions. The first decision was to declare 200-nautical mile EEZs. The second was to "harmonise" the region's fisheries policy in pursuing a "co-ordinated approach in their negotiations with dwfns"<sup>53</sup> (Kent 1980: 166). The third was agreement in principle for the establishment of a regional fisheries organisation to "promote conservation and rational utilization" of the region's fish stocks (Kent 1980: 166).<sup>54</sup> The South Pacific Bureau for Economic Cooperation (SPEC) offered the meeting two options regarding the "nature and membership of the proposed organization" (Neemia 1986: 33). The first option called for the inclusion of all interested states to conserve, manage and properly utilise their living resources, thereby adhering to the Article 64-type organisation envisaged by the UNCLOS. The second option was more narrowly defined as "maximising benefits for the coastal nations", which would secure "maximum concessions from foreign fishing nations" (Neemia 1986: 33-34). Thus, the second option did not conform to an Article 64-type organisation, instead being region-orientated (Neemia 1986: 33-34).<sup>55</sup> It is clear there were different goals for each of these options and therefore, national interests, including costs and benefits, would be factors in determining which of the two options was preferred.

<sup>48</sup> Island states that were, at that time, members of the United Nations included Fiji, Papua New Guinea, Tonga and Western Samoa, all "had the benefit of keeping up with contemporary developments with the Law of the Sea (Teiwaki 1988: 106).

<sup>49</sup> New Zealand had presented papers to the Forum in 1973 and 1974 regarding foreign fishing "and the need to police fishing grounds in the South Pacific (Haas 1989: 114).

<sup>50</sup> See also see also Sutherland (1985: 13) and Sutherland and Tsamenyi (1992: Chapter 3).

<sup>51</sup> The South Pacific Commission (SPC) had convened "several technical fisheries meetings, beginning in the late 1960s" (Haas 1989: 114). Furthermore, in 1970 the South Pacific Fisheries Development Agency was established by the SPC in liaison with the United Nations Food and Agriculture Organisation (FAO) (Haas 1989: 114).

<sup>52</sup> See also Teiwaki (1983: 106).

<sup>53</sup> 'dwfns', or 'DWFNS' stands for distant water fishing nations. Throughout this thesis, I refer to them as 'fishing states'.

<sup>54</sup> See also Sutherland (1985: 14) and Gubon (1987: 246).



The fishing states that attended that meeting, namely the United States, Chile, France, the United Kingdom, Japan and Korea, preferred option one. Many Forum members preferred option two. Central to the differences was the United States' determination to consider highly migratory fish stocks separately and the equal determination by the Oceanic states to have them included in their national jurisdictions (Neemia 1986: 34). In addition, Japan did not recognise coastal state jurisdiction over highly migratory fish stocks (Tarte 1998a: 98). By the time of the Port Moresby South Pacific Forum meeting in August 1977, however, fractures had appeared between island governments regarding the inclusion or otherwise of fishing states in the new organisation. At the signing of the South Pacific Forum's *Port Moresby Declaration* in 1977, it was implied that the second option was being considered (Kent 1980: 168).

A Forum follow-up meeting took place in Suva in November 1977 at which representatives from the United Kingdom, France, Chile and the United States attended, "purportedly to represent the nonsovereign territories they administered in the region", and Japan attended as an observer (Gubon 1987: 247).<sup>56</sup> The United States continued to insist on the separateness of highly migratory stocks and on the related primacy of the United States Fishery Conservation and Management Act of 1976 (the Magnuson Act), Section 202e which states

the United States shall not recognize the claim of any foreign nation to an exclusive economic zone (or equivalent) ... if such nation – (1) fails to consider and take into account traditional fishing activity of fishing vessels of the United States; (2) fails to recognize and accept that highly migratory species are to be managed by applicable international fishery agreements, whether or not such nation is a party to any such agreements (United States Government 1996, see also Kent 1980: 169).

By the South Pacific Forum 1978 meeting in Niue, however, disunity among the oceanic states had become apparent (Sutherland 1985: 14, Fry 1981: 471). There was also hostility towards the United States for trying to force its views on the Oceanic states regarding highly migratory skipjack tuna stocks, the main resource that the FFA would be "controlling" (Fry 1981: 472). The Prime Minister of the Solomon Islands, Peter Kenilorea, argued that

We do not interfere in the coal mines of America – why should America be able to interfere in the fisheries of the independent Pacific Forum countries? (in Kent 1980:169).

The central theme running through the two options to be considered by the Forum members was the "distinction between conservation and management" as well as the "precise scope of the co-operative duty" (Sutherland 1985: 14).<sup>57</sup> The two options split the Oceanic states. Option one was favoured by fishing states, as well as Australia, New Zealand, Western Samoa, the Cook Islands and Niue. Apart from Western Samoa, a former New Zealand colony,

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<sup>55</sup> See also Teiwaki (1983: 106).

<sup>56</sup> See also Sutherland (1985: 26).

<sup>57</sup> Sutherland and Tsamenyi (1992: 27) discuss the implied differences between management and conservation, utilising the Concise Oxford Dictionary's interpretation. That is, "to 'manage' is to organise, regulate, take control of, while the verb 'conserve' means to "keep from harm, decay, loss, especially with a view to later use".

the two other Oceanic states were, at that time, dependent territories of New Zealand and were not those with rich tuna resources. The second option was favoured by Fiji, Papua New Guinea, Nauru, Tonga, Kiribati and the Solomon Islands, most of whom had substantial tuna resources.

Dolman (1985: 52) believes that the dispute was, however, based on “different interpretations of self interest”. The larger islands felt confident in their abilities to exploit the fisheries themselves, thus obviating the need for fishing states in the region. The small states, with fewer resources and limited internal capacity, believed their advantage lay in selling licence fees to fishing states and therefore saw advantage in their inclusion in a regional agreement. While this provides one view of the debate, it is essential to consider other factors: the Cold War politics of the period; the decolonisation process in the region at that time; the divergent interests of those Oceanic states with fish and those without fish; and the national interests of fishing states and other regional powers.

What most island governments sensed was the influence exerted by the United States over Australia and New Zealand concerning defence and political issues and how this might reflect the power balance within a regional fisheries organisation that included fishing states. Some Forum states were “uneasy” about the possibilities of adverse influence on decision-making within the new organisation (Herr 1994: 287). Others reflected that by including fishing states like the United States within the organisation, might “oblige it to control its fishing fleets” in the region (Neemia 1986: 35). Another element to the debate was the refusal by the United States to concede the rights of coastal states to conserve and manage highly migratory stocks in their EEZs.

All differences aside, the 1978 Niue Forum meeting closed with an agreed upon resolution to establish a regional fisheries organisation along the lines proposed in the *Port Moresby Declaration* of 1977 – the second option (Kent 1980: 170). This was followed-up at the July 1979 Honiara Forum meeting, where the decision to uphold that *Declaration* was approved by Island leaders. In August 1979, *The South Pacific Forum Fisheries Agency Convention* entered into force (Teiwaki 1988: 107, Herr 1990: 5).<sup>58</sup> In doing so, Herr (1990: 5) believes the region deliberately chose to adopt an insular perspective regarding its fisheries policies with fishing states. Furthermore, by going along that route, Herr argues that the region deliberately chose to control its fisheries resources, including the highly migratory fish stocks, within 200-nautical mile exclusive economic zones that would “derive maximum financial benefits” from foreign fishing fleets (Herr 1990: 5). This would not be possible within the framework of an Article 64 organisation (Gubon 1987: 248). I question the use of the word

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<sup>58</sup> There was the distinct possibility that a coalition, including Papua New Guinea and Fiji, would agree to form their own fisheries organisation, should the United States be allowed to participate. This controversy was running in tandem with growing cultural supremacy battles between Polynesia and Melanesia over issues such as leadership of SPEC (Fry 1981: 472-473).



“insular” in Herr’s argument. The Oceanic states were very aware of external forces. Furthermore, given their inter-island pre-colonial contact, and with it their informal regional identity, they were not ignorant of or indifferent to other cultures. It was a deliberate decision, made in the context of prevailing geopolitical dynamics, to keep the membership within the region.<sup>59</sup> This does not signify insularity. Furthermore, as Bergin (1994b: 2) states, “as an organisation it does not have to concern itself with suspicion and non-cooperation among DWFN members”.<sup>60</sup>

The region needed a strong, cohesive body which would achieve objectives, such as the conservation and management of the region’s tuna fishery. The decision to follow option two also meant that those states that had originally favoured option one realised that their specific interests were not those which would advance the common interest of the region. Samoa, the Cook Islands and Niue were all to argue later against the *South Pacific Nuclear Free Zone* (SPNFZ), reflecting a moderate, pro-United States attitude.<sup>61</sup> Nevertheless, as with the later SPNFZ, these states conceded their specific interests to the good of the region.

The Forum Fisheries Agency (FFA) became an organisation that comprises the Forum Fisheries Committee (FFC) and a Secretariat, which is answerable to the FFC (Sutherland and Tsamenyi 1992: 46). The FFC decides on the appointment of the Director and Deputy Director of the FFA. Both arms of the Agency are “designed to be consultative and advisory”, with neither arm having the “power to determine the allowable catch or allocate the surplus catch to foreign countries” (Van Dyke and Heftel 1981: 18). These functions are the responsibility of individual island members, who then advise the FFA of specific management decisions taken regarding issues such as catch quotas (Gubon 1987: 254). Funding for the FFA is received from Australia (26%), Canada (12%), New Zealand (7%) and contributions from other members. Japan has funded adviser positions, as has the United States and the Commonwealth Secretariat. Other donor funding has been received from Canada, China, Korea and Taiwan. Cash income has also been generated from registration fees and administrative costs associated with the Multilateral Fisheries Treaty (FFA Annual Report, 1998c: 24-25, 37).

The functions of the FFC include: formulating policy and administrative principles for the FFA; “providing a forum” to facilitate discussion regarding shared fisheries resources; operational functions in line with the Convention; and facilitating “coordination and

<sup>59</sup> While other regional and international organisations cannot be members of the FFA, they do attend meetings as observers. These include the member organisations of the South Pacific Organisations Co-ordination Committee (SPOCC).<sup>59</sup> Other organisations include: the European Commission (EC); Commonwealth Secretariat, Food and Agriculture Organisation (FAO); International Centre for Living Aquatic Marine Resources (ICLARM); United Nations Development Programme (UNDP); Overseas Fishery Co-operation Fund (OFCF); and representatives of parties to the Convention on the Conservation of Antarctic Living Marine Resources (CCAMLR) (Aqorau 1998: 93). Observers attending FFA meetings have included the officials from the dependent territories of American Samoa, French Polynesia and New Caledonia.

<sup>60</sup> DWFN – distant water fishing nation.

<sup>61</sup> See Chapter One. See also Fry 1986.

cooperation” within the region regarding fisheries management, dealings with fishing states; monitoring, control and surveillance; trade-related functions of fish processing; and access to regional jurisdictions by fishing states (Van Dyke and Heftel 1981: 18). To further these functions, the FFC meets once a year and makes its decisions by consensus. Where consensus cannot be reached, the Convention allows for motions to be passed by two-thirds of those members present, thus marking a departure from the ‘Pacific Way’<sup>62</sup> (South Pacific Forum Fisheries Agency Convention, 1979).

The operations of the Secretariat are to: “collect, analyze and distribute information on living marine resources, especially the highly migratory species; collect and disseminate information on management, legislation, and agreements adopted by other countries; provide assistance in the development of fisheries policies, negotiations, issuances of licenses, collections of fees, surveillance and enforcement;<sup>63</sup> and establish working arrangements with regional and international organizations, especially the South Pacific Commission” (South Pacific Forum Fisheries Agency Convention, 1979). Thus, the operations of the Secretariat are focused on the technical aspects of the FFA’s requirements and are supplemented by scientific studies undertaken by the SPC (Fong 1993: 132). These studies have also allowed for co-ordination between the SPC, FFA and the University of the South Pacific (USP) regarding “research and educational programmes” (Teiwaki 1988: 107).<sup>64</sup>

What emerges from the above tasks is that these multilateral activities are more cost-effective than could be achieved unilaterally, therefore, following a costs and benefits approach, it is in the national interest of individual Oceanic states to support the organisation. By limiting the membership to the region, the organisation has been able to focus on achieving conservation and management objectives. Hence, while fishing states, under the FFA’s Convention, can become a Party, this has not occurred, suggesting the “belief that their exclusion continues to be in the interests of Member States” (Sutherland and Tsamenyi 1992: 45). This “exclusion” has meant that the FFA has not been preoccupied with the “suspicion and non-cooperation” of fishing state membership (Bergin 1993: 5).

Some observers believe that the FFA’s operations have been “facilitatory” to the needs of its membership (Sutherland 1985: 43). Others consider that this facilitation aspect extends to “regional co-operation with other non-regional organisations”, as well as external aid organisations which fund regional marine programs (Teiwaki 1986: 107). Both are correct. The

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<sup>62</sup> The ‘Pacific Way’ was a term coined by Ratu Mara at the 1965 Lae SPC Conference where the so-called ‘rebellion’ by indigenous participants was staged. The ‘Pacific Way’ promotes “tolerance and decisions by consensus” (Hoadley 1992: 55).

<sup>63</sup> As an example of the service provided by the FFA to its members, detailed below is an account of help given to Kiribati. “The FFA was actively involved in the provision of essential services to the development of fisheries in Kiribati, including the provision of expert advice in the access negotiations with DWFNS, providing a data base for fisheries information on economic, management and legal matters; establishing working arrangements with regional and international organisations and conducting training programmes on issues of concern to the members” (Teiwaki 1986: 107).

<sup>64</sup> See also Neemia (1986: 34-35).



FFA is renowned globally for its efforts to co-ordinate regional fisheries policies as well as being considered “a unique regional organization” because of its twofold purpose of co-operation, and technical advice/assistance (Gubon 1987: 254).

At this point, it is interesting to reflect on Axline’s argument regarding the failure of many regional co-operative ventures globally during the era known as ‘old regionalism’. Axline (1994a: 4) has referred to these failures as casualties of the Cold War, the “double oil shock, increasing debt burden, and contraction of world-wide trade”. According to Axline, it was only in the 1990s, in the post-Cold War era, that ‘new regionalism’ emerged, on a different standing to that of ‘old regionalism’. This argument is referred to below in the context of the various regional and sub-regional instruments effected by the FFA. At this juncture, it is sufficient to point out that Oceania was different. The Cold War climate in the region enhanced, rather than diminished attempts by the Oceanic states to strengthen their position in the global political economy. The finalisation of the UNCLOS and the establishment of the FFA were primary vehicles used by the region to achieve its objectives of collective fisheries diplomacy.

### **Section three: Regional and sub-regional fisheries arrangements**

Shortly after the 1979 establishment of the FFA, a sub-regional group of member states formed the Parties to the Nauru Agreement (PNA Group).<sup>65</sup> These states included the Federated States of Micronesia, Kiribati, the Marshall Islands, Nauru, Papua New Guinea and the Solomon Islands.<sup>66</sup> The PNA states had noted the time taken to establish the FFA and, being the states with the richest tuna fishing grounds in the region, were determined to protect their tuna resources, in line with the new UNCLOS regime of extended jurisdiction (Doulman 1987e: 258). Other FFA member states were invited to join the PNA Group, and the FFA “was also mandated to serve as secretariat” for the PNA Group (Teiwaki 1986: 108).<sup>67</sup> The PNA Group was established in

an attempt to strengthen the bargaining position of Island nations by regulating the issue of fishing licences to foreign companies and thus prevent DWFNS playing Island nations against one another in access negotiations (Teiwaki 1986:108).

Thus, individual states had a common interest in establishing the PNA Group. After its establishment, the PNA Group finalised two important initiatives. The first initiative was the

<sup>65</sup> See Appendix C for an outline on the regional and sub-regional arrangements which have been finalised. These include: *The Nauru Agreement Concerning Co-operation in the Management of Fisheries of Common Interest, 1982* (otherwise known as the Parties to the Nauru Agreement, or the PNA Group); *An Arrangement Implementing the Nauru Agreement Setting Forth Minimum Terms and Conditions of Access to the Fisheries Zones of the Parties*; *Second Arrangement Implementing the Nauru Agreement Setting Forth Additional Terms and Conditions of Access to the Fisheries Zones of the Parties*; *Palau Arrangement for the Management of the Western Pacific Purse Seine Fishery Palau Arrangement*; *Federated States of Micronesia Arrangement for Regional Fisheries Access*; *the Niue Treaty on Co-operation in Fisheries Surveillance and Law Enforcement*; *the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America*; and *The Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific Region*.

<sup>66</sup> Tuvalu joined the PNA in 1991.

<sup>67</sup> See also Tarte (1998a: 98).

Regional Register, which would control the access to the region's waters by interested foreign fleets. The second initiative was the harmonised terms and conditions of access with which those fleets had to comply. The two initiatives will be discussed and analysed below.

### *First Implementing Agreement*<sup>68</sup>

The First Implementing Arrangement in 1982, "provides for the establishment of a regional register of foreign fishing vessels to be maintained by the FFA" (Aqorau 1998: 112). The Regional Register had a controversial beginning, with Japan and the American Tunaboat Association (ATA) strongly resisting the initiative, stating that it was "illegal, discriminatory, and unenforceable" (Doulman 1987e: 262). It is a requirement of the Regional Register that all fishing vessels wishing to operate in the EEZ of PNA states have to be recorded and issued with a licence, before concluding access agreements. Applications must include a recent photograph of the vessel, with its call sign and name clearly displayed (Aqorau 1998: 226). The database includes "information about the vessel owners, operators, masters and provides a history of any changes in that information" (Aqorau 1998: 226). The Regional Register is kept up to date and if violations occur, the vessel is penalised and, in extreme cases of illegality, is struck off the register, losing its "good standing" (Tarte 1998a: 99). Being struck off the Regional Register applies when

an operator is found to have carried out unlicensed fishing, presented inaccurate or incomplete catch logs, fished in a closed area or within the territorial waters of a member country or committed any other offence against the fishing laws of the member country; and either not complied with any judgment handed down by a court (such as payment of compensation) or evaded trial (Tarte 1998a: 99).

Once struck off, the vessel is unable to be re-registered "until its standing on the register is restored" (Doulman 1987e: 262).

Another aspect of the Regional Register is its emphasis on compliance, which rests solely with either the Flag State, or the fishing association to which the vessel belongs. The concept of the Flag State is meant to

compel the flag-state to accept some degree of responsibility for the compliance of its vessels with the fisheries laws and regulations of the coastal states (Tsamenyi and Blay 1989: 47).

Because of this, the Regional Register has been a positive factor of the effectiveness of the "regional regime for the management of foreign fishing vessels" and has been taken up by other regional fishing organisations, such as the Caribbean Community (CARICOM) and a sub-regional West African fisheries commission (Aqorau 1998: 227-228). The Regional Register is considered a substantive provision within a meaningful multilateral treaty, with a punitive

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<sup>68</sup> *An Arrangement Implementing the Nauru Agreement Setting Forth Minimum Terms and Conditions of Access to the Fisheries Zones of the Parties.*



mechanism in the case of misdemeanours that include sanctions such as fishing vessels being struck off the Regional Register.

For example, the Regional Register's worth was illustrated when United States purse seiners, *Ocean Pearl* (1985) and *Priscilla M* (1986) were both threatened with being struck off the Regional Register for violating the terms of their access arrangements (Doulman 1987e: 262). The United States fleet operators may have calculated the costs and benefits of defying the principles underlying the Regional Register. Nevertheless, the fact that the United States Government was, at that time, negotiating a multilateral fisheries treaty with the region may have swayed that Government from taking punitive action against individual Oceanic states (see pp 25-29 below).

### *Second Implementing Agreement*<sup>69</sup>

The Second Implementing Agreement of the Nauru Agreement in 1990, contains additional harmonised minimum terms and conditions of access for fishing vessels. These include a prohibition of transshipment at sea; and an obligation by vessel operators to pay travel costs, provide accommodation and provide full insurance for observers. In addition, the provision of a vessel monitoring system (VMS) on the vessel is required, "in anticipation of developments in communications in technology" (Aqorau 1998: 114). The *Second Implementing Agreement* met strong opposition from fishing states, such as Japan (Tarte 1998a: 100). While these Implementing Agreements were sub-regional arrangements finalised under the PNA Group's auspices, the FFA has applied them as minimum terms and conditions (MTC) for all its members for use in negotiations with fishing states (Herr 1990: 10, Cartwright 1999: 5). Not only was it a show of unified strength to the fishing states, but it was also an indication of their determination to achieve the objectives of collective fisheries diplomacy, that is: sustainability, a fair return, domestication and indigenous control.

Observers have argued that schisms have appeared within the PNA Group, which have detracted from its success. This includes the decision by the Marshall Islands and Papua New Guinea to "defect" from the 1983 ATA agreement (Teiwaki 1998: 112). There has also been a "tendency for island states to renege" on some of the PNA Group's decisions (Tarte 1998a: 99-100). This has occurred when fishing states have "refused to comply with the requirements and threatened to fish elsewhere" (Tarte 1998a: 99-100). As Aqorau (1998) and Tarte (1998a) both note, however, this refusal was countered by the introduction of the *Second Implementing Agreement*. In relation to the defection by the Marshall Islands and Papua New Guinea, Teiwaki (1988: 12) argues that Kiribati was not able to make such a decision, given its reliance on fishing access payments. Papua New Guinea has other rich natural resources and the Marshall Islands, at that time, was still a Trust Territory of the United States, and in receipt of significant

<sup>69</sup> *Second Arrangement Implementing the Nauru Agreement Setting Forth Additional Terms and Conditions of Access to the Fisheries Zones of the Parties.*

financial support. Furthermore, as Tarte (1998a: 99) points out, in the early 1980s, the tuna were abundant, forcing coastal states to compete for access fees. This situation left individual Oceanic states vulnerable to the persuasive tactics of fishing states to accept the minimum access payments. In spite of these cracks in the PNA's armour, however, they were not enough to bring down the apparatus of regional fisheries co-operation. Rather, it would seem that the objectives of collective fisheries diplomacy were maintained during this period of innovation. Why? The strength of the PNA Group seems sufficient to bear the competing demands of national interests. That it is able to do so is a reflection of the strength of the effectiveness of regional co-operation.

As well as these two Implementing Agreements, the PNA Group has also finalised two other, stand-alone Arrangements. The first of these is *the Palau Arrangement for the Management of the Western Pacific Purse Seine Fishery* (Palau Arrangement), which came into effect on 28 October 1992. The second is the *Federated States of Micronesia Arrangement for Regional Fisheries Access* (FSM Arrangement) that came into effect in September 1995. These Arrangements were finalised to highlight the importance that the PNA members placed on encouraging "domestic based and local fishing vessels" (Swan 1997: 7).

### *The Palau Arrangement*<sup>70</sup>

The decision by the PNA Group to finalise the Palau Arrangement was a "precautionary move" as concerns heightened in the late 1980s regarding the stock levels of yellowfin and bigeye tuna (Cartwright and Uherbelau 1998: 10).<sup>71</sup> At that time, there was disquiet regarding the over-harvesting of these stocks (Cartwright and Uherbelau 1998: 10, Aqorau 1998: 116). In line with Articles 56(1) and 61 of the UNCLOS, the Palau Arrangement placed limits on fishing effort and the number of vessels (205 currently), licensed to fish in the EEZs of member states.<sup>72</sup> It was presumed that by cutting effort, catch rates would increase over the medium to long term (Cartwright and Uherbelau 1998: 10, Aqorau 1998: 116). The Palau Arrangement applies not just to the EEZ of member states, but also to the "adjacent high seas in the Western Pacific where purse seine vessels operate" (Article 1.1(a) of the Palau Arrangement). The "special interest" of adjoining coastal states to high seas is also affirmed in the Arrangement (Preamble, Palau Arrangement). The Palau Arrangement is reflective of the pre-colonial conservation ethic of Pacific island societies regarding their custodial responsibilities towards marine resources. It represents the objectives of collective fisheries diplomacy as its aim is the sustainability of the resource, ensuring a fair return from fishing states and increasing indigenous control. It also demonstrates a determinant in evaluating effectiveness, that is, substantive provisions in meaningful treaties.

<sup>70</sup> *Palau Arrangement for the Management of the Western Pacific Purse Seine Fishery* (Palau Arrangement)

<sup>71</sup> The Palau Arrangement was opened for signature on 28 October 1992 and entered into force on 1 November 1995.



While the fishing states were not happy initially with the Palau Arrangement, relations have improved. The very fact that fishing states were not happy with the Arrangement signals that it was designed to limit over-harvesting, in other words, ensuring the resource's sustainability. Cartwright and Uherbelau (1998: 10) note that since the mid-1990s, the Arrangement has also had an "ancillary purpose". It has been used as a management tool to decrease the level of foreign fleet operators and encourage the number of domestic vessel licences. In doing so, the region was achieving another objective of collective fisheries diplomacy, that of domestication. The Palau Arrangement has had to take account of other new instruments such as the Fish Stocks Agreement (see Chapter Four). Aqorau and Bergin (1997: 178) believe that the Palau Arrangement "is a bold attempt by the Nauru Group to manage the skipjack and yellowfin fishery". In light of the Group's management attempts, given the changing circumstances of tuna operations in the region, for example, the MHLIC process<sup>73</sup> and the entry of Spain, there was a recent re-evaluation undertaken of the Palau Arrangement.<sup>74</sup> It is obvious that for the Palau Arrangement to demonstrate effective outcomes, it is necessary for it to operate in tandem with other sub-regional and regional initiatives.

### *The FSM Arrangement*<sup>75</sup>

In July 1993, "the Solomon Islands requested access for two of its purse seiners to fish in the Federated States of Micronesia, Kiribati and Nauru (Aqorau and Bergin 1997: 41). The request generated interest in the region and was discussed further at the Fish Stocks<sup>76</sup> negotiations in March 1994. The idea resulted in Kiribati providing a draft agreement at a meeting of the Parties to the Nauru Group (PNA) in April 1994 (Aqorau and Bergin 1997: 41). The FSM Arrangement encourages fishing state vessel owners to base their operations within the region.<sup>77</sup> Once their eligibility has been assessed, these locally-based fishing state operators are entitled to access within the EEZs of the PNA Group at a discounted fee of 5% of the catch (Hunt 1996: 9).<sup>78</sup> Access for these domestic-based operations are on terms no less favourable than those operating under either bilateral or multilateral arrangements (Cartwright and Uherbelau 1998:

<sup>72</sup> Parties to the Palau Arrangement include the Federated States of Micronesia, Marshall Islands, Nauru, Palau, Papua New Guinea, Tuvalu, Kiribati and the Solomon Islands

<sup>73</sup> Multilateral High Level Conference on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific (MHLIC process took place between 1994-2000)

<sup>74</sup> Report undertaken by G. Geen on behalf of the FFA (1999). One issue raised by Geen is the fact that although the cap is set at 205 vessels, as at 1999 there were only 177 vessels seeking allocation. Although new entrants (such as Spain) have concluded bilateral arrangements with a PNA member, they are not permitted allocation under the Palau Arrangement.

<sup>75</sup> *The Federated States of Micronesia Arrangement for Regional Fisheries Access* (the FSM Arrangement).

<sup>76</sup> *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* (the Fish Stocks Agreement).

<sup>77</sup> The FSM Arrangement opened for signature on 30 November 1994 and came into force on 23 September 1995.

<sup>78</sup> Parties to the FSM Arrangement as at May 1998 include the FSM, Kiribati, Nauru, Palau, Papua New Guinea and the Solomon Islands (Cartwright and Uherbelau 1998: 5).

6).<sup>79</sup> The benefits accruing to the Oceanic states from domestic-based operations could be significant. While Hunt (1996: 9) argues that most of the PNA member states lack the infrastructure necessary to service purse seine operations, if joint venture initiatives can be made attractive enough for fishing state operators to re-base locally, then funds can flow to strengthen infrastructure and support. As Aqorau and Bergin (1997: 55) note

the future growth and employment prospects of FFA member countries is likely to be based firmly on the development of domestic tuna industries, including shore-based industries to service the growth of locally based vessels.

Because of this, however, the FSM Arrangement represents an attempt by the Oceanic states to regain indigenous control over marine resources, one of the objectives of regional fisheries co-operation.

The enforcement provisions of the two Implementing Agreements that are linked to the Palau Arrangement and the FSM Arrangement are managed through specific strategies. The first is the Regional Register, discussed above. The second is through the minimum terms and conditions (MTC) applying to fishing state vessels operating in the region. The various procedures put in place to comply with the MTC are those involving monitoring, control and surveillance (MCS). FFA members have "adopted several procedures" to support their management of MCS policies (Aqorau 1998: 232, see also Aqorau and Bergin 1997).

These management procedures include the FFA's administration of the Regional Register, as discussed above. A Minute of Agreement was signed with the United States State Department regarding co-operation in monitoring and surveillance of fisheries in the WCPO, which was further enhanced by the *Lacey Act*. Republican Congressman John Fletcher Lacey authored the Lacey Act. It came into force in 1900 and prohibits the "interstate and international trade in illegally taken wildlife".<sup>80</sup> It was amended in 1981 and 1988 "to prohibit the importation of fish caught illegally to the US" (Aqorau 1998: 232). Under the *Lacey Act*, FFA states, in conjunction with the United States, can

seek the prosecution of foreign fishing vessels which infringe their fisheries laws and who subsequently attempt to discharge fish caught illegally at U.S. ports (Aqorau 1998: 232).

The *Lacey Act* has provided a significant deterrent to illegal fishing activity or 'bad actors' in fishing and has facilitated improved compliance rates in the WCPO (Aqorau 1998: 233). This demonstrates the achievement of another objective of collective fisheries diplomacy, that of sustainability.

Another management procedure uses the FFA to co-ordinate between the Australian, New Zealand and French airforces for 1,200 hours of aerial surveillance activities in the WCPO. Aerial surveillance activities are undertaken in conjunction with the Pacific Patrol Boat Program (PPBP). The FFA acts as a centre hub to provide analysis of sightings using its database (Forum

<sup>79</sup> See also Aqorau (1998: 124-130).



Fisheries Agency 1996b). Twenty-two patrol boat vessels have been supplied to FFA members by the Australian Government to help with maritime surveillance of their EEZs. This program commenced in 1987 when the first boat was handed over to Papua New Guinea.<sup>81</sup> The purpose of the PPBP is to provide fisheries protection within the EEZs of Oceanic states, but as well the boats can be used for “search and rescue, medical evacuations, hydrographic surveying, anti-smuggling and sovereignty patrols” (Bergin and Bateman 1999: 555). Bergin and Bateman (1999: 563) argue that the introduction of the PPBP program has recognised an increase in access rights fees for the Federated States of Micronesia from US\$2.1 million in 1979 to US\$21.2 million in 1994. Thus, illegal fishing state activities are monitored and controlled through the PPBP and associated maritime surveillance tools. This demonstrates effectiveness of collective fisheries diplomacy, in relation to sustainability and a fair return. In the period 1990-1996, fines of US\$1.8 million were paid to the Federated States of Micronesia (Bergin and Bateman 1999: 555). The payment of these fines also demonstrates the effectiveness of this co-operation; that is, fines are a sanction and a result of a meaningful arrangement, in this case, the PPBP. Both the increases in access fees and the payment of fines have demonstrated how the PPBP program has achieved the objectives of regional co-operation.

### *Niue Treaty*

The Niue Treaty on Co-operation in Fisheries Surveillance and Law Enforcement was signed in 1992 and entered into force in 1993.<sup>82</sup> Under the Treaty, FFA members “share their assets for fisheries surveillance and enforcement purposes” (Aqorau 1998: 236). This includes the “empowerment of each other’s officers to perform enforcement duties, enhancement of extradition procedures and evidentiary provisions” (Aqorau 1998: 236).<sup>83</sup> This Treaty has been important to the FFA members, given their “sparse surveillance capabilities” (Bergin 1993: 16). For example, Tuvalu and Tonga have concluded a subsidiary agreement to the Treaty. Under the agreement, Tonga leased a crewed PPB to Tuvalu for patrol activities in Tuvalu’s EEZ (Bergin 1993: 17). The Niue Treaty demonstrates objectives of collective fisheries diplomacy, that is; sustainability, a fair return and indigenous control.

A further initiative is the backing of a regional observer program and establishment of several national observer programs. Under bilateral arrangements, observers are placed on board vessels and given access to the “communication facilities, any part of the vessel and catch and reporting logs” (Herr 1990: 262). For the most part owners, who are responsible for all costs associated with hosting observers on board, have provided satisfactory co-operation. The

<sup>80</sup> See <http://www.awionline.org/pubs.quarterly/>.

<sup>81</sup> Under the PPBP vessels supplied per country are: Papua New Guinea (4); Vanuatu (1); Samoa (1), Solomon Islands (2); Cook Islands (1); Tonga (1); Federated States of Micronesia (3); Marshall Islands (1); Kiribati (1), Fiji (1), Tuvalu (1); Palua (1) (Bergin and Bateman 1999: 557).

<sup>82</sup> *Niue Treaty on Co-operation in Fisheries Surveillance and Law Enforcement*.

<sup>83</sup> See also the Forum Fisheries Agency (1996b).

observer program is reviewed annually under the terms of the FSM Arrangement (Aqorau 1998: 129, Bergin 1993: 14, Cartwright and Uherbelau 1998: 12).<sup>84</sup> The fact that vessel operators have provided satisfactory co-operation speaks to the achievement of the objectives of collective fisheries diplomacy for monitoring the extraction activities of individual vessels, thereby helping sustain the resource and facilitating a fair return.

A major initiative by the FFA to assist with MCS strategies is that of the Vessel Monitoring System (VMS). The VMS is a compliance measure that is quickly becoming standard among global fishery zones, for example, the European Union, the United States, Australia, New Zealand and South Africa (Director's Statement, Forum Fisheries Agency 1999b: v). In the early-1990s, FFA member countries decided to "implement a regional VMS" as a strategy to help manage tuna fishery stocks in EEZ jurisdictions, its role being to support

existing surveillance assets such as patrol vessels, surveillance flights and regional observers that currently operate across an area of approximately 30 million square kilometres (Director's Statement, Forum Fisheries Agency 1999b: v).

This initiative requires vessels fishing in the region to be fitted with a small transponder (a VMS) which uses satellite-based technology to transmit "position and catch data to FFA headquarters" (Bergin 1993: 17).<sup>85</sup> The VMS can monitor many aspects of illegal fishing taking place within the FFA region. These include: illegal fishing by unregistered foreign vessels within the FFA region; illegal fishing by FFA registered vessels within the FFA region; illegal fishing by FFA registered vessels in closed waters; mis-reporting of catch by area, species and/or weight; non-reporting of catches; dumping of damaged fish and bycatch; and illegal transshipment at sea of catch (Forum Fisheries Agency 1996b).

To help achieve better compliance through the VMS system, it is incorporated with the other MCS strategies. These include the logbook catch records; observer program catch reports; at-sea and in-port inspections; aerial surveillance; patrol boat operations; fishing vessel register; fishing license conditions and "comprehensive national legislation, preferably consistent across the region" (Forum Fisheries Agency 1999b). The VMS is in the process of being implemented regionally. Its regional implementation has been one of the hardest innovations to sell, not just to states within the region, but to fishing states, which have not been averse to pressuring Oceanic states against the implementation of the system.<sup>86</sup> Fishing states have been against installing VMS because of its surveillance capabilities.

At this point, it is useful to recap on collective diplomacy in the region from 1980 to the mid-1990s. This differed from earlier co-operative attempts that focused on regional integration strategies. Collective diplomacy came of age with, for example, the UNCLOS negotiations, the

<sup>84</sup> See also Forum Fisheries Agency Report No. 97/09.

<sup>85</sup> "... beacons (ALCs or Automatic Location Communicators) [are placed] on vessels ...[that] indicate position, speed and course of such vessels 24 hours a day" (Cartwright and Uherbelau 1998: 12-13).

<sup>86</sup> See discussion at p 158 of Chapter Six regarding Japan's attempts to pressure states like Kiribati over the implementation of a VMS.



Lomé Convention, the South Pacific Nuclear Free Zone (SPNFZ), and the Driftnet Fishing Convention. Collective diplomacy owed its strength to the strong indigenous leadership of people such as Ratu Mara of Fiji. Another important ingredient was the Cold War geopolitical environment, which encouraged the aims of the region through generous aid disbursement and the support of regional developed states, such as Australia and New Zealand. Together with the wave of decolonisation in the region, these ingredients combined to bring about a rise in collective diplomacy that went against the grain of what was occurring elsewhere in the world. Axline's theory of 'old regionalism' is contrary to the reality of regional co-operation in Oceania in the 1980s and into the 1990s. The "double oil price shock, increasing debt burden, and contraction of world-wide trade" (Axline 1994a: 5) did not affect the cumulative effect of collective diplomacy enjoyed by Oceania during this period. Instead, this period merely signalled a change in the relationship between Oceania and the global political economy.

These factors were also enmeshed with the FFA and its cumulative achievements in achieving the objectives of collective fisheries diplomacy. Thus, Australia and New Zealand encouraged the introduction of a raft of regional and sub-regional arrangements. In the Cold War environment, they were a way of strengthening western ideals, particularly after the United States finalised the Multilateral Fisheries Treaty with the region. Strong indigenous leadership was evident in fisheries policies, for example, the role of Satya Nandan at the UNCLOS negotiations and his role in the development of regional fisheries policies. It was through these factors, which owed their origins to the strong pre-colonial custodial approach to fisheries conservation and management, that the region was able to achieve these objectives of collective fisheries diplomacy, that is; sustainability, a fair return, domestication and indigenous control.

### *Multilateral Fisheries Treaty*<sup>87</sup>

After years of defiance regarding the rights of coastal states over highly migratory fish stocks, the United States yielded to the claims of the Oceanic states and finalised a Multilateral Fisheries Treaty. That Treaty is concerned with purse seine fishing with the PNA Group, but it also comprises an aid component that is distributed to all the independent states of the region. It is the only multilateral treaty the region has finalised and represents a landmark in Cold War relations between the United States and the FFA membership.

As noted in the first section, the historical concept of freedom of the high seas and the introduction of the Magnuson Act were in conflict with resolutions agreed at the UNCLOS III negotiations which proclaimed that coastal states could claim an extended jurisdiction of sovereign rights, an EEZ. The insistence by American Tunaboat Association (ATA) vessels that they could fish within the 200-nautical mile limit, and sometimes within the twelve-nautical mile territorial sea, was a dismissal of the UNCLOS-based claims of coastal states (Hughes

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<sup>87</sup> *The Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America.*



1987: 214. This resulted in many United States vessels being impounded in South American states and, during the early to mid-1980s, being arrested in the Oceanic region (Hughes 1987: 214). What made the United States administration do a complete reversal and finalise a multilateral treaty with the region? There are two main reasons which are given, both of which provide rational explanations for the decision.

The first reason is the most commonly propounded theory, Oceania's Cold War. Richard Holbrook, Assistant Secretary for East Asian and Pacific Affairs in the United States State Department noted in 1978 that

there is a reservoir of great goodwill towards the United States among the peoples of the South Pacific and this enhances the prospects for cooperative relations between them and the United States (Kiste 1991: 5).

This goodwill, originating from the United States participation in the Pacific conflict to end World War II, had all but disappeared by the early 1980s (Van Dyke and Nicol 1987).<sup>88</sup> Although coastal states globally had been declaring 200-nautical mile EEZ jurisdictions from the late 1970s, because the United States was not a signatory to the UNCLOS, it did not consider it should be bound by its requirements (Van Dyke and Nicol 1987: 109). ATA vessels adhered instead to the prescriptions of the Magnuson Act which upheld that tuna are highly migratory and can be fished at will, or through an appropriate international organisation. Furthermore, if a coastal state arrests a United States tuna vessel while fishing within its EEZ, the

Secretary of State notifies the Treasury Department to take "necessary and appropriate action" to embargo that nation's fish products" (U.S. Code, vol. 16, sec. 1825 (a)(4)(c) in Van Dyke and Nicol 1987: 109).

Because of the changes in prevailing weather conditions in the Eastern Pacific (*El Niño*) and the difficulties being experienced by the United States fleet in securing access arrangements with Mexico and Costa Rica, the fleet moved to the WCPO.<sup>89</sup> By 1984, the fleet harvested 66% of its total catch from the WCPO region (Doulman 1987d: 151). Fishing access agreements were finalised between individual Oceanic states and the ATA, not the United States government. Doulman (1987d: 151) has noted that the access fees paid at that time by ATA vessels were lower than Japanese fees (Tarte 1998a: 100). Further, by paying access fees, the ATA was acknowledging recognition of "coastal state rights to the tuna in their exclusive economic zone and *de facto* international acceptance" of such rights (Tarte 1998a: 101).

Between 1982 and 1986, four United States tuna vessels were impounded in Oceania. These were the *Danica* in Papua New Guinea in 1982, the *Jeanette Diana* in the Solomon

<sup>88</sup> In a Letter to the Editor of a Papua New Guinea newspaper, *Times*, it noted that "My admiration for the greatest nation in the world today – the United States – is gradually waning. [I]f I were in Yankee land ... I wouldn't even dream of trespassing on dear ole Billy Carter's farm" (Van Dyke and Nicol 1987: 112).

<sup>89</sup> See among others, Herrick (1997: 84-85). Aqorau and Bergin (1997: 175) suggest other reasons, for example, the growth of fleets from Latin America and the negative publicity in relation to the bycatch of dolphin with yellowfin tuna.



Islands in 1984 and the *Ocean Pearl* and *Priscilla M* in the Federated States of Micronesia in 1985 and 1986. In 1982, Papua New Guinea arrested the United States purse-seiner, the *Danica*, carrying 600 tonnes of tuna, within its 200-mile zone. The United States imposed sanctions on fish products from Papua New Guinea, but these were revoked once the boat had been resold to its owners for a small percentage of its worth (Waugh 1992, Van Dyke and Nicol 1987). The *Jeanette Diana* was arrested by the Solomon Islands government in 1984 for fishing illegally within its 200-mile zone. This latest defiance caused alarm within the region, given that a second United States vessel, the *Carol Linda* had been caught within Kiribati's twelve-mile limit. Helicopters had been seen off the Solomon Islands coast, an indication of purse seiner activity. The Solomon Islands court fined the captain and owner of the *Jeanette Diana* and confiscated the vessel, the gear, the helicopter and the catch for sale locally. Hughes (1987: 214) notes that the owner and master of the vessel "did their cause little good by deriding the High Court of Solomon Islands as a kangaroo court". The United States government imposed sanctions on the Solomon Islands and offered compensation to the boat owners. The sanctions were lifted once the vessel had been sold back to its owners. It has been said that the "Solomon Islands never regained the loss of its US\$10 million trade with the United States" (Waugh 1992: 175)<sup>90</sup>.

The *Ocean Pearl*, caught fishing illegally in the Federated States of Micronesia in 1985, escaped after "threatening to drop a speed boat rigged to its boom on top of the boarding party" (Waugh 1992: 175). There were moves to remove the vessel from the FFA's Regional Register, however, the owners paid the US \$500,000 fine. Observers have commented that it was a common sight throughout Oceania to see foreign vessels fishing just outside the reefs, well inside twelve-mile territorial waters (Waugh 1992: 175). When the logbook was examined for the *Ocean Pearl*, investigators discovered that another United States purse seiner, the *Priscilla M*, had been "fishing extensively in the 200-mile zone" of the Federated States of Micronesia during 1986. Not least, it was found that the vessel had also "fished in the 12-mile territorial sea adjacent to the state of Yap" (Van Dyke and Nicol 1987: 114). The owners paid a US\$400,000 fine as well as a US\$58,000 license fee. The more restrained approach taken by both sides was due in no small part to the negotiations which were under-way between the United States and the region to conclude a multilateral fishing treaty (Van Dyke and Nicol 1987: 114-115).

In the aftermath of the 1984 *Jeanette Diana* incident, the Solomon Islands, "threatened to invite the Soviet Union to fish in its waters" (Sutherland and Tsamenyi 1992: 68).<sup>91</sup> This was compounded by the fishing agreement signed between Kiribati and the Soviet Union in 1985. Teiwaki (1988: 96-97) argues that other concerns drove Kiribati to take such action. For example, it was seen as a release from the dependency of British aid; the promise of self-sufficiency; and reflected the fact that Australia, the United States, New Zealand and Fiji all had

<sup>90</sup> See also Van Dyke and Nicol (1987).

<sup>91</sup> See also Waugh (1992: 175).



relations with the Soviet Union (Teiwaki 1988: 96-97). During 1985, the Soviet Union also approached Fiji, Tuvalu, Papua New Guinea, and Vanuatu regarding fishing access arrangements. Matters escalated when the Soviet Union set up a South Pacific Branch within its Foreign Ministry in 1986 and signed a fishing agreement with Vanuatu 1987. This latter development raised alarm in Washington, Canberra and Wellington as it also “granted port access to Soviet vessels and landing rights to the Soviet national airline” (Sutherland and Tsamenyi 1992: 68). While these incidences of Soviet Union ‘penetration’ into the region went through until 1987, as far back as 1982, members of the United States Congress had advocated a treaty with the Oceanic states. It was believed the treaty should follow the pattern established under the Nauru Agreement and

[D]emonstrate the willingness of the United States to cooperate fairly and justly in the conservation and management of international fisheries stocks and to encourage the rational use of such resources by [United States] fishermen while still helping the small developing countries ... to make use of, and prosper from the use of, their own natural resources (United States Congressman Paul McCloskey Jr., 128 Congress Records 3948, in Sutherland and Tsamenyi 1992: 67).

There is a second argument advanced regarding the turnaround in United States policy regarding the management of highly migratory fish stocks within a coastal state’s 200-mile EEZ. One observer (Interview, Ross, October 2000).<sup>92</sup> suggests that the United States Secretary of State at that time, George Shultz, was keen to finalise the Multilateral Fisheries Treaty because it was a low cost initiative and it made the United States look good in the region. Not just this, but it was a “slap in the face for Australia and New Zealand” because of their stand regarding the South Pacific Nuclear Free Zone (SPNFZ) and visits by United States nuclear-powered ships. It was also a “smack on the bottom for the ATA” (Interview, Ross 2000) Given the Cold War political climate it is quite plausible that the low-cost ‘look good’ rationale of the United States government could have been bound up with its decision to conclude the Multilateral Fisheries Treaty. In that bipolar environment, the United States was able to achieve complete rehabilitation in the region, thwart any ideological advances by the Soviet Union, protect its tuna industry and retain its hegemonic status in furthering its regional security aims. The idea of it being “a slap in the face for Australia and New Zealand” is more problematic. Both of these states were concerned by the Soviet Union’s interest in the region and the finalisation of the Multilateral Fisheries Treaty would have allayed their concerns. The “slap on the bottom” for the ATA could well have been true. The fishing practices of ATA members had not shown the United States in a good light, and sections of the Administration may have been annoyed at having to clean up in the wake of ATA operations in Oceania.

FFA members commenced discussions on the Multilateral Fisheries Treaty in late 1983. From 1984, ten negotiating rounds took place to develop a multilateral treaty that “would provide for, as well as govern, the operation of the U.S. purse seine fleet” (Doulman 1987b:

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<sup>92</sup> Ken Ross works for the Bureau of External Affairs, New Zealand.



48).<sup>93</sup> While the commitment on both sides appeared high, progress was slow and an agreement was not finalised until 1987 (Doulman 1987b: 48, Herr 1990: 299). The inclusion, from round five in 1985, of a senior State Department official in the United States' delegation was "triggered" by the fisheries agreement between Kiribati and the Soviet Union and its related "strategic considerations" (Van Dyke and Nicol 1987: 117).<sup>94</sup> <sup>95</sup> Issues requiring negotiation and agreement included: the licensing and the Regional Register of fishing vessels; closed and limited areas; catch reporting; and licensing fees (Van Dyke and Nicol 1987: 117).

After intense negotiations, both sides agreed on US\$60 million in licencing fees over five years, for a guaranteed minimum of thirty-five vessels (Van Dyke and Nicol 1987: 120). This realised an access fee of around 9%. The terms of the Multilateral Fisheries Treaty provides that each of the sixteen-members of the FFA will receive a minimum portion. The residual 85% is apportioned according to where the fish were caught (Van Dyke and Nicol 1987: 121). The Multilateral Fisheries Treaty has been hailed as a "milestone" in the region's co-operative efforts (FFA Report No. 97/09: Annex A). As Bergin also notes (1994b: 2), "the treaty was undoubtedly the PICs<sup>96</sup> most successful venture in fisheries diplomacy".

Its primary significance was the acceptance by the United States of the sovereign rights of the region's coastal states to manage highly migratory fish stocks (Herr 1990: 300-301). In fact, the United States Congress amended the Magnuson Act in late 1990 to "recognize EEZ state jurisdiction over migratory species" (Kiste 1991: 9). The Multilateral Fisheries Treaty also reasserted the status of the United States as the region's hegemonic power, it halted any advance by an ideological opponent in Oceania and it provided long-term security for its tuna industry. Based on these outcomes, the Multilateral Fisheries Treaty is a very effective (and, for an economy of considerable size, an inexpensive) method of securing the United States rehabilitation in the region. From Oceania's perspective, it provides a sizeable long-term injection of funding and it has improved the region's perceptions of United States involvement in Oceania.

Perhaps one of the most important aspects of the Multilateral Fisheries Treaty is the FFA's ability to analyse the data provided by the United States fleet and to compare it with the data provided by other fleets operating in the region. This enables the FFA to estimate the catch levels of those other fleets. Thus, the FFA can determine the extent of illegal fishing conducted by other fishing states and take action against them, using the regional and sub-regional instruments as outlined above.

<sup>93</sup> See also Van Dyke and Nicol (1987: 117).

<sup>94</sup> A Pacific commentator noted in relation to the Soviet Union-Kiribati access agreement: "The US delegation was led by a new face, Ed Derwinski, sent by Secretary of State George Shultz specifically to confound the Russians by getting a treaty concluded as fast as possible. Island delegates told Islands Business that they had never found the American side more amendable (Van Dyke and Nicol 1987: 118, citing from *Islands Business*, 1985, 27).

<sup>95</sup> The Deputy Assistant Secretary for Oceans and Fisheries Affairs led the United States delegation to the negotiations ((Van Dyke and Nicol 1987: 117).

The success of the FFA's membership in concluding the Multilateral Fisheries Treaty is extraordinary for several reasons. First, they were dealing with a Cold War superpower, in a dynamic geopolitical environment. Second, the region was not just negotiating with a superpower, but also with a superpower whose emphatic stand, up until that point, was the denial of coastal rights conservation and management of highly migratory tuna stocks. Third, as illustrated above, the ability of individual Oceanic states to thwart abuses of their sovereign rights over their EEZs by the United States fleet had not been successful. It became successful when the FFA and its members negotiated as a single, powerful entity. Once again, the idea espoused by 'new regionalism' adherents that regional co-operation during this period was in decline, has been repudiated. Axline (1994b: 25) argues that regional organisations in a developing region, such as Oceania

are generally composed of states that are small, economically underdeveloped and militarily weak [and that, therefore,] the 'outside world' will have a relatively large impact on events in the region (1994a: 25).

This may be true, but what the above discussion demonstrates is that when these small states unite, they can acquire enough strength and power to counter a Cold War superpower. This of course is countered by the fact that the United States saw clear advantage in negotiating the Multilateral Fisheries Treaty.

#### **Section four: Other multilateral negotiations**

##### *Driftnet Fishing Convention*<sup>97</sup>

The success of the Multilateral Fisheries Treaty emboldened the FFA members to negotiate a multilateral treaty with Taiwan for its longline albacore fleet. The origins of the region's campaign to conclude a treaty with Taiwan were linked with concerns stemming from the late-1980s regarding the use of driftnets in large ocean areas (Wright and Doulman 1991: 307).<sup>98</sup> Japan had been the first fishing state to undertake driftnet operations in Oceania in 1983. This type of operation was seen to be more cost effective and operators, "faced with a cost squeeze" believed that driftnets would help to maintain their viability (Wright and Doulman 1991: 307).

The nets are "deployed at depths of about 10 metres and may be up to 50 kilometres in length" (Tarte 1998a: 130) and were popularly known as "the wall of death" (Veitayaki 1994: 38). In Oceania, driftnet fishing practices targetted surface-swimming albacore tuna. While previously longliners had targetted deep swimming albacore, by the late-1980s, driftnet and trolling methods were being used to harvest surface-swimming juvenile albacore (Cartwright

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<sup>96</sup> PICs – Pacific Island Countries.

<sup>97</sup> *The Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific Region.*

<sup>98</sup> For an in-depth analysis of the driftnet issue, see Wright, A., and Doulman, D (1991), "Drift-net fishing in the South Pacific: from controversy to management", *Marine Policy*, Vol 15, No. 5, pp 303-337.



and Uherbelau 1998: 11).<sup>99</sup> One of the reasons for the dramatic increase in driftnet fishing activity in the region was the United States' decision in 1988 to close its EEZ to foreign fleets, as well as the Soviet Union placing restrictions on foreign access to its EEZ. This resulted in driftnet fishing operations shifting to the high seas (Tarte 1998a: 130). By early 1989, there were 60 Japanese driftnet vessels and 60 Taiwanese driftnet vessels, covering the region's ocean expanse of "30,000 miles ... each night" (Veitayaki 1994: 101). The FFA aired three major concerns it had with driftnet fishing practices. One, there was increased pressure on the stock and an associated danger of over-fishing. Two, the problems associated with the significant by-catch of seabirds, non-target fish species and marine mammals (see Bergin 1997). Three, the navigational hazard posed by driftnets and the potential for continued (ghost) fishing after loss (Cartwright and Uherbelau 1998: 11).<sup>100 101</sup>

The Tarawa Declaration was finalised at the South Pacific Forum in July 1989. The Declaration highlighted the region's disquiet; asked for the co-operation of the international community to ban driftnet fishing; and praised Korea's actions for ceasing the practice and requested Japan and Taiwan follow suit (Cartwright and Uherbelau 1998: 11).

In November 1989, a conference was convened in Wellington, New Zealand at which the *Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific* was drafted and which subsequently came into force on 17 May 1991 (Wellington Convention). The ban includes driftnet fishing within the EEZ of FFA member states, as well as the adjacent high seas. At the United Nations General Assembly in November/December 1989, the United States tabled a Resolution which was co-sponsored by Australia, Papua New Guinea, Fiji, the Solomon Islands, Vanuatu, Zaire, Mauritania and New Zealand. The Resolution called for the cessation of driftnet fishing (Sutherland and Tsamenyi 1992: 85, Fong 1993: 137).<sup>102</sup> Japan argued for "more scientific research" before banning the practice (Tarte 1998a: 132). The General Assembly accepted a compromise Resolution which proposed a "moratorium on all large-scale driftnets on the high seas by 30 June 1992" (Tarte 1998a: 132). Aqorau (1998: 138) notes that it was the first time that the General Assembly had been "used to resolve a specific tuna fisheries problem" and highlighted the international support that the region received from its "intensive political and diplomatic lobbying" before the General Assembly. Taiwan agreed to stop its driftnet fishing in the region from 30 June 1991 (Sutherland and Tsamenyi 1992: 82, Fong 1993: 137).

<sup>99</sup> The trolling method of fishing for tuna entails the use of a baited line, being drawn along in the water behind the fishing vessel.

<sup>100</sup> Bycatch included turtles, dolphins, small whales and seabirds (Sutherland and Tsamenyi 1992: 80).

<sup>101</sup> Ghost nets include those which have been abandoned by their owners and which "continue to catch fish as they drift about the seas or roll about the ocean floor in the fishing grounds" (Veitayaki 1994: 42).

<sup>102</sup> The United States was committed to the Tarawa Declaration. Its House of Representatives passed Resolution 214 in November 1989 "in part endorsing the declaration". The Resolution was passed unanimously. In 1990, changes were made to the 1976 Magnuson Fisheries Management and Conservation Act, and "drift-net fishing was formally brought into line with the international stance taken by the USA on this issue" (Wright and Doulman 1991: 318).

Japan had two problems with the General Assembly's compromise Resolution. First, it believed that before a moratorium was agreed to that scientific research should be conducted into the allegedly dangerous practice. Second, Japan was against any form of control by coastal states of high seas fishing (Tarte 1998a: 132). By the South Pacific Forum meeting in August 1990, however, Japan had agreed to cease driftnet fishing in the 1990-91 season and had called for the establishment of a management regime for albacore tuna. Japan's decision to desist from driftnet fishing in Oceania resulted because of limited international support. Korea and Taiwan were not internationally influential and the United States had threatened trade sanctions. Tarte (1998a: 134) also believes that the driftnet-fishing group within Japan's distant water fleet was not influential and the situation was compounded by the hostility of its longline and pole-and-line fleets. Thus, some powerful interests helped to persuade the Japanese government.

Following the driftnet fishing ban, negotiations between Japan and the FFA to finalise management arrangements for albacore failed because of "conflicting objectives of the Agency and Japan" (Tarte 1998a: 134). These conflicting objectives included the insistence by Japan that management be across the entire stock, that is, all tuna species, both within the EEZ and high seas. Japan also stipulated that it was to be an Article 64 organisation with only those coastal states with albacore stocks involved, therefore not an FFA-wide regime (Bergin 1993: 13). The FFA maintained that it would not include EEZ albacore fishing, only fishing conducted on the high seas, that the FFA is the authority for concluding negotiations and that it would not be an Article 64 organisation. The differences were not compatible.

The negotiations between the FFA and Taiwan, which commenced in 1992, have produced a Draft Agreement between the FFA and the Taiwan Deep-Sea Tuna Boatowners and Exporters Association regarding longline albacore fishing. One of the major hindrances to concluding the Agreement has been the status of Taiwan in the region. While Palau, Marshall Islands, Nauru,<sup>103</sup> Solomon Islands and Tuvalu have all had diplomatic relations with Taiwan; other oceanic states recognise China and have not been amenable to finalising a Government-to-Government Treaty. To date the Treaty has not been concluded. A treaty was also discussed between the Korean tuna industry and the FFA in 1994. To date nothing has been finalised and the FFA is concerned by the poor record of compliance demonstrated by Korea's fleets which would need to improve before negotiations went any further (Aqorau 1998: 171).

The FFA also conducted multilateral discussions with some fishing states (Korea, Taiwan and Japan) to conclude a multilateral agreement for southern albacore tuna. The discussions rose out of the Driftnet Fishing Convention which called on all parties to develop management and conservation strategies for the southern albacore tuna. The FFA had hoped for a comprehensive arrangement which would included the

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<sup>103</sup> Nauru switched from recognition of Taiwan to recognition of China in July 2002. See Pacific Islands Report 21.7.02, online < <http://pidp.eastwestcenter.org>.



preservation of their sovereign rights over the resources within the EEZ; maximisation of benefits from the exploitation of the resource; ensuring the conservation of the resource, and control over the management regime on the high seas (Aqorau 1998: 150).

Three consultations took place between late 1989 and late 1990 (Fong 1993: 139). Once again, the discussions between the FFA members and the fishing states stalled on the differing views regarding an Article 64 organisation, as proposed by the fishing states and the FFA's insistence on a more non-formal, high seas-only regime for albacore (Aqorau 1998: 150).

The FFA's skills in multilateral negotiations failed in these above examples regarding albacore management.<sup>104</sup> Japan has distinct interests in the region's tuna fishery and has maintained a tight grasp on bilateral fisheries access arrangements because of its practice of linking these arrangements to aid. That is why a region-wide (multilateral) agreement would not help Japan's interests in the region. This is at variance with the Multilateral Fisheries Treaty between the United States and the FFA member states. The United States fleet does not operate in all EEZs in the region, only those where its purse seiners can harvest tuna. Japan has argued that while the provisions of the Multilateral Fisheries Treaty may appear generous, a component of that payment is aid. This is not denied. The difference, however, is that through a multilateral treaty, the aid component can be distributed more fairly, than through a bilateral arrangements, where aid is provisional on fisheries access, at the right price.

In relation to achieving the objectives of collective fisheries diplomacy, the Multilateral Fisheries Treaty provides an outstanding example. Looking at those aspects which demonstrate the effectiveness or otherwise of collective diplomacy in achieving objectives, the Treaty has helped the region control legal fishing activities through its reporting requirements. It has substantive provisions that support sustainability, a fair return and indigenous control. Back-up sanctions include the threat of being struck off the Regional Register. The Treaty was negotiated in the geostrategic context of the Cold War, which was arguably a central consideration of the United States when considering its finalisation.

Chapter Three has outlined the politics of the region's tuna fishing industry since the UNCLOS III negotiations. The history of the UNCLOS negotiations demonstrates the objectives of the traditional maritime states and those of the developing coastal states. What came out of these negotiations was the realisation by the Oceanic states that with unity comes power. At the negotiations, the leadership of Satya Nandan of Fiji demonstrated effectiveness, by drafting articles in relation to the rights of archipelagic states and the primacy of an EEZ regime. It was during the UNCLOS negotiations that the Oceanic states realised the importance of the emerging regime to the region. Thus, the decision to set up the FFA reflected changing global environmental norms. The inflexible attitude of the United States in disallowing the

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<sup>104</sup> The experience, particularly that relating to the negotiations between the FFA and Japan has relevance to the MHLIC negotiations, concluded in 2000. Japan maintained an antagonistic stance regarding those negotiations, in spite of their article 64 status and has yet to sign the WCPF Convention (see Chapter Five).

rights of coastal states over conservation and management of highly migratory fish stocks within an EEZ resulted in the organisation being confined to Forum membership.

By focussing the membership on the Forum states, the organisation was more able to meet the needs and aspirations of its members and thus realise the objectives of collective fisheries diplomacy. These objectives occurred during what was considered an era of 'old regionalism', which witnessed the failure of regional co-operative ventures elsewhere in the world (see Axline 1994a).

The range of regional and sub-regional instruments put in place by the FFA or the PNA Group demonstrates why the organisation was able to remain central to the needs of its members. One, the activities undertaken by the FFC and FFA Secretariat are undertaken at considerably less cost than could have been achieved unilaterally, thereby increasing the organisation's value to individual members. Two, for the most part, national interests have been subsumed for the good of the region. This was illustrated by those more pro-United States Forum members yielding to the regional interests in denying fishing states membership of the FFA. Three, the interests of the United States, were served by finalising a Multilateral Fisheries Treaty. These interests included strategic, international relations, the stability of its tuna fleet, and its international reputation. Four, through the implementation of such a Treaty, the region has benefited by the curtailment of illegal fishing efforts of so-called 'bad actors' in the region. Five, the success of the region's campaign to ban driftnet fishing illustrates the power of emerging environmental norms regarding fishing practices. It also made the world aware of the importance the region placed on environmental concerns. Six, it should not be forgotten that regional powers, such as Australia and New Zealand were prepared to support the Oceanic states and their goals for fisheries conservation and management. The Cold War environment was to the region's advantage and once the United States had become a 'good actor', it also accorded the region the support it required, for example, in relation to driftnet fishing. Seven, the indigenous leadership of the region should be highlighted. Delegates to the UNCLOS, such as Satya Nandan of Fiji, were high-profile, articulate and single-minded in their pursuit of regional goals. They succeeded in putting the region's concerns on the global map. On the downside, the failure by the region to conclude negotiations with Japan, Taiwan or Korea regarding an albacore management regime has highlighted the differences between the objectives of collective fisheries diplomacy and the views of the fishing states. For example, the insistence by fishing states on finalising an Article 64-type arrangement for albacore management with only those coastal states with albacore being included. Furthermore, fishing states wanted the management regime to be across the entire stocks, both within EEZs and the high seas. This ran counter to the region's insistence on sovereign rights with an EEZ and that the albacore management arrangement be concluded region-wide.



In conclusion, Cold War geopolitics helped to define the parameters of tuna fishing in the region. The region's incorporation into the global tuna economy was cemented with the emergence of the UNCLOS regime and its demarcation of 200-nautical mile EEZ jurisdictions. During this period, the region realised its objectives of collective fisheries diplomacy as illustrated by its implementation of regional and sub-regional instruments. It was unfettered high seas fishing within the region, however, which marred those EEZ achievements.

## CHAPTER FOUR

### **The politics of tuna operations in Oceania**

The previous Chapter demonstrated that by the mid-1990s fishing state operations in the exclusive economic zones (EEZs) of Oceanic states had become increasingly regulated and monitored. This has been achieved through the provisions of the *United Nations Convention on the Law of the Sea* (UNCLOS), the establishment of the Forum Fisheries Agency (FFA) and the cumulative achievements of the objectives of collective fisheries diplomacy. The FFA member states remained committed to those objectives, that is; to achieving resource sustainability, securing a fair return from fishing states, domestication and indigenous control of the tuna industry.

Combined with the region's attempts at regulating the operations of the fishing states were its continued attempts at involvement in joint venture operations and its encouragement of domestic participation in the tuna industry. These attempts were not only a reflection of the region's objectives, but they also reflected the region's pre-colonial custodial approach to marine resources. The region's pursuit of implementing regulatory conservation and management measures did not translate into any kind of control over joint venture operations or a significant growth in domestic tuna industries from the 1980s to the mid-1990s.

Chapter Three's purpose was to demonstrate those aspects which demonstrate the effectiveness or otherwise of collective diplomacy in achieving objectives, for example, the various regulatory conservation and management measures at the global, regional and sub-regional level. This Chapter pauses for reflection. For example, what impact did the changing global tuna economy have on the region's tuna industry and in particular, the operations of the fishing states? What was the geostrategic context under which fishing operations took place between the 1980s and the mid-1990s?

To examine these issues the Chapter comprises two sections. The first section examines the activities of fishing states in Oceania from the 1980s to the mid-1990s. There was continued interest in tuna harvesting in the region shown by the fishing states, combined with over-capacity of fleets, a constriction in profit margins and a heightened intrusion of environmental considerations. Therefore, the region's tuna industry had become very competitive and sensitive to any changes in the global tuna economy. The section demonstrates that the environment of the global tuna economy did not provide encouragement for the development of joint ventures in the region. The second section continues Chapter Two's discussion on joint ventures and the domestic tuna industry from the 1980s to the mid-1990s. Joint ventures in the region have only realised small gains in the level of domestic participation in the tuna industry. This has been influenced by the changing global tuna economy, which has affected Oceania's endeavours to



both invest in the infrastructure to support a domestic tuna industry and to maximise the region's benefits and involvement.

The Chapter concludes that from the 1980s to the mid-1990s, achieving those objectives of collective fisheries diplomacy did not translate into a strengthening of domestic involvement in joint ventures or an encouraging level of indigenous control. Inappropriate investments, poor advice, insufficient knowledge about the commercial aspects of tuna fishing and the global tuna economy in which the region has had to compete have all contributed to a less than optimum outcome.

### **Section one: Foreign commercial tuna operations from the 1980s to the mid-1990s**

The FFA was established in 1979 and thereafter instituted meaningful regional and sub-regional instruments that mattered, with back-up sanctions. The conclusion of the UNCLOS in 1982 had led to fishing states, such as Japan, agreeing to 200-nautical mile EEZs and paying access fees for the right to fish. One of the main opponents of the new regime, the United States, had backed down by 1987 when the Multilateral Fisheries Treaty was concluded with the FFA membership, thereby agreeing to coastal states' sovereign rights over highly migratory tuna within 200-nautical mile EEZs (Van Dyke and Nicol 1987).

There were still renegade fishing states, such as Taiwan and the Republic of Korea (Korea), who were prepared to under-report and to fish illegally in the region, but whose activities would be highlighted by the Multilateral Fisheries Treaty's compliance requirements.<sup>1</sup> These requirements include the observer program, comprehensive log-book data, and the Vessel Monitoring System (VMS). Together with the implementation of the Pacific Patrol Boat Program (PPBP) and the introduction of aerial surveillance flights, a more regulatory environment had emerged. This is reflected in the increased fees to the region between 1980 and 1993.<sup>2</sup> This should not disregard, however, the stresses and strains that the fishing states were undergoing, which had an impact on their operations, and their relations, in the region. These included such issues as subsidies, ageing fleets, fleet overcapacity, over-supply, crew shortages, increased competition and tight profit margins. The major fishing state operations will be discussed below. These states include China, Japan, Korea, Soviet Union, Taiwan and the United States.

#### *China*

According to the SPC<sup>3</sup> Yearbook (1998: 27), China commenced its operations in the Western and Central Pacific Ocean (WCPO) in 1988 with seven longliners. Its fleet peaked in 1994 with

<sup>1</sup> See Forum Fisheries Agency (1996b).

<sup>2</sup> By 1993, annual access fees amounted to: Japan US\$22.16 million, United States US\$18 million, Taiwan US\$10.72 million, Republic of Korea US\$8.12 million, Other US\$1.26 million (Maxwell and Owen 1994: 16). This compares with, for example, the US\$27.3 million that Japan paid to the Oceanic states for the four years between 1978-1982 (Togolo 1987: 58)

<sup>3</sup> Secretariat of the Pacific Community (SPC).

456 longliners. An FFA observer notes that with the wind-down of Korean, Japanese and Taiwanese vessels in the region, there is an opportunity for China to take over as the major Asian tuna harvester (Interview Clarke April 2001).<sup>4</sup> While Japan has been the foremost Asian influence in Oceania to date, China remains an unknown force. One observer likens the relationship between Japan and China as maintaining a “watching brief on each other’s areas of influence within Oceania” (Fry 1999: 18).

China’s expansion has had an impact on Japan’s *sashimi* market, with marked increases in landings over the 1990-1993 period. By 1994, Chinese longliners based in Micronesia numbered 200, with two Chinese companies, the Koen and the Kakwan being the foremost operators in the WCPO (Bergin and Haward 1996: 48). Prior to 1994, China negotiated through a Taiwanese company operating in the Micronesian region, but in 1994 it negotiated directly for access agreements with the Marshall Islands and the Federated States of Micronesia (Forum Fisheries Agency Director’s Report 1994/1995: 8). This reflects the complex inter-connected nature of the tuna industries of Taiwan and China. For example, observers have suggested that Taiwanese capital could finance the expansion of China’s tuna fleet with ULT<sup>5</sup> technology (Haward and Bergin 1996: 170).<sup>6</sup>

Although China has not been a major player to date in the region, there are indications that it will become one during the twenty-first century. The challenges associated with feeding a large population will drive Chinese fleets to rich fishing grounds. This will inevitably lead them to the WCPO, financed by, in all probability, Taiwanese money. Taiwan could assume with China the same role that Japan had earlier assumed with both Taiwan and Korea. That is, Taiwanese business interests could finance the development of China’s fishing fleet, which would operate at a very competitive level.

### *Japan*

Japan prefers bilateral over multilateral fisheries arrangements because greater leverage and influence can then be applied to the recipient requiring aid (Tarte 1998a: 205). The Japanese Government admits, “the state of a country’s fisheries relationship with Japan could influence the priority of an aid project” (Bergin and Haward 1996: 74). Other Japanese aid to the region is channelled through regional organisations such as the Pacific Islands Forum and the SPC, the latter organisation being important because of its Tuna and Billfish Assessment Program research facility (Tarte 1998a: 201).

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<sup>4</sup> Les Clarke works at the FFA.

<sup>5</sup> Ultra-low freezing technology (ULT).

<sup>6</sup> Haward and Bergin (1996: 171) include the following footnote: “It should be noted that Japanese officials are particularly concerned about the growth and the sustainability of China’s operations in the Western Pacific, many of them operating under Taiwan trading companies. Japan does not believe that China will continue to increase its effort in the Western Pacific as they have done in recent years. Japanese officials also note that China’s catch is being landed at many ports and catches are not being reported accurately. Import data only does not report the port of shipment, not the actual catch, nor always who is actually catching. Some Japanese fishery scientists believe that China is ‘secretly’ fishing for tuna”.



Japan has been vocal in its support for an UNCLOS Article 64 regional organisation which would comprise fishing and coastal states.<sup>7</sup> Its refusal to finalise a multilateral fisheries treaty with the region stemmed from UNCLOS Article 64 concerns. Japanese fishing policy strategies are compounded by its own domestic problems, which have had an impact on its distant water fishing fleet operations. The so-called “bubble economy” of the 1980s gave way to economic recession and a slump in fishery products demand by the 1990s (Taya 1995: 52). Japan’s fishing fleet restructuring policies, which have been under-way since 1976, compound this situation. These policies are considered essential because of diminishing profitability and the economic viability of its fleets and include removing older, more inefficient vessels. Other constraints relate to rising fuel costs, burgeoning labour costs, increased fleet operation costs, higher access fees, and the lower overheads enjoyed by some of its competitors, for example, Taiwan and Korea.<sup>8</sup>

With the introduction of the UNCLOS and 200-nautical mile EEZs, Japan’s fishing strategies shifted to the high seas, in an attempt to avoid coastal state regulations. At that time, it was estimated that “thousands of fishermen” were put out of work and “hundreds of vessels” scrapped (Bergin and Haward 1996: 94). The negotiations for the Fish Stocks Agreement sought to manage high seas fishing, one reason why Japan has opposed its implementation (see Chapter Five). Japan’s longline fleet in the region peaked at approximately 120 vessels in 1965. Its global longline fleet was measured at between 1,400 and 1,600 during the 1970s. Most of these vessels (994 in total) were listed on the Regional Register (Riepen 1987: 163-164). By 1996, Japan’s longline fleet had contracted by over 70% to 216 vessels (FFA 1998: 39). Japan’s purse seine fleet in the region went from 4 vessels in 1969, peaked at 39 vessels in 1988 and had declined to 31 vessels in 1995. Pole and line vessels in the region totalled 622 in 1953, peaked at 715 in 1955 and had declined to 173 by 1995 (SPC Yearbook 1998). These figures demonstrate Japan’s static purse seine operations in the region, but highlight its dwindling pole and line operations, in the face of technology and efficiency gains in other sectors of the tuna industry. The static purse seine figures reflect the growing unprofitability of Japan’s fleet, in comparison to, for example, Taiwan.

Although Japan tries to control the expansion of other fishing fleets to limit over-fishing, it still needs to protect its supply. For example, in 1993, “Japan produced about 22 percent and consumed 31 percent of the total tuna production in the world market” (Haward and Bergin 1996: xv). Because of Japanese fleet restructuring, however, “[I]mports have more than doubled, by 104% in the past ten years and now almost equal domestic supply” (Haward and

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<sup>7</sup> See Chapter Five.

<sup>8</sup> See Tarte (1998a pp 121-122) for a discussion on Japan’s fleet restructuring and associated problems. Other emerging competitors include Indonesia, Philippines and Thailand (Tarte 1998a: 121).

Bergin 1996: xv).<sup>9</sup> Two reasons given for these changes are the strong yen and rising production costs in Japan.

Since Japan came out of recession in the early-1990s, domestic consumption of tuna has risen dramatically (Taya 1995: 53). This is due in part to the diversification in tuna products, the spread of supermarkets launching low-cost tuna products and Japan's inland dwellers gaining increased access to fresh tuna due to use of super-chilled refrigerators (Taya 1995: 53). Therefore, Japan needs to maintain a fine balance between its domestic and imported catch levels. Too much tuna flooding the Japanese market from producers such as Taiwan and Korea could lead to a collapse in the price of tuna and with it the viability of Japanese companies and the industry as a whole.

Since the late-1970s, fishery expenditure by Japanese industry "has exceeded fishery receipts" (Campbell and Nichol 1994: 47, see also ABARE 1988: 285). As well, observers highlight the "negative rates of return for skipjack pole-and-line and longline vessels" (Campbell and Nichol 1994: 47).<sup>10</sup> This said, Japan's purse seine industry continues to be profitable (Bergin and Haward 1996: 87). Bergin and Haward (1996: 87) point to the vertically integrated structure of the Japanese fishing industry, enabling losses made in one sector to be offset in another. The Japanese government is influenced by concerns over employment and "political pressure from cooperatives and prefectures" which are responsible for the livelihoods of fishing communities (Campbell and Nicholl 1994: 47). As well, there is a desire by the government to retain a presence in those fishing grounds where it has traditionally fished, even before EEZ jurisdictions (Campbell and Nicholl 1994: 47). In Oceania, those fishing grounds include Micronesia.

Another related issue is the pre-occupation with food security in Japan. Although the post-war generation is less preoccupied with this mentality, it is still reflected in government thinking (Haward and Bergin 1996, see also Campbell and Nicholl 1994). To take account of these influences, it is necessary for the Japanese government to intervene in the market. This intervention is sometimes referred to as subsidies. Whether these subsidies come in the form of "price support schemes, favourable credit status and soft loans, insurance assistance and subsidies"; they help to prop up the market (Campbell and Nicholl 1994: 48).

These pressures on the industry have implications for the way in which Japan interacts with the Oceanic states. They go some way to answer why Japan is a difficult fishing state with which to negotiate. These include its stubbornness over access fees increases, finalising multilateral treaties, criticisms over purse seine management arrangements, high seas fishing within Oceania, and the implementation of an Article 64-type organisation (Tarte 1998a). For all Japan's rhetoric, however, it is hypocritical. Japan pays Australia 11% in access fees for tuna

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<sup>9</sup> Imported tuna went from 135,000 tonnes in 1985 to 275,000 tonnes in 1994 (Haward and Bergin 1996: xv).  
<sup>10</sup> Citing Matsuda and Ouchi (1984 - unavailable).



considered of inferior quality to that harvested in Oceania (Crocombe 2001: 333). Japan pays the Oceanic states approximately 5% access fees, which are tied to its aid program.

There is no doubt that the Japanese tuna industry is complex. Competition from other lower-cost fishing states active in Oceania has resulted in political and economic intervention. As will be discussed in Chapter Five, historical catch record is the strongest argument on which Japan rests its case for allocation of tuna stock quota in the region. It needs to maintain a stable tuna supply for its domestic market. Korea and Taiwan do sell the majority of their tuna catch to Japan, however, the growth in the tuna industry elsewhere in the world could create competition, particularly for the highly prized *sashimi* market.

Japan captures the global market for *sashimi* and while it might concede 11% to Australia, Japan is not prepared to do so for the Oceanic states. Its bargaining power through bilateral access arrangements ensures that the region, for the most part, is acquiescent, thus ensuring aid provisions. Some states in the region do not have the luxury of being able to turn down vital economic revenue. As Bergin (1994b: 3) notes,

Japan is highly dependent on access to the region and it will only be through a multilateral arrangement that higher access fees will be realisable in practice.

Because Japan is concerned primarily with the PNA group, it tries to ensure it remains on good relations with those states. It could not afford to give in to Papua New Guinea's demands, however, as it would have resulted in a domino effect throughout the PNA group.<sup>11</sup> That is why bilateral access agreements remain Japan's trump card in its relations with the region's tuna-rich states.

Papua New Guinea's refusal to countenance Japan's "package" provides an example of an Oceanic state that is not prepared to sacrifice national interest for the sake of revenue. Given Papua New Guinea's position as one of the influential members of the PNA, this suggests that the PNA's commitment to sustainability and a fair return are strongly grounded. This issue has relevance to the study of the *Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific* (the WCPF Convention) negotiations in Chapters Five and Six.

### *Republic of Korea (Korea)*

Korea's longline operations in the WCPO started in 1958 with two vessels. It peaked in 1974 with 220 vessels and in 1995 totalled 154 vessels. Figures for Korea's purse seine industry show that activity commenced in 1980 with two vessels. The fleet expanded to 39 vessels in 1990 and then decreased to 30 vessels in 1995 (SPC Yearbook 1998). The FFA's insistence on fishing

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<sup>11</sup> Papua New Guinea has resisted Japan's hard-line approach to access payments since 1989. Papua New Guinea was demanding 10%; Japan was conceding 4%. Among the factors which influenced Papua New Guinea's steadfast refusal to concede was the uncompromising, antagonistic style of the Japanese negotiator, Norio Fujinami (Tarte 1998a: 111-118).

fleet compliance with the Vessel Monitoring System (VMS) discouraged Korean operators and some moved to the Indian Ocean, where compliance is still limited (Haward and Bergin 1996: 4-20). Nevertheless, because of increased labour and fuel costs associated with distant fishing operations in the Indian and Atlantic Oceans, the Korean fleet is focussing its energies in Oceania (Wildman 1993: 98).

The Korean fleet's reputation in the region is damaged not least because of its defiance of management and conservation concerns. This creates difficulties for the Korean fleet to gain access to Oceanic fishing grounds. While there is now a "substantial improvement" in data supplied from the Korean purse seine operators, the "catch reporting of the longline fleet remains very poor" (Director's Report to the FFC: 1995-1996). This state of affairs is compounded by the lack of

on-shore Korean investment in the region, in either the purse seine or longline fisheries. This again will not help Korean vessel owners secure the longer term access to the region that they desire (Director's Report to the FFC: 1995-1996).

Oceanic observers are critical of Korea's lack of investment in the region, in comparison with other Asian fleets, such as China, Taiwan and Japan.<sup>12</sup> Compounding this is the Korean fleet's poor compliance history in Oceania (Forum Fisheries Agency 1996b).

There has been a substantial rise in Korea's domestic demand for frozen *sashimi*, which has occurred at the same time as "declining prices in the Japanese market" (Haward and Bergin 1996: 20-43). Korea experiences similar problems to those of Japan regarding its tuna industry. These include crew difficulties, with many young Koreans disinterested in entering the fishing industry because of its perception as the four 'd's', that is: dirty, difficult, dangerous and distant work. It is a government requirement that half the vessel crew is Korean and problems of incompatibility are experienced between Korean and the foreign crew component. Other problems include the increased competition from other fishing fleets, for example, Taiwan and Indonesia. Securing access to EEZ fishing has also been costly for the Korean fleet, which records a 290% increase in fees between 1990 and 1991 (Wildman 1993: 94). This may be due to greater vigilance on the part of coastal states. The Oceanic states have uncovered considerable information because of the Multilateral Fisheries Treaty, which highlights under-reporting and failure to report.

Since 1992, Japan has also sought to set a quota on the limits of imports from Korea as well as Taiwan. That said, many Korean fishing fleets, and in particular, small operators, have close links with Japanese trading houses, which gives them preferential access to Japan's markets. Some analysts put the figure of Korean vessels supplying their catch to Japanese trading companies around 80% (Haward and Bergin 1996: 38-55). Other problems relating to Korea's tuna fishing industry include an ageing fleet, reduced catch levels, which also mean

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<sup>12</sup> WCPF Preparatory Conference (Prepcon) interviews April 2001.



constricted profits, a decrease in Japanese market prices, combined with higher operational costs, including labour. One side effect of labour costs has been the reflagging of its fishing vessels to FOC registries (Haward and Bergin 1996: 78).

Because of a pessimistic outlook, Japanese investment in Korea's fishing sector is declining and several big Korean fishing companies are in the process of restructuring and moving to other more profitable aspects of the industry, for example, food processing and fish importing (Haward and Bergin 1996: 63). This leads to perceptions of an unstable Japanese market and makes the Korean fishing sector vulnerable regarding its level of exposure to the Japanese market.

Korea's fishing fleet is not well-regarded by the region. Its willingness to comply with conservation and management principles is dismal and its illegal fishing practices earn it the dubious title of 'bad actor'. While Korea pays the Oceanic states up to 6% in access fees, this needs to be weighed up against its 'bad actor' reputation. Even Korea, however, has felt the weight of increased monitoring control and surveillance (MCS) measures in the region, evidenced by reductions in its illegal fishing operations (Forum Fisheries Agency 1996b).

#### *Soviet Union – Russian Federation*

During the earlier part of the nineteenth century, Russian navigators, traders and scientists undertook exploratory trips to the Oceanic region (Crocombe: 1987: 187, Henningham 1995: 94). The Soviet Union's tentative twentieth century steps into Oceania were not marked by an enthusiastic welcome. The Soviet Union negotiated with Tonga in 1976 to set up an Embassy and a fishing fleet base, to gain landing access for Aeroflot, to facilitate crew changeovers, build a dock and develop Tonga's airport. Australia stepped in to the Cold War breach to dissuade Tongan authorities from proceeding with the negotiations by providing an increase in aid and support to Tonga (Henningham 1995: 95). The Soviet Union found it difficult, pre-Gorbachev, to make headway in formalising its relations with the Oceanic states, who were not about to sell out to communism and were wary about aid (personal communication, Fry, 05.08.2002).

When the Soviet Union signed the *South Pacific Nuclear Free Zone* (SPNFZ) in 1986, the Soviet Union "gained a favourable image" in the region (Hoadley 1992: 49). These developments were compounded by the actions of two powers in particular, France and the United States. France had not endeared itself to the region by refusing to negotiate with the Kanaks of New Caledonia regarding their decolonisation aspirations. Moreover, it had not helped its cause by bombing Greenpeace's flagship, *Rainbow Warrior* in Auckland's harbour. To make matters worse, the United States was seen by the region as unsupportive over this issue, as well as continuing to support the flagrant illegal fishing by its fleets in Oceania. In this geostrategic context, Kiribati agreed to a fishing access arrangement with the Soviet Union in 1985 which was followed by its agreement with Vanuatu. While Australia and New Zealand had cautioned Kiribati and Vanuatu about the Soviet Union, both island states felt confident of

their abilities to deal with the Soviets. Neither arrangement was ultimately “cost-effective” and neither was renewed (Henningham 1995: 95). There was also resentment on the part of those Oceanic states when it was learnt that New Zealand had finalised a fishing agreement with the Soviet Union (Henningham 1995: 95). In 1990, the Russian Federation opened a diplomatic mission in Port Moresby, Papua New Guinea and negotiated a fisheries arrangement (Dorrance 1992: 132-133). The fisheries deal was not finalised, however, because of “suspicions about Soviet intentions” (Henningham 1995: 97).

The Soviet Union’s WCPO purse seine operations commenced in 1985 with 5 vessels. Later, as the Russian Federation, its fishing activities peaked in 1993 with 8 boats. In 1994, its last year of activity, it had 4 purse seine vessels fishing in the WCPO (SPC Yearbook 1998). From these figures, it is concluded that the Russian fleet’s level of activity was minimal. During this period, there were ideas put forward regarding a “subregional multilateral access arrangement involving Papua New Guinea, the Solomon Islands and Vanuatu” (Doulman 1991: 82). Nothing came of these ideas.

While the Soviet Union/Russian Federation has had a short-lived exposure in the region, it has had an impact – a financial one. The suspicious nature of the Cold War geostrategic environment secured an increased level of interest in the region by the metropolitan powers. In answer to the Soviet intrusions into Oceania, for example, Japan initiated a new policy for Oceania, the Kuranari Doctrine, which doubled Japan’s “official development assistance to the region ...interpreted as ... strategic aid” (Tarte 1998a: 150). The conservative nature of the Oceanic states was reflected in their reticence to promote Soviet fishing operations in the region, particularly when they realised that Cold War politics would work in their favour financially. The Soviet fishing expansion was minimal, but Western policy-makers were blinded by paranoia and threw money at the region to win friends.

### *Taiwan*

Taiwan’s longline fleet activity in the region commenced in the WCPO in 1964 with 12 vessels and peaked in 1976 with 194 vessels in operation. By 1995, its Oceanic fleet was reduced to 62 vessels. Its purse seine activities, on the other hand, increased dramatically from 3 vessels in 1983, to 42 vessels in 1995 (SPC Yearbook 1998). The growth of Taiwan’s fishing fleet results in it being second to Japan in the world’s tuna fishing fleets, with Taiwan leading the albacore fleets (Ho 1995). That said, the Taiwanese albacore catch, which peaked in the mid-1970s, had halved by 1990-1996 (Haward and Bergin 2000: 36). Japanese fears that Taiwan’s continued increases in supply of *sashimi* tuna might destabilise this vulnerable market led to an agreement being concluded in 1994 between the Federation of Japan Tuna Associations and the Taiwan Deep Sea Tuna Boatowners and Exporters Association. This resulted in the introduction of a voluntary import quota for the Taiwanese catch. Taiwanese officials concede that there would be a “a big mess” if the quota is exceeded (Haward and Bergin 1996: 130). There is growing



concern in Taiwan regarding its dependency on a single *sashimi* tuna market, which resulted in a concerted domestic campaign to interest Taiwanese in the product. Taiwan's longline *sashimi* market to Japan amounts to approximately 99% of its catch. If the Japanese market price contracts, then Taiwan's fleets suffer (Haward and Bergin 2000: 37-39).

Since the Palau Arrangement, Taiwanese purse seine vessels operating in the WCPO have come under increasing pressure to base their vessels locally. This initiative is to encourage joint ventures with the region (Haward and Bergin 1996: 143). Ting Hong Oceanic Enterprise has been the most important Taiwanese *sashimi* operation in Oceania. During the early-1990s, the company had

dock-side packing facilities in Yap, Chuuk, Pohnpei and Korea in FSM, Majuro in the Marshall Islands and in Honiara, Solomon Islands ... It owns three 727 cargo planes for shipping carton packed fresh tuna from various base ports to Guam and Saipan for connection to scheduled airlines (Haward and Bergin 1996:142).<sup>13</sup>

The Taiwanese fleet is also concerned about the rise in Chinese fleet numbers in the Federated States of Micronesia and Palau. As well as these pressures there are: labour shortages for both skilled and unskilled vessel crew; continuing depressed tuna markets which result in higher operational costs; competition from countries with cheaper overheads (for example, Indonesia and the Philippines); and increasing pressure to conform to compliance measures. Since the early-1990s, approval has been given for Taiwanese fishing vessels to be crewed by 50% foreign workers, rather than the 33% previously. China is a major crew provider for Taiwanese vessels (Wildman 1993: 125). Observers note that Taiwan has the "advantage of access to virtually limitless crew from mainland China" (Haward and Bergin 2000: 33).<sup>14</sup> Other factors affecting profits and operational viability include domestic factors such as the sudden interest rate rises "from 6.3 to 11.13 percent between April and July 1989" (Haward and Bergin 2000: 42). This was compounded by a 30% increase in the cost of insurance premiums within a short space of time (Haward and Bergin 2000: 42).

Taiwan's lack of diplomatic status influences its abilities to be a contracting party to international, regional and sub-regional fisheries management regimes, despite its desire to do so.<sup>15</sup> Taiwan's fishing sector complains that it is prepared to take note of government policy if its government is able to participate fully in international fisheries bodies. The sector argues that without that participation, it feels Taiwan's fleet is not treated fairly as regards quota allocation. Observers believe that Taiwan's membership of international organisations would "make it

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<sup>13</sup> Because of legal action regarding its fishing activities, as well as its refusal to use local transshipment facilities, Ting Hong was asked to leave the FSM in 1994/1995.

<sup>14</sup> There are, however, problems experienced on board because of the "significant wage differential between Chinese and Taiwanese deckhands (Haward and Bergin 2000: 42).

<sup>15</sup> While the United Nations does not recognise Taiwan, "the designation of fishing entities" within the Agreement has "enabled Taiwanese scientists to present data on Taiwanese catches". Taiwan is also a participant in the Indian Ocean Tuna Commission (IOTC) and the Indo-Pacific Tuna Program (IPTP). Taiwanese scientists are also observers at the International Commission for the Convention of Atlantic Tunas (ICCAT) (Haward and Bergin 1996: 159).

easier for government to exercise greater control over industry” (Haward and Bergin 1996: 150).

Haward and Bergin (1996: 150) note that the Taiwanese government is aware that its fleet drags its feet in relation to compliance and realises that its participation in international fisheries bodies could be enhanced if it collected statistical data. One advantage of Taiwan’s tuna industry, in comparison to that of either Japan or Korea, is its lower overheads, particularly for crew. Taiwan is also aware that reflagging vessels to FOC registries works against its good standing in the international community.<sup>16</sup> As regards the Taiwanese fishing industry’s use of open registries, an industry official notes that some members of Taiwan’s tuna fishing industry

had not always been ‘good students’ of Taiwan’s international relations and had caused ‘many headaches’ for government. These problems are associated with the recognition issue and Taiwan’s desire to be seen as a ‘responsible fishing nation” (Haward and Bergin 1996: 150)

While this public attitude regarding FOC registers will help maintain Taiwan’s share of the global tuna market, its activities in Oceania, at least in the early-1990s, were not aimed at maintaining good standing in the region. For example, Taiwanese fleet under-reporting of catch was estimated at 79% in 1990. By 1993, however, this figure had dropped to 49% (Forum Fisheries Agency 1996b).<sup>17</sup> In the 1996 Director’s Report to the Forum Fisheries Committee (FFC), it was stated that the “abysmal reporting behaviour” of the Taiwanese longline fleet is the “principal reason” behind the region’s attempts to conclude a multilateral treaty with Taiwan (FFC 1996: 10). That said, the region has not been able to finalise a treaty with Taiwan. The region’s fisheries conservation and management principles have seen a reduction in Taiwan’s ‘bad actor’ habits, but not enough for it to concede a Treaty.

Of the major fishing fleets operating in the region, Taiwan’s operations are the most price-competitive. This is due to its ability to access China’s unskilled labour market. Although this helps make its operations competitive, it also makes Taiwan’s tuna industry the most vulnerable to the vagaries of the Japanese consumer. As it exports almost its entire *sashimi* catch to Japan, it is exposed to any fluctuations in the Japanese market.

### *United States*

Because the United States’ interests in the region are primarily strategic, it is necessary to examine the full range of those interests to gain an understanding of how the United States’ tuna fleet operates within its geostrategic goals. By 1986, the United States had finalised Compacts of Free Association with the Federated States of Micronesia and the Marshall Islands. The Compacts incorporated socio-economic development funding, defence and strategic access, but

<sup>16</sup> It is believed that between 80-100 Taiwanese long-line vessels are reflagged (Haward and Bergin 1996: 165).

<sup>17</sup> Using the same source, Japan’s under-reporting was 15% and Korea’s was 28% in 1990. As regards non-reporting, Japan was 31%, Korea was 75% and Taiwan was 5% in 1990 (Forum Fisheries Agency 1996b).



also support for some political independence, for example, in relation to foreign affairs. Integral to United States geostrategic considerations is its Kwajalein Atoll facility in Marshall Islands. This facility works as part of the United States Department of Defense's missile-defense research program. As Dorrance notes

The Kwajalein Missile Range facility in the Marshall Islands will remain essential so long as there is a need to test ICBM delivery vehicles and to develop the Strategic Defense Initiative (1992: 63).

Kwajalein Atoll in the Marshall Islands has been an important site for the United States for decades and remains so.<sup>18</sup> Under the Bush Administration, there were missile tests during 2001 that involved the destruction of a mock warhead, launched from the Vandenberg Air Force Base in California, by interceptors launched from the Kwajalein Atoll.<sup>19</sup> Because of this continued commitment to develop the strategic defence shield, the Micronesian region remains a geostrategic outpost for United States interests.

There is also another aspect of the region's strategic importance to the United States. During the Pacific War, the United States Navy was denied Asian access by the occupying Japanese forces (Hezel, 1995, Peattie 1988). This goes some way to understanding the United States' disquiet at the UNCLOS negotiations over loss of freedom of the high seas and the fears regarding closure of EEZ and archipelagic waters.<sup>20</sup> While "Rights of innocent passage" (UNCLOS Article 52) clearly enunciates the shipping rights of all States to enjoy innocent passage, the importance of freedom of access through archipelagic straits such as those of Indonesia should not be underestimated in relation to United States geostrategic interests.<sup>21</sup> These straits give access to its fleets en-route to the Indian Ocean and Persian Gulf.

As part of the United States commitment to the region, it had discussed the 'bad actors' of fishing in remarks aired at an informal meeting of the yearly United States/FFA Multilateral Fisheries Treaty talks in late 1991.<sup>22</sup> At those talks, the United States raised its frustration at the defiance of some fishing states to adhere to the compliance measures that the United States fleet had taken on board as part of the Multilateral Fisheries Treaty. Those remarks were the first steps towards the *Convention on the Conservation and Management of Highly Migratory Fish Stocks in Western and Central Pacific Tuna* (WCPF) negotiations. While politically motivated,

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<sup>18</sup> In 1948, Kwajalein housed the displaced Bikini people, who were forced off their island by United States atomic bomb tests. In 1954, atomic bomb-affected islanders from Rongelap were also housed on Kwajalein. During those years of atomic bomb tests, Kwajalein was used as a staging area and support base for the United States military. In 1959, Kwajalein was selected as the "target site for the United States intercontinental ballistic missile program". Marshallese workers on Kwajalein were moved to the nearby island of Ebeye (Hezel 1995: 275).

<sup>19</sup> See the Pacific Islands Report 15 July 2001, online < <http://pidp.ewc.hawaii.edu> .

<sup>20</sup> See the UNCLOS regarding "rights of innocent passage", Articles 52, 53, 54, 58, for example.

<sup>21</sup> Innocent passage extends to the right of a vessel not just to travel through the territorial sea, but to stop and anchor, as needed by navigation, or by necessity, in times of distress or danger (see Churchill and Lowe 1983: 64).

<sup>22</sup> Personal communication with Transform Aqorua, Legal Counsel, Forum Fisheries Agency.

the transformation by the United States from 'bad actor' to 'good actor' regarding its fishing activities in Oceania has resulted in the region gaining, for the most part, a strong ally.

That said, it has been observed that while the Multilateral Fisheries Treaty was "satisfactorily resolved in 1987 ... some of the public relations damage lingers" (Dorrance 1992: 98). The public relations damage refers to wide-held beliefs in the region that the United States not only supported French nuclear testing in French Polynesia, but also that it had backed French colonial policies in New Caledonia. Dorrance (1992: 100) argues that the failure by the United States to correct these allegations highlights its deficient attempts at "public diplomacy" within Oceania. A summit was held between the United States and the Oceanic states in October 1990, led by President George Bush. At that summit, initiatives were announced to promote relations between the parties.<sup>23</sup> The region was not seduced by the Bush rhetoric. There was no United States support for the *South Pacific Nuclear Free Zone* (SPNFZ), no agreement to influence French thinking on its nuclear testing program and the United States upheld its view that there was insufficient evidence to support global warming environmental policies (Dorrance 1992: 104). Island leaders were also critical of United States support favouring the north Pacific and the lack of aid to those states south of the Equator (Hoadley 1992: 40).

While these experiences highlight the United States' public relations deficiencies in its dealings with the region, the importance of the region for its fishing fleet remains constant. This is despite the decline in the number of vessels and the fleet's commercial viability (DFAT 12.02.98). The United States purse seine fleet rose from 3 vessels in 1976 to peak at 62 vessels in 1983 and to decline to 44 vessels by 1995. Its purse seine fleet was regulated following the October 1986 conclusion of the Multilateral Fisheries Treaty, which allows for up to 50 of its purse seiners to fish within agreed areas of the FFA region.<sup>24</sup> Since the Multilateral Fisheries Treaty, the fleet's most productive year was 1994, when 49 vessels were operating in the region (SPC Yearbook 1998).

The main thrust of United States foreign policy in Oceania since the Cold War has been the Multilateral Fisheries Treaty. Apart from guaranteeing access to its fleet, it has helped to promote the United States as a friend of the region, given that the aid component of that Treaty is distributed region-wide. As the United States provides continued support under Compact arrangements for the Micronesian region, an area over which it has defence and strategic control, the Multilateral Fisheries Treaty is a cheap method of gaining the support of other Oceanic states.

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<sup>23</sup> These initiatives included: a reduction in use of the chemical weapons disposal unit on Johnston Atoll; establishment of a Joint Commercial Commission; establishment of a Asia-Pacific Growth Fund and Environmental Investment Fund; promotion of United States investors to the region; extension of the Multilateral Fisheries Treaty; USAID private sector aid for agriculture and marine resource development; and education exchange programs in the region (see Hoadley 1992: 39-40, Dorrance 1992:104-107).

<sup>24</sup> There are closed areas of the FFA region to the United States fleet, including Tonga's EEZ.



This section illustrates the extent of fishing state operations in Oceania from the 1980s to the mid-1990s. The competitive nature of the industry has led to restructuring and indeed, restrictions being placed by Japan on the supply of tuna. These include the issue of FOC vessels and their catch, as well as limiting the level of imports from sources such as Taiwan and Korea. This is done to maintain market stability and therefore it is in the interests of Taiwan and Korea to comply, given their high exposure to Japan's *sashimi* market. The section also highlights the importance of the region's tuna fishing grounds to these fishing states. The back-up sanctions of the real threat of being struck off the Regional Register has brought about greater compliance. This is demonstrated in the decrease in illegal fishing activities by two of the most notorious 'bad actors' in the region's tuna fishery, Taiwan and Korea.

This section also illustrates that it is not just fish which drives the relations between the region and fishing states. It is evident that the Multilateral Fisheries Treaty is a byproduct of the geostrategic context in which the United States' operates in the region. To an economy the size of the United States, the costs associated with the Treaty are a small price to pay for the continued access that it guarantees. Nevertheless, the Treaty and its provisions, provide a demonstration of what can be achieved by substantive provisions in meaningful treaties with back-up sanctions.

### **Section two: Domestic commercial tuna operations and joint ventures from the 1980s to the mid-1990s**

This section examines joint ventures and the domestic tuna industry to establish why these areas have only realised small gains in the level of domestic participation in the tuna industry. There are several reasons for this. For example, these activities have been influenced by the changing global tuna economy, which in turn has affected Oceania's attempts to both invest in the infrastructure to support a domestic tuna industry and to maximise the region's benefits and involvement. While there were joint ventures in operation during this period, these favoured the foreign partners and were not as successful as would have been imagined, given the rich tuna stocks in the region.

The development of national fisheries programs has been encouraged at the regional level, through the FFA (Herr 1990: 180). These programs have been aimed at either joint ventures or development of domestic tuna industries. Funding during the 1980s originated from not just the FFA, but also the South Pacific Commission (SPC), and the United Nations Food and Agriculture Organisation (FAO) and the United Nations Development (UNDP) Programme Regional Fishery Support programme. The FAO/UNDP funding has either been disbursed directly to national governments, or channelled through the FFA. Herr (1990: 382) believes that these arrangements have "paid handsome dividends in terms of assisting and promoting general development and economic expansion in national fisheries sectors". Thus, the development of joint ventures and domestic tuna industries is driven at the region level and has had an impact

on the size and workload of the FFA. Therefore, regional objectives and the development efforts of joint ventures and domestic tuna industries are linked.

Gert van Santen and Philipp Muller (2000: 13) note that the Oceanic states have sought foreign loans and grants, as well as local public equity into funding joint ventures and their domestic tuna industries over the past thirty years. In so doing, they were encouraged by aid donors, who stressed the development of local industry to limit the region's exposure to external forces. Not only did these decisions result in rivalry between the Oceanic states over vessel purchase, processing plants, transshipment facilities and port infrastructure, but they had to contend "with well-established, global tuna industries" (van Santen and Muller 2000: 13). As well as these rivalries, however, the region has to contend with the changes in the global tuna economy.

For example, the United States fleet decreased by 50% over the period 1976-1986 due in large part to the increasing competition from the lower-cost Taiwanese and Korean fleets (van Santen and Muller 2000: 13). By the mid-to-late-1980s, Japanese trading companies had cut their financial links with Korean and Taiwanese companies. More important, however, was decision by canneries to trade on the spot market for its supplies, rather than directly with fishing fleets. This exposes the fleets to a higher level of risk, as well as creating a fiercely competitive cannery market. Thus, by the early-1990s, when the Oceanic states enthusiastically took up loans and entered the tuna market, they did so at a very aggressive time in a less profitable sector of the tuna commodity chain (Schurman 1998: 122). The Oceanic states did not have the opportunity to participate in the more profitable sector of the commodity chain. This sector is connected with "raw material trading and retail/distribution" (Schurman 1998: 122). It centres among "large multinational corporations or trading companies with long histories in the industry and strong links to their buyers ... and the distribution sector concentrated on "fewer than a dozen multinationals and Japanese trading companies" (Schurman 1998: 123). Therefore, the Oceanic states' relative low level of capital exposure to the industry means that the only option available to them is to participate at the harvesting and transshipment stage of the commodity chain.

It is not just the external factors of the global tuna economy, however, that collude to restrain the region's development of a domestic tuna sector or successful joint ventures. The lack of domestic infrastructure is related to a complex set of local factors, which also hinder private sector development in the islands. One of these is land tenure. Traditional land tenure arrangements in many of the islands make it difficult for land to be sold, or leased long-term, therefore making it difficult to use land to gain credit. The Asian Development Bank (ADB) points out that

[P]rivate indigenous financing in the Pacific is, however, constrained because traditional tenure over land immobilizes the local land lease market and therefore the expansion of



the domestic property market and its use as collateral for commercial credit (ADB 1997: 24).

In defence of traditional land tenure, however, it does provide indigenous islanders with an extended family base where subsistence living has few costs. Land tenure gives these communities a security that others elsewhere in the developing world lack. Development agencies, such as the World Bank, have tried to dismantle land tenure as a condition of providing loans to Papua New Guinea

The first and short-term strategy is to forcibly evict communities from land targeted for key development projects, such as dams, plantations, and mines. The second, medium term strategy is to offer schemes such as the World Bank's Land Mobilisation Programme to induce people to give up control over their land in exchange for promises of 'development' (World Bank Watcher appeared in *Pacific Islands Monthly*, 31.5.2001).

Capital is another limiting factor for the region's private sector to become involved in the tuna industry, as the tuna industry is

comparatively expensive to enter; it is capital intensive, high risk, and highly competitive without private, tradable resource rights... [T]una catches are unpredictable and world tuna prices are subject to marked fluctuations resulting from worldwide shifts in the balance of supply and demand, a factor beyond the control of even the large tuna firms (ADB 1997: 27).

As noted in Appendix B, the costs associated with buying a longline vessel can amount to between US\$500,000-US\$600,000, with a second-hand vessel costing US\$300,000. Purse seine vessels can cost between US\$13-US\$18 million new, with a second-hand vessel costing up to half of this figure. Purse seine nets can add US\$500,000-US\$600,000 (FFA 1998). Securing loans in Oceania to purchase these vessels is a prohibitive proposition.

A further limiting feature for pursuing regional participation is the lack of skilled labour in the industry. While there are maritime schools established in the Federated States of Micronesia, Marshall Islands, Fiji, Kiribati, Papua New Guinea, Tonga and Tuvalu, these are generally focused on merchant seamen. Oceanic states are dissuaded from entering the tuna industry because of

the lack of local skills training, the relative wages, and the employment policies that favor government employment, as well as the arduous nature of the work involved (ADB 1997: 25).

Other factors which inhibit participation include relative isolation, lack of domestic infrastructure, "low levels of private sector finance", and a "lack of entrepreneurial experience and management skills" (FAO 1997: 29). This has not stopped the majority of the island states from trying to enter the tuna industry.

In 1993 there were 1,300 tuna vessels operating in the region. Of that figure, however, the domestic fleet numbered 17 purse seiners, 26 longliners and 42 pole and line vessels (AIDAB 1994:7). The AIDAB report notes that by 1994, the FFA had reported that

few, if any ... have met the expectations of their Pacific island partners in terms of generating profits and employment, or providing the level of training required for nations to allow them to play a larger role in the fishing operations or the management of the company. Of the purse seine joint ventures currently operational in the region, most are heavily in debt and hard pressed to cover their day to day operating costs (AIDAB 1994: 13).

Reasons why joint ventures have failed include

inexperienced government-appointed directors, loosely drafted agreements, political intervention, and a lack of understanding of overseas industry connections of the foreign partner (Doulman 1989: 36).

By examining more closely individual joint ventures, as well as domestic tuna operations, it becomes clear that while Doulman's analysis is right, there are also local factors to be considered, as well as the global tuna economy. The following discussion highlights the joint ventures and domestic operations active in the region since the 1980s to the mid-1990s.

### *American Samoa*

Pago Pago remains the centre for the United States fleet's regional canning operations, although some fish is transshipped to canneries in Puerto Rico. Fishing and canning remain American Samoa's major industry, given its duty free access to the United States domestic market (Crocombe 2001: 400). By 1985, approximately 27% of the "employed labor force in the territory was engaged in tuna processing" (Schug and Galea'i 1987: 195). Aside from this, the approximately 2,000 Korean immigrants who have settled in American Samoa and married local people have been associated with the canning industry. The industry employs around 4,000 workers, who, apart from immigrant workers, are drawn from Samoa (Crocombe 2001: 54). Local American Samoans are more likely to be drawing government benefits (Crocombe 2001: 400, 525). As is the case with other tuna canning operations in the region, for example, PAFCO's cannery in Fiji and Soltai in the Solomon Islands, the work women do is largely unskilled and lowly-paid (Crocombe 2001: 127).

### *Federated States of Micronesia*

The Federated States of Micronesia established the National Fisheries Corporation (NFC) in 1989 to facilitate the development of a domestic tuna fishery (FAO 1998f). According to Schurman (1998: 115), until 1995 the government had invested more than US\$120 million in the development of a domestic industry. This has been supplemented by an Asian Development Bank (ADB) US\$6.5 million development loan to boost the domestic long-line fleet, "targeting the fresh *sashimi* market" (FAO 1998f: 3). The NFC finalised an agreement in 1994 with a group of Japanese tuna fishing companies. For example, Nikkatsuren invested in NFC and a separate Japanese company was set up to provide "guidance, funds and air freight connections to Japan" (Tarte 1998a: 126-127). Japanese vessels fishing in the Federated States of



Micronesia's EEZ harvest the tuna destined for airfreighting to Japan. The first consignment was exported to Japan in February 1995 (Tarte 1998a: 126-127).

Tarte (1998a: 127) notes that the joint venture arose out of Japanese concerns regarding Taiwanese and Chinese fleet activity in the area. These fleets had "contributed to the expansion of fresh tuna exports to Japan and put increased pressure on the fresh tuna market in Japan", thus

[T]he objective of the 'cooperation' is stated clearly to be gaining 'influence' with the FSM government on the question of limiting access of Taiwanese and Chinese vessels, while 'stabilising' Japan's own access arrangements (Tarte 1998a: 127).

Furthermore, as Doulman (1998: 9) argues

[W]hat must be realised is that for government, the profit centre for the venture is in-country, while for the partners it is likely to be a centre outside the country – either the parent company or an affiliate company.

Self-interest by joint venture partners is not unexpected but there are two prongs to it. The first is to protect the Japanese company concerned and the second is to deny other fleets the same level of access. A by-product of this self-interest is to put pressure on the local partner, in this case, the Federated States of Micronesia government, to support Japan's two goals. The NFC also finalised joint ventures with two other government-owned companies, the Caroline Fishing Corporation (CFC) and the Yap Fishing Corporation (YFC). A further state-owned enterprise, Westpac was a joint tuna venture with United States interests (FAO 1998f: 4).

The other domestic operation is the Pohnpei Fisheries Corporation (PFC), which buys those tuna identified as "not of sufficiently high quality to justify air freighting" (FAO 1998f: 4). The tuna is processed into "vacuum-packed fresh and frozen loins and smoked fish" (FAO 1998f: 4). This operation is termed a "white elephant" because it was initially set up to process reef fish, rather than tuna. "For this reason it cannot operate at maximum efficiency" (Micronesian Seminar 8.9.1993). It is suggested that even if PFC did operate efficiently, its success is reliant on purchase of fresh tuna, as PFC has no vessels itself (Micronesian Seminar 8.9.1993).

Other aspects of the tuna industry which have the potential to be financially lucrative include "port infrastructure, and cold storage and transshipment facilities", which return a better outcome (Schurman 1998: 117). Even here, Schurman (1998: 117) notes, there is reluctance by domestic-based fleets to use the "fuel, foodstuffs, bait and ice". This is largely because foreign transshippers fear erosion of their own profits. In this respect, "the largest foreign longlining company in the country", Ting Hong, refused to use the domestic facilities as part of the Federated States of Micronesia's push for fishing access (Schurman 1998: 117). Consequently, Ting Hong left.<sup>25</sup> The lack of a sizeable private sector in the Federated States of Micronesia has

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<sup>25</sup> As Schurman (1998: 117) notes, while Ting Hong has owned some boats, it "mainly contracts with Chinese longliners, and makes most of its money as a transshipper."

led to the government investing in the tuna industry. This has not been a successful marriage, although NFC has survived. Compounding this is the leverage applied by Japan and Ting Hong regarding pre-eminent protection of their own industries over that of the country in whose waters they are operating. Those negative aspects aside, the Federated States of Micronesia is geographically advantaged, given its proximity to major transshipping ports, such as Guam and Saipan, although the limited runway on Pohnpei does restrict aircraft size. In 1995, it was estimated that the 260 vessel domestically-based fleet, comprising local and foreign vessels contributed approximately US\$68 million to the country's coffers (FAO 1998f: 5).

The Federated States of Micronesia has one of the richest tuna fishing grounds in Oceania. Their experiences in establishing a domestic tuna operation illustrate the difficulties of participation in the global tuna economy. If the foreign investor in a joint venture is not genuinely focused on the operation, but rather on protection of its own market, then the chances of success are marginal. As has been discussed earlier, in spite of the enthusiastic support of donors and banks, the downturn in the tuna market in the 1990s did not help those Oceanic states keen to enter the industry.

### *Fiji*

The ailing PAFCO was taken over by the Fiji Government in 1986 and began to show a profit. Hughes (1987: 212,221) has suggested that during its less-profitable years, when C. Itoh owned PAFCO, it was used as a transfer-pricing facility.<sup>26</sup> An important element in the viability of PAFCO relates to its preferential access to the European Union states, under the Lomé Convention. Like the Solomon Islands, Fiji concentrates on the top end of the canned tuna market, particularly the United Kingdom where pole-and-line caught fish commands premium prices. Until the early 1980s, PAFCO was not a successful venture (Waugh 1986: 28). By 1986, however, the Fiji government had obtained a controlling share in the venture with the sell-out by its joint venture partner, C. Itoh (Veitayaki 1995: 56). Veitayaki believes the problems experienced by the enterprise until the end of that decade comprised

the acceptance of the product, the marketing of the products overseas, competition from other canneries, lack of skilled manpower and lack of capital (1995: 57).

The PAFCO cannery, located on the island of Ovalau is now 98% Fiji government-owned. Ovalau villages and private investors own the remaining 2% (Hunt 1999: 574). Supplies of tuna are either imported from Pago Pago or sourced from local long-line vessels (Hunt 1999: 573). The FAO (1998e: 4) identifies fisheries products (fresh and processed) as being the fourth biggest export after sugar, gold and garments, with the "ex-vessel value of the tuna fishery" worth approximately US\$40 to US\$45 million in 1995.

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<sup>26</sup> See Hughes (1987: 212, 221) for a discussion on the transfer pricing arrangements of Solomon Taiyo.



The largest Fijian operator for *sashimi* grade tuna is the Suva-based Fiji Fish Company Ltd, which operates 33 long-line vessels, 12 being owned by the Company and the remainder operating as joint ventures or contract vessels. According to Hunt (1999: 574), Fiji Fish “has demonstrated a high level of efficiency in catching and processing” because it has the “high level of management” demanded by industrial fisheries. Veitayaki (1995: 60) notes the competitive nature of the industry and the ability of a company, such as Fiji Fish, to meet the extensive demands placed on it by fresh tuna overseas markets, such as Japan (1995: 60).

PAFCO, like Solomon Taiyo, has been assisted by the Lomé Convention and its policy of preferential access arrangements for goods originating from developing states such as those of Oceania. During the period under discussion, the Fijian tuna industry has demonstrated an ability to grow and become a viable income generator. This is helped by the central location of Fiji in the region, its reputation for secure investment, its educated workforce and a higher degree of local capital for investment than other Oceanic states. An objective of the FFA has been to provide support to national governments like Fiji’s, to assist and promote

general development and economic expansion in national fisheries sectors. It has also provided the necessary backup support and technical assistance to enable national administrations to develop the infrastructure and expertise to meet the many challenges posed by the rapid growth of their fisheries (Herr 1990: 382).

Through the provision of such funding, indigenous control of a fisheries organisation like PAFCO has been encouraged. This demonstrates the effectiveness of regional fisheries co-operation through an organisation like the FFA to achieve the goals of its members.

### *Marshall Islands*

As the centre of the United States strategic interests in Oceania, the Marshall Islands will remain important to its future defence policies, particularly in relation to its Kwajalein missile range. The EEZ of the Marshall Islands is an important tuna fishing ground. In the early 1990s, a joint venture with a United States company established a longline fishing base, which included “vessel provisioning and fish processing facilities” at Majuro (FAO 1998h: 3). Subsequently, the joint venture moved into Chinese hands and by the mid-1990s incorporated more than 150 Majuro-based Chinese longliners, exporting tuna to Japan (FAO 1998h: 3).

The Marshall Islands is an important PNA member. Its rich fishing grounds should mean that domestic operations are viable. By the mid-1990s, the Marshall Islands economy was undergoing restructuring, which had a negative affect on the development of a domestic tuna industry (see Bank of Hawaii Report 1.5.01).

### *Papua New Guinea*

While purse seine and longline activities are on the increase, the pole and line industry had failed by 1981. By 1984, the pole and line operation, known as Papua New Guinea Tuna

Fisheries Pty Ltd (PNGTF), had resumed, but on a smaller scale, “financially and logistically backed by Japan’s Okinawan prefectural government” (Doulman and Kearney 1987: 15). By 1985, there were 9 pole and line vessels operating in Papua New Guinea, selling approximately 50% of the catch to PAFCO, with 30% being bought by Japan and Thailand (Doulman and Kearney 1987: 15). A Japanese/Australian corporation established a *katsuobushi* plant in 1971, which was subsequently bought out by Star-Kist (Papua New Guinea) Pty Ltd in 1979<sup>27</sup> and resulted in the plant’s closure. While it was thought the plant would reopen under the aegis of PNGTF in 1985, this did not eventuate (Doulman and Kearney 1987: 21).

In spite of increased levels of monitoring, control and surveillance, countries like Papua New Guinea continue to experience illegal fishing. For example, in 1994 there were 16 fishing vessels “involved in PNG government claims for compensation for illegal fishing” (ADB 1997: 8). This may have affected a decision in mid-1995 by Papua New Guinea to terminate foreign fleet licenses, to help expand its domestic longline fleet. When attempts were made by foreign fleet long-liners to operate under “local charter arrangements”, this section of the industry was regulated to prevent all but “bona fide domestic entrants” (FAO 1998b: 3). A total of 11 longline vessels were licensed in 1995, with the higher quality catch air-freighted to Japan and the lower quality catch either air-freighted to Australia, or sold domestically. There are two canneries in operation in Papua New Guinea. One cannery in Lae processes imported frozen mackerel; the other cannery in Madang processes tuna. The Madang operation, RD Tuna Cannery, is a new joint venture with Philippine interests (FAO 1998b).

Papua New Guinea’s attempts to develop its domestic operations have been made possible because the country has other natural resources, for example, petroleum, gold and copper. This is also reflected in its earlier decision to stand firm with Japan over access fee levels (Tarte 1998a: 111-118). As a tuna-rich PNA member, Papua New Guinea has been one of the most vocal island states in trying to assert increased domestication and indigenous control over its marine resources. This is reflected in the collective diplomacy undertaken by the PNA group at the MHLC negotiations (see Chapter Seven in particular).

### *Solomon Islands*

By the mid-1980s, the tuna industry in the Solomon Islands provided work for 7% of the population (approximately 1850 people). Fixed assets included two shore bases, forty fishing vessels (twenty-eight of them locally-owned), with two majority-owned locally incorporated fishing companies (Hughes 1987: 203). By then, approximately 40% of export earnings for the Solomon Islands was coming from the tuna industry. The embargo imposed on the Solomon Islands government by the United States over the arrest of the *Jeanette Diana*, however, created a further burden on an increasingly depressed industry (Hughes 1987: 214).

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<sup>27</sup> This company is 100% American owned (Kent 1980)



Three fleets are operating in the Solomon Islands pole and line fishery. These include the 6 vessels operated by National Fisheries Development (NFD) which, while Solomon Islands-based, is owned by the Canadian company, BC Packers. The second fleet is the Japanese-based group (Campbell and Hand 1998: 423). During 1989-1993, the Japanese fleet comprised 77 vessels, however, this has decreased to 39 vessels. The third fleet is the Solomon Taiyo (Soltai) joint venture and comprises 20 vessels (Campbell and Hand 1998: 423). During 1994, for example, Soltai and NFD operated 27 pole and line vessels, of which 12 were “chartered Okinawan vessels (FAO 1998d: 3). Tuna caught by the Soltai venture is canned at Noro and then shipped to the United Kingdom. This market does not accept purse seine-caught canned tuna, whereas both NFD and BC Packers supply the Japanese canned tuna market, which does accept purse seine-caught tuna (Campbell and Hand 1998).<sup>28</sup>

Soltai’s Japanese partner changed its name in 1993 from Taiyo Gyogyo to Maruha. The Solomon Islands government was concerned that Maruha would pull out of the joint venture to focus on its manufacturing and marketing of marine products (Barclay and Wakabayashi 2000). While other Japanese joint ventures in the region had failed by the mid 1980s, the fact that the Noro facility was shore-based gave the Solomon Islands venture a distinct advantage (Barclay and Wakabayashi 2000).<sup>29</sup> In 1995, the facility included

two wharves for landing catches, one each for purse seiners and pole and line boats...there was a cold storage capacity of 800 tons, an 110 ton brine tank, and a 35 ton icemaking machine for keeping fish cool on the way to the freezer...there is an administration block, a sewerage treatment plant, a place for the slip and repair of boats, dining halls, storage for food, fuel and equipment, a welfare centre, a clinic, shops, etc (Barclay and Wakabayashi 2000: 4).

These observers note that as well as the substantial shore-based facility, there are other factors which have ensured the life of the joint venture. These include the Japanese government’s involvement in the region, which is linked to the interconnectedness of Japanese industry and government; a thriving global market in green/dolphin friendly tuna products; and the advantages for developing countries under the Lomé Convention (2000: 4).<sup>30</sup> These advantages include preferential access for goods from the Oceanic states to the European Union.

In spite of these advantages, in the years between 1987-1997, Schurman notes that Soltai has recorded a profit only once (1998: 117-118). Reasons given for this deficiency include

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<sup>28</sup> Barclay and Wakabayashi (2000: 5) have pointed out that the European and North American markets are prepared to pay more for an environmentally friendly, or green, tuna product, harvested using the pole-and-line technique, rather than the indiscriminate technique of purse-seining which allows a significant bycatch.

<sup>29</sup> Barclay and Wakabayashi (2000: 4) note that other Japanese oceanic joint ventures had been mothership-based, so that when things went wrong, it was easy to pull out of the venture.

<sup>30</sup> See Tarte (1998a: 5) on the close relationship and links between Japanese industry and government. As an ACP member, the Solomon Islands can gain access to the European markets free of the 24% tariff which is applied to non-ACP members.

a flawed financial structure and an adverse combination of catch rates, market conditions, and exchange rate movements [compounded by] [T]transfer pricing on the part of the Japanese partner was also a problem (Hughes 1987: 210-222).

While Schurman (1998: 6) argues that Solomon Taiyo has not been the success the government had desired, Barclay believes that in spite of the difficulties faced, the joint venture has survived, providing thousands of jobs, contributing to the economy and facilitating technological transfer. Approximately 2,496 people are employed by Soltai (FAO 1998d: 4). Campbell and Hand (1998: 423) have conducted an economic analysis to the issue of technological transfer, concluding that the Solomon Islands has not received “any on-going benefits of technology transfer in return for concessional access to their waters”. Furthermore, the “annual cost of concessional access to tuna resources in the SIFZ is equivalent to 0.7 percent of the SI Government’s annual revenue”, which represents a “significant opportunity cost” to the Solomon Islands government (Campbell and Hand 1998: 423). In the face of these arguments, therefore, it seems that while there have been some advantages for providing local employment, the financial returns have been minimal for what has been concessional access.

Solomon Taiyo represents the major joint venture undertaken by any of the Oceanic states. The debate over its viability and returns to the Solomon Islands is ongoing. By securing concessional access in the 1970s, the company has been able to hold off any other competitors. Had the Solomon Islands EEZ been open to other competitors, the state could have gained increased economic revenue from access fees. On the other hand, the cannery has provided an income for hundreds of local workers, who may not have gained anything from access fee payments. For the period under review, Solomon Taiyo represents the clearest opportunity for any Oceanic state to gain indigenous control over a joint venture and with it, the domestication of its tuna industry. In some ways, this joint venture achieved for Japan what the Multilateral Fisheries Treaty achieved for the United States. That is; access to rich fishing grounds for its fleet, provision of regular cash injections into the Solomon Islands, and the employment of hundreds of local workers, thus demonstrating Japan’s friendship towards the region. In other words, a cost-effective public relations exercise.

Chapter Four has provided an opportunity to reflect on the practical realities within the region’s tuna industry during a period of strong regulatory growth. What is evident from this Chapter is that regional fisheries conservation and management measures did not correlate with an increase in an Oceanic state’s participation or financial gains over extraction of this resource. The various regional regulatory regimes did give the Oceanic states the encouragement and the possibility of developing local industries. Changing factors in the global tuna political economy, however, such as oil prices, ageing fleets, crewing costs, weather patterns, subsidies and an over-supply of tuna to the market, placed financial constraints on their effective participation in this industry.



Fishing states, for their part, are also pressured, not just by the increasingly regulated environment in which they fish, but also by factors which are beyond their control. Fleet activities in Oceania have not been immune to the changes in the political tuna economy that constrain economic return and contract expansion and development of the industry. Japan's control of the *sashimi* market highlights the reliance of the Asian fleets in particular on supplying this market.

While the United States is not immune to these tensions, its fishing operations in the region are made more complex by its geostrategic concerns. The United States fleet's record of compliance under the terms of the Multilateral Fisheries Treaty benefits the region by helping to analyse the operations of other fishing states in the WCPO. This helps to achieve the objectives of collective fisheries diplomacy, that is; sustainability, a fair return, domestication and indigenous control.

The lack of real interest by fishing states to invest in joint ventures with the Oceanic states has been disappointing, but understandable in the changing political tuna economy. As was demonstrated with the Japanese joint venture with the Federated States of Micronesia, domestic priorities will always come before the concerns of the junior partner, an Oceanic state. The poor outcome regarding domestic operations in the region is not surprising, given the factors required for success. Land tenure continues to be a controversial issue in relation to on-shore development and infrastructure, as well as the limited Oceanic capital investment, human resources, entrepreneurial skills and relative isolation. While countries such as the Federated States of Micronesia and the Marshall Islands are advantaged because of their proximity to the Asian market, even they have difficulties in establishing and maintaining operations. Fiji, on the other hand, should have been in a better position to expand its domestic industry because of its central location in the region, its educated workforce, its ability to attract overseas investment and the level of investment that is available locally.

The difficulties faced by the region relate to the lower-value and higher risk sector of the commodity chain to which the region is relegated. The harvesting and transshipment stage of the chain is vulnerable to capricious weather conditions, fleet purchase and maintenance, capital investment, transshipment facilities and airfreight availability. Vessel purchase is prohibitive, even for industrial economies and the costs involved in maintaining, crewing and supplying the vessels has seen contraction of powerful fishing states, such as Japan, Korea and Taiwan.

For the period under review, the Oceanic states have had mixed success in pursuing joint ventures and domestic tuna industries. The operations of the fishing states demonstrate that even for the more industrialised states, the tuna industry is very competitive, with low profit margins. For these reasons, it is easier to achieve those objectives of collective fisheries diplomacy that relate directly to the substantive provisions in meaningful treaties, for example, sustaining the resource and securing a fair return.



## CHAPTER FIVE

### The double-edged sword

The FFA's efforts at collective fisheries diplomacy were challenged by an additional international regime. That regime was the 1995 *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December, 1982 relating to Straddling Fish Stocks and Highly Migratory Fish Stocks* (the Fish Stocks Agreement). By supporting that Agreement the Oceanic states were conceding the requirement to co-operate with fishing states that might extend to the establishment of a suitable organisation, as laid down in Article 64 of the *United Nations Convention on the Law of the Sea* (UNCLOS) and Article 8.1 of the Fish Stocks Agreement.<sup>1</sup> Their support of the Fish Stocks Agreement led to the December 1994 meeting between the Forum Fisheries Agency (FFA) membership and interested fishing states to discuss the future management of the region's tuna industry. That meeting and subsequent negotiating rounds<sup>2</sup> resulted in the *Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific* (the WCPF Convention).

Chapter Five is divided into two sections. The first section examines the negotiations to conclude the Fish Stocks Agreement. The section demonstrates the active participation by the Oceanic states at those negotiations and their co-operative efforts in having measures, important to the region, inserted into that Agreement's text. In the light of that Agreement, section two explores the first two MHLC negotiating rounds to conclude the WCPF Convention and highlights the specific issues of importance to both fishing and coastal states. The Chapter concludes that the participation by the Oceanic states in the Fish Stocks negotiations seemed to contribute to Oceania's objectives of collective fisheries diplomacy. This momentum from the Fish Stocks Agreement was maintained in the early rounds of the negotiations to conclude the WCPF Convention. The five further negotiating rounds are examined in Chapters Six and Seven.

#### Section one: Negotiating the Fish Stocks Agreement

The finalisation of the UNCLOS in 1982 did not resolve the issue of either highly migratory fish stocks or straddling fish stocks. For example, during the negotiations to conclude the UNCLOS, there was recognition that shared stocks would "constitute a major resource

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<sup>1</sup> Article 64 (UNCLOS) states that "[T]he coastal State and other States whose nationals fish in the region for the highly migratory species listed in Annex 1 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. In regions for which no appropriate international organization exists, the coastal State and other States whose nationals harvest these species in the region shall co-operate to establish such an organization and participate in its work".

<sup>2</sup> The negotiating process was known as the Multilateral High-Level Conference on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific (MHLC)

management problem” (Munro 1999: 5). Shared stocks are those fisheries “which cross the EEZ boundary into the EEZ (EEZs) of one or more neighbouring coastal states” (Munro 1999: 4). In contrast, straddling fish stocks, such as pollock, jack mackerel, cod and orange roughy, high seas anadromous stocks, such as salmon, or highly migratory fish stocks, such as tuna, swordfish, marlins or frigate mackerel, were not considered significant issues (Barston 1995: 160, Burke 1994: 84-5, Munro 1999: 5).<sup>3</sup> Straddling stocks “are to be found both within the EEZ and the adjacent high seas” (Munro 1999: 4).<sup>4</sup> Highly migratory stocks “naturally move to and from the EEZ and the adjacent high seas” (Munro 1999: 4). As Barston notes, straddling or highly migratory fish stocks “account for around 10% of world food supply” (1995: 159).

In the decade following the 1982 UNCLOS, an escalation of disputes ensued over these stocks. In the case of the North-west Atlantic (Grand Banks) straddling turbot stocks, it resulted in the Canadian military shooting at a Spanish fishing vessel, the *Estai*, and its subsequent arrest (Burke 1994: 85, Day 1995).<sup>5</sup> There was growing international recognition that the ability of coastal states, including those of Oceania, to manage either straddling stocks or highly migratory stocks was tenuous in the face of increasing levels of fishing state activity on the high seas (Schram Stokke 2000: 206).<sup>6</sup> Those levels of fishing state activity had risen not only because of the UNCLOS’ prescriptions on EEZ fishing, but also because

rising competition, higher operational costs and lower yields, [meant] fishing companies have since introduced a wide range of new technologies enabling them to find, catch and process fish in concentrations or at depths which previously would have been impossible or uneconomic (Schram Stokke 2000: 206).

Because of the improvements in gear technology, concerned coastal states began to call for limits to be placed on high seas fishing (Barston 1999: 334, Van Dyke 1994: 1). The most concerned coastal states included Argentina, Australia, Canada, Chile, Iceland and New Zealand. Those states which were responsible for 90% of distant water fishing were Russia, Japan, Spain, Poland, the Republic of Korea (Korea) and Taiwan, with the United States and China not far behind (Earth Summit +5 1997).

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<sup>3</sup> These stumbling blocks, however, resulted in the disputes between Russia and the United States in the Bering Sea regarding pollock; the cod and turbot wars of the Grand Banks in the Northwest Atlantic; and the conflict surrounding the orange roughy stocks located between Australia and New Zealand (Burke 1994: 84-85).

<sup>4</sup> Anadromous stocks “spawn in fresh water but spend most of their life in the sea” (Churchill and Lowe 1983: 207).

<sup>5</sup> See also Day 1995, Munro 1999, O’Reilly Hinds 1995, Roughgarden and Smith 1996 among others, for discussion on the Grand Banks controversy). In the wake of sustained overfishing of the Grand Banks, Canada “prohibited its own citizens from fishing for cod and other groundfish in the Canadian exclusive economic zone in the Atlantic, and, as a result, more than 35,000 fishers and fisheries workers have lost their jobs” (Van Dyke 1994: 30).

<sup>6</sup> By mid-1993 in the United States “fisheries for Atlantic haddock, cod and flounder and for Pacific salmon virtually collapsed. Iceland cut back its domestic fishing by 50 per cent because of depleted stocks” (Earth Summit +5 1997: 3).



Under the UNCLOS, developing coastal states, such as the island states of Oceania, were given sovereign rights over an extended jurisdiction of 200-nautical miles.<sup>7</sup> They were, at the same time, however, confronted with severe resource capabilities. These included financial, human and infrastructure, that limited their ability to exercise those sovereign rights over the activities of fishing states active not just within the EEZ, but in high seas pockets or on the high seas, adjacent to an EEZ.<sup>8</sup> The United Nations General Assembly Resolutions on high seas driftnet fishing in 1989 and 1991 supported the concept of the 'precautionary principle' even where there is no "adequate scientific evidence" to support any necessity for it (Burke 1994: 109). The concept of the precautionary principle also arose at the 1991 Session of the Committee on Fisheries (COFI) at the FAO, within the context of its discussions on driftnet fishing (Doulman 2000: 3).

The two types of "precautionary reference points" originated from the UNCED negotiations and referred to "conservation (or limit)" and "management (or target) (Hayashi 1995: 56). The precautionary approach was to replace the "traditional concept of MSY" (maximum sustainable yield), which is not considered adequate in "an era of poor resource condition" (Hayashi 1995: 56). Thus

[C]onservation reference points set boundaries for safe biological limits within which the stocks can produce MSY, while management reference points are intended to meet management objectives.....States shall take measures to ensure that such reference points will not be exceeded, and in the event they are exceeded, States shall, without delay, take the specified action to restore stocks (Hayashi 1995: 56-57).

As Tarte (1998a: 129) points out, the burden of proof under the precautionary principle rests with fishing states, not coastal states.

Conservation and management of straddling and highly migratory fish stocks is also included in Paragraph 17.50 of Agenda 21, "the blueprint for action adopted at the end of the UN Conference on Environment and Development" (UNCED) held at Rio de Janeiro in June 1992 (de Fontaubert 1995: 80). Canada attempted to have the issue of a regime to govern highly migratory and straddling fish stocks discussed at that Rio de Janeiro UNCED meeting. All that was achieved, however, was Paragraph 17.50 of Agenda 21 that recommended the convening of an inter-governmental conference to negotiate such a regime (de Fontaubert 1995: 80).

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<sup>7</sup> I discussed in Chapter Three an understanding of the differences between 'sovereignty' and 'sovereign rights'. To recap on that understanding, sovereignty means a state has exclusive rights, legal supremacy and powers over its lawful jurisdiction. Alternatively, sovereign rights prescribe control over a specific issue as a consequence of sovereignty. An example given to me is that Australia's sovereignty over its territorial sea means it has the sovereign right to exploit its resources as it see fit, or as may be allowed under international law. I was grateful for advice on this issue from Judith Swan and Mark Gray. See Akehurst (1991: 15-19) and Churchill and Lowe (1983: 130-132) for discussions on sovereignty and sovereign rights.

<sup>8</sup> Several oceanic states have high seas pockets that link them at the outer limits of their EEZ. For example, between the Federated States of Micronesia, Nauru, Papua New Guinea, the Solomon Islands, Fiji and Tuvalu. There are also pockets between Kiribati, Tokelau and Tuvalu, between Palau, Federated States of Micronesia and Papua New Guinea. Before 1994, several other coastal states (Argentina, Canada and Chile) had finalised national legislation which authorised "action against foreign vessels on the high seas to enforce international requirements in some circumstances" (Van Dyke 1994: 4).



There is no doubt that the divergent interests of coastal and fishing states prevented the UNCED meeting's ability to negotiate such a controversial issue. On the one hand, fishing states were concerned at any attempt by coastal states to extend jurisdiction beyond their 200-nautical mile EEZ, so-called 'creeping jurisdiction'. On the other hand, coastal states, such as those of Oceania, wanted some kind of binding agreement that would recognise the highly migratory nature of some fish stocks and the need to protect them on adjacent seas. There were also coastal states, such as Canada, which had concerns regarding straddling stocks.<sup>9</sup> The United Nations convened the Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks in New York in July 1993 (the Fish Stocks Conference).<sup>10</sup> de Fontaubert notes

[T]he stage was then set for a number of countries with diverging interests to attempt to settle their differences and put an end to years of overfishing, and try to prevent the total collapse of some of the most commercially valuable stocks (1995: 81).

### *The Fish Stocks Conference*

According to Barston (1999: 335), states attending those conference negotiations fell into four main groups. The first group comprised the "extreme" coastal states of Chile, Colombia, Ecuador and Peru, combined with the "activist" coastal states of Canada, Argentina and Norway. This disparate grouping was unified because of a common stance on coastal states' sovereign rights as well as the "special rights" for high seas areas adjacent to their EEZ regions. The second group included the high seas fishing states of Japan, Republic of Korea and Poland. This group received encouragement from states such as Ukraine, Thailand and the People's Republic of China on issues such as the due regard for the rights and responsibilities of flag states and their refusal to allow high seas arrests by coastal states. The third group comprised the "moderate reformist" coastal states of Australia and New Zealand. Both states were also supportive of the developing Oceanic states at those negotiations.<sup>11</sup> A fourth group included the Russian Federation, the European Union and the United States. Barston notes that the United States had an "uneasy" role because while on the one hand it supported a balanced coastal and fishing state international agreement, on the other hand, it had sensitive multilateral arrangements with the FFA as well as the Russian Federation (1999: 335).

Alternatively, de Fontaubert (1995: 81) outlines the positions of just two groups, the coastal and fishing states. For example, coastal states were calling for flag state responsibility on

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<sup>9</sup> See Tarte (1998a: 137-138) for a discussion on this issue.

<sup>10</sup> Subsequent sessions were held in March 1994, August 1994, March-April 1995, and a final session in July-August 1995 (Freestone 1999: 145, Barston 1999: 335).

<sup>11</sup> According to Mary Harwood, there were three people who assisted the Chair of the negotiations (Satya Nandan) in preparing advance drafts of the text of the Fish Stocks Agreement - herself, Michael Lodge (whom, at that time was Legal Counsel, Forum Fisheries Agency and the FFA's adviser at the negotiations), and Talbot Murray (a member of New Zealand's delegation). Harwood believes that the region achieved strong outcomes at those negotiations because all FFA representatives worked together to "hunt as a pack" on issue such as compliance and data collection (Interview October 2001). Mary Harwood works at the Department of Agriculture, Fisheries and Forests Australia (AFFA). Harwood was second in charge of Australia's delegation to the Fish Stocks Agreement.



the adjoining high seas, some were even “willing, if all else failed, to take matters in their own hands” (de Fontaubert 1995: 81). These states would have represented the more radical elements in Barston’s analysis of coastal states. Fishing states were opposed to this call, fearing ‘creeping jurisdiction’ over and above the UNCLOS provisions. As well, fishing states also wished that coastal states would take responsibility to ensure “compatible measures” in EEZ jurisdictions (de Fontaubert 1995: 81). These concerns clashed with the belief of coastal states in the inviolability of their sovereign rights within an EEZ (de Fontaubert 1995: 81).

The role of the European Union at the Fish Stocks negotiations is also relevant. The central focus was Spain, a fishing state whose activities had resulted in military intervention by Canada regarding its continued exploitation of the diminishing turbot stocks of the Grand Banks. As a member of the European Union, Spain demanded its support. A condition of its entry into the European Union had been the proviso that it would not fish in European Union waters, but rather in distant waters for a specific time. This led to Spain over-fishing in Namibia and Canada (de Fontaubert 1995: 79). At the beginning of the Fish Stocks negotiations, the European Union’s position was hard-line as it had “little choice but to defend one of its members, which had been cornered into this position by a decision of the Union” (de Fontaubert 1995: 85). Later into the negotiations, however, due in no small part to the extended European Union’s membership which now included Sweden, the hard-line was softened because of Sweden’s historical attempts to meet head-on “inflexible” fishing states (de Fontaubert 1995: 85).

The Chair of the Conference, Ambassador Satya Nandan of Fiji,

Proved to be masterful in accommodating the concerns of all sides, drawing extensively from all sources of expertise – be they the FAO experts, national delegates, or certain NGO representatives, and rekindling the process when it was faltering. His handling of the outcome issue was also astute, and he created quite a ripple when he first issued the new negotiating text in the form of an Agreement, albeit a Draft Agreement. Predictably, some of the DWFNs were up in arms claiming that they had never agreed to such an outcome, but the Chair had foreseen that they would eventually see it as in their interest and agree to it (de Fontaubert 1995: 87).

Nandan’s achievement in finalising a document which was neither too strongly worded for the consumption of fishing states, nor too weakly worded for the benefit of fishing states is hailed by de Fontaubert (1995: 87). While this seems commendable, it demonstrates the importance that was accorded the commercial interests of the powerful fishing states.

The participation by the Oceanic states at the Fish Stocks negotiations was noted and commended by Victorio Uherbelau, Director of the FFA in his Annual Report of 1994/1995, in which he stated

FFA member countries have participated fully in the process leading up to the Conference, as well as the Conference itself. Indeed, as the Conference has continued, FFA member countries, as a group, have taken an increasingly active and significant role in the key group of “like-minded countries” and have successfully influenced the

direction of the Conference in a way that has been favourable to the interests and needs of Small Island Developing States (1994/1995: 14).

Given Uherbelau's position, it is natural that he would support his organisation, however, Harwood points out that the region "hunted as a pack" at the negotiations, thus supporting Uherbelau's claims (Interview, October 2001). Furthermore, the Forum Fisheries Committee (FFC) held a caucus each morning to discuss issues of importance to the group (Harwood, Interview, October 2001). It is important to note that this group included those tuna resource-rich Oceanic states, for example, Fiji, Kiribati, Papua New Guinea and the Federated States of Micronesia. Furthermore, in an analysis of the Fish Stocks Conference, it was noted by the Department of Foreign Affairs and Trade (DFAT) that the

FFA member countries, acting as a tightly coordinated and clearly focused block, had a major influence on the conference outcomes. Many facets of the agreement reflect the strong technical and policy inputs made by FFA members and the persistence of the region in pressing for practical solutions of global application (25.8.1995).

The Fish Stocks Agreement has several important features. One, it imposes new conservation obligations for the management of highly migratory and straddling fish stocks, utilising the precautionary approach, both within and beyond EEZ jurisdictions. Two, it imposes requirements for fishing states to supply data on fish stocks, for example, bycatch, catch levels, discards and details on fishing effort. Three, it provides for the establishment of quotas and allows for boarding and inspection by parties to a regional organisation. Four, it calls for the establishment of regional fishing organisations to facilitate co-operation and conservation of the stocks. Five, it tackles problems caused by the persistence of unauthorised fishing by allowing only those States that have agreed to management and conservation measures to have access to fishing grounds. Six, following on from this, the Fish Stocks Agreement sets out procedures for ensuring compliance with its provisions, including the right to board and inspect vessels belonging to other States. Finally, it provides mechanisms for the dispute resolutions to facilitate compulsory and binding peaceful settlement of disputes between States (Fish Stocks Agreement 1995, Earth Summit +5).

In analysis of the Fish Stocks Conference, de Fontaubert argues that it

adopted a very compatible approach by adopting a set of very general principles that are designed to be applied through the regional arrangements and organizations which, under the Agreement, will be strengthened, or created when they are not already in place (1995: 84).

As Mann Borgese has pointed out, however, fishing and coastal states alike were not quick to support the new regime, in spite of having just completed the negotiations (2000: 769).<sup>12</sup> The

<sup>12</sup> For entry into force, the Fish Stocks Agreement required thirty ratifications. The Fish Stocks Agreement entered into force on 11 December 2001 with thirty-one ratifications. In order of ratification, these are: Tonga, Saint Lucia, United States of America, Sri Lanka, Samoa, Fiji, Norway, Nauru, Bahamas, Senegal, Solomon Islands, Iceland, Mauritius, Federated States of Micronesia, Russian Federation, Seychelles, Namibia, Iran, Maldives, Cook Islands, Papua New Guinea, Monaco, Canada, Uruguay, Australia, Brazil, Barbados, New Zealand, Costa Rica, Malta. The thirty-first ratification was the United Kingdom, which, on



fishing states were reluctant to support the Agreement because they insisted that the regime be across the range of stocks, that is, high seas and EEZs and were still reluctant to “renounce their freedom to fish” (de Fontaubert 1995: 84). The coastal states were protective of any attempt to deny them sovereign rights over their EEZs (de Fontaubert 1995: 84).<sup>13</sup>

#### *Aftermath of the Fish Stocks Agreement*

One fishing state that has been uncomfortable with this Agreement is Japan. Japan’s problems with the Fish Stocks Agreement arose at a time when its fishing industry was under “increasing economic pressure”, and Japan was facing adverse international opinion regarding its high seas fishing (Tarte 1998a: 138). Japan argued for “minimum restrictions regulating high seas fishing”, contending that increased restrictions would impose difficulties upon its fleets (Tarte 1998a: 138). These restrictions include the watering down of regulatory measures such as monitoring control and surveillance (MCS) of fleet activity by the regional organisation, coastal states or other fleets. MCS measures include boarding and inspection and the observer program.

Japan favours the establishment of regional fisheries institutions, in which it, as a fishing state, has an allocation of quota, preferably based on historical access. Such a system limits the expansion of coastal states’ domestic fleets and is, therefore, at variance with the objectives of collective fisheries diplomacy in Oceania (See Herr 1990). Japan is also an opponent of the precautionary approach, a principle adopted by the Fish Stocks Agreement and taken up by the FFA membership.

Japan’s aversion to the Fish Stocks Agreement and the concept of the precautionary approach is at odds with the FFA membership and the United States. For the Oceanic states, that Agreement is a double-edged sword. On the one hand, it gives added weight to the provisions of the UNCLOS, goes some way to alleviating their concerns regarding high seas fishing and facilitates a regime of flag state responsibility.<sup>14</sup> On the other hand, it also creates an extra burden on the already stretched resources of the FFA membership. For example, in order to comply with Articles 5 and 6 of the Fish Stocks Agreement, coastal states are to put in place

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behalf of Pitcairn, Henderson, Ducie and Oeno Islands, Falkland Islands, South Georgia and South Sandwich Islands, Bermuda, Turks and Caicos Islands, British Indian Ocean Territory, British Virgin Islands and Anguilla, ratified the Fish Stocks Agreement on 10 December 2001 (see Oceans and Law of the Sea, online < <http://www.un.org> (date accessed 30 April 2002)).

<sup>13</sup> Under Article 56.1(a) of the UNCLOS it states that “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 the water, currents and winds

<sup>14</sup> Flag state responsibilities laid down in the Agreement incorporated the 1993 FAO Compliance Agreement, which outlines “... the duty of parties to exercise effective jurisdiction over high-seas fishing operations by vessels flying their flags ... (Schram Stokke 2000: 19). The Compliance Agreement notes that ‘Each Party shall take measures as may be necessary to ensure that fishing vessels entitled to fly its flag do not engage in any activity that undermines the effectiveness of international conservation and management measures (Article III 1 (a)).

harmonised conservation and management standards for their EEZs that incorporate the precautionary approach. These standards are to apply across the whole region.

As important as this task is, of greater importance is the fact that the FFA is not considered a competent body to provide fisheries conservation and management, as laid down in Article 64 of the UNCLOS and Article 8 of the Fish Stocks Agreement. Such a competent body requires the co-operative membership of both fishing and coastal states with competency for conservation and management. The obligation to co-operate, as laid down in the UNCLOS, is strengthened in the Fish Stocks Agreement, Article 8, paragraph 4, which states

Only those States which are members of such an organization or participants in such an arrangement, or 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.

Instead, the FFA operates as

an effective organization in coordinating the Pacific island states' policies and enhancing cooperation among them, especially in their relations with DWFNS (Aqorau and Bergin: 1998: 28).

Through their participation at the Fish Stocks Conference, Oceanic states realised that additional regional machinery would be required. Fishing states such as Japan were becoming more vocal in their demands for an inclusive regional organisation to conserve and manage the region's tuna resource. During an Inter-Sessional Consultation for the negotiations to conclude that Agreement, held in February 1995, Japan supported a United States position that "membership or participation in subregional or regional fisheries management organisations or arrangements should be compulsory" (FFA Summary Report February 1995).

In part to gain the upper hand, the FFA moved to initiate discussion with fishing states by holding a Multilateral High Level Conference (MHLC) at FFA headquarters, Honiara, Solomon Islands in December 1994. Following that meeting, the February 1995 Forum Fisheries Agency Summary Report notes

FFA member countries will need to make further progress in developing appropriate regional mechanisms for conservation and management of highly migratory fish stocks.

That further progress resulted in the WCPF Convention.

The shortcomings of the UNCLOS to deal comprehensively with the issue of straddling or highly migratory fish stocks had ramifications for fishing state operations in the years following 1982. Rather than seeking fishing access agreements, or being bound by EEZ regulatory measures, many operators took their vessels to the high seas. The problem was that straddling stocks lie between the high seas and EEZs and highly migratory stocks swim vast distances through high seas and EEZs. Coastal states, such as Canada, had closed its most important straddling stock fishery because of overfishing and still boats fished in defiance.



While Barston (1999) outlines four different negotiating groups at the Fish Stocks Convention which came together with joint interests, there was a clear divide between fishing and coastal states. By working co-operatively at those negotiations, coastal groups, such as the FFA membership, were effective blocs, moving crucial issues forward such as the precautionary approach; data provisions and flag state responsibilities.

The FFA, as an organisation, is also under scrutiny when analysing the outcomes from those negotiations. Did the organisation achieve its objectives? These objectives include regulating high seas fishing, specifically adjacent to EEZs. The Fish Stocks Agreement requires fishing states to provide the region with data on bycatch, discards, fishing effort and catch levels. These issues reflect those specific compliance and data collection measures that the regional membership campaigned for at the Fish Stocks negotiations (Harwood, Interview, October 2001). It paves the way for an Article 64-type organisation, an outcome not necessarily to the liking of the Oceanic states. So, yes, through collective diplomacy, the organisation did achieve regional objectives. In doing so, however, it opened the door once more on the question of the inclusion of fishing states in a regional fisheries organisation. It is clear that Nandan, as the Chair, pushed the region into negotiations in relation to a co-operative arrangement with fishing states.

## **Section two: *Negotiating the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific*<sup>15</sup>**

When the FFA was established in 1979, the structure of the organisation did not meet the requirements laid down in Article 64 of the UNCLOS.<sup>16</sup> For example, the organisation comprises only the region's coastal states, with no membership by interested fishing states. It is also a consultative body, which advises its members, but leaves it to them to apply conservation and management measures. With the commencement of the Fish Stocks Agreement's negotiations in 1993, there was growing awareness in the region of the need for a co-operative management regime for its tuna fishery. As demonstrated in previous Chapters, the Oceanic states had effectively promoted the objectives of collective fisheries diplomacy by the mid 1990s. It prepared them for negotiations with interested fishing states to finalise a tuna fisheries conservation and management convention for the Western and Central Pacific Ocean (WCPO). From December 1994 until September 2000, these achievements would be tested through the seven negotiating rounds of the Multilateral High-Level Conference on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific (MHLC).<sup>17</sup> The MHLC process would result in the *Convention on the Conservation and*

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<sup>15</sup> The WCPF Convention.

<sup>16</sup> For discussions on this debate see, among others, Aqorau 1998, Herr 1990, Sutherland, 1985, Sutherland and Tsamenyi 1992, Van Dyke and Heftel 1981.

<sup>17</sup> The first round in December 1994 was simply known as The Multilateral High-Level Conference on South Pacific Tuna Fisheries.

*Management of Highly Migratory Fish Stocks in the Western and Central Pacific* (the WCPF Convention).

The purpose of the second section is to examine the first two rounds of these negotiations (MHLC1-2). The section is divided into two parts. The first part examines the MHLC1 negotiations. The MHLC1 negotiating round was an exploratory session between the FFA membership and interested fishing states. The second part examines the MHLC2 negotiations. The MHLC2 was a preliminary session that culminated in the Majuro Declaration.

*Part one: An Appraisal of MHLC1, Honiara, 5-9 December 1994*<sup>18</sup>

In December 1994 the FFA membership held a meeting with fishing states regarding “effective regulation of fishing fleets operating in the region” (Tarte 2001a: 9). Effective regulation, an integral part of conservation and management, had been a goal of the FFA and its members since the establishment of the organisation in 1979. First, it was supported by the conclusion of the UNCLOS in 1982. Second, the idea of establishing a co-operative body between the region and fishing states had been raised informally by the United States delegation to the Multilateral Fisheries Treaty talks with the Forum Fisheries Committee (FFC) in December 1991.<sup>19</sup> The proposal stemmed from “concerns that the United States fleet was being placed at a competitive disadvantage” (Kaufman 1994: 11).<sup>20</sup> Third, it was supported by the conclusion of the negotiations for the Fish Stocks Agreement, which had been underway since July 1993. As discussed in section one above, the FFA membership had been an active participant at those negotiations. Fourth, the issue of fisheries management had been a focus of the Leaders’ discussions at the August 1994 Brisbane South Pacific Forum. The FFA membership had resisted previous attempts by the fishing states to conclude an Article 64-type arrangement

because of the potential for such a body to reduce PIC control over the fisheries resources within their exclusive economic zones (DFAT 15.12.94).

As discussed above, the Fish Stocks Agreement is a double-edged sword. On the one hand, it regulates fishing state activities on the high seas. On the other hand, however, it requires co-operative action between fishing and coastal states, specifically between the FFA membership and those fishing states operating in the region.

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<sup>18</sup> Delegations which attended that meeting included the FFC membership, Japan, People’s Republic of China (China), Republic of Korea (Korea), the United States and the Philippines. It had been expected that Taiwan would attend. The politics surrounding its nomenclature of “Chinese Taipei”, however, led to its last-minute refusal to participate at that meeting. This issue remained a problem throughout the negotiations.

<sup>19</sup> Personal communication with Transform Aqorau, May 2002.

<sup>20</sup> In particular, transshipment was seen as one main reason behind the United States encouragement of the talks. Transshipment at sea by Taiwanese and Korean fleets enabled them to harvest more fish because of increased fishing time. As well, transshipment at sea was a means of disguising the true level of catch and thereby avoiding paying access fees. It also created difficulties in determining accurate scientific assessment of catch and effort (anonymous). Alternatively, it was believed that the Japanese fleet “was the most orderly, professional and law-abiding” (anonymous).



Back in May 1994, an agenda had been agreed between the FFA, Japan and the United States for a high-level fisheries management conference. Invitations were sent out to the FFA membership and interested fishing states (FFC 24 1994: 9-10). Known now as the MHLC1, that December 1994 meeting, held at the FFA's headquarters at Honiara in the Solomon Islands, represented a new era in co-operative relations between the region and fishing states.<sup>21</sup> The MHLC process represented the first negotiations of their kind in global tuna fisheries management which followed the prescriptions of the Fish Stocks Agreement. The first round of negotiations focused on technical issues. The Chair, Ambassador Robin Yarrow of Fiji, notes that

[I]t is emphatically not a Conference to discuss broader issues relating to the management of highly migratory fish stocks throughout the region. Such issues are complex and politically sensitive. It may well be that, to the extent that the issues are left unresolved by the ongoing discussions in the United Nations, they will need to be addressed at some stage in the future (MHLC1 Conference Secretariat, 1995: 23).

In a report prepared for the FFC before the MHLC1, Kaufmann (1994: 12) observes that the purpose of the meeting was to consider "harmonising access arrangements on terms equivalent to those of the U.S. fleet". It was not to be a venue to discuss "cooperative management arrangements" (Kaufmann 1994: 12). The Department of Foreign Affairs and Trade (15.12.94) notes that Australia's approach to the MHLC was to "work with other FFC members and the FFA Secretariat to limit discussion on Article 64 issues". The conference would be framed as a "one-off confidence building exercise" between the delegations (DFAT 15.12.94).

The MHLC1 negotiations stand apart. At the time, there was uncertainty as to how future management arrangements would evolve. There was a gap between the MHLC1, held in December 1994 and the MHLC2, held in June 1997. During that intervening two and a half year period, technical sub-committees evaluated management proposals. The important issues discussed at that MHLC1 meeting included multilateral versus bilateral arrangements; sovereign rights and highly migratory fish stocks; and the rights of the flag state. These issues are examined below.

#### *Multilateral v. bilateral agreements*

The August 1994 Brisbane South Pacific Forum's theme of 'managing our resources' resulted in the Leaders' adoption of a regional policy preference for multilateral fishing access agreements. Australia, the United States and New Zealand refer to the primacy of this approach in their MHLC1 Country Statements, as do several of the Oceanic states. On the other hand, several of the Parties to the Nauru Agreement (PNA) states, such as the Federated States of Micronesia, the Marshall Islands, Kiribati and Nauru make no such endorsement. It must be remembered that for these states, the concept of being worse off under multilateral agreements

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<sup>21</sup> Multilateral High-Level Conference on South Pacific Tuna Fisheries, Honiara, Solomon Islands 5-9 December 1994. The words "High-Level" referred to the fact that attendance "was at ministerial,

is a very real issue. For states such as Kiribati and the Federated States of Micronesia in particular, tuna is their only natural resource. This aversion to multilateral agreements is fostered by Japan, which maintains a greater leverage over those states through bilateral access arrangements.

In a meeting held before the MHLC1, the PNA group put forward the idea of a multilateral head agreement, which would incorporate terms and conditions of access. There would then be subsidiary, bilateral arrangements, which would be responsible for determining access fees. It was argued by the FFA Secretariat and Australian Government officials that an approach of this type

fails to take advantage of the combined negotiating strength which the Pacific Island Countries (PICS) possess as a cohesive whole (DFAT 15.12.94).

Papua New Guinea, also a PNA member, endorsed the Multilateral Fisheries Treaty with the region.<sup>22</sup> Its Country Statement at MHLC1 notes that a multilateral treaty is “the right approach to management of tuna resources in the region”. Papua New Guinea points out, however, that “the treaty has not worked as far as domestication of the tuna industry is concerned” (MHLC1 1995: 41). Papua New Guinea is critical of the fact that one of that Treaty’s aims is to encourage domestic participation in the tuna industry. It amounts to more than rhetoric in terms of proposed shore-based facilities, although making investment pay in the region is no easy task (Interview, Cartwright, May 2001).<sup>23</sup>

#### *Sovereign rights and the highly migratory fish stocks*

In Japan’s Country Statement, the Fish Stocks negotiations are raised, together with Japan’s belief that the tuna stocks’

conservation and management require coherent and compatible approach throughout their migratory range [and] is not simply legally required by international law, but it is also a scientific and even a practical “must” (MHLC1 1995: 35).

Japan believes a single regime should apply for tuna stocks, both in-zone (EEZ) and high seas. This belief would be restated throughout the MHLC negotiating process and is in sharp variance with the views of the FFC bloc and the advice of the FFA Secretariat. The bloc remains committed to the inviolability of a coastal state’s in-zone sovereign rights. Australia and New Zealand were initially supportive of the Japanese view that the new regime should manage the stocks in their entirety. National tuna management plans were, therefore, considered to be

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<sup>22</sup> ambassadorial and senior official levels” (Tarte 2001a: 9).  
It must be remembered that Papua New Guinea has refused Japan access to its EEZ since the late 1980s, after Japan refused to pay a higher access fee. In mid 2001, inconclusive talks were held between the two countries regarding a new bilateral agreement (see Pacific Islands Report, 18 July 2001, online <<http://www.pidp.ewc.hawaii.edu>

<sup>23</sup> Cartwright is a former Deputy Director of the FFA and was an FFA Secretariat observer at the MHLC process.



inappropriate, given the highly migratory nature of the stocks (Interview, Cartwright, May 2001). This view diverges from the Fish Stocks Agreement, which states

[C]onservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of the straddling fish stocks and highly migratory fish stocks in their entirety. (Article 7.2, the Agreement).<sup>24</sup>

By MHLC2, Australia and New Zealand had conceded the Oceanic states' view that national tuna management plans were appropriate.<sup>25</sup> Their concession had been noted in FFC Talking Points prepared in 1995, which states that

We are mindful of the region's international obligations under UNCLOS III. That said, we do believe however that the region should not concede sovereignty to the DWFNs for those tuna resources which are predominantly taken within the EEZ's [sic] of the PICs. Management decisions for these resources should res [sic] with the region, and the region alone (Talking Points, FFC Subcommittee on Future Management Arrangements (Undated Preliminary Report, p 1)).

### *Rights of the flag state*

The issue of flag state enforcement on the high seas was raised in Korea's Statement, its views differing from those of the FFC bloc. Regarding the monitoring, control and surveillance (MCS) of vessels on the high seas, the Fish Stocks Agreement (Article 18.3g(i) states that

the implementation of national inspection schemes and subregional and regional schemes for cooperation in enforcement ... including requirements for such vessels to permit access by duly authorized inspectors from other States.

Korea has yet to ratify the Fish Stocks Agreement and, as regards MCS, its

data continues to be the most inaccurate of all the fishing fleets. Their reporting behaviour reflects the poor reputation that the Korean operators have established in the region (FFA Director's Annual Report 1994/95: 8).

Thus, the region does view the Korean tuna industry with favour. This is not only because of its poor MCS record, but also because of its poor investment record in the region. Until the Korean government has some authority and influence over its tuna fishing industry and invests in the region, it will not be viewed favourably by the FFA membership.

### *Aftermath*

As the MHLC1 were the first negotiations of their kind between fishing and the FFA membership, the delegations merely aired preliminary views. The MHLC1 did, however, achieve results. For example, the negotiations highlight the importance of unity within the FFC bloc in that they

<sup>24</sup> Australia ratified the Agreement in December 1999. New Zealand ratified the Agreement in April 2001.

<sup>25</sup> This view was set out in a report for the FFA by Kaufmann, (1994: 10) which states: "The need to develop tuna management plans for the region that detail economic, social and conservation objectives ... [A]ll tuna fishing effort under national jurisdiction should fall under the management plans".

imposed a tight structure ... they worked off an agreed set of points for each agenda item. The extent to which this unified approach held throughout the meeting was quite notable ... [it] did contribute to the presentation of a unified front to the DWFNS (DFAT 15.12.1994).

From these comments, it is evident that the region was united in its approach at the MHLC1 and not divided by national interests. The bloc had not been pushed into discussions regarding an Article 64-type organisation by the fishing states, but had rather signalled the need for technical meetings to discuss the shape of future management arrangements. This was in line with the region's wish to take matters slowly and carefully. That is why fishing states, such as Japan, were disappointed with that December 1994 MHLC meeting. Japan had hoped to push the region down the track towards an Article 64 organisation, but this hope was derailed by the region's unified approach on this issue.

The MHLC1 delegations agreed to convene two technical consultations. The first would focus on the development of the Vessel Monitoring System (VMS), later held in September 1995 and November 1996. The second consultation would consider options regarding fishing catch and effort data retrieval, held in July 1996 (Cartwright 1999: 18, Tarte 1998b: 6). The FFC decided to set up a sub-committee, comprised of its members, "to consider future fisheries management arrangements in the region" (Tarte 2001a: 10). It was to include examination of

[E]xisting institutional arrangements in the region, to assess the impact of international developments, to identify and assess possible alternative institutional approaches to tuna management in the South Pacific, and to recommend strategies for the region (Tarte 2001a: 10).

#### *Consultations and Sub-Committees leading to the MHLC2*

By the time the FFC's sub-committee had met for the third time in February 1996, it had identified the structure, functions and options for establishing a regional tuna management arrangement. Also identified were strategies for liaison with fishing states that had been identified in a Review undertaken by Geen and Bergin (1995).<sup>26</sup> The region decided that a second multilateral high-level conference should be convened to negotiate high seas issues with the fishing states in accordance with Article 8 of the Fish Stocks Agreement. It had been agreed at FFC26 that commitment to the convening of the second conference would be based on

member countries' long term goal of developing their domestically-based fishing industry and the phasing-out of the foreign-based fleet" (FFC 26 1995: 16).

Another commitment focused on the strengthening in-zone arrangements, which involved convening a Ministerial-level FFC meeting. Both initiatives were to take place in early to mid-1997 (Tarte 2001a: 12, FFC Sub Committee Meetings: March 1995, October 1995 and February 1996).

<sup>26</sup>

A recommendation of the Sub-Committee on Future Management Arrangements was that the Oceanic Fisheries Programme of the South Pacific Commission (SPC) be transferred to the FFA.



As the 1996 year progressed concerns were raised by several members of the FFC as to whether fishing states should be involved in the region's development of tuna management arrangements, as stipulated by the Fish Stocks Agreement's duty to co-operate. This reflects one side of the double-edged sword. A meeting held in Tokyo, Japan in May 1996 to explore the possibilities of establishing a Northern Pacific fisheries management regime heightened these concerns. Other states present at that Tokyo meeting included China, Taiwan, Korea, Mexico, Canada and the United States.<sup>27</sup> It was feared that such a regime could "engulf" the WCPO (Tarte 2001a: 12). Australia's Statement to FFC 29 spoke of these concerns and notes the

urgent need for us to be in a position to engage distant water fishing nations and other, non-FFA coastal states and territories in meaningful dialogue ... and be prepared to discuss matters relating to the management of tuna stocks (FFC 29 1996b: 44).

Because of these concerns, a meeting of the FFC in mid-1996 decided to

combine the two initiatives, thus DWFNS and Pacific island coastal states would together build comprehensive management and conservation arrangements for the region's tuna stocks, throughout their migratory range (Tarte 2001a: 12).

The Majuro South Pacific Forum, held in September 1996, endorsed the Marshall Islands' initiative to convene a ministerial meeting. The meeting would "advance the process" of concluding a sustainable fisheries management regime in the region (Forum Communiqué 1996). It also endorsed the Marshall Island's offer to hold a second MHLC. These initiatives were to occur

in conjunction with the development of national tuna management plans by FFA member states, which would include the setting of provisional total allowable catches (TACs) within waters under their respective national jurisdiction (Tarte 2001a: 12).

The FFA Director's Annual Report of 1996/97 urged its member to identify the Total Allowable Catch (TACs), within an overall EEZ management plan. This would complement "their commitment to cooperate with other states and DWFNS" as laid down in the UNCLOS and the Fish Stocks Agreement (FFA Director's Annual Report, 1996/97). The Australian government had noted that

[T]he region's ability to make an impression on the DWFNS, to advance their objectives, and to adequately handle difficult issues, will depend largely on the level of cohesion demonstrated by the PICs (DFAT 1994).

The cohesion demonstrated by the region at the Fish Stocks Conference and later at MHLC1 put the Oceanic states in a strong position to maintain the momentum, and their influence over the MHLC negotiating process.

The Oceanic states realised that Article 8 of the Fish Stocks Agreement called for co-operation "through appropriate subregional or regional fisheries management organizations or

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<sup>27</sup> The Tokyo meeting was titled the "Interim Scientific Committee for Tuna and Tuna-like Species in the North Pacific Ocean". The species included swordfish, bigeye and northern bluefin tuna. At that meeting,

arrangements” (Aqorau 1998: 284). The period between the MHLC1 and the MHLC2 had been used to examine future management options, as well as to convene technical consultations regarding VMS and stock analysis.<sup>28</sup> By June 1997, the region was ready to sit down with the fishing states and discuss the options available, without commitment. Their experiences with the fishing states had made them cautious. In particular, Japan’s refusal to enter into a multilateral agreement with the region made the island states “wary” of any kind of reform to the *status quo* of the region’s conservation and management measures (Aqorau 1998: 284).

*Part two: An Appraisal of MHLC2, Majuro, June 1997*<sup>29</sup>

The preferences of the Oceanic states regarding the pace of the MHLC2 were dissimilar to those of the fishing states. Concerns were raised separately by Japan regarding the proposed agenda for the MHLC2 and the draft Declaration, which the FFC had prepared. It considered both as being “too vague” (Tarte 1998b: 7). Japan had clear ideas about what it wanted out of the MHLC2. These were

to delimit the objectives of cooperation ... water down references to application of the precautionary approach and to the provision of technical and financial assistance to the small islands states ... sought to stall implementation of the regional monitoring system and to protect its vessels from what it saw as undue enforcement measures (Tarte 1998b: 7).

Japan and other fishing states at the Majuro meeting would require patience. The United States believed that the draft conservation arrangements should apply throughout the range of the species, both within and beyond 200-nautical miles. The United States supported Japan’s claims that the management regime should include EEZs.

Taiwan was under no misapprehension regarding the FFC’s position in relation to its attendance at future MHLC negotiations. It was stipulated in a letter from the FFA Director to the Ambassador of the Embassy of the Republic of China that the name “Chinese Taipei” was considered the “only acceptable option” (FFA 3.12.96). Taiwan was suspicious that Australia had influenced the FFA’s decision before the MHLC1 regarding its nomenclature of Chinese Taipei (DFAT 14.12.94). By February 1997, however, Taiwan had agreed to its nomenclature

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Japan proposed extending the membership to Indonesia, the Philippines, Palau, Kiribati and the Federated States of Micronesia (FFC 29 1996: 11-12).

<sup>28</sup> The SPC in Noumea held the 1996 Technical Consultation on the Collection and Exchange of Fisheries, Data, Tuna Research and Stock Assessment. It considered such issues as: the data requirements for stock assessment work; current data deficiencies; data verification, validation and security; current arrangements for conducting tuna research and stock assessment; and future arrangements for data exchange, tuna research and stock assessment (FFA Director’s Annual Report 1996/97: 21).

<sup>29</sup> States that attended MHLC2 were: Australia, Taiwan, Cook Islands, Federated States of Micronesia, Fiji, French Polynesia, Japan, Kiribati, Marshall Islands, Nauru, New Caledonia, New Zealand, Niue, Palau, Papua New Guinea, China, Philippines, Korea, Solomon Islands, Tonga, Tuvalu, United States, Vanuatu, Wallis and Futuna and Western Samoa. Indonesia was unable to attend. Observers included Canada, FAO, Forum Secretariat, FFA, IATTC, SPC, SOPAC, and USP.



(DFAT 26.02.97). Taiwan attended the MHLC2 and all successive negotiations as Chinese Taipei, thereby acceding to China's diplomatic pressure.

Australia believed that the agenda for the MHLC2 should be kept as "simple and general as possible" (DFAT 17.01.97). This was to avoid giving the fishing states the impression that the Oceanic states were "pre-cooking the meeting's outcome" (DFAT 17.01.97). Procedural issues were not to be considered as a separate agenda item. This could "bestow MHLC2 with more autonomy as an independent process than FFA members were prepared to acknowledge at this stage" (DFAT 17.01.97). Most important, however, was Australia's opinion that to "maximise" the FFA membership's "control of the process", the MHLC2 meeting should be regarded as a "one-off, Forum initiated gathering that may generate some of its own momentum" (DFAT 17.01.97).

Australia's views were indicative of the uneasiness within the region regarding control over the MHLC process. While they were willing for the negotiations to be an opportunity to exchange the kinds of views expressed at the MHLC1, it was felt that the negotiations could eliminate the in-zone sovereign rights of the Oceanic states. This is a crucial issue for the region. The FFC

agreed to a consensus position ... which was to aim for a declaration stating the commitment of all parties to cooperate in regional arrangements in order to achieve compatible management measures (in zone and high seas) ... wide application of the precautionary approach, sharing of fisheries data and cooperation in MCS ... special importance to the region was explicit recognition of their sovereign rights to manage, exploit and conserve resources within EEZs (Tarte 1998b: 7).

The FFC wanted the FFA to play an important role in facilitating "the consultation and negotiation process" (Tarte 2001a: 15). While there were differences of opinion regarding the form of future management arrangements within Oceania leading up to the MHLC2 meeting, the FFC presented a regional bloc to achieve its agreed aims for the Majuro negotiations. It was not, however, the intention of the FFC to move too quickly at Majuro.

By late 1996, it was evident that the FFA wanted to secure the services of H.E. Ambassador Satya Nandan, a Fiji national, to Chair the MHLC process. In his December 1996 Statement to the General Assembly on item 28: Law of the Sea, H.E. Ambassador Laurence Edwards of the Marshall Islands to the United Nations notes

[T]he proud heritage of the Pacific has been capped this year by the election of H.E. Ambassador Satya Nandan of Fiji to the post of Secretary General of the International Sea Bed Authority ... Mr President, as you are well aware, Ambassador Nandan was a most able Chairman of the process which led us to the adoption of an Agreement on Straddling Fish Stocks and Highly Migratory Stocks (Republic of the Marshall Islands, 9 December 1996).

FFC30 in January 1997 agreed to invite Nandan to chair the MHLC2 negotiations. By then, Nandan had confirmed his availability for the position (DFAT 14.1.1997). His selection was, according to one observer, "an inspired choice", given his "expertise and achievements" in the

UNCLOS process, his Chairing of the Fish Stocks negotiations, and his solid ties to Oceania (Tarte 2001a: 14).<sup>30</sup> In his Opening Statement to the MHLC2 negotiations on 10 June 1997, Nandan noted that twenty years previously he had prepared a paper which had been presented at the 1977 Port Moresby Forum. That paper had advocated the establishment of a regional fisheries agency (FFA). Nandan commented that the years between the establishment of the FFA and the MHLC2 negotiations had not been wasted. That time had allowed for better relationships to be formed between the Oceanic and fishing states, as well as a greater understanding by the region of what was involved to manage its tuna resource. To enable “free and frank discussion” to take place, Nandan suggested that there be no record of the proceedings (MHLC2 1997: 8-11).

Nandan’s view that over an eighteen-year period a better relationship had been forged between Oceanic and fishing states is at odds with the analysis by Geen and Bergin (1995) in their Review of Tuna Management Arrangements in the Central Western Pacific. On the question of joint management decision-making structures between the region and fishing states, the authors believe that

At this stage, the relationship between the DWFNS and the FFA member countries is probably not sufficiently developed to enter into such arrangements, even in cases where they are seen to be desirable for conservation of certain tuna stocks. DWFNS, for their part, would be unlikely to demonstrate the necessary sensitivity to the concerns of FFA members or the willingness to make concessions that would meet the needs of island countries for control of resources within their zones (Geen and Bergin 1995: vi-vii).

This analysis is supportive of the view that the region already had in place effective regional mechanisms to ensure fisheries conservation and management. On the other hand, to bring about the acceptance by fishing states of conservation and management measures it was necessary to involve them in those measures, through a co-operative mechanism, such as a regional organisation.

Japan’s Country Statement at the MHLC2 meeting was blunt in its assessment that little had been achieved since the MHLC1. Japan considered the most important issue that the meeting should discuss was the “framework ... of the conservation and management measures” regarding the stocks concerned (MHLC2 1997: 33). Japan’s Statement was also dismissive of the principles of the UNCLOS and the Fish Stocks Agreement, believing that “we should start addressing ourselves to the real problems of the conservation and management of the highly migratory species” (MHLC2 1997: 34). This includes stocks in their entire range, both high seas and in-zone. Both Japan and Korea made specific mention of the system already in place

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<sup>30</sup> Tarte noted that Nandan led Fiji’s delegation to the UNCLOS III negotiations between 1973-1982. He “ ... played a key role in resolving issues relating to the EEZ concept ... helped lay the groundwork for the declaration of EEZs by Pacific island states and for the establishment of the FFA ... Later served as an Under Secretary General for the Law of the Sea...[and was] elected head of the International Seabed Authority” in 1996 (Tarte 2001a: 14).



in the region for Total Allowable Catch (TACs). Both countries disagree with TACs being laid down for highly migratory stocks. They dispute the practicalities of setting a TAC for EEZ zones. Rather, Korea and Japan believe the TAC should apply throughout the region (MHLC2 1997: 34).

Korea's Statement supported Japan's criticisms regarding tuna fishing conditions in the region, questioning the Vessel Monitoring System (VMS), the region's demands for higher access fees, the "tough requirements for fishing", and the "over-regulation and excessive responsibility" regarding skipjack, yellowfin and albacore (MHLC2 1997: 38). Korea argued that these resources "are self-renewable, and we can exploit them in virtual perpetuity" (MHLC2 1997: 38). Korea's Statement, however, does note that the Fish Stocks Agreement, with its emphasis on the precautionary approach and transparency, will "contribute to the realization of sustainable fisheries" (MHLC2 1997: 38). Korea then maintains that a "prudent" approach should be adopted regarding implementation of that Agreement and the application of the precautionary approach (MHLC2 1997: 38).<sup>31</sup> Korea's Statement notes that "owing to their domestic situations" many countries are not prepared to ratify the document (MHLC2 1997: 37-38). The Korean fleet's disregard for MCS measures is explained by the official Korean line that it is possible to exploit the tuna "in virtual perpetuity" (MHLC2 1997: 37-38).

Korea and Japan were the two main dissenting voices heard at the MHLC2 negotiations. Taiwan (Chinese Taipei being its formal nomenclature), merely notes that any "one-sided terms and conditions proposed unilaterally by one particular block of nations" would not necessarily be in its long-term interests (MHLC2 1997: 28). Rather, fishing and coastal states need to cooperate over "sensible and feasible conservation and management" ideas (MHLC2 1997: 29). Taiwan had been anxious for inclusion in the Fish Stocks Agreement and was incorporated as a 'fishing entity'. This gives it some degree of legitimacy in the global fisheries arena. It was keen to be included, for the same reasons, in the WCPF Convention.<sup>32</sup>

As a major fishing state active in the WCPO, the United States is careful to be supportive of Oceania in order to protect its fleet's access under the Multilateral Fisheries Treaty. There is, however, still a hint of political exigency about the priorities for the United States in the region. The United States' Statement notes that it is

important to our foreign policy to maintain this close relationship and to do what we can to promote economic development among Pacific Island States. The tuna stocks of the region are clearly of key economic importance to island economies (MHLC2 1997: 49).

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<sup>31</sup> Korea, like Japan, has signed the Fish Stocks Agreement, but has not ratified it.

<sup>32</sup> Taiwan has used other fishing regimes to try to gain state recognition. For example, it has filed an application to join the CCSBT (Commission for the Convention of Southern Bluefin Tuna). "The CCSBT is seeking a solution between Taiwan's desire to use CCSBT membership as diplomatic recognition of its "statehood" (CCSBT membership is limited to states) and diplomatic consideration to China" (Yoichiro Sato, *The Japan Times*: 7 June 2001).

Another element of United States interest in the MHLC process was the need to see “sound conservation” of the region’s fisheries stocks (MHLC2 1997: 49). These migratory stocks travel through United States waters and are harvested by its fleet. The “sound conservation” aspect also supports national interest, for example, the well-being of members of the United States fleet. Another element is the “economic health of our own tuna industry” (MHLC2 1997: 49). The United States is, therefore, preoccupied with national interests, both economic and strategic.

The Country Statements of the Oceanic states note their concerns in relation to the interests of small island states being protected in developing the necessary capacity to fulfill their obligations under the UNCLOS and the Fish Stocks Agreement. While not a regional microstate, Papua New Guinea made specific reference to the needs of small island states in its Statement. Kiribati’s closing remark, however, highlights its national interest, remarking that

[W]hile Kiribati fully support [sic] the concept of the future management arrangement, we would like to reserve our position on particular issues which we consider purely of national interest (MHLC2 1997: 36).

Throughout the MHLC process and in fisheries negotiations generally, Kiribati’s need to “reserve” its position has been a negative factor. However, Kiribati is dependent upon fisheries access payments. These reservations are, therefore, paramount to Kiribati.

Notwithstanding the airing of divergent preliminary stands at the MHLC2, the meeting adopted (by acclamation) the Majuro Declaration. The Declaration represents the first agreement between Oceanic and fishing states regarding the region’s fisheries resources. It is also the first time that tenets underpinning the Fish Stocks Agreement were used, “thus the region was a test case for the implementation of this new international regime” (Tarte 1998b: 8). The Majuro Declaration calls on fishing and coastal states alike to finalise the WCPF Convention within three years. It is to be fashioned on the requirements of the Fish Stocks Agreement. These requirements include

a mechanism for the conservation and management of highly migratory fish stocks in the region ... to cooperate effectively in the conservation and management of highly migratory fish stocks ... through application of the precautionary approach ... to [ensure] that conservation and management measures for highly migratory fish stocks in areas under national jurisdiction and those for the high seas are compatible ... collect and share ... complete and accurate data concerning fisheries activities ... cooperate in monitoring, control and surveillance of fishing activities ... provide financial scientific and technical assistance to Pacific island developing States and territories to enhance their ability to conserve, manage and sustainably use the highly migratory fish stocks of the region (Majuro Declaration).

It is significant that fishing states agreed to the Majuro Declaration. The Declaration is tied to the principles of the Fish Stocks Agreement. Neither Japan nor Korea has ratified that Agreement, yet they agreed to the Majuro Declaration. Their disagreement at later negotiating rounds over measures relating to the Fish Stocks Agreement caused controversy, particularly as they had agreed to the Majuro Declaration. Perhaps they considered the Majuro Declaration as ‘soft law’, and not binding, different to the ‘hard law’ of the Fish Stocks Agreement? Aqorau



(2002: 1) discusses the differences between soft and hard law in international fisheries instruments, noting that

Some of these instruments reflect “soft law”. These are represented by declarations, statements of principles, code of conducts or international plan of actions. Some instruments are “hard law” and are manifested in the form of international treaties that stipulate explicit rules governing State conduct over fisheries.

It should be remembered that at the Fish Stocks negotiations, it was not the preference of fishing states such as Japan and Korea to finalise a legally binding instrument (see de Fontaubert 1995).

The Chair raised the FFA’s involvement in his Closing Statement to the MHLC2, noting that the FFA will provide secretariat services for the negotiations and the inter-sessional meetings (MHLC2 1997: 16). This decision gave the region some control over the negotiations. A crucial issue, however, was the need to ensure continued funding of the MHLC process. MHLC2 was funded by a variety of donors, including some fishing states. Funding problems were a major irritant throughout the MHLC negotiations, not least because the FFA’s resources were over-stretched. The FFA provided the staff and resources necessary to organise each MHLC and to help in the development of MHLC policies (Tarte 2001a: 15).

The MHLC3 was scheduled for June or July 1998. Technical inter-session consultations would be held before that. The first meeting, in December 1997, would analyse the various options for the management of the region’s highly migratory stocks. The second meeting, in April 1998, would “develop options for monitoring control and surveillance”. Both inter-sessional meetings would prepare reports for consideration by MHLC3 (Chair’s Report, MHLC2 1997: 12-16).

The major outcome of the MHLC2 was the Majuro Declaration. The Majuro Declaration committed all states to complete the negotiations within three years. This would be a challenge for all parties to the negotiations. The willingness of fishing states such as Korea and Japan to agree to the Majuro Declaration had implications for their respective arguments at later stages of the negotiations. The unity displayed by the Oceanic states in highlighting the needs of small island states was an important factor in regional unity; for example, Papua New Guinea’s specific mention of small island states and their needs and aspirations. This is not to discount the national interests of some states, such as Kiribati, which is dependent on fisheries access fees. Nevertheless, eleven of the FFC delegations to the MHLC2 were led at ministerial level. This gave added weight to the commitment of the regional leadership. It also presented a strong face to the fishing states. The third meeting scheduled for Tokyo in a year’s time would test that commitment.

This Chapter examined the outcomes of the Fish Stocks Agreement that include the regulation of high seas fishing, specifically adjacent to EEZs. This is an important issue, because while most tuna is caught within 200-nautical mile EEZs, these stocks traverse high seas and EEZs. A second issue is the incorporation of the precautionary principle, which reflects

the pre-colonial conservation and management ethics of the region. A third issue is the requirement that fishing states provide details of bycatch, discards, fishing effort and catch levels. This is where the region demonstrated the effectiveness of collective diplomacy at the Fish Stocks negotiations.

These issues were important to the FFA membership, for example, the region's conservation and management ethic, dating back to pre-colonial times. A second positive factor was the strong indigenous leadership at the Fish Stocks Agreement by such individuals as Satya Nandan of Fiji, who chaired the negotiations. A third positive factor is the work undertaken by a small group which was led by Nandan (Fiji) and included Harwood (Australia), Murray (New Zealand) and Lodge (FFA), to draft the Fish Stocks Agreement. A fourth positive factor is the daily caucus of the FFC that strengthened the engagement of the Oceanic states of Fiji, Tonga, Kiribati, Papua New Guinea, Vanuatu and the Federated States of Micronesia. The region was united in its endeavours at the Fish Stocks negotiations and this unity helped the FFC membership to put in place those substantive provisions of a meaningful treaty. By doing so, the region would be better placed to achieve their objectives of regional fisheries co-operation.

The MHLC2 negotiations concluded with the Majuro Declaration. The Declaration was adopted by acclamation. The Majuro Declaration incorporates the ideals of the Fish Stocks Agreement. The Declaration was used at later negotiating rounds when fishing states, (which supported the Declaration) tried to dispute measures from the Fish Stocks Agreement being drafted into the negotiating text. By finalising the Majuro Declaration, the region committed itself to pursuing a co-operative arrangement with fishing states. The other side of the double-edged sword again demonstrates the difficulties faced by the Oceanic states which, on the one hand, wanted prescriptive measures for high seas fishing, yet on the other hand, were committed to a co-operative arrangement with fishing states.

An observer has said that one of the problems associated with the implementation of the Fish Stocks Agreement was an overemphasis on achieving a legal solution to what is essentially a technical fisheries management problem. What is needed for the region is to develop an effective fisheries management solution within the legal framework of that Agreement. This solution includes the management and allocation of the resource, jurisdictional arrangements for the high seas and the implementation of the Vessel Monitoring System (VMS), catch and capacity controls and other regulatory measures (Interview, Cartwright, May 2001).<sup>33</sup> The drafting of the Fish Stocks Agreement by Nandan (and helped by Harwood, Talbot and Lodge), reflect the preference for a legal solution. With a legal solution being used to pursue a co-operative arrangement, it was up to the region to harness its co-operative abilities to achieve the best outcome for the region. By the end of MHLC2, the region had laid the groundwork for such an outcome by finalising the Majuro Declaration.

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<sup>33</sup> Cartwright, now a Consultant, was the Deputy Director of the FFA during the MHLC process.



## CHAPTER SIX

### Riding the high tide

After the success of the Majuro meeting and the adoption by acclaim of the Majuro Declaration, the mood was positive in the region regarding the Multilateral High Level Conference on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific (the MHLC) negotiations. The next two negotiating rounds, MHLC3 at Tokyo and MHLC4 at Honolulu, represented the commencement of the serious side of the negotiating process. As was the case with the Fish Stocks negotiations, from the MHLC3, the negotiations were divided generally between fishing and coastal states, with the United States changing sides, depending on the issues under debate.<sup>1</sup>

This Chapter comprises five sections. The first section examines the MHLC3 negotiating round at Tokyo. The second section examines the MHLC4 negotiating round at Honolulu. At these two sessions, the distinct differences between the interests of fishing and coastal states over specific issues under negotiation became noticeable.<sup>2</sup> The third section explores the most important issues discussed at those two negotiating rounds.

Section four pauses for reflection on the realities preoccupying the major fishing states operating in the region from the mid-1990s to 2000. This section highlights the difficulties faced by fishing states whose operations were affected by changes in the global tuna economy, for example, fleet overcapacity, ageing fleets, continuing problems finding experienced crews, as well as the imposition of substantive treaty provisions aimed at regulating fleet activities. These difficulties created a context in which MHLC politics were conducted. The fifth section examines the region's joint ventures and domestic tuna industry from the mid-1990s to 2000. This section illustrates the difficulties faced by the region to achieve two specific objectives of regional fisheries co-operation; that of domestication of the tuna industry and indigenous control over the economic and political process of development of the tuna resource. While it could be argued that the region did achieve indigenous control in relation to implementing substantive provisions in meaningful treaties, indigenous control over joint ventures, or increasing the level of the tuna industry's domestication was not so certain.

Before moving on to an examination of the MHLC3 and MHLC4, it is useful to examine several of the more controversial issues which were debated at the negotiations and why they were important to the Oceanic states. First, the precautionary approach was a concept which originated with the campaign against driftnet fishing, its purpose being to err on the side

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<sup>1</sup> For example, on issues relating to monitoring, control and surveillance, the United States was aligned with the FFA states. On issues such as decision-making or the Convention area however, the United States was aligned with other fishing states.

<sup>2</sup> The comparisons between the Opening Statements made by individual delegations at MHLC3 and MHLC4 provide a useful source of differences. In addition, the reports of each of the negotiating rounds by an observer, Dr Sandra Tarte, of the University of the South Pacific (USP) provides supporting analysis.

of caution regarding fishing activity to limit any negative environmental impact (Doulman 2000a). Moreover, the lack of full scientific evidence should not be used as a reason for not applying the precautionary principle. The precautionary approach was supported by the Oceanic states at the Fish Stocks negotiations and reflects their pre-colonial conservation ethic, which in contemporary times is linked to one objective of collective fisheries diplomacy, that of sustainability. From this, it is evident that the costs involved in not adhering to the precautionary principle may lead to unsustainability of the resource. The benefits are sustainability of the resource.

Second, the issue of allocation illustrates a great divide between the fishing and Oceanic states. For the Oceanic states, allocation and the total allowable catch (TAC) are linked to their perceptions regarding sovereign rights.<sup>3</sup> The allocation issue covers “process and criteria for allocation, new entrants and dispute settlement” (Tarte 1999a: 11). The Oceanic states believe that they should control the TAC within their EEZs, the future WCPF<sup>4</sup> Commission allocating high seas TAC. Furthermore, in the Oceanic states’ view, the fish caught in their EEZs remain their resource. The view of fishing states, such as Japan, is that they have ownership over the fish they catch and that allocation should be region-wide and not divided. Japan believes that allocation should be distributed on the basis of historical catch in the area, which benefits its fleet. This approach denies the Oceanic states the ability to increase domestication or encourage indigenous control (Tarte 1999a: 11). For the Oceanic states, the issue of allocation is tied to all four objectives of collective fisheries diplomacy - that of sustainability, a fair return, domestication and indigenous control. Again, looking at the issue of costs, the fishing state approach to allocation denies the Oceanic states the right to develop domestication and indigenous control. Therefore, there are no benefits to the region.

Third, the FFA had put in place minimum terms and conditions (MTCs) measures through various regional and sub-regional instruments and they were controversial at the MHLC negotiations, for example, the observer program, transshipment and the VMS.<sup>5</sup> MTC measures reflect two objectives of collective fisheries diplomacy, those of sustainability and a fair return. It was through the implementation of MTCs under the Multilateral Fisheries Treaty, for example, the observer program, that the region was able to identify the illegal fishing practices of other fishing states in the region.

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<sup>3</sup> Just to review the meaning of sovereign rights; sovereignty means a state has exclusive rights, legal supremacy and powers over its lawful jurisdiction. Alternatively, sovereign rights prescribe control over a specific issue as a consequence of sovereignty. For example, Australia's sovereignty over its territorial sea means it has the sovereign right to exploit its resources as it see fit, or as may be allowed under international law. My thanks to Judith Swan and Mark Gray for their views on this distinction. See Akehurst (1991: 15-19) and Churchill and Lowe (1983: 130-132) for discussions on sovereignty and sovereign rights.

<sup>4</sup> *Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean* (WCPF)

<sup>5</sup> MTCs are also a part of monitoring, control and surveillance (MCS) measures that reflect conservation and management goals.



The observer program has both a compliance and a scientific role. Asian fishing states argue against the compliance role, citing the cost, the restricted space aboard vessels and “the problems of having “foreign’ observers” (Tarte 1999a: 14). For the region, the benefits outweigh the costs. The prohibition on transshipment at sea is designed to “verify catch and effort reporting, as well as generate more on-shore services and revenue for coastal states” (Tarte 1999a: 13). There are no costs for the region associated with this, but there are significant benefits. The VMS is supported by the majority of the FFA membership and provides a way of monitoring fishing fleet activities in the region. Japan has been a major opponent of the VMS, believing that confidential data from the fishing vessel should be first transmitted to the flag state and thereafter to the central monitoring hub. The FFA membership feels that this process allows for sanitisation of the data (Tarte 1999a: 14). In relation to costs and benefits to the region, the costs associated with implementing the VMS and maintaining it are outweighed by the benefits associated with automatic location communicators (ALCs), automatically transmitting a signal to a satellite and thence to a monitoring centre, or central hub, such as the FFA. The signal contains information regarding the location of fishing vessels in the region (Molenaar and Tsamenyi 2000).<sup>6</sup> This discussion is not inclusive of all those issues debated at the negotiations, merely some of these more contentious issues.

### **Section one: An appraisal of the MHLC3, Tokyo, June 1998<sup>7</sup>**

By the MHLC3 negotiating round, new entrants to the region’s tuna fishery had emerged with the European Union and France both expressing an interest in pursuing fishing access arrangements. This prompted questions by the FFC regarding over-fishing by the European fleets elsewhere in the world and raised concerns within the region regarding the European Union’s commitment to sustainable exploitation (FFC 34 1997). The push by the FFA to make the VMS a condition of fishing activity in the region caused problems with Japan and other fishing states (Tarte 1998c). Linked to these regional concerns regarding the tuna industry were the continued efforts of donors, such as Australia, to encourage economic reform and private sector development (Firth 2000a, Sutherland 2000).

Australia’s Statement to the FFC 34 meeting in November 1997 notes the need to “identify and articulate our own national and collective interest”. Further that

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<sup>6</sup> See also Forum Fisheries Agency 1999b.

<sup>7</sup> Delegations at MHLC3 were Australia, Taiwan, Cook Islands, Federated States of Micronesia, Fiji, France, French Polynesia, Indonesia, Japan, Kiribati, Marshall Islands, Nauru, New Caledonia, New Zealand, Niue, Palau, Papua New Guinea, China, Philippines, Korea, Samoa, Solomon Islands, Tonga, Tuvalu, United States and Vanuatu. Observers included Canada, the United Nations Food and Agriculture Organisation (FAO), Forum Secretariat, Forum Fisheries Agency (FFA), Inter-American Tropical Tuna Commission (IATTC), Secretariat of the Pacific Community (SPC), and the University of the South Pacific (USP).

Forum Leaders and Economic Ministers have committed themselves to an Action Plan for economic reform and development in the region. Sustainable management of resources – and particularly our important fisheries resources – is an important part of that commitment. We must ensure that what happens in FFC is consistent with and contributes to broader regional work on sustainable economic development (FFC 34 1997: Attachment D).<sup>8</sup>

Australia's linking of economic reform with the fisheries sector indicated that conditionality would be attached to the provision of fisheries aid, based on the implementation of good governance policies and economic reforms, thus binding Australia's policies with the prevailing global neo-liberal agenda.<sup>9</sup> Hence, Australia gave support to the ideals of "privatisation, 'downsizing', liberalisation of trade, transparency, accountability and management reform" (Fry 1999: 25-26). Overall, because of the land tenure issue and the limited capital investment in the region, there is a small private sector and island communities are dependent upon the public sector for both investment and services.<sup>10</sup>

Aside from the neo-liberal demands of donors such as Australia at that time, the two inter-sessional meetings during the year before the MHLC3 helped to maintain the momentum of the MHLC negotiations. The fisheries management inter-sessional meeting recommended defining the geographical scope of the *Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific* (WCPFC Convention). Other recommendations included the specific stocks to be managed and the encouragement of participation by coastal states from the Western Pacific region, for example, Indonesia. A workshop took place in Honolulu in May 1998 to study relevant issues surrounding the application of the precautionary approach. The meeting identified funding constraints for data collection and scientific evaluation (Tarte 1998b: 9, Tarte 2001a: 16).

The monitoring, control and surveillance (MCS) inter-sessional meeting, held in Fiji in March 1998, supported the region's stand on the Regional Register, the Niue Treaty, the regional observer program and the VMS.<sup>11</sup> The meeting recommended to the forthcoming MHLC3 negotiating round that

The overall objective of MCS is to ensure compliance with conservation and management measures adopted through the Regional Arrangement. In carrying out this objective, the Regional Arrangement should adopt MCS measures which are compatible with existing MCS measures (MHLC 1998a: 5).

<sup>8</sup> The Forum Economic Ministers Meeting held at Cairns, Australia on 11 July 1997, agreed on an Action Plan. The Plan covered Economic Reform, Public Accountability, Investment Policies, Tariff Policies and Multilateral Trade Issues in the region (online < <http://www.forumsec.org.fj> date accessed 5 April 2002).

<sup>9</sup> Neo-liberalism and the belief in a globalised economic policy support an open global trading system that is free of government restrictions. For a discussion on globalisation and neo-liberalism, see Scholte 1997.  
<sup>10</sup> This includes the often-disastrous attempts at investment in the tuna industry by the public sector (see Chapters Three and Four).

<sup>11</sup> The Intersessional was attended by Australia, Taiwan, Cook Islands, Federated States of Micronesia, Fiji, France, Japan, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, People's Republic of China, Philippines, Republic of Korea, Samoa, Solomon Islands, Tonga, Tuvalu, United States and Vanuatu (MHLC 1998a).



The existing MCS measures in the region include those incorporated within the Multilateral Fisheries Treaty and those relating to the United States Lacey Act.<sup>12</sup> From the discussions, it was evident that fishing states

were beginning to bridle at the way in which FFA Regional Terms and Conditions and the UNIA were being used by coastal States to support a push for high MCS standards for the regional arrangement. This was particularly noticeable in the case of VMS, transshipment and the compliance role of observers (Cartwright 1999: 21).

This decision to use existing MCS measures would lead to disagreement at later MHLC negotiating rounds. Fishing states believed that the new Commission should finalise MCS measures. It must be remembered that MCS conditions helped to form the backbone of Oceania's achievement in regional fisheries co-operation.

What the inter-sessional meetings illustrated was the sensitive issue of weighing up the rights and responsibilities of port state, flag state and coastal state. In the absence of a regional instrument, the Fish Stocks Agreement calls for flag state responsibility on the high seas and coastal state responsibility within an exclusive economic zone (EEZ). If a regional instrument had been put in place, then it sets out the requirements for high seas boarding and inspection. It was agreed that the Fish Stocks Agreement's prescriptions would prevail, pending the conclusion of a regional regime.<sup>13</sup> The issue "masked deep reservations on the part of a number of DWFNS, which became evident in subsequent negotiations" (Tarte 2001a: 17).<sup>14</sup>

Five weeks before the Tokyo negotiating round the Chair circulated draft articles in the form of a discussion paper designed to

Ensure, through proper management, the long-term conservation and sustainable use of highly migratory fish stocks in the western and central Pacific ocean in accordance with the 1982 Convention and the 1995 Agreement (MHLC3 1998b: 36).

By doing so, Nandan hoped to generate discussion of those issues requiring negotiation. When these were discussed at the FFC 35 meeting in May 1998, (one month before MHLC3), several states expressed anxiety that matters were moving too fast and that time would not allow a unified regional stand to be developed. States felt that due concern must be given to the loss of power over in-zone management when the new regime was established, as it would cover stocks across their entire range (FFC 35 1998a).

A divisive element, as well as a negative external factor, emerged when Japan announced it would only fund travel to Tokyo for those Oceanic states with which it had

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<sup>12</sup> Under the *Lacey Act*, FFA states, in conjunction with the United States, can seek the prosecution of foreign fishing vessels which infringe their fisheries laws and who subsequently attempt to discharge fish caught illegally at U.S. ports (Aqorau 1998: 232). The *Lacey Act* has provided a significant deterrent to illegal fishing activity or 'bad actors' in fishing and has facilitated improved compliance rates in the WCPO (Aqorau 1998: 233).

<sup>13</sup> This decision is in accordance with Article 8.2 of the Fish Stocks Agreement which states, "[P]ending agreement on such arrangements, States shall observe the provisions of this Agreement and shall act in good faith and with due regard to the rights, interests and duties of other states".

<sup>14</sup> DWFNS are distant water fishing nations.



bilateral access arrangements.<sup>15</sup> In a letter to Mr Tatsuo Saito, Head of the Japanese delegation, the FFC 35 Chair notes the “united” stand taken by the 16 member countries at FFC 35 that the funding made available for the Tokyo MHLC “should be made available on a non discriminatory basis” (DFAT 12.6.1998). The letter went on to state that, given the high travel costs involved, FFC members had even gone so far as to look at alternative venues within the region for the next meeting. The FFC Chair’s letter annoyed Saito. Saito’s response to the FFC Chair states that

the respective budget items were subject to various conditions and limitations, such as the restriction to use the appropriation only in Japan in case of some budget items *or to be used only in connection with certain countries* (DFAT 12.6.1998 italics added).

Apart from the perceived preference for PNA members (except for Fiji), the incident emphasises the lack of long term funding for the MHLC process. It draws attention to the fact that the FFA was powerless to control the financial aspects of running the process. The FFC 35 meeting notes its concern regarding Japan’s provision of funding. For example, the money remained in Japan’s hands and could not be used by the MHLC Secretariat. Further, the money “was being used in a discriminatory manner” and that it was seen as “an attempt to fragment regional solidarity” (FFC 35 1998: 15). One observer notes that some people travelled to Tokyo business class, while other people travelled economy class (Interview, Cartwright, May 2001).<sup>16</sup> The region has dealt with Japan for a long time, however, and it was pragmatic about Japan’s attempts to splinter solidarity over this issue. As an extra-regional power in the Western and Central Pacific Ocean (WCPO), Japan may have been attempting to limit the abilities of the region to manage the process.

The MHLC3 negotiations in Tokyo attracted large delegations. For example, Japan’s delegation comprised 55 officials. There were 25 delegates from the United States, 22 delegates from the Philippines, 15 delegates from Taiwan, 13 delegates from the Republic of Korea (Korea), 10 delegates from Australia, and 7 delegates from both China and France. By attracting such large delegations, there was a clear perception by fishing and coastal states that the negotiations would change the way that tuna fishing is conducted in the WCPO.<sup>17</sup>

The Chair steered the conference through his circulated draft articles, one by one. Two meeting styles were adopted which were used in subsequent negotiating rounds. Open plenary discussed the draft articles and delegations proposed alternative text. Where articles raised contentious issues, the meeting split into small working groups, which were convened to resolve differing perspectives (Tarte 2001a: 19). Nandan had used this operating style during the negotiations for the Fish Stocks Agreement and the small working groups became an important focus for later MHLC negotiations. From the MHLC3 until the conclusion of the MHLC7, the

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<sup>15</sup> At that time, those states were Solomon Islands, Kiribati, Federated States of Micronesia, Marshall Islands, Tuvalu, Nauru and Fiji (Tarte 2001a).

<sup>16</sup> Ian Cartwright, now a consultant, was the Deputy Director of the FFA during the MHLC negotiations.

<sup>17</sup> By the MHLC7, for example, the United States delegation comprised 43 representatives.



FFC met in caucus regularly during the negotiations. Nandan also gave the FFC a “special pre-conference briefing” (Tarte 2001a: 19).

According to one observer, the MHLC3 marked a turning point in the negotiating process. Japan, like all the other participants, received the Chair’s draft articles in advance of the Tokyo meeting. Japan then put forward alternative text. Every time Japan tried to present alternatives, it was

shot down by New Zealand and Australia. Arguably, some of their suggestions improved the text, but we just said no, the only text we will accept is the Chairman’s text. We embarrassed the Japanese in front of hundreds of their industry people (Interview, Cartwright May 2001).

Having been overruled so comprehensively in front of its constituency, Japan emerged from the MHLC3 negotiations aggrieved, its position hardening at subsequent negotiating rounds. The FFC membership had stood its ground, presenting a unified bloc at the Tokyo negotiations. The membership realised that regional solidarity would be essential at future negotiations, however, they also realised that compromise may be required in order to finalise the future agreement (Tarte 1998c: 10).

At the end of the third round of negotiations, the draft text illustrated the Oceanic states’ commitment to their inviolable rights over in-zone, MCS and TAC issues. The draft text reflected the rights of coastal states and highlighted the obligations of fishing states. Nonetheless, it was evident that Japan had tried to apply pressure under its bilateral arrangements with certain of the Oceanic states, for example, Kiribati.<sup>18</sup> This was illustrated by the “virtual invisibility” of some island delegations at FFC caucus meetings of the MHLC3 negotiations (anonymous).<sup>19</sup>

In Axline’s (1994b: 29) examination of this type of situation, he believes that a state (such as Japan), as an external factor in influencing the outcome of negotiations, would have “taken steps to influence the calculation of costs and benefits” in sidelining members of the regional coalition. On the other hand, Axline (1994b: 28) also argues that there are factors which can influence individual members of the coalition in relation to important issues of national interest, for example, a state’s domestic political and economic situation, as well as its reliance on aid. Put plainly, Kiribati’s revenue from fishing license revenue in 1998 totalled US\$24.9 million. Kiribati’s annual budget in 1998 was \$US\$36.5 million (Keith Reid, 2000d).

Rumours abound within the region regarding payments in brown paper bags to individuals from the Oceanic states. Currying favours in this way has always been a less-than-savoury aspect of the region’s tuna industry. It has also been an external force used to try to

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<sup>18</sup> The FFC had decided to move ahead with the VMS and increase its regional registration fee from US\$200 to US\$500 per vessel. This led to pressure being applied by Japan and other fishing states regarding bilateral access arrangements (DFAT 3.7.1998).

<sup>19</sup> Another delegate remarked that “Kiribati is the worst, some senior people are in the pockets of the Japanese” (anonymous).



challenge those objectives of regional fisheries co-operation, for example, the sustainability of the tuna resource by undermining conservation and management measures.<sup>20</sup>

There were clear dividing lines on the outcome of the MHLC3 negotiations. The FFC, other coastal states and the United States were firm on issues relating to the precautionary approach and other MCS matters. On questions of membership and TAC, the United States was aligned with the fishing states. The allocation issue was always going to be difficult. The Japanese approach, in particular, of promoting fishing effort levels, rather than fishing catch levels, would have the effect of minimising the rights of Oceanic states over their tuna resource.<sup>21</sup> The FFA states needed to maintain their collective stance at the MHLC4 and beyond, to retain their control over the process. It was equally clear that the fishing states needed to work on the Chair, and to employ divisive tactics with individual FFA members, to tilt the process more towards their favoured outcomes.

### **Section two: An appraisal of MHLC4, Honolulu, February 1999<sup>22</sup>**

Australia and New Zealand believed it was necessary to encourage the Oceanic states to speak out publicly in defence of issues under debate at the MHLC4. Fishing states, such as Japan, would then realise that the FFC's more developed members were not manipulating the Oceanic states.<sup>23</sup> Furthermore, Japan would realise that the Oceanic states were serious about the issues at hand (DFAT 03.07.98, interviews with New Zealand's delegation). The FFC's daily caucus at the previous MHLC negotiations helped to formulate a regional position on specific issues. Nevertheless, Australia and New Zealand had always spoken individually. Now that the negotiations were about to get to the substance of issues, observers argued that the Oceanic states needed to speak individually. By allowing the FFC to speak for everyone, individual Oceanic states were vulnerable to suasion by others (DFAT 03.07.98, interviews with New Zealand's delegation).

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<sup>20</sup> These views were told to the author by a variety of observers of the region's tuna fishery. One anonymous story concerned an Oceanic state delegation (state 'a'), which met a fishing state delegation (state 'b') in Guam to discuss a bilateral fisheries access agreement. Upon reaching Guam, state 'a' was told of a change of plans. The delegates were then flown to the capital of state 'b', in spite of their protests regarding inappropriate clothing. The delegates from state 'a' were provided with three new suits of clothing and 'gifts' and they were 'feted' for several days, in return for a favourable outcome to the negotiations.

<sup>21</sup> By setting effort levels, (which would be linked to historical catch records and the effort required to achieve that catch), the Japanese fleet could maintain, or increase its fleet numbers (if it needed to), to ensure that its effort level corresponded with its historical catch figures. In this way, as catch levels can fluctuate seasonally, the Japanese fleet is assured of maintaining its catch level at whatever high harvests it has enjoyed historically. This scenario would exclude domestic catch significantly, as it does not have a bountiful historical catch history.

<sup>22</sup> Delegations at MHLC4 were Australia, China, Cook Islands, Federated States of Micronesia, Fiji, France, French Polynesia, Indonesia, Japan, Kiribati, Marshall Islands, Nauru, New Caledonia, New Zealand, Niue, Palau, Papua New Guinea, Philippines, Republic of Korea, Samoa, Solomon Islands, Taiwan, Tonga, Tuvalu, United States of America, Vanuatu and Wallis and Futuna. Observers included Canada, Mexico, the European Commission (EC), FAO, Forum Secretariat, FFA, IATTC, SPC and USP.

<sup>23</sup> It was believed among the fishing states that Australia and New Zealand made the decisions for the FFC membership, particularly in the early stages of the negotiations (interviews with Australian and New Zealand delegation members, October-December 2000).



The Chair circulated an Information Note to all delegations in advance of the MHLC4 negotiations. The Note emphasises the need for “consideration of a number of key substantive issues ... with a view to arriving at agreement on them” (MHLC4 1999a: 32). These include “the convention area, issues relating to allocation ... minimum terms and conditions of fishing, enforcement, institutional arrangements, decision making and dispute settlement” (MHLC4 1999a: 32). Nandan clarified these issues at the FFC 37 meeting at Honolulu immediately before the MHLC4 negotiations.

At that FFC 37 meeting, it was decided to deny the European Union’s request to become a full participant at the negotiations. Instead, it would continue to attend as an observer. The demonstration of “real interest” by the European Union in the region’s tuna fishery was considered tenuous (FFC 37 1999a: 1). The FFC’s decision to deny the European Union full membership to the MHLC process was not taken lightly. FFC members believed the European Union might retaliate by denying the region access to the European tuna market (FFC 36: 1998b, FFC 37: 1999a). This did not eventuate.

The United States Government’s hosting of the MHLC4 negotiating round at Honolulu, supported its commitment to conclude a WCPF Convention. The FFC held caucus sessions regularly throughout the meeting over issues of concern to the region, for example, membership, allocation, TAC and Convention area. The Legal Working Group (LWG) within the FFC worked hard at the MHLC4, setting out comprehensively such issues as the area of application, in-zone management functions, and enunciating the duties of coastal states for in-zone management and the duties of the Commission in the Convention’s zone (Tarte 1999a: 5).

Japan maintained its prominent objection to the Chair’s draft text at the commencement of the MHLC4 by tabling a draft convention document

wherein basic rights and obligations of the parties and skeleton of the framework of the Commission are clearly defined, with the details left for the commission to decide, as is usual [sic] the case with other fisheries commissions which have been working successfully (Japan’s Statement, MHLC 1999b: 15).

Japan was supported in its attempt to table an alternative draft text by other Asian fishing states, notably Korea and China (Tarte 1999a: 6). For example, China’s Statement notes that the current draft text “had a number of details, such as observer on board, minimum terms and conditions”, adding that “there includes too many of these details to allow agreement to be reached in the short term” (MHLC 1999b: 10.).

There are important issues to be remembered regarding Japan’s Statement and the support provided by Korea and China. The MHLC process represents the first time multilateral fisheries negotiations were undertaken in accordance with the prescriptions of the Fish Stocks Agreement. Japan’s rationale was that the Chair’s draft text contained too much detail, most of which should be left to the Commission to finalise. The Oceanic states were concerned about substantive issues being left to the Commission to resolve. This could result in the fishing states



applying pressure to the Oceanic states by forcing their agreement to watered down provisions by withholding their funding to the Commission (Tarte 2001a: 21). What concerned most other participants regarding the Japanese text was the

danger of watering down provisions established by the UNIA; that the removal and deletion of key articles (for the sake of brevity) would undermine the objectives of conservation and management (Tarte 1999a: 6).<sup>24</sup>

It was not a successful manoeuvre by the Asian fishing states, as the conference focused on the Chair's draft text.

One Australian observer notes that what he really found encouraging at the MHLC4 conference and gave him heart about the success of the negotiations, was the "warm and fuzzy" atmosphere (Interview, Jusseit, April 2001).<sup>25</sup> He felt participants demonstrated a

sense of moral responsibility to look after the resource and they were going to sit down and work together and forget about our personal political suasions (Interview, Jusseit, April 2001).

The MHLC4 was considered a good outcome for the region by most observers interviewed, including Jusseit. One delegate notes that the Conference Chair had remarked that following the MHLC4 "Japan was critical of his leadership and willingness to take up the views of the fishing states" (Interview, Hughes, November 2000).<sup>26</sup>

One factor was singled out as making a difference at the MHLC4. These were the regular meetings convened by the FFC's Legal Working Group (LWG). This had resulted in the FFC bloc being involved at the meeting by regularly putting forward draft text for consideration (Tarte 2001: 24). This was strengthened by the refusal of the MHLC Chair to

weaken compliance and enforcement measures, as well a water down decision making and references to the precautionary approach (Tarte 2001a: 24).

The outcomes of the MHLC4 negotiating round favoured the FFC membership. By working as a united bloc and participating actively in the meeting, the region ensured that the draft text was representative of their concerns. These included the progress on issues such as the precautionary approach, the VMS and transshipment. These outcomes occurred because of the LWG's active participation, the FFC Chair at the time, Moses Amos, who helped to maintain a united regional bloc through regular caucus sessions and the support of the MHLC Chair for the region's objectives. On the other hand, the fishing states went away from the MHLC4 unsettled about the limited power they had exercised over the process. The outcome of MHLC4 demonstrated the importance that unity can play in negotiations. The fishing states did not comprise a united bloc in the same way that the FFC bloc did.

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<sup>24</sup> 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 (known as the Fish Stocks Agreement, or the UNIA).

<sup>25</sup> Hans Jusseit works for the East Coast Tuna Industry and was a member of Australia's MHLC delegation.

<sup>26</sup> Neil Hughes works for Environment Australia and was a member of Australia's MHLC delegation.



A major outcome of the MHLC4 meeting was the decision to establish a Commission, once the WCPF Convention was in place.<sup>27</sup> Subsidiary committees would include a Scientific Committee as well as a Compliance and Technical Committee, both staffed by Commission members (Tarte 2001a: 22). In order to be cost-effective, it was considered that where possible, the Commission should draw on the services of existing scientific bodies, such as the Oceanic Fisheries Program of the Pacific Community (Tarte 2001a: 22). The Convention area, the observer program, transshipment, high seas boarding and inspection and the VMS are among those issues discussed at the MHLC3 and the MHLC4. They are examined below.

### **Section three: The major issues negotiated at the MHLC3 and the MHLC4**

At the MHLC3 Indonesia expressed strong views regarding the WCPF Convention Area by emphasising the sovereignty of coastal states over archipelagic waters and the difficulties involving semi-enclosed waters (FFA 1998F: 2). Japan stated its inability to sign an arrangement without having the geographical boundary specified for stock management (FFA 1998f: 2). The Chair's Summary notes the open northern boundary and that the southern boundary needs to comply with the Commission for the Convention of Atlantic Marine Living Resources (CCAMLR) (MHLC 1998b: 36).<sup>28</sup> Furthermore, the eastern boundary needs to take account of French Polynesia, Pitcairn Island and the Inter-American Tropical Tuna Commission (IATTC) boundaries, and the western boundary is difficult because of the South China Sea and the Celebus Sea. Nandan believed they needed to strike a balance "between two very important elements; political circumstances and scientific or biological considerations" (MHLC 1998b: 36).

#### *Convention Area*

By MHLC4, Japan wanted the WCPF Convention's boundary defined as far north as 50°. This would result in Russia, Japan, Taiwan and Korea being included as coastal states. It would also incorporate other species, such as northern Pacific albacore and northern Pacific bluefin.<sup>29</sup> Neither of these two species is relevant to the region. There would be complexities with the northern boundary set at 50°. These complexities include the status of Taiwan as a coastal state and the inclusion of Russia as a member of the WCPF Commission. The extension northwards to include Korea, China and Japan as coastal states has the potential of making difficulties (Interview, Gray, March 1999).<sup>30</sup> If the northern boundary went as high as 50°, there would be an erosion "of FFC dominance as small island States in the Convention area" (FFC 39 1999b:

<sup>27</sup> Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific.

<sup>28</sup> According to Lorraine Elliott, CCAMLR's boundary itself is "vague" on the Antarctic/Southern Ocean convergence (Personal communication, May 2001).

<sup>29</sup> That said, northern bluefin have been caught as far south as Fiji (FFC 39 1999b: 32).

<sup>30</sup> Mark Gray works for the Department of Foreign Affairs and Trade and was a member of Australia's MHLC delegation.

32). This could result in a 'siege mentality' within the ranks of the FFA membership and might undermine regional co-operation.

The proposal was complicated by Japan's demand that the Commission should have separate geographical committees. This includes a separate northern committee, where the "subregion's unique geographic, fisheries patterns and the compositions of members involved as coastal states and fishing participant should be reflected" (Japan's Statement MHLC 1999a: 16). In so doing, "different standards and regulations would apply" (Tarte 1999a: 8). The major fleets in the north Pacific are the Japanese and the United States, with Canada having a minor fleet. There is a difference between the northern and southern albacore stocks (Interview, Heikkila, April 2001).<sup>31</sup> One delegate remarked that Japan could control the sub-regional committees (anonymous).

The FFC bloc was apprehensive in relation to the prospect of a northern sub-committee. Japan asserted that the committee would focus on the high seas fishing activity in the area by small trolling boats, "which did not have the means of meeting the more stringent regulations elsewhere" (Tarte 1999a: 8). A concern of the FFC members was the possibility that the committee could "divide and weaken the overall regime", as well as block others from "any management role in that northern area" (Tarte 1999a: 8).

The western and eastern borders of the WCPF Convention area were also contentious. Apart from disparate sovereignty claims in the South China Sea, the inclusion or exclusion of the archipelagic waters of Indonesia and the Philippines made the western boundary difficult to resolve (Tarte 1999a: 8). The Chair foreshadowed this in his Information Note, which states that

[B]ecause of the conflicting claims to a number of islands in the South China Sea, it was suggested by some that the western boundary should be adjusted to avoid areas under controversy, but include, as far as possible, the important fishing and spawning grounds (MHLC 1999a: 32).

The archipelagic waters of Indonesia and the Philippines are important fishing grounds and excluding these waters from the WCPF Convention area could undermine the Commission's work.<sup>32</sup> The Solomon Islands and Papua New Guinea complicated this issue, both requesting that their archipelagic waters be excluded from the Convention area, thus demonstrating the primacy of national interests (1999a: 8).<sup>33</sup> French Polynesia insisted that its EEZ be included, as its important southern albacore fleet is not covered under the conditions of the IATTC,<sup>34</sup> though "falling within their overall area of competence" (Tarte 1999a: 8). This issue made the eastern boundary difficult. The representatives from the United States tuna industry were unhappy, as it would require their fleet being "subject to dual (possibly conflicting) regulations" (Tarte 1999a:

<sup>31</sup> Wayne Heikkila works for the Western Fishboat Owners Association and was a member of the United States' MHLC delegation.

<sup>32</sup> See the map of the Convention area at Figure 7.1, Chapter 7, page 184a.

<sup>33</sup> This is in line with Papua New Guinea's attempts to exclude the Multilateral Fisheries Treaty from its archipelagic waters.

<sup>34</sup> Inter-American Tropical Tuna Commission (IATTC)



8).<sup>35</sup> These regulations include the WCPF Convention and the IATTC. French Polynesia argued, however, that it is not easy to accept “[B]eing artificially separated from other sectors of the maohi people” (French Polynesia Country Statement MHLC 1999a: 14).

The Chair was lobbied intensively regarding the WCPF Convention’s boundaries, the revised area incorporating the southern section of French Polynesia, exclusion of the archipelagic waters of the Philippines and Indonesia, and the inclusion of the EEZs of Korea and Japan, up to 42° north and 50° west (Tarte 1999a: 9). Provision was made for a northern management sub-committee, which is authorised to “make recommendations to the Commission on measures to be applied in that area” (Tarte 1999a: 9). The concept of an open-ended northern boundary, managed by a northern sub-committee of the Commission was a serious issue for the FFC bloc. Not only did it mean that different conditions will apply in that northern area, but also that major fishing states might sit at the Commission’s negotiating table as coastal states, thus heightening the vulnerability of the Oceanic states. The fact that the northern sub-committee has to submit its recommendations to the Commission made this issue more reassuring for the Oceanic states (Tarte 1999a: 9). It means, however, that the region will have to maintain a united front at the Commission’s negotiating table over any measures the northern sub-committee may want to instigate.

### *Allocation*

Allocation was a difficult issue at the MHLC3 and subsequent negotiations. The Oceanic states, led by Nauru, believed that the new WCPF Commission should set a global Total Allowable Catch (TACs). Allocation would be then decided for either high seas or in-zone (EEZ). Flag states would control the high seas TAC, while the coastal states would decide the TAC split between EEZs (FFA 1998f: 19). This was not Japan’s perspective. Rather, allocation should relate to past and present fishing effort (historical catch levels) and have no bearing on coastal state demands for in-zone TACs (FFA 1998f: 19, Tarte 1998c: 5). By tackling the allocation issue in this way, Japan would not only “secure its share of the fishery”, but would “effectively remove ownership of the resource from the Pacific island states” (Tarte 1998c: 9). This would result in the Oceanic states having minimal advantage in access arrangement negotiations. The Chair dispelled any worries the Oceanic states might have in this regard, stating that

measures adopted by coastal states in-zone and those adopted on the high seas “should not undermine the other. The same standards must apply”. Moreover, while “The Commission is entitled to adopt measures providing direction for the application of in-zone measures ... It is the prerogative of the coastal state to manage EEZs and licensing arrangements”. The key restraint was that once an overall TAC for a stock had been decided and allocation between high seas and EEZs made, “that TAC should not be breached” (Tarte 1998c: 8, quoting from the Chair’s remarks made during the plenary sessions of the Conference).

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<sup>35</sup> In my interview with Heikkila (U.S Western Fishboat Owners Association and member of the United States’ MHLC Delegation, April, 2001), he also expressed concern over this issue.

Allocation is the key to the management of the region's tuna fishery. That is why other interested fishing states, such as those under the umbrella of the European Union, are keen to be included in the negotiations. Without participation, they will not be eligible for allocation. It is also important to the Oceanic states. Their long-term goal is to increase domestication of the industry, which will require increased allocation. It is not in their regional, or national, interests to allow Japan to control the allocation issue. It has the capacity to undermine all of the objectives of collective fisheries diplomacy, that is; sustainability, a fair return, domestication and indigenous control. The allocation concept also drove that conservation ethic of the pre-colonial island communities, when families, villages or chiefly systems maintained, for the most part, a judicious control over terrestrial and marine resources (Johannes 1976).

This issue divided the parties to the MHLC4 negotiations. The FFC bloc maintained its right to set domestic TAC for EEZ fishing activity. The bloc conceded that the Commission could co-ordinate this, as well as setting a TAC for the high seas. The FFC membership did not consider it appropriate that the Commission "impose management and conservation measures on coastal states" (Tarte 1999a: 12). Rather, it was the responsibility of fishing states to accept EEZ regulations and "follow compatible standards on the high seas" (Tarte 1999a: 12). The FFC group was supported by Indonesia and the Philippines on this issue, as it is recognised that approximately 60% of the catch is harvested within the EEZ of the FFA region (Tarte 1999a: 12). According to Willock (Interview, January 2001),<sup>36</sup> the issue did not receive the support of fishing states, including the United States, as they believed that when finalising allocation there should be no distinction drawn between the EEZ and high seas. The leader of the United States delegation, Mary Beth West, made this issue more controversial during the MHLC4 negotiations by stating "I can't believe we have been sitting at the same table, this is a non-starter" (Interview, Willock, January 2001).

Japan was forthright on this point, arguing that

[I]f anyone is thinking of receiving national in-zone quota and by selling it a price with a expectation of higher economic return, I must say it is totally wrong. Allocation of highly migratory species by small areas is biologically and statistically nonsense, since the catch in a small area fluctuates year to year (Japan's Country Statement MHLC 1999b: 16).

The allocation issue split fishing and coastal states. Japan has a tendency to perceive ownership or rights in terms of who catches the fish. Japan's concern is to hold market share and it is in Japan's interests to have other countries wind back their fisheries effort. Hence, Japan has seized upon global moves to limit fisheries effort. Through the auspices of the United Nations

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<sup>36</sup> Anna Willock works for TRAFFIC Oceania, a non-governmental organisation, which is part of the Worldwide Fund for Nature (WWF). Previously Willock worked for the FFA. Willock attended the MHLC negotiations in both capacities.



Food and Agriculture Organisation (FAO), Japan has called for lowering of fishing capacity, to downsize fleet sizes.<sup>37</sup> At MHLC4, Japan noted that

[E]ven in the area of the western and central Pacific some of the species, such as bigeye tuna, cause doubts for any further development .. [I]n other areas of the world ocean, most stocks of the tuna resources are already fully or overexploited and fishing capacity is becoming redundant. This is the reason why Japan decided to reduce 20 per cent of its distant water longline fleet following the advice of the FAO. We will take measures to totally scrap these vessels so that they should not increase fishing pressure in our region ... [B]ut the same vessel reduction measures might not occur in other countries, or in other fleets ((Japan's Statement, MHLC 1999a: 15).<sup>38</sup>

For Oceania's coastal states, however, tuna harvested within their EEZ "remains their resource (subject to both rights and obligations)" (Tarte 1999a: 12). The Chair tried to resolve the impasse by drafting a new article in line with the Fish Stocks Agreement's support of the rights of coastal states. The new draft article stipulates that

T[t]he principles and measures for conservation and management enumerated in article 5 shall be applied by coastal States within areas under national jurisdiction in the Convention Area in the exercise of their sovereign rights for the purpose of exploring and exploiting, conserving and managing highly migratory fish stocks (MHLC 1999a: Annex 5 Article 7.1)

Thus, thanks to the intervention by the Chair, the FFC's position was strengthened by this draft provision.

### *Decision-making*

Another contentious issue at the MHLC3 and the MHLC4 related to methods of decision-making. The FFC membership was clear about its preference for decision-making by consensus, but agreed with the Chair's fallback position of a voting process. This was not the preference of the fishing states. The United States supported a consensus voting procedure, or an objection procedure, arguing that the United States Senate might not support a process which bound an individual country to a majority view (FFA 1998f: 20-21, Tarte 1998c: 6). Korea and Japan maintained that they would not be bound by a three-quarters majority vote, as the 16-member FFA states could out-vote the fishing states. Japan stressed that this is unacceptable to the 5 states that catch most of the tuna. The retention of an objection clause was important because Japan needs to protect its national fishing industry. China also supported a consensus procedure (FFA 1998f: 20-21, Tarte 1998c: 6). Fishing state anxieties focused on the number of coastal states who could out-vote them at the Commission's negotiating table. The FFC membership, however, did not want one fishing state holding the balance of power over decisions. This is possible with the inclusion of an objection clause.

<sup>37</sup> See the FAO's Press Release 98/62, which called for fishing capacity to "be drastically reduced to rebuild stocks of ... temperate tunas on the high seas" (FAO 1998i).

<sup>38</sup> While Japan did scrap some of its longline fleet, the boats scrapped were older vessels. An observer argues that Japan will not be prepared to face the situation on adjustment of its fleet (Interview, Lack, December, 2000). Lack is a consultant, but worked formerly with the Australian Fisheries Management Authority (AFFA). In that former capacity, Lack was a member of Australia's MHLC delegation.

This issue remained intractable at the MHLC4. The Chair wanted to ensure that the WCPF Commission would require three-quarters majority and provide for a review tribunal. While this generally met with the support of the FFC members, the LWG group highlighted such problems as decision-making delays and endless review and procedures for reviews, disputes and appeals (Tarte 1999a: 18). Australia wants voting decisions, rather than consensus, because some fishing states could hold up the decision-making process by disagreeing with every decision (Interview, Gray, March 1999). Japan, Korea and Taiwan argued for binding decisions to have the support of those parties that harvested three-quarters of the region's catch. This argument was quashed by the FFC membership. The Samoan delegate noted "that such a system recalled the 'discrimination' of regional arrangements [specifically the SPC] during the colonial era" (Tarte 1999a: 19). No agreement was reached on this issue.

### *Enforcement issues*

The debate over the establishment of a compliance and enforcement committee divided fishing and coastal states at the MHLC3, although the United States agreed with the FFC's call for such a committee. The Asian fishing states did not support an observer program which included compliance measures. They believed enforcement was a flag state responsibility. Japan argued that "too much emphasis is laid on compliance and enforcement aspect [sic]" (Country Statement MHLC3 1998b: 18). Asian states instead promoted the idea of incorporating this committee into a technical committee which could look at these issues "as need arises" (Tarte 1998c: 6). Japan argued that "flag state enforcement was paramount", but it was the Chair's view that the role of observers is significant and that it will require additional deliberation (FFA 1998f: 23-24). The FFC bloc and the United States are committed to the observer program as it is an integral aspect of the Multilateral Fisheries Treaty as well as forming part of the region's minimum terms and conditions.

The deliberations over the observer program continued at MHLC4, along with transshipment and the VMS. The region has consistently argued against transshipment on the high seas. First, it makes monitoring of catch and effort hard to facilitate, compounds the issue of illegal fishing and therefore has an impact on the level of fishing access payments to the Oceanic states. Second, it denies the Oceanic states of the opportunity to provision fleets because of the motherships that restock and refuel fishing vessels on the high seas. Fishing states applied pressure to "water down provisions in the draft text that restricted and regulated transshipment" (Tarte 1999a: 14). This was not agreed to by the FFC states as they believe that the lack of clear guidelines on this issue could lead to "blanket authorisation" for transshipment on the high seas (Tarte 1999a: 14). The draft text at the conclusion of MHLC4 prohibits transshipment at sea "in the Convention Area beyond areas under national jurisdiction" (MHLC 1999a: Annex 5 Article 30.3).



In relation to the observer program, it was argued by the Asian fishing states that observers were foreign, took up valuable space on board, created logistical difficulties and involved financial cost. Japan also argued that observers should not have a compliance or monitoring role, rather they were to carry out a specific scientific role (Tarte 1999a: 14). It was noted that observer costs would be covered under the WCPF Commission's work program. The Asian fishing states, however, preferred to see this issue omitted from the WCPF Convention document. The issue was not resolved. The FFC group was of the opinion the wording of the draft article lacked strength, thereby creating opportunities for "delaying tactics or obstruction" of the program (Tarte 1999a: 14).

### *Vessel Monitoring System (VMS)*

Along with transshipment and the observer program, the VMS also forms part of the region's MTCs. Japan had already protested about the FFA's imposition of a regional VMS. The argument that some of Japan's smaller vessels lacked the necessary space for the VMS equipment is unfounded. The transponder is the size of a small box. Nevertheless, Japan maintained that the VMS used by the FFA region is "not compatible with that used by Japanese vessels elsewhere" and expressed disquiet regarding data confidentiality and the cost of the VMS technology (Tarte 1999a: 14). In defiance of these arguments, the Solomon Islands announced that it had implemented a new Fisheries Act, which requires fishing vessels to carry the VMS equipment. The Solomon Islands Statement note that its own domestic tuna industry considers "the capital and operating costs of the VMS to be reasonable" (MHLC 1999a: 22). If vessel operators refuse to comply with the new arrangements, the Solomon Islands will seek alternative vessel operators. The Solomon Islands decision resulted in the Japanese fleet not renewing its fishing access arrangements. Kiribati, on the other hand, was seen to be lagging behind with the VMS implementation. This would have been due, in no small part, to pressure being exerted on it by Japan (Interview, Gray, March 1999). The amended draft article, however, calls on all members to fit the VMS technology.

In the discussion on the related issues of boarding and inspection, Japan argued that there was no need for this clause "if there existed a regional VMS and observer program" (Tarte 1999a: 15). Japan also attempted to have removed most of the draft text article relating to compliance and enforcement. While China and Korea supported Japan's attempt, the United States, however, sought additional text for "non-discriminatory trade measures" against any party that attempts to "undermine" the regime, specifically those measures relating to monitoring, control and surveillance (MCS) (Tarte 1999a: 15). The Chair included this additional text, albeit with the reluctance of Korea, China and Japan. Through the United States' intervention, MCS measures, integral components of the region's fisheries conservation and management measures, were protected in the draft text.

### *Precautionary Approach*

The precautionary approach is an important aspect of effectiveness and it is contained within one of the objectives of regional fisheries co-operation, that of sustainability. As discussed in Chapter Three, the precautionary approach was first applied in relation to the banning of driftnet fishing. At the MHLC3, Japan and Korea argued that the article should be deleted as it contains “too much detail and unnecessary at this stage [sic]” (FFA 1998f: 15). Korea maintains that it is important to guard against the indiscriminate use of the precautionary approach. Likewise, Taiwan notes that

[F]or the fishing industries, an unpredictable precautionary principle inhibits efficiency and realistic fishing planning, and increases the costs and risks of doing fishery activities. For the larger international community, the uncertain precautionary principle impedes the development of rational, coordinated, and predictable fishery conservation and management policy (Country Statement MHLC 1998b: 29).

The purpose of the precautionary principle is to err on the side of caution regarding fishing activity to limit any negative environmental impact, thus

States shall apply the precautionary approach widely to conservation, management and exploitation of straddling fish stocks and highly migratory fish stocks in order to protect the living marine resources and preserve the marine environment (Article 6(1), Fish Stocks Agreement)

Furthermore, the lack of full scientific evidence should not be used as a reason for not applying the precautionary principle. Taiwan’s ratification of the Fish Stocks Agreement was facilitated by its inclusion as a fishing entity. Its criticisms of the precautionary approach, therefore (an essential component of that Agreement), is at odds with its stand at the MHLC negotiations. The Chair’s revised text after the MHLC4 reflects the wording of the Fish Stocks Agreement by providing details of the precautionary approach.<sup>39</sup> This was a definite win for the region because the precautionary approach represents a global shift in environmental norms and forms the basis of conservation and management measures as laid down in the Fish Stocks Agreement. How do we understand this win against the fishing states? Did the MHLC Chair favour the region, given his background at the Fish Stocks negotiations? The lack of unity between the fishing states up to MHLC4 contrasted strongly with the unity of the FFC bloc, which benefited from good leadership, the hard work of the LWG and the evident regional co-operation between the FFC members. This led to collective diplomacy on issues such as the precautionary approach and the support of the MHLC Chair, resulting in a draft negotiating text which favoured their outcomes.

### *High seas enclaves*

Another important issue for the Oceanic states at the MHLC3 were high seas enclaves, given that the unique characteristics of the region results in fishing being carried out in high seas enclaves or pockets, adjoining an EEZ. The geographical specificity of the region links states

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<sup>39</sup> See Article 6 of the draft WCPF Convention at the conclusion of MHLC4.



via these high seas enclaves, or pockets.<sup>40</sup> For this reason, the Oceanic states wish to see fishing effort controlled in these enclaves, or pockets. This results in those adjacent Oceanic states having special interests, and therefore rights, over those high seas enclaves, or pockets. Papua New Guinea's Statement notes the "special interests that the surrounding states have in their sound management" (Country Statement MHLC 1999a: 20). Fishing states, however, (in particular Japan and China), argued against any special consideration being attached to high seas enclaves, or pockets, on the grounds of 'creeping jurisdiction' (Tarte 1999a: 10). They felt that such consideration was not included in the Fish Stocks Agreement, which only specified special rights "where the high seas pocket is surrounded by just one EEZ" (Tarte 1999a: 10). The FFC bloc was successful on this issue, the draft text at the conclusion of MHLC4 notes the "special interest of the States surrounding such pockets of high seas" (MHLC 1999a: Annex 5 Article 8.4).

### *Membership*

This contentious issue competed with disagreements over membership and 'real interest' at the MHLC4. The extension of the northern boundary could bring in other states, for example, Russia. As noted above,<sup>41</sup> the European Union was refused membership to the MHLC process because it could not demonstrate a 'real interest' in the region's tuna fishery. Canada, which attended the MHLC4 as an observer, had also been lobbying for membership. This created discord between the fishing states. Japan disputed Canada's claim of having a "significant fishing presence in the area" as none of the Canadian fleet was registered to fish in the region (Tarte 1999a: 10). The Chair, however, considered that Canada should be granted admission for three reasons. First, it has a history of southern albacore fishing in the region. Second, it is a Pacific coastal state. Third, it has given staunch support for regional fisheries development and, through its commitment to the Fish Stocks Agreement, it is a steadfast adherent of effective fisheries conservation and management (Tarte 1999a: 10). Canada was granted membership to the negotiation process at the conclusion of the MHLC4. Because of the Chair's articulation of 'real interests', the European Union and Mexico were denied full membership.

### *Scientific Committee*

Aside from the emotive issue of 'real interests', there were other divisive issues negotiated at the MHLC4. The discussions on scientific arrangements noted that there are two specific matters to be resolved. The first is the establishment of a Scientific Committee, to be located within the Commission. The second is the provision of separate, autonomous scientific advice to

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<sup>40</sup> These enclaves are located between the Federated States of Micronesia, Papua New Guinea, Marshall Islands, Nauru, Kiribati, Solomon Islands, Tuvalu, Fiji and Vanuatu. Enclaves located between Palau, Federated States of Micronesia, West Papua and Papua New Guinea. Between Australia (Norfolk Island), New Zealand, Vanuatu, Fiji and Tonga. Enclaves located between the Cook Islands, Kiribati and French Polynesia. Enclaves are also located between Kiribati, the United States (Palmyra Islands) and the Cook Islands.

the Commission. The United States recommended that the Oceanic Fisheries Program (OFP), which is housed within the Pacific Community (SPC), could provide this advice. Unless scientific advice is provided independently, the United States believed it could lead to disagreement within the WCPF Commission. Japan argued that it had no wish to see the Scientific Committee “subordinated to, or weakened by, a scientific staff” (Tarte 1999a: 16). The FFC membership was amenable to the new draft text on this matter, which notes that scientific staff could make recommendations to the Commission directly and through the scientific committee (Article 13 draft WCPF Convention, Tarte 1999a: 16).

### *Included species*

At the MHLC4 there was also debate regarding the specific stocks to be included in the WCPF Convention’s work. While the four main tuna species would be covered (skipjack, bigeye, albacore and yellowfin), the FFC was not happy about subsidising the WCPF Commission’s work on those stocks not of direct relevance to the region. This includes those stocks to be covered by the northern management sub-committee.<sup>42</sup> One scientific observer stated that the MHLC process is concentrating on these four major stocks and that, compounding this, the process is run by diplomats and bureaucrats “who have no understanding of basic fisheries management” (Interview, Ward, November 2000).<sup>43</sup> Ward points out that scientists had tried to put their concerns to the Australian delegation regarding other stocks, such as swordfish, important to Australia, New Zealand, Fiji and Hawaii.<sup>44</sup> Because of the pace of the negotiations to get the WCPF Convention in line with the Fish Stocks Agreement, however, these concerns were not allayed.<sup>45</sup> The draft negotiating text at the end of MHLC4 does state, however,

that the Commission may decide to add such other species of fish to the list of highly migratory species listed in Annex of the 1982 Convention as it considers necessary (MHLC 1999a: Annex 5 Part 1 Article 1 (f)).

The issues discussed above were the most contentious debates at the MHLC3 and MHLC4. They represent the ideological divide between fishing and coastal states. For the most part, these issues also embody that pre-colonial conservation ethic which guided fisheries resource management. What is demonstrated from the above discussion was the determination

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<sup>41</sup> See p 155.

<sup>42</sup> For example, northern Pacific albacore and northern Pacific bluefin.

<sup>43</sup> Peter Word works for the Bureau of Resource Sciences (BRS) and was a member of Australia’s MHLC delegation.

<sup>44</sup> In Part 1, Article 1 (f) of the draft negotiating text at the end of MHLC4, it was noted that the highly migratory fish stocks covered those stocks as outlined in Annex 1 of the UNCLOS, which were found in the Convention area. While that Annex includes Albacore, Bigeye, Skipjack and Yellowfin tunas, it also includes Bluefin, Blackfin, Little and Southern Bluefin tunas, Frigate mackerel, Pomfrets, Marlins, Sailfishes, Swordfish, Sauries, Dolphin, Oceanic sharks and Cetaceans.

<sup>45</sup> One issue that has arisen regarding stocks is the preoccupation of the PNA group, the FFA and the SPC of the purse seine industry for harvesting skipjack. While skipjack is the single most valuable resource, it is largely confined to the PNA countries (Interview, Talbot, October, 2000). Talbot works for the National Institute of Water and Atmospheric Research Limited (NIWA) and was a member of New Zealand’s MHLC delegation.



by the FFC bloc to participate in a significant way at the MHLC3 and the MHLC4 to ensure that the region's concerns would be incorporated into the draft negotiating text. The FFC either succeeded in having its concerns included in the draft negotiating text, for example, high seas pockets, the precautionary approach, transshipment and MCS measures, or the issues were not resolved and will be revisited at MHLC5, for example, allocation and decision-making. As mentioned earlier, having good FFC leadership, the support of Australia and New Zealand, strong support through the LWG, the support of the United States for most issues and a Conference Chair who supported their outcomes, all combined to help the FFC bloc's effectiveness in collective diplomacy . The lack of unity within the fishing states resulted in their inability to influence the draft negotiating text, apart from the issue of the northern management committee.

#### **Section four: Foreign commercial tuna operations from the mid-1990s to 2000**

Section four examines the activities of the major fishing states in the region since the mid-1990s. The over-supply of tuna for the canning sector, the increase in flags of convenience-registered (FOC) tuna vessels, ageing fleets, labour problems and new entrants to the region, such as Spain, were major issues in this period. The MHLC negotiations did not occur in a vacuum, but were instead reflective of the competing demands of national interests within the global tuna economy. To obtain some sense of this context we need to examine the activities of the major fishing states in the region since the mid-1990s. The over-supply of tuna for the canning sector, the increase in flags of convenience-registered (FOC) tuna vessels, ageing fleets, labour problems and new entrants to the region, such as Spain, were major issues in this period.

### *China*

According to the SPC Yearbook (1998), China commenced its WCPO operations in 1988 with 7 longliners. Its fleet peaked in 1994 with 456 longliners but fell to 116 longliners in 1997-1998. Recent FFA Director's Reports have noted the decline in importance of the Chinese fleet during 1997-1998. The 1998 Report notes that there are only 78 Chinese vessels on the Regional Register, down from the 116 recorded by the SPC as fishing during the 1997-1998 registration year (Forum Fisheries Agency 1998). Nevertheless, some observers maintain that even though the Chinese effort to date has not been successful, the fact that

even if only 10% of China's population reach income levels of Japan then there will be a huge domestic tuna market in China (Haward and Bergin 1996: 170).

These observers note that looking ahead to fishing activity in the 21<sup>st</sup> century, the large Chinese labour pool will be beneficial. They also suggest that Taiwanese capital could finance the expansion of China's tuna fleet with the ultra-low freezing technology (ULT) (Haward and Bergin 1996: 170).<sup>46</sup> On the other hand, it is also argued that China, (as well as Japan), has no understanding of environmental protection. Furthermore, that the Chinese are more difficult negotiators than the Japanese; that they are "thugs" (Interview, anonymous).

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<sup>46</sup> Haward and Bergin (1996: 171) include the following footnote: "It should be noted that Japanese officials are particularly concerned about the growth and the sustainability of China's operations in the Western Pacific, many of them operating under Taiwan trading companies. Japan does not believe that China will continue to increase its effort in the Western Pacific as they have done in recent years. Japanese officials also note that China's catch is being landed at many ports and catches are not being reported accurately. Import data only does not report the port of shipment, not the actual catch, nor always who is actually catching. Some Japanese fishery scientists believe that China is 'secretly' fishing for tuna".



The support China provided Japan at the MHLN negotiations reflects an attitude that is more concerned with fleet freedom from regulatory requirements than fleet support for monitoring, control and surveillance. Linked to this is Haward and Bergin's (1996: 170) analysis that suggests that it is only a matter of time before Chinese fleet effort expands further into the WCPO and that domestic requirements will dictate this necessity. Clarke supports this analysis, believing that, with the wind-down in the Korean and Taiwanese fleets, there is a possibility that China will take over in the region (Interview, April 2001).<sup>47</sup>

### *Japan*

Japan's increasing level of diplomatic activity in Oceania resulted in a Tokyo Summit being convened in October 1997 with the Forum states. While the Summit focused publicly on the region's economic development, including trade, investment and tourism, it also provided the opportunity to enhance Japan's role as the largest donor to the region (excluding Australia's commitments to Papua New Guinea) (Finin and Wesley-Smith 1997). By 1997, Japan had embassies in Papua New Guinea, Fiji, Solomon Islands, Federated States of Micronesia and the Marshall Islands (Ministry of Foreign Affairs of Japan 1997). Apart from Fiji, these states are Parties to the Nauru Agreement (PNA) members, with rich tuna resources.

Japan's purse seine fleet in the region went from 4 vessels in 1969, peaked at 39 vessels in 1988 and declined to 35 vessels in 1998. Pole and line vessels in the region totalled 622 in 1953, peaked at 715 in 1955 and declined to 162 in 1997 (SPC Yearbook 1998). As at 2000, Japan had 255 longline vessels listed on the Regional Register (McCoy, Rodwell and Tamate 2000). At an Asian Pacific Economic Community (APEC) meeting in July 1999, Japan called on other fishing states to reduce their vessel numbers as a means of preserving tuna resources, as laid down by the United Nations Food and Agriculture Organisation (FAO) (Kyodo News International 13.7.1999). While Japan used the FAO as a vehicle in calling for fleet size reductions, its reasons were motivated more by the need to protect its own fleet harvests and safeguard its domestic market than FAO environmental concerns. Japan had, by March 1999, retired 132 longline vessels, out of its global fleet of 650 (Kyodo News International 13.7.1999). Japan then called on those states to which it had supplied fishing vessels in the past, for example Taiwan and Korea, to reduce their fleet capacity.

Unfortunately, however, these calls have only encouraged fleets to reflag their vessels to Flags of Convenience (FOC) registries. In relation to the overall themes of this thesis, the existence of FOC registries in the region can work against the achievement of the objectives of

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<sup>47</sup> Les Clarke works at the FFA and was an FFA Secretariat observer to the Preparatory Conference for the WCPF Commission at Christchurch in April 2001.

Oceania's collective diplomacy. FOC registries in Oceania include the Marshall Islands and the Cook Islands.<sup>48</sup> The expansion of FOC registries have signalled a growing attraction by some to regulatory freedom generally regarding issues such as "labour conditions, management powers, accounting standards, financial arrangements, exchange control and property rights (van Fossen 1992: 3). Specifically, reflagging fishing vessels to open registries enables fleet owners to bypass national conservation and management requirements, as well as undermining such calls as those by Japan, to restrict fleet numbers. For example, when Japan and Korea agreed to limit Korea's tuna exports to Japan and to limit Korea's fleet size, Korean fleets simply reflagged to open registries to avoid the restrictions.

It is estimated that as of 1996, approximately 20% of fishing fleets operating on the high seas globally are FOC-registered vessels (Bergin and Haward 1996: 77, see also Haward and Bergin 2001: 95-96). In October 1999, Mitsubishi Corporation, which controls approximately 30% of Japan's tuna market, issued a directive generally to all those in the tuna market to cease "buying, selling or dealing with FOC caught tuna" (Bergin and Haward 1996: 77). The directive specifically called on members of its own organisation and all other Japanese trading companies to refrain from trading with FOC-caught tuna and "actively co-operate in the elimination of the FOC system" (International Transport Workers' Federation 22.10.1999).<sup>49</sup> The Mitsubishi Corporation said in a Press Release that the company

and our affiliates voluntarily declare that we will not engage in any commercial transactions of fish caught by the fishing vessels on the list, and that our transportation vessels will not receive or transport fish caught by the fishing vessels on the list and that we will carry out all other acts in accordance with the purposes of the administrative guidance (17.12.99).<sup>50</sup>

The increase in FOC-registered tuna vessels is a disturbing issue for the region's efforts to implement conservation and management measures and achieve the objective of sustainability. Japan has demonstrated a concern on this issue which is focused on maintaining the stability of its domestic tuna market. Swamping its domestic market with FOC-caught tuna could be a disaster for its own tuna industry. The reflagging of fleets, from fishing states such as Taiwan and Korea reflect the increasingly regulated environment in which they are expected to operate. For example, the negotiations to conclude the Fish Stocks Agreement and the negotiations to conclude the WCPF were occurring alongside the decisions by these states to reflag to FOC registries.

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<sup>48</sup> A quick search of the Internet located a site specifically detailing flags of convenience registries and their services. Registries as at 16.05.2001 include Antigua & Barbuda, Belize, Cambodia, Cayman Islands, Costa Rica, Cyprus, Delaware (US), Gibraltar, Honduras, Liberia, Malta, Netherlands Antilles, Republic of Georgia, Republic of the Marshall Islands, Panama, St Kitts & Nevis, St Vincent & the Grenadines ([www.flagsofconvenience.com](http://www.flagsofconvenience.com)). The Cook Islands was listed on another Internet site relating to flags of convenience registers ([www.fotw.ca/flags/flagconv.html](http://www.fotw.ca/flags/flagconv.html), as at 09.05.2002).

<sup>49</sup> See also letter from Greenpeace to Mitsubishi, <http://www.greenpeace.org/mitletter.html> on 17.12.1999.

<sup>50</sup> See <http://www.mitsubishi.co.jp/>.



*Republic of Korea (Korea)*

Korea's longline operations in the WCPO started in 1958 with two vessels. It peaked in 1974 with 220 vessels and at 1998 totalled 169 vessels. Figures for Korea's WCPO purse seine industry show that activity commenced in 1980 with 2 vessels. The fleet expanded to 39 vessels in 1990 and then decreased to 26 vessels in 1998 (SPC Yearbook 1998). In relation to FOC vessels fishing in Oceania, it has been estimated by the SPC that during 1997

there were at least 5 ex-Korean long-liners flagged in Panama, 2 ex-Korean long-liners flagged in Honduras .. [and] there were also 2 ex-Korean purse-seiners flagged in Panama (Bray 2000: 24).

From the above figures, the Korean fleet appears to be in decline. Haward and Bergin 1996: 170) have dismissed the Korean industry as a long-term competitor, given its insufficient funds and the fact that it relies heavily on large subsidies. Korea also has an ageing fleet and "even bigger labour problems than Taiwan" (Haward and Bergin 1996: 170). As with Taiwan, the Korean government has had limited ability to control the activities of its tuna fleet, Oceanic observers noting the compliance record of Korea, in particular, has been weak (interviews with Oceanic delegates, April 2001). By reflagging to FOC registries, the Korean fleet hopes to avoid those monitoring, control and surveillance measures, being negotiated for both the Fish Stocks Agreement and for the WCPF Convention. By supporting Japan at the MHLC negotiations, Korea hoped to lessen the regulatory measures under debate.

*Spain*

Spain's sphere of influence in Oceania died with its defeat in the 1898 Spanish-American War. It relinquished Guam to the United States and sold its Micronesian interests to Germany. Spain's visibility in the region did not reappear until 1998. By October 1998, the European Union had sought licenses for up to 20 large fishing vessels, the majority being from Spain (Pacific Islands Report 7.10.1998). What had created the sudden interest in Oceania's tuna resource? Simply, that the tuna stocks in the Atlantic and Indian Ocean were under pressure. Add to that a European Union comment that it wanted some reciprocity from the region for the aid which the states receive (Keith-Reid 3.3.2000). There have been other factors involved, for example, a condition of Spain's membership of the European Union was its agreement not to fish in the Union's waters, but rather distant waters (de Fontaubert 1995). Spain then proceeded to over-fish off the coasts of Namibia and Canada. After being pushed out of these waters, Spain needed new fishing grounds.

Given Spain's "alleged poor compliance record", Kiribati has incorporated "rigorous conditions" on the Spanish fleet's licences, under a fisheries access agreement concluded in late

1999 (Keith-Reid 3.3.2000).<sup>51</sup> Concerns were raised about the agreement by the FFA and the Pacific Islands Forum, both of whom noted that the European fleets - among them Spain - were entering the region because “they had depleted their own fishing grounds in the Atlantic Ocean” (Pacific Islands Report 21.2.2000). The Spanish fleet had been tuna fishing for some time in the Eastern Pacific fishing grounds of Panama, Ecuador and Guatemala (Keith-Reid 3.3.2000). The fleet had moved towards the Kiribati’s Line Islands and had requested the use of Kiritimati Island as a transshipment port. Keith-Reid notes that it was Kiribati’s belief that unless it licensed the Spanish vessels, they would fish in these grounds illegally. The agreement provides payment of more than 6% of the catch value. Asian fleets have refused to pay more than 4-5% of the catch value.

Regional observers, while on the one hand deploring the actions of Kiribati in licensing the Spanish vessels in the wake of a regional decision not to do so, have nevertheless stressed the inability of a country, such as Kiribati, to forego such a revenue bonanza (Interview Oceanic delegates, April 2001). Kiribati has a land area of just 810 square kilometres, however its ocean area totals 3,550,000 square kilometres. This makes surveillance of its EEZ impossible. Observers are keen to emphasise, however, that while Kiribati had stretched the boundaries of regional co-operation, it had not broken those boundaries.<sup>52</sup>

There is no doubt that Spain will become a more important player in the region. The European Union has been negotiating with the FFA over other access arrangements with, for example, France, which has sought licenses to fish in the EEZ of New Caledonia (Pacific Islands Report 7.10.1998, FFC 45 2000d).<sup>53</sup> In mid-1998, the FFA held talks in Brussels regarding the European Union’s interest in purse seine operations in the WCPO. While at that time the European Union was talking about a multilateral treaty with the region, similar to that of the Multilateral Fisheries Treaty, this seems to have been dismissed in favour of bilateral access arrangements (observer interviews, April 2001).

Like Japan and the United States, the European Union believes that its aid contributions to the region give it the power to extract fishing access agreements from the FFA membership. At the time the Multilateral Fisheries Treaty was finalised, the American Tunaboat Association (ATA) “refused to pay more than a small proportion of the commercial rate” for access to FFA waters, requiring the United States government to provide the remainder, “from its aid budget” (Nero 1997: 377). Industry pays approximately US\$4 million, which is divided among the vessels. The United States government’s aid budget pays the remaining US\$14 million of the

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<sup>51</sup> Furthermore, Kiribati had signed an agreement with Spain in spite of the fact that, as a member of the MHLN negotiations, it had agreed to an MHLN5 Moratorium excluding new members from admission to the process.

<sup>52</sup> Observers wished to remain anonymous.

<sup>53</sup> New Caledonia, as a dependent territory of France, is not a member of the FFA, or any of the Forum’s family of organisations, which are restricted to the region’s independent states. To fish in the region, the French fleet needs to be licensed through the FFA’s Regional Register.



US\$18 million Treaty per year (DFAT 12.2.98). At that 1998 meeting in Brussels, the FFA membership notes that it

would not wish to see any confusion between grant aid, training and other forms of technical assistance and fisheries access. Whilst it is apparent that access arrangements have yielded other benefits, we are wary of arrangements that link aid funding with access and other arrangements. In this regard, we would also not wish to see linkages with access and Lomé IV negotiations (Forum Fisheries Agency 30.6.1998).

In the same way, while Japan argues that its fisheries access agreements are separate to its Oceanic aid policies, it concedes that the priority of an aid project could be affected by Japan's fishing access relationship with a particular coastal state (see Bergin and Haward 1996: 74).

### *Taiwan*

Taiwan's longline fleet activity in the region commenced in the WCPO in 1964 with 12 vessels peaked in 1976 with 194 vessels and declined to 52 vessels by 1998. Its WCPO purse seine activities, on the other hand, increased from 3 vessels in 1983 to 42 vessels in 1998 (SPC Yearbook 1998). One advantage of Taiwan's tuna industry, in comparison to that of either Japan or Korea, is its lower overheads, particularly for crew. Taiwan is also aware that reflagging vessels to FOC registries will work against its good standing in the international community.<sup>54</sup> In November 1999, in an effort to curtail over-fishing, Japan and Taiwan reached agreement on the level of compensation paid to Taiwan by Japan for the decommissioning of fishing vessels which had been operating under FOC open registries (Bray 2000: 14, see also Haward and Bergin 2001: 95-96). In relation to the Taiwanese fleet's use of open registries, an industry official notes that some members of the industry

had not always been 'good students' of Taiwan's international relations and had caused 'many headaches' for government. These problems are associated with the recognition issue and Taiwan's desire to be seen as a 'responsible fishing nation' (Haward and Bergin 1996: 150)

In addition, the SPC found an ex-Taiwanese longliner flagged in Belize that was operating in the region during 1997 (Bray 2000: 24). Unlike Japan, the Taiwanese and Korean governments have found it difficult to control their fishing fleets. So, while at the government level, there may be agreement on international conservation and management measures, getting industry on side to implement the measures has not been successful. This has been reflected in the defiance by the Korean and Taiwanese fleets of regulatory measures in Oceania and their history of illegal fishing activities.

### *United States*

As was discussed in Chapter Three, the interests of the United States in the Oceanic region are based primarily on geostrategic considerations. United States concerns regarding China's

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<sup>54</sup> It is believed that between 80-100 Taiwanese long-line vessels are reflagged (Haward and Bergin 1996: 165).

strategic expansion into Asia are related to its continued traditional freedom of access in the Asia/Pacific region and explain the United States' continuing need for compliant Oceanic states (see Stratfor 2000). Some observers argue that the end of the Cold War and its policy of 'strategic denial' to thwart the Soviet Union's expansion into the region may have led to a decline in the strategic interests of the United States in Oceania (see Kiste 29.1.01).<sup>55</sup> Rather, it seems that the United States remains strategically committed in the region. Admiral Blair notes that the Honolulu-based Pacific Command is able to "successfully enhance security without conflict" (31.01.01). He goes on to say that

We can, *In Asia*, successfully manage the development of countries which are developing their power – China, India, Russia, Indonesia (Blair 31.01.01 italics added).

Thus, the United States needs access in Asia in order to "successfully manage" developing countries, such as China. This access is predicated on access through Oceania. Hence, the United States will continue to regard its Micronesian defence strategies as crucial.

The United States purse seine fleet rose from 3 vessels in 1976, peaked at 62 vessels in 1983 and declined to 39 vessels in 1998 (SPC Yearbook 1998). Its purse seine fleet was regulated following the October 1986 conclusion of the Multilateral Fisheries Treaty, which has allowed for up to 50 of its purse seiners to fish within agreed areas of the FFA region. The 1998 figure of 39 purse seiners reflects the impact that excess global capacity has had on the industry. At the 1998 Multilateral Fisheries Treaty talks, United States and FFA officials noted that this problem had been exacerbated by the recent collapse in the price of tuna for the canning industry, which had followed a year of steady tuna market prices. It had also not been helped by the continued landings of small fish by fleets such as Taiwan and Korea. These landings contributed to an already oversupplied market, resulted in decreased prices and affected negatively the tuna resource's value (FFA Director's Annual Report 1998).

To date there have been two main fishing powers in the region, and both of them have applied leverage to gain access to the rich fishing grounds of Oceania. With Spain, and perhaps the rest of the European Union's fleet vying for access, you might expect to see more competition and more gain to the FFA members. This may not necessarily follow. While Spain is paying slightly more in access fees, its reputation elsewhere precedes it regarding defiance over monitoring, control and surveillance initiatives. Kiribati's actions can be understood in terms of its limited revenue sources, the impossibility of policing its vast EEZ, the realisation that the Spanish may well have fished regardless and that Kiribati should take advantage of the offer and receive some level of access fees. This reflects a costs and benefits approach to Spain's fishing access. As will be discussed in Chapter Seven, the European Union is anxious

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<sup>55</sup> In this regard, Fry notes that the demise of the Cold War led to the "nuclear-armed B52s" being "withdrawn from Guam and the fall-back needs in Palau reassessed" (Fry 1999: 6).



to establish a presence in the region's tuna fishery before the allocation issue is negotiated at the yet-to-be-established WCPF Commission. Equally anxious are the attempts by the region to limit the European Union's presence to observer status only during the MHLC negotiations, thus denying it the right to vote and have a say regarding the future of the region's tuna fishery. This is an important issue because the European Union's membership would mean another fishing state negotiating team, with a Spanish presence, as well as providing Japan with another ally. The European Union has not been averse to strong-arm tactics over fisheries negotiations elsewhere in the world.<sup>56</sup>

### **Section five: Domestic commercial tuna operations and joint ventures since the mid-1990s**

Since the mid-1990s, the growth of joint ventures and the domestic tuna industry has been limited. This is at odds with the importance of the region's tuna resource to the global tuna economy. As stated in the Introduction, Oceania provides 30% of Japan's *sashimi* market (Department of Foreign Affairs and Trade 2000). Moreover, between 70 and 75% of the 774,000 tonnes of purse-seiner caught tuna in the WCPO is caught in the EEZs of Oceanic states. Therefore, both the fresh/frozen and canned global tuna industry is reliant on the region (Department of Foreign Affairs and Trade 2000, Forum Fisheries Agency 1998: 89). Those Oceanic states with domestic tuna operations and joint ventures are examined below, including American Samoa, Federated States of Micronesia, Fiji, Papua New Guinea, Samoa Solomon Islands and Vanuatu.

#### *American Samoa*

There have been changes in ownership of the American Samoan canneries with the 1997 bankruptcy of Van Camp Seafood. Van Camp Seafood was the parent company for Samoa Packing cannery before its sale to Tri-Union. The three shareholders of Tri-Union include Thai Union, known as the "largest seafood cannery in Asia"; Tri Marine International, ("one of the largest tuna trading companies in the world"); and Edward Gann, "an independent US flag tuna purse seiner boat owner and operator" (Samoa News 11.7.1997). It is reported that during 1998, the American Samoa tuna canneries produced and consigned canned tuna worth more than US\$400 million to the United States mainland (Samoa News 25.5.1999).

Since then, however, there have been further developments, with both Tri Marine and Edward Gann selling their 50% share in the Van Camp Seafood Company to Thai Union in 2000. Chicken of the Sea International, one brand in the Van Camp Seafood stable, with a 17.6% share of the United States canned tuna market has recorded annual canned seafood sales

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<sup>56</sup> See newspaper reports regarding Morocco's refusal to allow European Union an extension of their fisheries access (<http://fis.com/fis/worldnews>)

in excess of US\$400 million in 2000. The Thai Union company “is now the largest canner of tuna in Asia and the second largest canner of tuna worldwide” (PR Newswire 26.12.2000).

These developments in the American Samoa canned tuna industry represent a consolidation by Thai tuna processing interests. The fact that American participation has declined is a reflection of the tight profit margin in this industry and the economies of scale in the global tuna economy. It also represents a growing monopoly of the canned tuna industry by Thai operators.

### *Federated States of Micronesia*

Along with Papua New Guinea, the Federated States of Micronesia has rich tuna fishing grounds. In 1998, with a reduction in operations, the domestic-based fleet provided US\$25-30 million to the government (FAO 1998f: 5). The reductions occurred because of the withdrawal of a large foreign operator in 1996, which in turn “reduced air lift capacity” and led to a “poorer scheduling for the remaining active vessels” as well as a weakening Yen against a stronger United States dollar (FAO 1998f). In 1999, it was estimated that the Federated States of Micronesia government had received US\$15.4 million in access fees (Micronesian Fisheries Authority 2000: 3). The outlook for the domestic industry is optimistic in relation to purse seine operations targetting skipjack and yellowfin, however, the “negative trends or poor performance by domestic components of the fishery are a cause for concern” (FAO 1998f: 3). That said, observers point out that the costs involved with purse seine operations make it difficult for local investors to participate in tuna fishing in the Federated States of Micronesia (e-mail correspondence, Thoulag, 4.6.2001). In spite of the attempts to develop a local tuna industry, the results are modest. In Chapter Four’s discussion on these developments there were several reasons outlined which contributed to these modest gains. These include a lack of private investment, land tenure issues, shipping difficulties, including the airport’s short runway and limited wharf infrastructure.

### *Fiji*

The PAFCO cannery, located on the island of Ovalau is now 98% Fiji government-owned and in 1999 employed between 700-1000 (mainly women) assembly-line workers. Ovaluan villages and private investors own the remaining 2% (Hunt 1999: 574). In 1997, the Fiji Auditor-General raised concerns regarding the US\$2.52 million bail-out by the government of PAFCO, but Hunt points out that matters were not improved when PAFCO merged with the ailing government-owned fishing company, Ika, back in 1994.<sup>57</sup> PAFCO was forced to import most of its canning requirements and this was compounded by high transportation and transshipment costs in comparison to the Thai or Filipino canneries. This necessitated financial assistance by the Fiji government (Hunt 1999: 574).

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<sup>57</sup> See *Pacific Islands Report* of 25.6.1999 regarding the Auditor-General’s report.



Financial security for PAFCO improved in mid-1999, when a 5-year joint venture agreement was finalised with Bumble Bee Seafood, Inc which is expanding its operations in the WCPO. This resulted in an expansion plan worth US\$2.3 million to upgrade the processing facilities to meet European Union and United States Food and Drug Administration standards. PAFCO exports to markets in Europe, Canada, the United States, Australia, New Zealand and within the region. Like the Solomon Islands, as a former British colony, Fiji canned tuna exports have been given preferential access to European markets under the Lomé agreement (PACNEWS 22.7.1999, 4.2.2000, Food and Drink Weekly 16.5.2000, Hunt 1999: 574). Cornelius notes that the PAFCO management is optimistic that the Bumble Bee contract will free the company from dependence on Lomé, or any other preferential trade agreement (2000: 44).

Operations like PAFCO may not be competitive in the global tuna economy if the Lomé Convention's preferential access is withdrawn. Bumble Bee's partnership with PAFCO gives the company access to the valuable United States canned tuna market. It remains to be seen whether the company's optimistic prediction that it will be independent of agreements such as Lomé or Cotonou comes to fruition.<sup>58</sup> Other benefits include the restricted numbers of licensed vessels, "favourable air transport links ... a low-tax policy ... and the benefits of local entrepreneurial skills in what is a "largely domesticated catching, processing and fresh fish export industry" (Hunt 1999: 584). If these benefits are eroded or the abundance of tuna stocks in Fiji's EEZ diminish for reasons, such as El Niño weather conditions, the Fijian tuna industry will suffer accordingly.

### *Marshall Islands*

Since the mid-1990s, the joint venture with China has declined because of "worsening economic conditions, resource considerations, and disputes between the Government and the base operators" (FAO 1998h: 3). During 1996, there was a joint venture with a Hawaiian longline group. A US\$5 million tuna loining facility was completed in 1999. Foreign interests include the San Francisco-based Pacific Micronesia and Orient Line, as well as Star Kist. The facility, which employs 300 local workers, cleans loined tuna targeted for American Samoan canneries (Radio Australia 25.8.1999). While it is considered too recent to analyse the opportunities for further development of the facility, the Bank of Hawaii notes that

[G]iven RMI's need to create jobs at practically any skill level, this type of activity is one of the most feasible (2001: 9).

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<sup>58</sup> The Cotonou Agreement, which was signed in June 2000, replaces the Lomé Convention. From 2008, World Trade Organisation rules will apply to trade agreements, with only those least developed countries being able to maintain non-reciprocal tariff preferences (ECDPM 2001, online < <http://www.oneworld.org>). At present neither Fiji nor Papua New Guinea is a designated Least Developed Country according to United Nations' criteria which is adhered to by the United Nations Conference on Trade and Development (see <http://www.unctad.org>).

While the loining facility is a relative newcomer to the Marshall Islands, the other sector of the tuna industry, which earns the government income is transshipment. In 1998, the Marshall Islands became a transshipment centre for Asian, Pacific and United States fishing fleets. This was augmented by a “revamped, business-oriented fisheries department” that “slashed fees and removed bureaucratic red tape” (Johnson 16.4.1999). For example, the Korean fleet signed an access agreement with the Marshall Islands in 1998, which includes port calls and transshipment. While the license fees amount to US\$840,000, spending by the Korean fleet in-country amounts to US\$500,000 (Johnson 16.4.1999). The economic injection from port calls, apart from refuelling and resupplying the boats, comes from the money the crew spends in stores, bars and restaurants. On the other hand, the transshipment industry has resulted in environmental damage to Majuro’s lagoon. For example, thousands of kilograms of discarded frozen tuna have been dumped into these waters which have also been polluted by oil and garbage after fishing vessels have cleaned their bilges or fish holds that are generally “full of salt” (Pacific Islands Report 17.08.2001).

The uncertainty of the global tuna economy was demonstrated in 2000, when global prices for an over-supplied tuna market plummeted, with a flow-on effect for small economies, such as the Marshall Islands. From 1998, the price of tuna was estimated to have dropped by almost 67% in 2 years (Johnson 11.9.2000). While in 1999, 27 Korean purse seiners transshipped in Majuro, generating revenue of approximately US\$8 million, none visited in 2000 (Johnson 11.9.2000).

The above discussion of the Marshall Islands’ domestic tuna industry demonstrates that factors as simple as the prevailing weather conditions can negatively affect the income generated through such sectors as transshipment. This makes island economies vulnerable as tuna-related business generates a significant proportion of their income. Vulnerability makes island states open to the suasion of fishing states, eager for cost reductions, and resulting in states like the Marshall Islands being prepared to ignore the environmental destruction caused by the transshipment industry.

### *Papua New Guinea*

The domestic longline fleet contracted to 8 vessels in 1998, however, the local purse seine industry rose from 2 vessels in 1994 to 13 vessels in 1998 (SPC Yearbook 1998). Some of the tuna harvest went to Philippine canneries and some was unloaded in Micronesia (FAO 1998b: 4). There are two canneries in operation in Papua New Guinea. One cannery in Lae processes imported frozen mackerel; the other cannery in Madang processes tuna. The Madang operation, RD Tuna Cannery, is a joint venture with Philippine interests. In August 1997, the cannery made its first export shipment of 4,000 cases of tuna to the United States. Other markets have been secured in Europe (Pacific Islands Report 26.8.1997). The above operations represent a very modest achievement given the fact that Papua New Guinea has one of the richest tuna



fishing grounds in the WCPO. During the period under review, the Japanese fleet was still being denied access, after refusing to countenance an increase in access fees in the late 1980s.<sup>59</sup> The United States fleet concentrates on purse seine-caught tuna, which are processed at canneries in American Samoa. Development of a domestic longline industry could target the fresh/frozen sashimi market.

### *Samoa*

The development of the alia catamaran longline tuna fleet has grown since 1997. In 1999, the combined annual value of both locally-sold tuna and tuna exports amounted to approximately US\$10 million (2000: 44). Furthermore, tuna exports accounted for approximately 60% of total exports (Unpublished Treasury Department information in Gillette et.al. 2000: 44). Samoa's alia tuna fleet is growing and is an positive factor in the development of local tuna industries in Oceania.

### *Solomon Islands*

In the years 1996-1998, the tuna harvest totalled 70,000 tonnes, "over 98% of which is taken by the domestic fleet" (FAO 1998d: 3). Tuna caught by the Solomon Taiyo venture was canned at Noro and then shipped to the British market. As pointed out in Chapter Four, this market does not accept purse seine-caught canned tuna, whereas both NFD and BC Packers supply the Japanese canned tuna market, which accepts purse seine caught tuna (Campbell and Hand 1998).<sup>60</sup>

In August 2000 the cannery closed. The ongoing civil conflict between the two ethnic factions of the Guadalcanal Isatabu Freedom Fighters and the Malaita Eagle Force affected the physical safety and working environment of the cannery workers (Solomon Islands Broadcasting Corporation/PINA Nius Online 26.1.2001, Solomon Star/PINA Nius Online 28.3.2001). The re-opening of the cannery depends on the global tuna economy and the easing of ethnic tensions. A lot also depends on the level of technological transfer that is supposed to have occurred between the Japanese and the local fishermen, ongoing access to European markets,<sup>61</sup> the continued support of the Solomon Islands government and other investment into the company. The future re-opening of the cannery is bleak without these factors. An additional problem is the ageing of the pole and line fleet. This may mean that supplies may be sourced from purse seiners, which will cut off the niche United Kingdom market, given its strictures on quality.

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<sup>59</sup> See Tarte (1998a: 111-118).

<sup>60</sup> Barclay and Wakabayashi (2000: 5) point out that the European and North American markets are prepared to pay more for an environmentally friendly, or green, tuna product, harvested using the pole-and-line technique, rather than the indiscriminate technique of purse-seining which allows a significant bycatch.

<sup>61</sup> As the Solomon Islands is designated as a Least Developed Country (LDC), it may not be adversely affected by the World Trade Organisation's rules regarding non-reciprocal tariff preferences (see ECDPM 2001, and the United Nations Conference on Trade and Development, <http://www.unctad.org>).

This Chapter examined the MHLC3-MHLC4 negotiating rounds and reflected on what was happening in the region after the mid-1990s regarding the major fishing state operations, joint ventures and domestic tuna operations. The MHLC negotiations did not occur in a vacuum, but rather at the same time as day-to-day tuna operations in the region. The region demonstrated collective diplomacy that achieved outcomes and made a difference at the Fish Stocks negotiations and that momentum was maintained until the conclusion of the MHLC4 negotiating round. This momentum was achieved for several reasons. The Fish Stocks negotiations were led by Satya Nandan, a Fiji national who, helped by several others, drafted an Agreement that met the region's concerns regarding conservation and management of highly migratory stocks on the high seas. Nandan was then chosen to Chair the MHLC negotiations, a decision which reassured Oceanic delegations. The Majuro Declaration was seen as a sign of legitimacy of the region's goals for fisheries conservation and management. By the conclusion of the MHLC4 negotiations, a draft framework for the WCPF Convention was in place. The shape of the draft text reflected the region's concerns regarding conservation and management, in particular the precautionary approach, transshipment, the VMS and high seas pockets. These outcomes were a reflection of the effectiveness of collective diplomacy by the FFC bloc. For example, the work of the LWG, the strong leadership of the FFC, the united approach taken by the membership on those areas of concern, as well as the support of Australia and New Zealand. The United States also provided strong support to the region in relation to those monitoring, control and surveillance (MCS) issues under debate. As well, the MHLC Chair provided support to the region's collective diplomacy efforts.

The Asian fishing states were unhappy, particularly with the outcome of the MHLC4. It was not in their national interests that the FFC bloc exhibit a strong unified approach and they attempted to sideline individual Oceanic states in the hope that it would lessen the bloc's cohesion. To the conclusion of MHLC4, this had not occurred. In spite of the invisibility of some Oceanic states, the FFC bloc maintained its commitment to securing favoured outcomes for the draft WCPF Convention.

The activities of fishing states in the region have undergone changes since the mid-1990s. The historical lineup of those more important fishing states in the region is altering to take account of new interests, such as Spain and China and the gradual demise of operations by the Korean fleet. In the early days, Japan had financed both Korea's and Taiwan's operations. Japan then moved the focus of its operations to retail and distribution, no longer being able to compete with cheaper operators from Korea and Taiwan. Japan will want to maintain good relations with China, given Korea's decreasing level of activity if, for no other reason than to ensure a stable supply of tuna for Japan's domestic market. For these reasons, the outcomes of the MHLC process are important to the future viability and operations of foreign fleets in the region. The reliance of the fishing states on the resources of the region mean that they need to



be engaged with the MHLC process and try to influence the outcome of the negotiations to suit the operations of their fleets.

From the mid-1990s, the attempts by the Oceanic states to increase their level of exposure through joint ventures and domestic tuna industries did not meet with great success. The major joint venture success story in the region, Soltai, had closed down in 2000 due to inter-tribal conflict. Small gains were made in Papua New Guinea and Fiji, however, the long-term gains from these projects are uncertain, given the changes projected under the Cotonou Agreement. Samoa represented a positive aspect of developments in the local tuna industry and demonstrates that longline ventures are more feasible than the capital-intensive purse seine industry. The Solomon Islands is designated as a Least Developed Country, unlike either Papua New Guinea or Fiji. This may make them vulnerable to World Trade Organisation rules regarding non-reciprocal tariff preferences after 2008. Furthermore, issues such as allocation which were under negotiation at the MHLC process have major implications for the future involvement of the Oceanic states in the region's tuna industry. Managing allocation is an integral component of managing the sustainability, a fair return, domestication and indigenous control over the tuna resource.

## CHAPTER SEVEN

### The tide turns

Leading into the fifth Multilateral High Level Conference on Highly Migratory Fish Stocks in the Western and Central Pacific (MHLC5) negotiating round, it was apparent to the MHLC Chair, Satya Nandan, that there was discontent within the ranks of the Asian fishing states. This discontent limited his ability to encourage the goals of the Forum Fisheries Committee (FFC) states in these negotiations. The FFC states needed to offer alternative text and stand their ground against attempts to water down or sideline those issues that were important for the management and conservation of the region's tuna fishery. While FFC co-operative action did occur at these last three negotiating rounds (MHLC5-MHLC7), it was not constant. Self-interest emerged on the part of individual states as well as on the part of the sub-regional group, the Parties to the Nauru Agreement (PNA) members. There were also concerns about FFC leadership and matters were fuelled by antagonism between individuals from different delegations within the FFC caucus.

This Chapter is split into six sections. Section one examines the MHLC5 negotiations. Section two examines the MHLC6 negotiations. Section three examines the MHLC7 negotiations. Section four examines the main issues arising from these last three rounds. Throughout the examination of these negotiations, the thesis has focused on the Forum Fisheries Agency membership and that of its main protagonist, Japan. Section five explores the roles played by other states important to the negotiations, namely, the United States, Korea, Taiwan, China, Canada, France, Indonesia and the Philippines. Section six has a general discussion on the Preparatory Conference (Prepcon) meetings which have emanated from the MHLC negotiations. Up to the time this thesis was submitted, there had been two Prepcon meetings.

By the end of MHLC7, the Asian states were unhappy with the negotiated text for the *Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific* (WCPF Convention). Furthermore, the FFC bloc achieved a less than optimum result and the United States would have difficulty getting Congress to ratify the regime. This Chapter concludes that the MHLC Chair, Australia, New Zealand and the United States persuaded the Oceanic states to accept a decision-making procedure that may disadvantage them. With controversial issues, such as allocation, being left to the WCPF Commission to finalise, the outlook was not necessarily optimistic for the abilities of the Oceanic states to achieve the best outcome. Taiwan, which achieved exactly what it wanted – a degree of recognition in an international regime, may well be the only winner. The Chapter concludes that the MHLC process illustrates a decline in achieving the objectives of collective fisheries diplomacy - a reflection of the history of Oceania's collective diplomacy generally.



## **Section one: An appraisal of MHLC5, Honolulu, 6-15 September 1999<sup>1</sup>**

Japan does not want you and our friends in this Conference room to underestimate the degree of its frustration with the process and intermediate outcome of the Conference up to the present. My delegation sincerely desires that I can make amicable statement at the conclusion of this round of the Conference (Japan's Country Statement, MHLC 1999b: 15).

The MHLC Chair circulated an Information Note to all parties in advance of the September 1999 negotiations. The Note outlines the substantive issues requiring attention at the MHLC5 meeting. These include:

decision-making and the formula for financing of the Commission ... the issue of a committee to advise the Commission on particular stocks in the northern region of the proposed Convention area, technical matters relating to the operational details of a regional vessel monitoring system, and ...the provisions of article 31 relating to the special requirements of developing States, territories and possessions (MHLC 1999b: 31).

In addition to these issues, the Chair noted that other matters needed further negotiation. These included the total allowable catch (TAC) and allocation, transshipment, the precautionary approach, the Convention area, the species to be covered, membership, high seas pockets, the scientific committee, the northern sub-committee, archipelagic waters and the Taiwan question. It was remarked above that at the end of the MHLC4, the draft WCPF Convention text on many of these issues was favourable to the goals of the FFC bloc. The bloc needed to maintain its unity at MHLC5 and beyond to ensure that the draft text on these issues remained strong and in its best interests. Unity within the group could be achieved through regional co-operation, a strong FFC Chair, and the continued activism of the Legal Working Group (LWG). The supportive role of Australia, New Zealand and the United States was also beneficial, as was the backing of the MHLC Chair.

In the lead-up to the MHLC5 negotiations, the Chair received several high-level representations from fishing states. Unhappiness was expressed with the lack of consideration accorded to their alternative text suggestions during previous negotiating rounds (Tarte 1999b: 4). This included failure to take into account Asian fishing state:

concerns and suggestions [including] removing from the text much of the details relating to the precautionary approach, MCS and enforcement ... [thus guaranteeing] ... that their freedom to fish on the high seas is not curtailed and that flag state responsibility is not subordinated to the Commission (or coastal states) (Tarte 1999b: 4).

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<sup>1</sup> Representatives attended the MHLC5 negotiations from the following states: Australia, Canada, China, Cook Islands, Federated States of Micronesia, Fiji, France, French Polynesia, Indonesia, Japan, Kiribati, Marshall Islands, Nauru, New Caledonia, New Zealand, Niue, Palau, Papua New Guinea, Philippines, Republic of Korea, Samoa, Solomon Islands, Chinese Taipei, Tonga, Tuvalu, United States of America, Vanuatu and Wallis and Futuna. Observers attended from Mexico, the European Commission (EC), the Food and Agriculture Organisation of the United Nations (FAO), the Forum Secretariat, the South Pacific Forum Fisheries Agency (FFA), the Inter American Tropical Tuna Commission (IATTC), the Pacific Community (SPC) and the University of the South Pacific.



In his address to the FFC41 Honolulu meeting, held immediately before the MHLC5, the MHLC Chair advised the membership that after consideration of these views he “felt disposed to give more weight to the concerns” of fishing states at the MHLC5 (Tarte 1999b: 4).

Competing challenges faced the FFC bloc in its attempts to maintain unity and cohesion. The first challenge was a negative external factor: the fishing states which came to the MHLC5 round determined to break the FFC’s control over the process. The second challenge was the self-interest which emerged with individual Oceanic states as well as with a sub-regional group, the Parties to the Nauru Agreement (PNA) members. The third challenge related to the FFC’s leadership.

The change in atmosphere was evident at the MHLC5 and was reinforced by the tone of the fishing states’ Country Statements. For example, the United States was forthright in its refusal “to be legally bound to decisions on important issues made by the majority” (MHLC 1999b: 27). The decision-making issue was a difficult one for the United States, as its Congress follows a consensus decision-making process. Japan “lamented” its perceived “marginalisation from the MHLC process” (Tarte 1999b: 4). Japan remarked that the:

same Conference hall and the same familiar faces of delegations bring back to me the vivid memory of the last Conference. The most outstanding impression I could not escape from was a feeling that my delegation might not belong to the Conference. (Statement MHLC 1999b: 14)

Japan went on to point out that it had not agreed to Canada’s inclusion as a full member, and considered the “decision taken by a big caucusing group always to dominate the conference is far from healthy [sic] picture” (Statement MHLC 1999b: 14).

These remarks were prompted by Japan’s alternative texts and suggestions having been ignored at previous MHLC negotiations. Japan was also not happy with a strong or united FFC as it limited the extent of the control Japan might otherwise have been able to exert over individual Oceanic states, or the process. Japan agreed with the United States’ refusal to be bound by a majority vote decision-making process and refused to attend any future MHLC inter-sessionals that focused on monitoring, control and surveillance (MCS), the vessel monitoring system (VMS) and other issues which it believed should be left to the Commission to finalise (Tarte 1999b: 4).

While the FFC’s Legal Working Group (LWG) had played an active role at the MHLC4, it lacked the scope to continue doing so at the MHLC5 because most of the sessions were conducted in plenary, rather than in small working groups. The LWG was hampered in any drafting it did try to initiate by a lack of cohesion within the FFC to “reach common positions on many issues” (Tarte 1999b: 5). In addition, the LWG’s drafting suggestions were rarely tabled in plenary discussions, or passed to the MHLC Chair for comment. These



problems were centred on the FFC Chair, Samoa's Vitolio Lui, who reportedly ignored advice from the LWG, the FFA Secretariat or other FFC members.<sup>2</sup>

The previous Chair, Moses Amos from Vanuatu, had trusted the FFA Secretariat to make decisions and to provide technical advice to members regarding the intricacies of the MHLC negotiations. As one observer notes, Amos had provided a very "coherent approach" by putting up group submissions at earlier MHLC negotiations (Interview, Geen, December 2000).<sup>3</sup> Lui, as FFC Chair, did not. He argued that as the Oceanic states were all equal, they could all make individual statements and "not rely on a unanimous approach" (Interview, Geen, December 2000). Samoa does not have high seas areas outside its EEZ. Lui did not see the FFA as the appropriate vehicle for promoting the interests of the PNA group, one reason why the PNA group became more vocal at these later negotiating rounds.<sup>4</sup> It was Lui's belief that a regional position is more advantageous to the PNA group, than to other FFA members (Interview, Willock, January 2001).<sup>5</sup>

Thus, the more tuna-rich Oceanic states put up statements, for example, Fiji, Papua New Guinea and the Federated States of Micronesia. There had been a will within the group at earlier MHLC negotiating rounds to have a more coherent approach. At MHLC5 it became passive and reactive (Interview, Geen, December 2000). An Oceanic delegate noted that Japan was able to split the FFC through its interests with the PNA, reinforcing other criticisms made regarding Lui (Interview, Amos, April 2001).<sup>6</sup> Japan's ability to split the FFC through its PNA interests also had the capacity to undermine effectiveness of collective diplomacy over the objectives of sustainability.

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<sup>2</sup> Vitolio Lui took over as FFC Chair at the FFC 39 meeting in May 1999. He replaced Moses Amos of Vanuatu.

<sup>3</sup> Geen, now a consultant, was part of the FFA Secretariat at the MHLC negotiations.

<sup>4</sup> The PNA group wanted to participate at the negotiations because purse seine skipjack operations, which are most prevalent in their sub-region, also take place on the high seas, adjacent to EEZs.

<sup>5</sup> Willock, who now works for TRAFFIC Oceania was, at the time, an FFA Secretariat staff member.

<sup>6</sup> Moses Amos led Vanuatu's MHLC delegation.

## Section two: An Appraisal of MHLC6, Honolulu, April 2000<sup>7</sup>

Several controversial issues surfaced following the MHLC5 negotiations. In October 1999, after nearly two years of discussion, Kiribati finalised a fishing access agreement with Spain, a major European fishing state.<sup>8</sup> At the thirtieth South Pacific Forum, held in Palau in October 1999, leaders recognized:

the importance of a strong agreement, including a decision-making process, which is respected by all, and a system of compliance that will ensure maximum effectiveness of management controls. The Forum noted the importance of regional solidarity and the implementation of existing regional commitments on fisheries issues. (South Pacific Forum Communiqué 1999: 5)

The Forum's comments, while alluding to regional disunity of the MHLC5, helped to focus the region on what was required of the MHLC6 negotiations.

At the FFC42 meeting in March 2000, a month before the MHLC6, the group discussed a range of strategies that would be utilised at the forthcoming MHLC negotiations. These included the increased utilisation of the Legal Working Group (LWG) to provide advice to the FFC caucus. It was acknowledged that while the FFC had held regular caucus sessions during the MHLC5 round, there had been little common ground between its members. This had resulted in a loss of impact on the negotiations by the FFC because of a lack of supporting statements (FFC42 2000a: 2-4). It was suggested that the LWG address the concerns of individual members, instead of members airing their differences publicly in plenary or working groups, a course of action which had eroded unity. The meeting agreed that where common ground was lacking, individual members should convey their concerns to the MHLC Chair, Satya Nandan. This had always been the Chair's preferred course of action. The Chair used it as a barometer of "how great a priority an issue was" (FFC42 2000a: 2-4).

In the Chair's Information Note, circulated to all member states in advance of the MHLC6 session, Nandan observed that further consideration was needed on difficult issues such as decision-making, the financial arrangements, position of fishing entities, participation by territories and entry into force. To meet the timeframe for completion of the negotiations, now set for the end of August 2000, the Chair believed it would be necessary to work long hours at the MHLC6 negotiations (MHLC 2000a: Annex 4).

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<sup>7</sup> Delegations to the Conference included: Australia, Canada, China, Cook Islands, Federated States of Micronesia, Fiji, France, French Polynesia, Indonesia, Japan, Kiribati, Marshall Islands, Nauru, New Caledonia, New Zealand, Niue, Palau, Papua New Guinea, Philippines, Republic of Korea, Samoa, Solomon Islands, Taiwan, Tonga, Tuvalu, United States of America, Vanuatu, and Wallis and Futuna. Observer delegations included Mexico, the European Union (EU), the Food and Agriculture Organisation of the United Nations (FAO), the Forum Secretariat, the South Pacific Forum Fisheries Agency (FFA), the Inter American Tropical Tuna Commission (IATTC), the Pacific Community (PC), and the University of the South Pacific (USP).

<sup>8</sup> It is noted "With pressure on Atlantic and Indian Ocean tuna stocks mounting, the European Union in recent years has mentioned access to the Pacific fishing grounds for its tuna fleets as a reciprocal benefit for the aid it gives to Pacific Island countries." (Keith-Reid, February 2000a: 18). In an *Islands Business* report it stated that although other members of the FFA had not spoken out publicly against Kiribati's decision, they felt that "Kiribati has broken ranks in letting the Spanish in before a deal has been done with the European Union." (April 2000: 9).



An observer (Tarte 2000a) has outlined the MHLC Chair's address to the FFC43 immediately before MHLC6. During that address, Nandan was adamant that neither opt-out provisions nor mandatory consensus was appropriate. This is to safeguard the interests of the Oceanic states, as well as "effective conservation and management" (in Tarte 2000a: 3). The Chair noted that:

while distant water fishing nations can walk away and find somewhere else to fish once the resource was depleted, coastal states cannot. The people most threatened by over fishing are those in whose waters the stocks are found. (in Tarte 2000a: 3)

Another issue discussed was the repeated request by the European Union for membership of the process (rather than as an observer). The MHLC5 meeting had issued a Resolution which instituted a moratorium disallowing new members joining the process.<sup>9</sup> The Resolution reassured several of the Oceanic states which were opposed to any further fishing states entering the process.<sup>10</sup>

The Chair reminded the FFC bloc that he needed its active participation in the process, otherwise he would not be able to discount the "large quantity of input" that other states provide (in Tarte 2000a: 4). The Chair's remarks motivated the FFC to

table[d] a position paper which suggested amendments to text dealing with definition of fishing, references to human food consumption in the allocation criteria, the northern sub-committee, VMS, transshipment, and requirements of small island developing states. An FFC statement was delivered in response to the EC's request for full participation in the preparatory commission. The FFC Chairman also delivered a closing statement that reiterated the FFC's 'bottom line' on decision making, VMS, and entry into force, as well [as] its views on the convention area and compliance issues (Tarte 2000a: 4).

The FFC's participation at the MHLC6 went some way to redressing its failures at the previous round. Nevertheless, delegates had commented that the FFC caucus sessions at the MHLC6 were "ineffectual" and that Lui still found it difficult to differentiate between his position as FFC Chair and his country's position (Interview, Lack, December 2000).<sup>11</sup> Because FFC positions were not adequately debated during caucus sessions, many of the Oceanic delegations were not prepared to put their views strongly at the meeting. This led to the PNA states being prepared increasingly to articulate their positions (Interview, Lack, December 2000).

Nevertheless, the FFC bloc was helped by the use of small working groups at MHLC6, rather than the open plenary format adopted at the MHLC5. The FFC membership found it easier to debate issues in a less formal atmosphere. These groups considered such issues as observer status, financial arrangements, the regional observer program and the status of

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<sup>9</sup> In spite of this, Kiribati went ahead and finalised a fishing access agreement with Spain, thereby defying the MHLC5 Resolution.

<sup>10</sup> At the MHLC6 session, a request was received from the United Kingdom requesting full participation on behalf of its territory, Pitcairn Island. The request was granted because the United Kingdom's territories of Pitcairn, Henderson, Ducie and Oeno Islands all lie within the WCPF Convention Area (Chair's Closing Statement MHLC 2000a: Annex 7).

<sup>11</sup> Lack, now a consultant, as this time worked work at the Australian Fisheries Management Authority (AFMA) and was a member of Australia's MHLC delegation.

Taiwan.<sup>12</sup> Larger working groups were also convened to deal with decision-making, VMS, transshipment, the WCPF convention area, boarding and inspection, the interim regime and European Union participation (Tarte 2000a: 4-5).

Part way through the MHLC6 negotiations, when the Chair issued his revised text, Korea and Japan reiterated that neither of them was agreeable to the revisions.<sup>13</sup> Japan notes that its “past contribution might be looked at as marginal in terms of what has been reflected in the present text” (MHLC 2000a: Annex 3). This is surprising, as the draft text at the conclusion of the MHLC5 negotiating round had incorporated many of Japan’s suggestions. For example, by the conclusion of the MHLC5, the draft articles which related to the precautionary approach, transshipment and high seas boarding and inspection, had been watered down. Furthermore, the FFC’s Opening Statement at the MHLC6 notes that “in a number of recent instances, our concerns have been given little consideration” (FFC43 2000b: Attachment D).

As they had done at previous negotiating rounds, Korea and Japan argued that because the Fish Stocks Agreement was not yet in force, it lacked formal status in international law and should not be used for the WCPF Convention. In response, the Chair noted the Majuro Declaration’s reference to that Agreement. He reminded Korea and Japan that they had both adopted the Declaration and that to delete reference to the Fish Stocks Agreement would “negate the whole objective of this meeting”. He added that perhaps they were “attending the wrong meeting”? (Tarte 2001a: 3). A Tongan delegate, who remarked “to reopen issues negotiated in the 1995 Agreement was “unacceptable”, upheld the Chair’s remarks (Tarte 2000a: 5-6).

While the MHLC6 negotiating round was a better outcome for the FFC bloc than the MHLC5, there were still difficulties within the FFC, for example, the FFC Chair’s leadership, which undermined its unity. Some intractable issues remained, including decision-making methods, the participation of territories and possessions, and the status of Taiwan. Other controversial issues were considered by the Chair to have been satisfactorily resolved, for example, the Convention area, transshipment and the observer program. With the United States firmly on the side of the region in relation to MCS issues, Asian fishing states were not in a powerful-enough position to influence the negotiations as much as they would have liked. It was evident that if the MHLC7 negotiating round was to be concluded successfully, concessions would be required on both sides. The FFC bloc felt it had conceded too much at the MHLC5 round, had regained some ground at the MHLC6 meeting, and was therefore not prepared to

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<sup>12</sup> While there was a moratorium in place on new members joining the process, new observers to the process were still allowed. The MHLC6 meeting discussed Ecuador’s request for observership. The meeting passed a Resolution, agreeing that certain rules were to be imposed on observers. These include agreement that observer status was “not to be treated as an entitlement for accession to the convention, and membership of the future regime, or to any future allocation of fishing rights” (Tarte 2000a: 5).

<sup>13</sup> A delegate noted the Japanese would “try to undermine the Agreement, then not ratify it, conduct a scientific committee, anything to delay the procedure”. That said, the Japanese “would never violate the letter of an agreement” (anonymous).



concede anything at the MHLC7 round. The fishing states, including the United States, were unhappy with several outstanding issues, including decision-making options. It was not clear that the MHLC7 would reach agreement.

### **Section three: An appraisal of MHLC7, Honolulu, 30 August – 5 September 2000<sup>14</sup>**

Finally, Mr. Chairman, the Sea is part and parcel of our being. While “fish” may only be a tradable commodity to our partners, to us, this is the lifeline for our future generations. It is part of our tradition, our history, heritage and culture. Indeed, it is part of our spirit and soul. In short, Mr Chairman, we are giving up a part of us in this Convention. We therefore call on our partners to recognize, value and respect this (Fiji’s Opening Statement, MHLC 2000b: 15).

The Conference Chair circulated an Information Note to all delegations in advance of the MHLC7. Nandan believed that satisfactory progress had been made on a range of issues, however, he considered three areas required further negotiation. These were decision-making, the status of fishing entities and the participation of territories and possessions. The Chair then outlined the work program for the forthcoming MHLC7. It would commence with a three-day session to finalise the WCPF Convention, which would be then be opened for signature during a two-day ministerial level meeting (MHLC 2000b: 29-33).

The decision-making issue highlighted fisheries management differences between the two groups. The status of Taiwan and the participation of territories and possessions were also linked to the geostrategic considerations of one delegation, the United States. At the MHLC negotiations, the United States had given Taiwan public support for its desire to have contracting party status, and had maintained military support for Taiwan in spite of protests by China. The refusal by the United States to give its Oceanic dependencies self-determination centred on its geostrategic policies in the region.

At the FFC 45 meeting convened immediately before the MHLC7, the incoming Chair, Joe Thwaites of Australia, informed the group that Japan wished to raise several issues of concern during the final session (FFC 2000d: 4). Thwaites believed that the MHLC Chair’s proposal for a chambered voting system was worth consideration, particularly given its attractiveness to fishing states. The Oceanic delegates were not so sure. The meeting agreed that the FFC Chair would present an Opening Statement, highlighting those issues of concern to the bloc. The Chair would also deliver a Closing Statement.

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<sup>14</sup> The following is a list of delegations attending the MHLC7 session. Australia, Canada, China Cook Islands, Federated States of Micronesia, Fiji, France, French Polynesia, Indonesia, Japan, Kiribati, Marshall Islands, Nauru, New Caledonia, New Zealand, Niue, Palau, Papua New Guinea, Philippines, Republic of Korea, Samoa, Solomon Islands, Taiwan, Tonga, Tuvalu, United States, Vanuatu, and Wallis and Futuna. Observers included Ecuador, the Food and Agriculture Organisation (FAO), the Forum Secretariat, Forum Fisheries Agency (FFA), the South Pacific Regional Environment Programme (SPREP), the Inter American Tropical Tuna Commission (IATTC), the Pacific Community and the University of the South Pacific (USP).

Most delegations went to MHLC7 believing that the three issues highlighted in the MHLC Chair's Note would form the basis of the negotiations. However, there was advance warning that Japan was having trouble domestically with the draft WCPF Convention, when its delegation leader resigned shortly before the MHLC7. As Talbot Murray<sup>15</sup> put it, "once we saw who the new leader was, we realised we were in for trouble" (Interview, October 2000). The new Japanese delegation leader was Masayuki Komatsu,<sup>16</sup> Japan's leading negotiator to the Southern Bluefin Tuna Commission (CCSBT), the International Whaling Commission (IWC), and the Indian Ocean Tuna Commission (IOTC). It transpired that Japan's domestic fishing industry had not been kept abreast of the MHLC negotiations and there was unease that the new WCPF Convention would result in "international control" of its domestic fleets, particularly the skipjack industry (Tarte 2000b: 2). Leading up to MHLC7, Japan had requested a six-month postponement of the meeting, ostensibly to give it time to persuade its domestic fishing fleet of the benefits to be gained from the WCPF Convention round (Interviews, Ridings and Murray, October 2000).<sup>17</sup> This request was denied.

At the beginning of the MHLC7 negotiations, Japan advised that it had 22 separate problems, and five major problems, for example, it insisted on an opt-out provision on decision-making (Sydnes 2001: 800). On the third day of the negotiations, Japan produced its own draft WCPF Convention text (Interview, Ridings, October 2000). The MHLC Chair commented that the only resemblance between Japan's draft Convention and his draft Convention were the page numbers (Tarte 2000b: 2). Among the differences was a separate definition for the northern boundary of the 20° North parallel and the 20° South parallel. This includes a "separate regime for the area north of the 20 degrees North parallel" (Japan's Opening Statement MHLC 2000b: 17).<sup>18</sup> Japan argued that:

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<sup>15</sup> Murray works for the National Institute of Water and Atmospheric Research (NIWA), and was a member of New Zealand's MHLC delegation.

<sup>16</sup> One United States delegate referred to Komatsu as a "bulldog" (anonymous).

<sup>17</sup> Ridings works for the Ministry of Foreign Affairs and Trade and was a member of New Zealand's MHLC delegation. She led New Zealand's delegation to the MHLC5, MHLC6 and MHLC7.

<sup>18</sup> Other major differences include the following. "In place of the existing provisions governing dispute settlement, Japan sought a formula that would require the consent of all parties to a dispute before seeking arbitration and it also favored a system 'unique' to this arrangement". (Specifically Japan was opposed to the compulsory dispute settlement provision contained in the draft text. This drew on the Fish Stocks Agreement, where dispute settlement provisions contained in the United Nations Law of the Sea Convention (UNCLOS). This would apply to members of the Commission, whether or not they are also parties to the Fish Stocks Agreement.) On compliance and enforcement measures, Japan supported a 'scheme ... based on the flag state principle'. Japan believed that boarding and inspection, the regional observer programme and the VMS should 'avoid excessive and unnecessary operational and economic burdens'. It reiterated its view that all references to the Fish Stocks Agreement should be removed, and that entry into force provisions changed. On decision-making, Japan favored an objection procedure that 'took into account the views of the minority – Asian fishing nations and entities'. It argued that a majority would not necessarily be 'just or fair'. Moreover, Japan may not have the same notions of 'sustainable use' as other countries" (Tarte 2000b: 2-3, see also Japan's Opening Statement MHLC 2000b: 17).



fishing patterns and practices in the Pacific are quite different from that of the South Pacific, socio-economically, culturally, and traditionally and that there is strong scientific evidence that major tuna stocks are distributed mainly in the Northwestern Pacific. In this regard, we are inclined to start to create a regime for long-term conservation and sustainable use of highly migratory fish stocks in the North Pacific. Japan's Opening Statement MHLC 2000b: 17)

There was suspicion among other delegations that Japan was attempting to have its EEZ excluded from the WCPF Convention area (Tarte 2000b: 2). Ridings comments that the New Zealand delegation wished to avert a complete collapse of the work that had been achieved over the years of drafting the WCPF Convention (Interview, October 2000).

Several PNA members were vocal in their disappointment of Japan's actions. For example, Kiribati joined with other Oceanic states in their disapproval of Japan (Interviews: Heather Scott and Vaughan Wilkinson, October 2000).<sup>19</sup> The Marshall Islands openly voiced concern and noted that it could have an impact on their bilateral fishery access arrangements (Interview, Ridings, October 2000). An Oceanic delegate commented that the region had "bent over backwards to accommodate them [Japan]", and having given up so much within the WCPF Convention text, "they [Japan] are still not in" (Bernard Thoulag, Interview, April 2001).<sup>20</sup> Tarte noted that:

[M]embers of the FFC resolved not to entertain further demands from Japan or open up negotiation on all aspects of the text ... the FFC Chairman gave notice that if Japan was putting forward new proposals, then the FFC also had its own set of proposals. (Tarte 2000b: 3)

Tarte believes this was a "tactical move by the FFC", leaving Japan in no doubt that the FFC would simply "revert to its original position" should it go ahead with its new proposals (Tarte 2000b: 3). It was also a show of strength by the FFC, a positive demonstration of regional co-operation. Apart from Korea and to a lesser extent, China, there was no support for Japan's initiative.<sup>21</sup> One delegate perceived that Australia neither seemed prepared for Japan's actions, nor able to handle the ensuing negotiations with calm.

Wilkinson was critical of Australia's approach. In discussing his perceptions of Australia's negotiating style at the MHLC7 meeting, he argues that when Australia was FFC Chair, it had a tendency to get excited. Wilkinson believed that Australia's head of delegation (which was Joe Thwaites), in particular, was endeavouring to incite Japan by being aggressive, basically "telling them to go to hell" and thus playing into Japan's hands (Interview October 2000). Wilkinson adds that Nandan knew he had to draw Japan along in the negotiations, and

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<sup>19</sup> Scott works for Tuna New Zealand and was a member of New Zealand's MHLC delegation. Wilkinson works for Simunovich Fisheries Ltd and was a member of New Zealand's MHLC delegation. He requested that it be noted that his comments are his personal views and do not reflect the views of New Zealand's MHLC delegation.

<sup>20</sup> Thoulag heads the Micronesian Maritime Authority and led the Federated States of Micronesia's MHLC delegation.

<sup>21</sup> John Hampton, an observer commented that China had felt "insulted" by Japan's behaviour (Interview, Hampton, April 2001). Hampton works for the Oceanic Fisheries Programme at the Pacific Community and was its observer at the MHLC negotiations.



Australia's aggressive baiting of Japan did not help. Because of the southern bluefin tuna (SBT) controversy, Wilkinson feels that Australia had "no credibility" at that time (Interview, October 2000). He adds that Australia still appeared upset about the recent decisions made in the SBT case.<sup>22</sup> Wilkinson concludes that other members of the Australian delegation lacked international conference experience. As well, its two key delegates (Thwaites and Gray) were unable to stop several members making pointless and incomprehensible interjections (Interview, October 2000).<sup>23</sup> On the other hand, an Australian delegate commented that New Zealand's delegation had changed, and that they were inexperienced (Interview, Ward,<sup>24</sup> November 2000). In relation to the claim that Thwaites had incited Japan at small working groups within the MHLC7 negotiations, this could have been a strategy employed deliberately against Komatsu, famous for his own bullish tactics at international negotiations.<sup>25</sup>

In his Closing Remarks, the MHLC Chair raised the issue of Japan's substantial changes to the draft text. He said it had been unfortunate that Japan's MHLC7 delegation was new to the negotiations and "not familiar" with the history of the process, resulting in difficulties "in the dialogue and communication" (MHLC 2000b: 63). While Japan had requested a postponement of the final session, consultation with other delegations had revealed a lack of desire to either agree to the postponement, or open up those issues which had already been agreed upon (MHLC 2000b: 63).

Australian observers believe that the WCPF Convention was watered-down to accommodate Japan; one delegate saying that "we are not in the mood for compromise" and that "it would be detrimental to the process to reopen agreed text at subsequent negotiations" (Interview, Gray, November 2000). Another delegate argued that whilst Japan did not need to join the WCPF Convention, the United States did need Japan's membership (Interview, Heikkila,<sup>26</sup> April 2001). While the United States won three campaigns at the MHLC7, (decision-making, dependent territories and the Taiwan issue), it has not emerged a winner, yet. This is because the United States tuna industry needs Japan to sign on to the WCPF Convention, so that the United States Congress will ratify the Convention (Interview, Heikkila, April 2001).

In its analysis of the MHLC7 round, the Western Fishboat Owners Association highlights two specific issues which damaged the United States' attempts to get Japan's

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<sup>22</sup> Japan claimed victory in the dispute in August 2000, after an international tribunal, set up in Washington under the UNCLOS, ruled that it had no jurisdiction to authorise or ban research fishing (Radio Australia 7.8.2000).

<sup>23</sup> Mark Gray, Australian Department of Foreign Affairs and Trade, was the other key delegate in Australia's MHLC delegation.

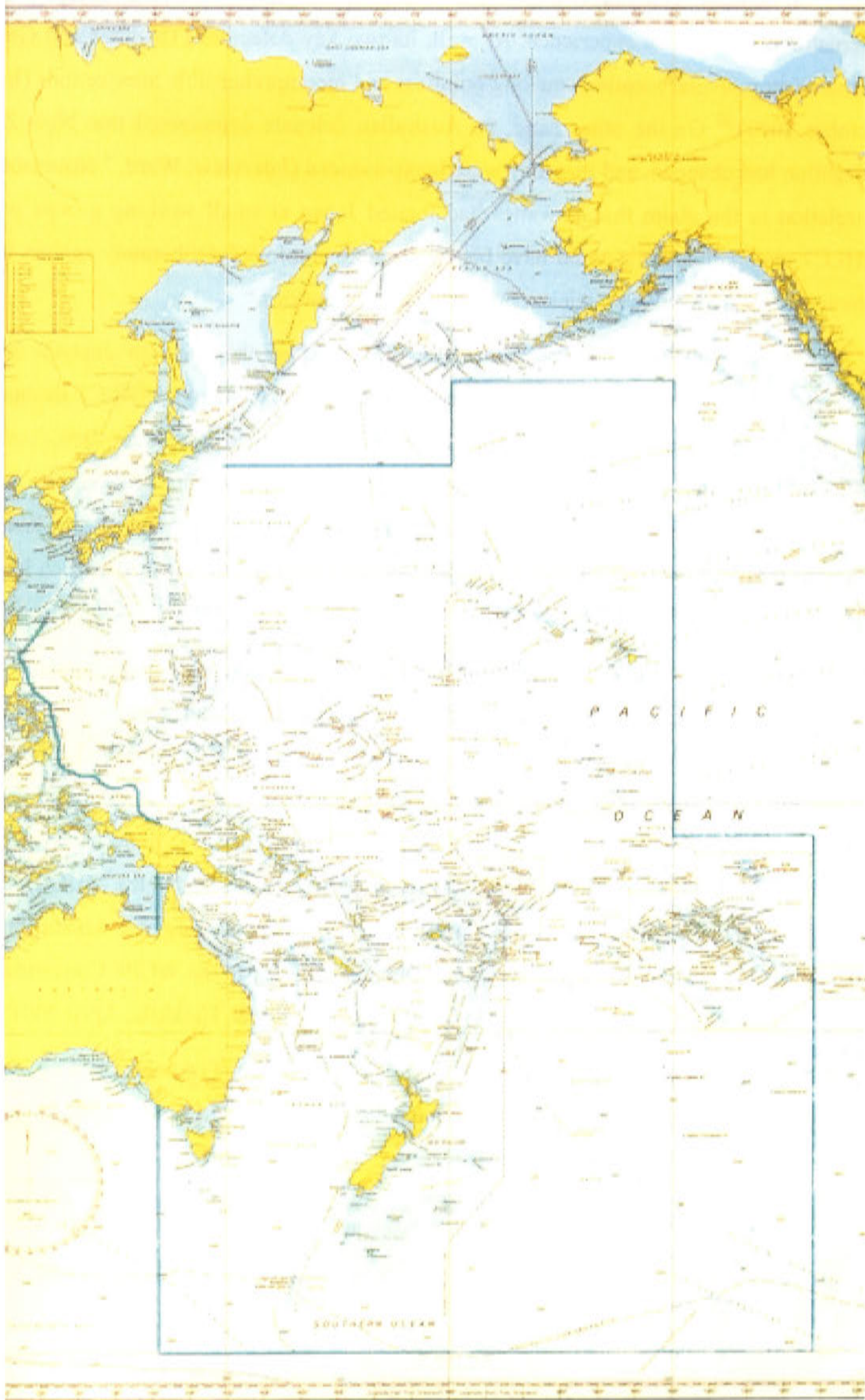
<sup>24</sup> Peter Ward is a scientist with the Bureau of Resource Science and a member of Australia's MHLC delegation.

<sup>25</sup> These related particularly to his negotiating style for the SBT, as well as the International Whaling Commission. Komatsu said he felt there was nothing wrong "using the leverage of overseas development aid" to influence countries on the whaling issue (Pacific Islands Report 19.7.2001). Komatsu once "famously described minke whales" as "cockroaches of the sea" (Pacific Islands Report, 27.7.2001).

<sup>26</sup> Heikkila works for the Western Fishboat Owners Association and was a member of the United States MHLC delegation.



Convention Area: as discussed in current MHLC draft text (Hawaii, February 1999)



agreement to the WCPF Convention. The first issue was the Clinton Administration decision, just as the MHLC7 negotiations commenced, to consider the imposition of trade sanctions on Japan over its whaling policies. As mentioned above, the leader of the Japanese delegation, Komatsu, was also Japan's whaling negotiator. The second issue was the SBT controversy. Because of the perceived failure to co-operate with the other two members of the SBT Convention, Komatsu would have been even more sceptical regarding the possibilities of co-operating with in excess of 26 states and territories (Western Fishboat Owners Association MHLC7: 3).

By the time the MHLC7 negotiations came around, it was evident that the Oceanic delegations were tired and running out of steam. The process had been a drain on scarce Oceanic resources and any prolonged negotiating could have resulted in a more fragmented FFC bloc. As will be discussed below, the MHLC Chair, Australia, New Zealand and the United States persuaded the Oceanic states to sign on at MHLC7 to a chambered voting system for decision-making which may ultimately be to their detriment. Although it was done to attract the Asian fishing states to the WCPF Convention, this goal was not achieved. Some issues were not resolved and have been left to the Commission to negotiate, for example, allocation and new entrants. The region lost ground on several issues, for example, transshipment, the precautionary approach, the observer program, boarding and inspection and their 'special interest' over high seas enclaves. The FFC bloc's decline in effectiveness of collective diplomacy resulted in a weaker WCPF Convention.

#### **Section four: An appraisal of the issues at the MHLC5, MHLC6 and MHLC7**

The following discussion examines those areas of the draft negotiating text that were unresolved and which required debate at the MHLC5-MHLC7 negotiating rounds. These included the WCPF Convention area; decision-making; allocation issues; the VMS; transshipment; preamble and final clauses; the observer program, compliance, and enforcement issues; small island developing states; financial arrangements; species list; high seas boarding and inspection; fishing entities (Taiwan); territories; participation by the European Union; the precautionary approach; scientific advice; and the interim regime. This list includes many of those substantive provisions of a meaningful multilateral treaty, the WCPF draft Convention.

#### *WCPF Convention Area*

The western and northern boundary to the WCPF Convention area remained controversial at the MHLC5. Indonesia objected to the United States' proposal at the MHLC5 that the western boundary should include its archipelagic waters.<sup>27</sup> There was also objection from the

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<sup>27</sup> This issue was also controversial at the UNCLOS III negotiations, when maritime powers, such as the United Kingdom and the United States, protested that the claims of archipelagic states "would result in areas which had previously been high seas or territorial seas becoming internal waters" (Teiwaki 1988: 81).



archipelagic Oceanic states of Papua New Guinea, Vanuatu, Fiji and the Solomon Islands regarding the “specific references” to Indonesia and the Philippines “on the grounds that all archipelagic states should be treated the same” (Tarte 1999b: 7).<sup>28</sup> Related to the difficulties of resolving the western boundary was Indonesia’s request that the Celebes Sea should be excluded because it was an inland sea. The western boundary was further complicated by territorial disputes involving coastal states within the South China Sea, and disputes around Japanese-claimed islands.<sup>29</sup>

The issue of the northern boundary caused dissent within the FFC. Some members believed that it had the capacity to water-down the coastal states’ level of influence within the Commission. By extending the northern boundary to 50°, it did include the full migratory range of the four main stocks, but it also included other stocks of limited interest to the Western and Central Pacific Ocean (WCPO). Papua New Guinea argued that to extend the northern boundary as far north as 50° was not within the ambit of the negotiations and that extending the northern boundary may result in dilution of their “interests as resource owners” (Statement MHLC 1999b: 21). Other FFC states agreed (Australia, Solomon Islands, Federated States of Micronesia, Fiji and Palau). Kiribati, however, favoured maintaining the extended northern boundary for species coverage (FFC 40 1999c: 1). Japan argued that the regime should:

cover the entire migratory range of the tuna and tuna like species, regardless of what legal or political status of particular areas ... if equity is not achieved ... as to the geographical boundary of the Convention area or Japan is forced to accept meaningless lines splitting its own 200 mile zones, then we have to insist that northern boundary should be brought down to 20°N parallel in order to avoid such shameful treatment. (MHLC 1999b: 15)

This remark hides Japan’s wish to control a northern sub-committee of the Commission. The argument over splitting Japan’s EEZ dismisses the fact that the WCPF Convention boundary cuts through Australia, from South Australia to the Northern Territory. The MHLC Chair decided to leave the western and northern boundaries open, stating that the “stocks of interest (and their movement) will help to define the convention area” (Tarte 1999b: 8). While this approach lacked the support of the FFC, it was approved by the fishing states (Tarte 1999b: 8).

Linked to the concerns regarding the northern boundary was the northern sub-committee, promoted by Japan (and the United States) at the MHLC4 negotiations. The FFC requested advice regarding the implications of such a committee and the participation by other Commission members to any of its discussions. The Chair’s revised draft includes a northern sub-committee. In his Closing Statement, the Chair notes:

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This was relevant to those archipelagic areas around the Philippines and Indonesia that had been traditional shipping corridors (Teiwaki 1988: 81). See discussion on this issue in Chapter Three, p 55.

<sup>28</sup> Vanuatu’s Statement noted, “approximately 21% of skipjacks, 12% bigeye and 30% yellowfin tuna are harvested” in the archipelagic waters of Indonesia and the Philippines (MHLC 1999b: 29).

<sup>29</sup> For example, Japan has requested Russia to refuse access to Korean boats fishing around the disputed Kuril Islands. Towards the end of World War II, the Soviet Union seized these former Japanese-claimed islands. Japan claims sovereignty over these islands and their EEZ (FIS World News, 3.7.2001).

[T]he membership of this sub-committee would be those situated in the northern part of the Convention Area, as well as those fishing in such area, with a right for all interested members of the Commission to attend meetings of the sub-committee as observers.  
(MHLC 1999b: Annex 6)

The outcome of the debate on the WCPF Convention area represented a major setback for the FFC membership at MHLC5. Most of the membership had argued for a lowering of the northern boundary, to ensure that the regime would remain focused on the four main tuna species. There was also a very real fear that an open-ended northern boundary could bring in some of the powerful fishing states as coastal states and weaken the island region's numerical influence in the Commission.<sup>30</sup> Discussion on this issue at the MHLC6 concentrated on the western and northern boundaries, both of which had been left open in the draft text. The Philippines and Indonesia wanted the western boundary to follow their archipelagic baselines. This was added to the draft text. By the conclusion of MHLC6, the text had incorporated the open western and northern boundaries of the Convention area.

The open western and northern boundaries of the WCPF Convention concerned most FFC members because of the division caused by the northern sub-committee, the fish stocks to be covered, and issues of enforcement. While their concerns were met in the WCPF Convention in relation to FFC observer status for those northern sub-committee meetings, the enforcement provisions for an open western and northern boundary may prove more difficult. Enforcement comes under monitoring, control and surveillance (MCS) measures and is an aspect of demonstrating the effectiveness or otherwise of collective diplomacy in achieving objectives, for example, a substantive provision in a meaningful multilateral treaty. It is not believed that this outcome meets the objectives of collective fisheries diplomacy, particularly in relation to sustainability.<sup>31</sup>

### *Decision-making*

While it seemed that the Convention area debate had been resolved satisfactorily by MHLC6, a far more contentious issue throughout the negotiations was decision-making. Decision-making has been called the "make or break of the MHLC process" (Sydnes 2000: 798). Both Japan and the United States tabled alternative text at MHLC5 regarding decision-making. Japan's proposition was complex, involving total fishing catch "in a weighted voting system" (Tarte 1999b: 9). This would alleviate the concerns of both Korea and Japan of being a minority group. The United States' proposal had three separate decision-making processes.<sup>32</sup>

<sup>30</sup> The United States and the Western Fishboat Owners Association "quickly latched onto [the] concept" of a northern sub-committee as "the best approach for preventing South Pacific nations from exerting undue influence over the region" (Western Fishboat Owners Association 2000a: 3).

<sup>31</sup> Those objectives are sustainability, a fair return, domestication and indigenous control.

<sup>32</sup> The first process is mandatory consensus. The second process is "where a super majority (4/5) voting procedure should operate along side an objection and opt out provision" Tarte 1999b: 9). The third process includes voting "without any objection clause" Tarte 1999b: 9). This relates to "decisions on MCS, enforcement, scientific research and data collection" (Tarte 1999b: 9).



The FFC members, together with Canada, Indonesia and the Philippines, agreed to amendments incorporating some of the suggestions raised by the United States and Japan. There were, however, two areas of disagreement. These related to Japan's complicated weighted voting procedure (which nobody understood),<sup>33</sup> and the United States proposal for mandatory consensus (Tarte 1999b: 9).<sup>34</sup> The impasse was not resolved. After consultation, Japan abandoned its complex decision-making proposal and backed the United States' plan (Tarte 1999b: 9). Australia argued that the mandatory consensus proposal could result in "a single contracting party [holding] the Commission hostage in a manner which would be very damaging to our collective purpose" (Statement MHLC 1999b: 10). Furthermore, as the Federated States of Micronesia Government notes, it is necessary to have alternatives to consensus, to avoid "deadlock and paralysis" in facilitating the implementation of the WCPF Convention (Statement MHLC 1999b: 13). Others observed that the United States "stomped its foot to ensure that fishing nations will have a voice in future Convention programs" (Western Fishboat Owners Association MHLC5: 1).

In the Chair's draft WCPF Convention text circulated at the close of MHLC5 there were provisions for mandatory consensus and "third party conciliation in the event of an objection, in order to facilitate consensus" (Section 6 Article 20). The United States representative was reportedly "disappointed" that his suggestions on decision-making had been rejected "out of hand" by the FFC membership (Western Fishboat Owners Association MHLC5: 5). The representative told the Conference that he:

could not understand the belief that it would be fair for one group to make decisions for everybody. This is the only issue that will prompt the US to walk away from this process and the Convention. (Western Fishboat Owners Association MHLC5: 5).

Apparently, the United States' remarks were "met with silence", followed by a series of comments from the Oceanic states regarding some time being needed to study the United States' proposal (Western Fishboat Owners Association MHLC5: 5). Japan too felt that its suggestions on decision-making belonged to a minority group within the negotiations. Japan's Statement notes that it was:

seriously concerned about the effect of such tendency to disregard the minority view ...[that] the present text will put the interest of the minority to be bound to be disregarded (MHLC 1999b: 14).

The debate on this issue represented another setback for the FFC membership at MHLC5. FFC members were against mandatory consensus, particularly on crucial issues to the region such as

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<sup>33</sup> Japan's proposal "was a somewhat convoluted approach, that included fishing catch totals in a weighted voting system" (Tarte 1999b: 9). The system ensures that neither Korea nor Japan is in a minority.

<sup>34</sup> As the United States Statement outlines, if the decision-making measures binds it as a minority to a majority decision, there is very little chance of it being ratified by the Congress. Further, the United States delegation would not "be prepared to present such a decision-making regime for Congressional approval" (Statement MHLC 1999b: 27).

allocation, and budgetary decisions. On the other hand, the fishing states, including the United States were emphatic in their refusal to be bound by majority decision-making.

At FFC 43, held immediately before the MHLC6 session, the membership agreed that it had “compromised enough ... to accommodate the positions of DWFN<sup>35</sup> and other coastal States” (FFC 43 2000b: 2). At the MHLC6, Japan reiterated its preference for mandatory consensus in all but a few cases. These exceptions would have a three-fourths majority vote, split between two groups. The first group included states and entities that harvested more than 30,000 tonnes yearly. The second group comprised the remainder of the membership. Japan also insisted on an opt-out clause (Tarte 2000a: 6-7).<sup>36</sup> Japan and Korea emphasised that to join the WCPF Convention under the prevailing circumstances would be “suicidal” (Tarte 2000a: 6). Other fishing states, for example Taiwan, China and the United States, remained rigid on this issue. The stated preference of the United States was for its tabled position at the MHLC5 negotiations. It was noted that the United States “has a problem with democracy – they do not like being outvoted” (Interview, anonymous).

While fishing states protested, the MHLC Chair refused to consider “any further watering down” of the decision-making measures (MHLC 2000a: Annex 7). In his Closing Statement at MHLC6, he noted that:

the requirement for a four-fifths majority would have the effect in practice of promoting consensus on all matters. This should be more than sufficient assurance to all sides (MHLC 2000a: Annex 7).

His refusal to allow any further amendment, while meeting with agreement from the FFC bloc rendered the participation of the fishing states uncertain. The United States remained determined to resolve the impasse; however, Japan and Korea “rejected the text”, Korea going so far as to request a further session of the MHLC to settle this and other contentious issues (Tarte 2000a: 8).

At MHLC7, a new decision-making proposal was advanced by the United States at an informal meeting with the FFC members for a chambered voting system; one chamber comprising FFA members, the other chamber comprising non-FFA members (Sydnes 2001: 800). Each chamber requires a majority vote for adoption of decisions not agreed to by consensus.<sup>37</sup> As Cordonery (2002: 5) notes, the “voting system by chambers ... would be arithmetically disadvantageous for the FFC member states. The FFC membership was not in

<sup>35</sup> Distant Water Fishing Nations, referred to in this thesis as ‘fishing states’.

<sup>36</sup> An Australian delegate notes that Japan has problems with dispute resolution (as well as the precautionary approach), as neither of these is incorporated in the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) (Interview, Hughes, November 2000). Another delegate argues that it is important for the Commission to have independent scientific advice, to avoid the CCSBT situation (Interview, Lack, December 2000).

<sup>37</sup> Some issues, however, had mandatory consensus, for example, rules of procedure, allocation of TACs, financial regulations, new entrants and amendments to the convention (WCPF Convention 2000).



favour of this system, wanting to retain the text as at the end of the MHLC6.<sup>38</sup> The Chair refused to contemplate opt-out provisions, “arguing that this would negate the right to a compulsory settlement of dispute procedure” (Tarte 2000b: 4).<sup>39</sup> Lobbying on this issue continued until the closing stages of the MHLC7 negotiations. The Chair, Australia, New Zealand and the United States persuaded the FFC bloc to agree to the chambered voting system.<sup>40</sup> They were persuaded to do so because acceptance of the chambered voting system would bring the United States and other fishing states on board (Tarte 2000b: 4, Interviews with Australian, New Zealand and Oceanic delegates). The system requires three-fourths majority in each chamber, “and provided further that in no circumstances shall a proposal be defeated by two or fewer votes in either chamber” (WCPF Convention, Section 6 Article 20.2). Ridings (Interview, October 2000) remarked that the chambered voting system came about as a way of getting the other fishing states on board.<sup>41</sup>

Lobbying on the decision-making issue also took place with the Korean delegation which agreed, the night before the MHLC7 negotiations concluded, to support the chambered voting system. However, it appears that following consultation with Japan, Korea decided not to support the chambered decision-making process (Sydnes 2001: 800). Korea’s decision angered coastal states, (including New Zealand), which felt that Korea had stabbed them in the back. As Murray notes, however, there are sensitive bilateral issues between Japan and Korea, including critical bilateral fisheries agreements. (Interview, October 2000). Another observer, Peter Cozens<sup>42</sup> (Interview, October 2000), emphasised the problematic nature of Northeast Asian security and noted that we hear little regarding the fights that occur between Japan and Korea over the Straits of Tsushima.<sup>43</sup> Cozens believes that other Asian states have always considered Korea as the “smallest boy on the block” and it was therefore not surprising that Korea aligned with Japan.

The decision-making issue represents another aspect which demonstrates the effectiveness or otherwise of collective diplomacy in achieving objectives, such as substantive

<sup>38</sup> At the conclusion of MHLC6, the draft text incorporated a vote of four-fifths majority being required for decision-making, which Nandan considered almost consensus voting.

<sup>39</sup> Tarte notes that the Chair had remarked that since the UNCLOS had entered into force, “it was a requirement to have compulsory dispute settlement”. Any fisheries management regime that did allow an opt-out clause had been negotiated before the entry into force of the UNCLOS (Tarte 2000b: 4.).

<sup>40</sup> It is not surprising that the MHLC Chair, Nandan, supports the chambered voting system. As well as leading the Fish Stocks negotiations, Nandan also steered the negotiating process for the *Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982* (sometimes referred to as the ‘Boat Paper’, in the same way as the Fish Stocks Agreement is referred to as the “Fish Paper”) (de Fontaubert 1995: 87). The ‘Boat Paper’ led to the establishment of the International Seabed Authority (ISA) and the division of the member states into chambers for decision-making (Mann Borgese 1996: 7).

<sup>41</sup> A significant development resulting from the chambered voting system is that the FFA has been “institutionalised” in the new Commission, as being part of the big chamber (Interview, Clarke, April 2001).

<sup>42</sup> Peter Cozens, New Zealand Centre for Strategic Studies, Victoria University at Wellington.

<sup>43</sup> For example, see the ongoing dispute regarding Korean fishing activity around the disputed Kuril Islands. The Soviet Union seized control of these former Japanese-controlled islands towards the close of World War II. Japan has disputed Moscow’s sovereignty (FIS World News 3.7.2001).

provisions in a meaningful multilateral treaty like the WCPF Convention. In this case, the island region was persuaded to accept a substantive provision that may not be in its best interests. Nandan had previously incorporated a chambered decision making process into the International Seabed Authority (ISA). In discussing the chambered decision-making of the ISA, Mann Borgese (1996: 7) argues that “as far as voting is concerned, ... it is rigged in such a way that three industrialized states can block any decision of the Council”. In relation to the WCPF Convention, a proposal cannot be defeated by two or fewer votes in either chamber” (WCPF Convention, Section 6 Article 20.2). This means that three votes in the chamber comprising the fishing states can defeat a specific decision, which may, for example, relate to conservation and management measures.<sup>44</sup> Therefore, the chambered voting system has the capacity to defeat the objectives of collective fisheries diplomacy as pursued by the island states.

### *Allocation*

In spite of the differences of opinion regarding decision-making options, this issue was finalised at the conclusion of the MHLC7. The issue of allocation, however, was more difficult to resolve. The Chair’s inclusion at the MHLC5 of the difficult allocation issue indicated that he was considering inserting this measure into the framework of the WCPF Convention text, rather than leaving it to the Commission. It was considered a “relatively controversial maneuver” (Western Fishboat Owners Association MHLC5: 6). The FFC members’ stand on allocation remained unchanged; that is, they had sovereign rights over their in-zone, including the determination of allocation. They conceded that the Commission could co-ordinate a global Total Allowable Catch (TAC) and split EEZ allocation, in liaison with the FFC. Kiribati’s Statement notes that while the Commission must be given powers in its management of the various functions, “it must not in any way compromise the rights and sovereignty of coastal States” (MHLC 1999b: 16). The other concern of the FFC was allocation of high seas pockets, or enclaves and the emphasis of special concerns/rights over these adjacent high seas areas.

In this way, the Federated States of Micronesia’s Statement notes the appropriateness of “special consideration” being afforded to those coastal states adjacent to high seas pockets regarding any high seas allocation (MHLC 1999b: 12). Japan and Korea rejected this suggestion. Japan argued that the variance in stock levels would lead to “under and over-utilisation of fisheries” (Tarte 1999b: 11). They contended that recent catch levels should be utilised. As the capacity of the coastal states increased, so would their quotas. This was disputed by Indonesia the Philippines and the FFC members, who pointed out that such an approach hinders:

their aspirations to develop fishing capacity, and their desire to secure greater benefits from their tuna resources (Tarte 1999b: 11).

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<sup>44</sup> See Cordonery (2002: 5).



Furthermore, Kiribati's statement emphasises that the region needs a Convention to "conserve the resource sustainably but also to enable the resource-States to harvest their own resource" (MHLC 1999b: 16). This issue has relevance to the aspirations of the region in relation to domestication and indigenous control of the tuna fishery.

Opposing this view, Korea states that it is "unreasonable" of coastal states to "claim ownership of tuna within EEZs" and that they therefore "did not have the legal right to allocation within EEZs" (Tarte 1999b: 11). Despite the Chair correcting Korea on this issue, it emphasises the gulf in understanding between the fishing and coastal states. At the FFC40 meeting in August 1999, it was noted that fishing states had made statements at other international fisheries management meetings, "asserting the rights of the fishing State to in-zone catch history" (FFC40 1999c: 4). The Solomon Islands said that using catch history to resolve EEZ allocation means that the historical catch is owned by the coastal states. It is then up to the coastal state to decide on the most advantageous access arrangement. Therefore, despite a fishing state's harvesting history in an EEZ, there is no "obligation on us as a coastal State to grant access" (Statement MHLC 1999b: 23). The Chair made small adjustments to the draft text on this issue. For example, the level of catch destined for domestic consumption was included, as well as the "special circumstances" of those states with only limited EEZ (Tarte 1999b: 11).<sup>45</sup>

The allocation issue was not resolved at the MHLC negotiations; rather the WCPF Commission will have to negotiate an allocation system. This will not be an easy task, given the divergent opinions of the fishing and Oceanic states. Allocation is a substantive provision in a meaningful multilateral treaty like the WCPF Convention. It has particular reference to those objectives of collective fisheries diplomacy, for example, a fair return, domestication and indigenous control. As has been discussed elsewhere in this thesis, sovereign rights are an integral part of the region's stand on marine resources and are a reflection of their pre-colonial conservation ethic. This was reflected in the way families, communities or chiefly systems allocated terrestrial and marine resources. Having regained that ethic through the various regional and sub-regional instruments which were put in place before the MHLC process, the region does not want to see its control over the allocation provision weakened because of fishing state tactics in the WCPF Commission.

### *High seas enclaves*

Linked to the region's ethics over allocation are what the islanders believe are their special rights over high seas pockets or enclaves, which have been disputed by Japan and the United States. At the conclusion of the MHLC4 negotiations, the draft text had incorporated the special rights of coastal states over adjacent high seas pockets. In response to calls by the United States, Japan and Korea to remove these rights, the Chair amended the text at MHLC5. The new draft text merely notes the need for special attention to be paid to high seas pockets, or enclaves, by

the Commission (MHLC/WP.1/Rev. 4, Annex 5). This was not a good outcome for the FFC membership and reflected a reversal of the draft text at the MHLC4. This demonstrated the lack of unity and cohesion within the FFC bloc at MHLC5 in not putting forward supportive claims to retain the MHLC4 draft text on this issue. With strong FFC leadership, involvement of the LWG, regional co-operation among the membership and the support of Australia, New Zealand and the United States, a different outcome on high seas pockets may have been achieved through collective diplomacy at the MHLC5.

The issue of special rights over high seas pockets or enclaves relates to the highly migratory nature of tuna and the unique geographical realities of the Oceanic region. EEZs and high seas pockets or enclaves link many of the islands. This means that tuna swim through these areas and are vulnerable to concentrated fishing in those high seas areas. By claiming special rights, the Oceanic states hope to control tuna fishing in these areas. Again, like allocation, this issue relates to the pre-colonial conservation ethic of the island communities in relation to terrestrial and marine resources. Under the Palau Arrangement, the region claimed ‘special rights’ over those high seas pockets or enclaves.<sup>46</sup> Because the region had previously regained control over this issue, its status in the WCPF Convention has diminished this control. It was meant to be a substantive provision in a meaningful multilateral treaty – which it was under the Palau Arrangement. It has been weakened under the WCPF Convention in relation to those objectives of collective fisheries diplomacy concerning sustainability, a fair return and indigenous control.

### *Vessel Monitoring System (VMS)*

The VMS was another issue about which the FFC bloc felt strongly at the MHLC negotiations. The bloc wished to maintain control over VMS operations within EEZs, leaving the Commission responsible for high seas VMS operations. It was pointed out by the FFA Director, Victorio Uherbelau, in May 1999 that:

the successful implementation of the FFA VMS would test the maturity of regional solidarity among the FFA membership, noting the divisive tactics being pursued by some distant water fishing nations ... that with unity and solidarity the FFA could prevail over external pressures mounted against it by the mightiest nations. (FFC 39 1999b: 4)

It was envisaged by the FFC that the Commission would contract the FFA to utilise its VMS facilities to co-ordinate high seas fishing activity. The United States supported this view, but it was rejected by Asian fishing states. The FFA Secretariat believed that Japan’s opposition to the VMS was “based on political rather than economic grounds” (FFC39 1999b: 24). Japan, Korea and Taiwan argued that fishing data should be first transmitted to the flag state, which would then retransmit the data to the Commission. While the United States and FFC considered

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<sup>45</sup> Japan had insisted on the inclusion of fish destined for domestic consumption.

<sup>46</sup> See Preamble to the Palau Arrangement.



that the data could be simultaneously transmitted to the Commission and the flag state, they were wary about the data being sent to the flag state for it to retransmit to the Commission. This wariness related to concerns that the data could be sanitised by the flag state. New Zealand made this point in its Statement, believing that there needs to be:

an effective and robust provision on the establishment of a vessel monitoring system, which New Zealand regards as a vital tool for monitoring and compliance in the region. (MHLC 1999b: 18)

An annex proposed by the United States envisaged the Commission being responsible for high seas VMS, coastal states being responsible for EEZ VMS, and procedures being developed to co-ordinate different VMS and to ensure confidentiality of the data. The Chair included the annex in his draft text. By the end of the MHLC5, however, in response to the forceful arguments put forward by Japan and other fishing states, he removed the annex. The Chair also acknowledged the right of the flag state to receive the data and then to retransmit it to the Commission (Tarte 1999b: 13). The Chair's acknowledgement represented a major concession to Japan's concerns over those of the United States, New Zealand and other coastal states.

At MHLC6, the FFC bloc argued that given technological advances with the VMS, there should be no difficulty in simultaneous transmission (Tarte 2000a: 19). The FFC bloc's concerns were answered in the Chair's draft text issued at the conclusion of the MHLC6. It called for VMS data to be simultaneously transmitted to the Commission (or other designated central hub) and to the flag state "where the flag state so requires" (MHLC/Draft Convention/Rev.1 Part V, Article 24.8). This outcome reflected objectives of collective fisheries diplomacy, specifically relating to sustainability, a fair return and indigenous control.

### *Transshipment*

Another MTC provision over which there was a clear divide between fishing and coastal states was in relation to transshipment. The FFC members argued for a complete ban on transshipment, believing that it undermines the Minimum Terms and Conditions (MTC) they had worked so hard to implement. The FFC 39 in May 1999 discussed the issue of transshipment at length. At that meeting, the FFA Secretariat noted that some of its members were experiencing difficulties in finalising bilateral access agreements because of the ban on transshipment at sea as set out in the MTCs (FFC 39 1999b: 21). While transshipment within an EEZ is subject to coastal state jurisdiction, most Oceanic states have banned the practice and it has become part of the region's MTCs. Transshipment on the high seas has not yet been circumscribed, with most fishing states arguing against its prohibition. The Philippines, for example, operates small purse seiners in Papua New Guinea's EEZ and has called the moves to ban transshipment as discriminatory. Papua New Guinea supports this call. On the other hand,

the United States and New Zealand argue that the only effective way of fulfilling MCS requirements is to ban transshipment (see Tarte 2000a: 21).

The Chair's draft text at the conclusion of the MHLC6 maintains a ban of purse seine transshipment at sea, although not within EEZs. Furthermore, "existing operations" on the high seas could be exempt (MHLC/Draft Convention/Rev.1 19 April 2000, Part IV, Article 29 1-5). It is argued that fishing states want to maintain transshipment for several reasons; it allows greater fishing time; it makes the operation more profitable; and it allows secrecy of catch and effort for those fishing fleets wishing to circumvent MCS measures. For conservation and management measures to be transparent there has to be control exerted over the catch. This control is maintained by shore-based transshipment. The ban on transshipment is a substantive multilateral treaty provision. While the WCPF Convention does ban high seas transshipment, it does not include existing operations, and there is no ban on EEZ purse seine transshipment. Most Oceanic states had banned EEZ transshipment as part of MTCs. It is believed there still could be problems with monitoring, control and surveillance and because of this, as an indicator of effectiveness, it may not meet the objectives of collective fisheries diplomacy, specifically sustainability, a fair return and indigenous control.

### *Preamble*

Issues for inclusion in the Preamble were also controversial. For example, Japan requested the inclusion of fish for 'human food consumption' in the first paragraph of the Preamble.<sup>47</sup> The Chair agreed to this request, despite opposition from the FFC states that felt that Japan could be advantaged when fishing opportunities are allocated (see Tarte 2000a: 18).<sup>48</sup> Again, the allocation provision is likely to be a controversial aspect of negotiations at the WCPF negotiating table. Furthermore, the parties to the MHLC5 did not concur with Japan's request to remove the references to the Fish Stocks Agreement, as it "had not yet been ratified by the required number of states" (Tarte 1999b: 15-16). Oceanic states wanted the Preamble to note the precautionary approach and the special needs of small island states. The inclusion of the special needs and problems of the smaller island states, a sub-group of the Forum, was promoted by Kiribati, one of its members. These issues were included in the draft text at the conclusion of MHLC5.

### *High seas boarding and inspection*

Also at MHLC5, the United States proposed a two-year moratorium on high seas boarding and inspection after the WCPF Convention's entry into force, during which time the Commission would "develop an enforcement regime that had the support of all members" (Tarte 1999b: 21).

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<sup>47</sup> This is a reflection of Japan's post World War II preoccupation with food security (see Bergin and Haward 1996: 31).

<sup>48</sup> At MHLC6, the FFC argued "consumption patterns do not necessarily reflect the measures of dependence of a population on the resource, such as availability of alternative good sources" (Tarte 2000a: 18).



Should agreement not be reached, the Fish Stocks Agreement's provision will apply. During that two-year period, unless there were reasonable grounds to suspect that a "serious violation" had occurred, boarding and inspection would not be sanctioned (Tarte 1999b: 21). Japan, China and Korea dismissed this proposal, arguing that it was best left to the Commission to resolve.

The Chair, however, considered that there was merit in the United States proposal and adopted it, with the addition of "alternative mechanisms" which will "ensure compliance" (Chair's Closing Statement MHLC 1999b: Annex 6). In so doing, the Chair believed he had dispelled the concerns of those states whose beliefs were at variance with the boarding and inspection articles of the Fish Stocks Agreement. The Chair agreed to a two-year grace period following the entry into force of the WCPF Convention. The FFC membership was concerned, however, that this grace period may "undermine the compliance and enforcement role of the Commission" (Tarte 2001a: 28). This issue, in effect, watered down the Convention's text and distanced itself from the Fish Stocks Agreement, not a result which favours conservation and management measures. Boarding and inspection demonstrates a substantive provision in a meaningful multilateral treaty like the WCPF Convention. This outcome therefore amounts to a reversal in terms of the objectives of the island states in relation to sustainability and a fair return.

### *Precautionary Approach*

Along with important MTCs like boarding and inspection, the precautionary approach is a central feature of conservation and management measures. At the MHLC5 negotiations, Canada, Australia and New Zealand highlighted the "compelling authority" of the precautionary approach, illustrated by its inclusion in the Fish Stocks Agreement (Tarte 1999b: 22). Japan, however, requested removal of any reference to that Agreement, as it was not yet in force, restating its "frustration that its interests were not being taken into account" (Tarte 1999b: 22). In response, the Chair "felt it was appropriate at this stage to delete the proposed annex" which set out the precautionary approach's application (Chair's Closing Statement, MHLC 1999b: Annex 6). This represented a further reversal for the FFC bloc, which did not wish to see reference to the application of the precautionary approach removed from the annex to the WCPF Convention, although its application was still contained within the Convention text.

### *Scientific Advice*

The provision of scientific advice also divided the parties to the negotiations. Two sources were being considered for the provision of scientific advice. The first, a scientific committee, made up of the Commission's membership. The second, an autonomous scientific source, derived from the existing regional scientific establishments of the region, specifically, the Oceanic Fisheries Program (OFP) of the Pacific Community (SPC). While the FFC membership and most other parties agreed to this plan, Japan rejected it. Japan argued that it could not agree to

the scientific committee being either “subordinated to, or sidelined by, the scientific staff (over which Japan would have limited control)” (Tarte 1999b: 23).

The United States disagreed with Japan’s argument, asserting that the “whole point” of structuring the scientific advice in such a way was to ensure that the Commission received “the best advice (which is) free and unfiltered” (Tarte 1999b; 23). The Chair noted that he was “unable to depart from the basic scheme for the provision of scientific advice” which had been drafted at the MHLC4 (Chair’s Closing Statement MHLC 1999b: Annex 6). This represented a win for the region and demonstrated an issue where unity and cohesion had resulted in a positive outcome. It also achieved an objective of collective fisheries diplomacy, in particular, sustainability.

### *Funding*

Another controversial issue related to the financial arrangements for funding requirements for the Commission’s future activities. For example, activities relating to the observer program, VMS, vessel register and the provision of scientific advice. A proposed amendment, tabled by Australia, suggested cost-recovery as a means of financing those activities additional to the Commission’s regular budget. The United States, Japan and Korea rejected this proposal (Tarte 2000a).<sup>49</sup> Japan argued that it would not support funding of those activities that it believed should not be included within the Commission’s work program (for example, the observer program). Further, if Japan was expected to contribute to such activities, it would have to reduce its level of budget funding (Tarte 2000a). The Chair agreed to amend the text to note “any other funds which the Commission may receive, including fees for specific services” (MHLC/Draft Convention/Rev.1 Section 5 Article 17 (d). This represents a further watering down of the text. The funding issue will be contentious, given the Commission’s dependence on fishing state financial support. Their conditional support may be manifest through intimidation and persuasive tactics by the fishing states in order to undermine, water down or limit MCS measures.

### *Fishing entities*

In spite of continued lobbying throughout the MHLC6 negotiations, the status of fishing entities remained unresolved. On the one hand, Taiwan wants contracting party status, arguing that, along with China, it will shortly accede to the World Trade Organisation (Tarte 2000a: 11). Taiwan believes that if territories have Contracting Party status, then it should too, stating that it would be a “major defect” if Taiwan was not accorded Contracting Party status (Opening Statement MHLC 2000a: Annex 3). China, alternatively, noted that:

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<sup>49</sup> Over 60 per cent of the catch in the WCPO Convention area is harvested in the EEZs of the Oceanic states by Japan, Korea, Taiwan and the United States (Western Fishboat Owners Association 2000a: 6).



the local election in Taiwan and the element of democracy and other irrelevant matters have nothing to do with fish stock conservation and management ... our colleague from Chinese Taipei has politicized the fishing issues in his opening statement on purpose ... we hold that the status of fishing entities has no inevitable and direct link with the conservation and management measures. (Opening Statement MHLC 2000a: Annex 3)

It was obvious that neither side would agree to the Chair's alternative draft that allowed Taiwan to accede to the WCPF Convention as a fishing entity, once that Convention has entered into force. Taiwan's inclusion as a contracting party was supported by the five Oceanic states with which it had diplomatic relations at the time; that is, Palau, Marshall Islands, Solomon Islands, Tuvalu and Nauru. Pro-Taiwanese Oceanic states were strongly supported by the United States (Tarte 2000a: 10-11). While Papua New Guinea did not side with Taiwan, it did admit that the WCPF Convention's provisions should bind both China and Taiwan (Opening Statement MHLC 2000: Annex 3). The Chair requested China and Taiwan "reconsider their positions" to resolve this matter before the MHLC7 negotiations (Tarte 2000a: 10-11).

This issue was not concluded until late in the MHLC7 process. In order to placate China, the issue "was resolved eventually through obfuscation and ambiguity" (Tarte 2000b: 5). This was achieved through removal of any direct reference to Taiwan's membership of the Commission. Nevertheless, provisions remain which bind Taiwan to the WCPF Convention, on its entry into force. This includes voting rights, except on the issues relating to amendments and new members, where only contracting parties may vote on these issues. Taiwan was included as a member in the final text of the WCPF Convention, "without making it explicit" (Tarte 2000b:5)<sup>50</sup> While this satisfied Taiwan, China expressed its disapproval with the amendment by abstaining in the final vote on adoption of the WCPF Convention. China maintains that Taiwan should have limited participation. As one observer points out, however, if Taiwan is going to pay 20 per cent of the budget, "it is insulting of China to argue over its participation" (anonymous 2000). The result was one more step in Taiwan's bid for international diplomatic recognition. The United States had won its second campaign at the MHLC7 negotiations. As Taiwan operates one of the major fishing fleets in the region it must be bound by the WCPF Convention and it is in the best interests of the FFA membership that Taiwan signs on to that Convention in whatever way is appropriate.

### *Participation of territories and dependencies*

The third campaign of the United States at the negotiations concerned the status of French territories such as New Caledonia and French Polynesia. The United States territories (Guam, Northern Marianas, American Samoa), the New Zealand territory (Tokelau) and France, (Wallis and Futuna) will not be given voting rights in the new Commission. France argues that, in view of the evolving nature of both New Caledonia and French Polynesia, each should have voting

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<sup>50</sup> In Part III, Section 1, Article 9.2 of the MHLC Convention, it states: "A fishing entity referred to in the Agreement, which has agreed to be bound by the regime established by this Convention in accordance with the provisions of Annex I, may participate in the work, including decision-making, of the Commission".

competency for their in-zone management and conservation. France, however, has voting competency for their in-zone compliance and enforcement. Japan is nervous regarding the prospect of additional Oceanic states with voting rights and the United States is against territories having voting competency (Tarte 2000a: 12-13).

As far as France was concerned, it did not matter what mechanism was to be found, but French Polynesia and New Caledonia must be able to vote. Ridings remarks that when France's proposal was put on the table again at the MHLC7, New Zealand said that it wanted Tokelau to have a vote and that there be no discrimination (Interview, October 2000).<sup>51</sup> The United States on the other hand, insisted that international law should be used to decide the issue. France abstained from the final vote on the adoption of the WCPF Convention. Ridings suggests, however, that by not making a statement at the time of the adoption of the article, France appeared to indicate that this issue might not be such a sticking point in the future. Ridings concludes that separate rights and voting rights might be negotiable in the future (Interview October 2000). In this regard, Tarte notes that:

the extent of that participation would depend on their respective competence under international law and would be spelt out in separate rules of procedure. (2000b: 5)

The United States had won its third campaign at the MHLC7 negotiating round. The issue of the voting rights of territories and possessions is an important issue in the region, as Forum membership is limited to independent states. The decision would have pleased the Oceanic states - if France's demands had succeeded, it may have led to France securing more votes.

### *Entry into force*

The differences of opinion over the participation of territories and possessions were also reflected in the issue of entry into force. Fishing states, including the United States, believed that there should be at least 13 ratifications, including three from the north (fishing states) and seven from the south (coastal states), before entry into force. The United States also argued for the deletion of the text that allowed "entry into force after two years on the basis of twelve ratifications even without any northern (i.e. fishing) state ratifications" (Tarte 2000a: 13). This text was included to avoid delaying tactics, by even one fishing state, over entry into force. While Japan, Korea and China backed the United States proposal, they also argued that "at least two of the northern states be Asian states" (Tarte 2000a: 13). Australia questioned this latter proposal. Japan responded that the Asian states account for approximately 60 per cent of the total catch. An added argument of the Asian states was that the United States activities in the region are restricted to purse seine fishing (Tarte 2000a: 13). The Chair amended the MHLC6 draft text to include ratification by at least three northern states and seven southern states, with

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<sup>51</sup> At the MHLC6, New Zealand tabled a paper which argued that a mechanism should be put in place, whereby Tokelau could accede to the Convention. The United Kingdom, on behalf of Pitcairn Island, neither attended any of the MHLC negotiations, nor made any submissions regarding this issue.



13 states required for ratification, and entry into force increased to three years (Part XII, Article 36). This result represents a compromise position for the FFC bloc, and also by the Asian fishing states.

### *Participation of the European Union*

The Asian fishing states and the United States had dominated the region's tuna industry for many decades. New players were emerging, however, with the European Union requesting full participation in the Precon process that was to follow the signing of the WCPF Convention. The Precon is an interim regime until the entry into force of the WCPF Convention. The FFC is concerned about the increased level of fishing state participation in the process, specifically because the European Union might be difficult. In this regard, it was noted at the FFC 43 meeting that the European Union had made "a fresh approach to certain FFA member countries" seeking endorsement for its full participation in the process. The meeting agreed not to support this request (FFC43 2000b: 5). The FFC bloc was also concerned that the European Union is not a flag state and that "competency would be divided between the EC and its individual member" (Tarte 2000a: 17). For example, The European Union's competence for fisheries only covers the European continent. If a European Union member has fisheries interests in the WCPO, that member has responsibility for those interests (Interview, Gray August 2000). Furthermore, the FFC was concerned that by allowing the European Union to participate it might lead to other fishing states seeking membership. This relates to Ecuador, Panama and Guatemala, all of whom fish in Kiribati's EEZ. Finally, it is known that members within the European Union opposed the Fish Stocks Agreement, for example, France and Spain (Interview, Doulman, April 2001).

The European Union believes there are several reasons why it is 'entitled' to take part in the Precon. First, Spanish vessels fish in the region. Second, European Union nationals "were investing in the region to develop local fisheries" (Tarte 2000a: 18). Third, the European Union provides the region with funds for highly migratory fish stock research. As well, the European Union delegate notes that it might be awkward for the Union to ensure that

vessels flying the flag of a member state ... comply with regional terms and conditions of fishing if it were not a member of the interim regime. (Tarte 2000a: 18)

The European Union tried to exert its power by threatening the Oceanic states with a reduction in its financial support to the region. It did not succeed. The European Union failed to achieve support for its full participation in the process. As Spain has not been allowed to fish within the in-zone jurisdiction of the European Union, and because it has overfished in other parts of the

world, it needs new fishing grounds. The MHLC6 membership's decision to disallow the European Union's participation angered the European Union and Spain.<sup>52</sup>

This is confirmed by Cartwright, who believes it was the right move to keep the European Union out until the MHLC process was complete, particularly to avoid a pre-emptive grab for an allocation of the tuna resource (Interview, May 2001). At the conclusion of MHLC6, when the European Union was refused membership, "they were furious" and "started cursing me and others, arguing that it was their right to full participation in the process" (Interview, Cartwright May 2001). Cartwright went on to concede that the European Union is more likely to comply with regulations than either Taiwan or Korea, and believes that it will be a "genuine partner in assisting the region to develop their tuna resource" (Interview, Cartwright May 2001).

While a fisheries official, Les Clarke,<sup>53</sup> supports this view, he feels that the European Union has a lot of explaining to do, as "their compliance failures are in everyone's mind" (Interview April 2001). Furthermore, "an increasing number of people note the way they are treating other states, for example, the West African states" (Interview, May 2001). Clarke also believes that the European Union has no control over the Spanish or the French fishing fleets. Doulman also discusses critically the issue of the European Union's participation in Oceania's tuna fishery, arguing that it had never previously displayed an interest in the region (Interview, April 2001).<sup>54</sup> This was a good outcome for the region and demonstrated unity under pressure. In spite of Spain securing an access arrangement with Kiribati, it was not enough to secure membership of the MHLC process through the European Union. A fishing heavyweight, the European Union might have compounded the divisive tactics employed by the Asian fishing states over controversial issues at the MHLC negotiations.

### *Observer program*

The Asian fishing states, such as Japan, were vocal in their opposition of another controversial issue, the observer program, submitting alternative text that "curtailed and limited the role of the observers and strengthened protective measures for the vessel's crew and fishing operations"

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<sup>52</sup> Another observer to the MHLC process noted that the European Union did not do itself any favours. It came late to the meetings and expected to be met with open arms. It was not. The conference had already decided who was going to be involved and who was not. There were cables back to Australia from the European Union, critical of Australia's role in "locking them out" of the process (anonymous).

<sup>53</sup> Les Clarke, Fisheries official, FFA.

<sup>54</sup> Between 1987-1991, Doulman made two trips to Brussels to try to interest the European Union in fishing in the region, as a counter to the United States fleet. Other individuals also made trips for the same purpose. According to Doulman, the European Union was not interested, but has since decided to become involved. Further, the European Union's stalling over ratification of the Fish Stocks Agreement infuriated the United Kingdom, which had deposited its instrument of acceptance, not just for itself, but also on behalf of its overseas territories, which are not covered by the Treaty of Rome. The United Kingdom had asked France to do the same, but France had refused (interview, April 2001). Doulman specifically mentioned Michael Lodge, previously Legal Counsel at the FFA, (who now works with Satya Nandan at the International Seabed Authority) as being one of those individuals who also went, cap in hand, to Brussels to try to interest the European Union in the Pacific.



(Tarte 2000a: 23-24).<sup>55</sup> While Japan's concerns were incorporated into the draft negotiating text at the conclusion of MHLC6, there remained two contentious issues. These were the accommodation provided to observers on the vessels and the observer program's funding arrangements. In relation to observer accommodation, after further debate, a compromise in the wording was reached that accommodation would be at a level "normally available to an officer on board the vessel" (Annex 3, Article 3.3, MHLC/Draft Convention/Rev.1 19 April 2000). The funding issue remains controversial and has been left to the WCPF Commission to resolve.

The observer program's funding component will be problematic for the WCPF Commission. Asian fishing states are not in favour of the observer program. It is Japan's view that the MCS and observer program represent the "direct extension of in zone practice of certain group of countries over high seas" (Opening Statement MHLC 2000a: Annex 3). The FFC bloc prefers the funding to be based on cost recovery, making members liable for "the actual observer coverage of their vessels" (Tarte 2000a: 23). Fishing states, on the other hand, argue that the observer program should be based on the "assessed contributions of all members" (Tarte 2000a: 23). The observer program is likely to be one of the most expensive components of the WCPF Commission's work program. The strength of the WCPF Convention will lie in its MCS provisions, including those back-up sanctions. The observer program is an essential component of MCS provisions. This outcome represents a watering-down of the WCPF Convention's text and of the MCS provisions that prevailed pre-MHLC and will have future conservation and management implications. As a substantive provision of a meaningful multilateral treaty like the WCPF Convention, the observer program is linked to those objectives of collective fisheries diplomacy; specifically, sustainability, a fair return and indigenous control. Therefore, the dilution of this provision means that these objectives have been undermined.

### *Flag state jurisdiction*

Thus, the FFC bloc lost ground over compliance and enforcement issues. As well, the draft text was amended to take account of fishing state concerns over erosion of flag state jurisdiction on the high seas. Japan argued successfully for the text to be further amended to give "greater protection for the flag state" (Tarte 2000a: 24). Japan also lobbied successfully for reassurance within the draft text that flag state responsibility will not be "overridden" by a coastal state where a fishing vessel has fished illegally within its EEZ (Tarte 2000a: 24). The Canadian delegation made boarding and inspection a focus of its MHLC6 Opening Statement, specifically, that the WCPF Convention should not "derogate from articles 21 and 22 of the Agreement in regard to boarding and inspection" (MHLC 2000a: Annex 3). As Canada had had a very public fight with Spain in relation to its over-fishing of the Grand Banks ground-stock, it

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<sup>55</sup> An observer to the MHLC process believed that the Japan was "50 years behind the rest of the world in understanding conservation" (anonymous). Hughes supports this belief, noting that in Japan's opinion, the environment "did not count" (Interview November 2000). Furthermore, Lack notes that "management and conservation are not on the agenda" for Japan (Interview, December 2000).

is committed to compliance and enforcement measures. Maximising flag state protection could easily lead to minimising compliance and enforcement measures, resulting in a weakened regime. This represents a loss for the region again in relation to the objectives of collective fisheries diplomacy, as boarding and inspection relates specifically to sustainability, a fair return and indigenous control.

While the Chair had been optimistic about the adoption of the WCPF Convention by consensus, by early into the MHLC7 meeting it was obvious this would not happen. When the draft text was put to the vote, it was adopted by 19 votes in favour, two against (Japan and Korea) and three abstentions (China, France and Tonga). Japan threatened the meeting by saying that the WCPF Convention would be “ineffective without the participation of the Asian fishing states” (Sydnes 2001: 801). Japan was also critical of the Chair’s role, challenged the rules of procedure and “the credentials of Indonesia and Kiribati” (Sydnes 2001: 801). Furthermore, Japan told the meeting that it “would establish a competing Commission covering the northern part of the Convention area” (Sydnes 2001: 801). In spite of Japan’s threats, all participating states, apart from Japan, signed the Final Act and 11 states signed the WCPF Convention.<sup>56</sup> Given Japan’s actions at the MHLC7, it is clear it did not intend to sign the Convention. Taiwan signed a separate arrangement (Tarte 2000b: 5). The support of the Oceanic states for the Convention may have reflected their belief that this was the best outcome that could be achieved. It was rumoured that the European Union had pressured Tonga not to sign at the MHLC7. Tonga has a rapidly expanding longline fleet that sells its fish directly to the European Union. Other rumours suggested that Tonga’s delegation leader, Akau’ola,<sup>57</sup> had arrived late at the negotiations and was unable to accept the changed decision-making provisions without advice from his government.<sup>58</sup> Support was expressed for the European Union by a Tongan delegate, who remarked to Scott (Interview, October 2000)<sup>59</sup> that Spain should have been allowed membership of the MHLC process.

The conclusion of the MHLC7 meeting marked the end of a lengthy negotiating process between fishing and Oceanic states which tested the resources of the regional bloc. As Sydnes (2001: 797) remarks, “[T]he overwhelming number of issues negotiated during the MHLC were ... matters where there were important conflicts of interest”. From the discussion of the

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<sup>56</sup> States which signed included Cook Islands, Federated States of Micronesia, Fiji, Marshall Islands, New Zealand (Depositary), Palau, Philippines, Samoa, Tuvalu, United States and Vanuatu.

<sup>57</sup> As the leader of Tonga’s delegation, Akau’ola signed the WCPF Convention at the Precon meeting at Christchurch, New Zealand in April 2001.

<sup>58</sup> Thoulag mentioned that the Federated States of Micronesia had, at one time, tried to become a member under the Lomé Convention. The response from the European Union was that “we were not wanted”. Then the European Union “developed an interest in fishing in our zone and suddenly the EU wants us to become a member” (Interview, April 2001).

<sup>59</sup> Delegates discussed with me the issue of Spanish fishing in the region. I was advised, for example, that the Director of Fisheries in Spain has just been appointed as Special Ambassador to Costa Rica, because that is where Spain is hoping to enter the Pacific fisheries (Interview, Doulman April 2001). In this regard, Heikkila noted that Spain is the most aggressive fishing nation he had ever seen, even more so than Japan. Spain is “totally arrogant” about its right to fish and wants a presence in the Pacific, perhaps through the IATTC (Interview, April 2001). It could achieve this through Costa Rica.



negotiations and the main provisions which were debated, the unity of the FFC bloc fragmented during the MHLC5 and the MHLC6 rounds because of poor FFC leadership, national interests and a decreased level of input from the LWG. There were internal and external factors which sought to undermine regional co-operation at MHLC5 and MHLC6. These included the attempts by Asian fishing states to split the FFC by engaging with the PNA states, or individual PNA states. By doing so, they hoped to fracture the FFC and make gains in the negotiating text. Hence, fishing states were preoccupied with their own national interests, over the regional negotiating process or fisheries conservation and management. These national interests reflect costs and benefits calculating those foreign and/or domestic policies of negotiating states.

Internal negative factors included the self-interested actions of individual states, or individuals, such as the FFC Chair, antagonism between individuals within the FFC bloc and the self-interest of a regional sub-group. As regards the latter, from the discussions above it is clear that the PNA group felt it had to take a stand independent of the FFC in order to express its concerns regarding specific issues of direct relevance to its skipjack purse seine industry. Divisions within the FFC, particularly over those with fish and those without fish, also occurred when the FFA was being established (see Chapter Three). The most important question is whether these divisions were enough to result in a decline in the effectiveness of collective diplomacy. In isolation, perhaps not. In combination, however, they were enough for the region to lose ground on several important negotiating issues, such as transshipment, the precautionary approach, the observer program, boarding and inspection, 'special interest' over high seas pockets and enclaves, thus allowing the fishing states to gain some control and influence over the process.

It was not until MHLC7 that the region regained cohesion and unity. It is suggested that the bickering by Australia and New Zealand not only undermined their previous leadership roles in regional fisheries negotiations, but also demonstrated a weakness in Canberra's corporate knowledge on the complex issues under negotiation. For example, Mark Gray commenced work on the negotiations at MHLC3 and Joe Thwaites at MHLC7. Having regained a more cohesive front, however, the Oceanic states were persuaded to accept a decision-making process that does not necessarily give them the confidence they need at the Commission's negotiating table. Several issues proved too difficult to resolve at the negotiations and have been left for the Commission to decide, for example, allocation and new entrants.<sup>60</sup> If the chambered voting system is required to decide allocation issues at the Commission, there will be opportunity for suasion and other tactics to achieve outcomes favoured by fishing states. This has implications for the Commission's funding of such controversial issues as the observer program.

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<sup>60</sup> A Resolution issued at MHLC5 which decided that "the number of participants in MHLC should not be increased", decided further "that requests for participation in MHLC will not be entertained until the draft Convention enters into force" and agrees "to consider applications for observer status as appropriate" (Annex 7 MHLC 1999b).

It is worth reflecting on whether, had the FFC bloc not lost its unifying role at MHLC5, the WCPF Convention would be stronger than it is. As the Asian fishing states did not sign a weaker WCPF Convention, they certainly would not have signed a stronger one. Once that Convention enters into force, however, those fishing states who will want to retain their fishing access in the region, even if they are non-parties to the WCPF Convention, will have to abide by that Convention. The Fish Stocks Agreement requires that non-parties co-operate and comply with regional arrangements.<sup>61</sup> Loss of unity and cohesion within the FFC at MHLC5 and MHLC6 led to a weaker regime and with it, less stringent conservation and management principles than those already in place through various regional and sub-regional instruments.<sup>62</sup>

Had the bloc been unified at the MHLC5 and the MHLC6, could they have fought these outcomes and won? Does the outcome suggest that even though the FFC bloc demonstrated regional co-operation, it may not have resulted in effectiveness in collective diplomacy? Perhaps the collective force of the Asian fishing states was enough to overcome whatever attempts at collective diplomacy the region attempted at those negotiating rounds. It may not, therefore, have mattered at that stage whether they mounted an effective campaign of collective diplomacy.

What did matter, however, was the diplomatic balancing act displayed throughout the process by the MHLC Chair, Ambassador Satya Nandan and his colleague from the International Seabed Authority (ISA), Michael Lodge. Nandan, on behalf of Fiji, had presented a paper on the need for the conservation and management of the region's fisheries at the 1976 South Pacific Forum Meeting. As Fiji's representative, he had campaigned actively at the UNCLOS negotiations. He led the Fish Stocks negotiations during his tenure as the UN Under Secretary General for the Law of the Sea and subsequently was elected head of the ISA in 1996. Lodge was Legal Counsel at the FFA before taking up a position with Nandan at the ISA. It should be recalled that Lodge was part of an inner group of negotiators who assisted Nandan draft the Fish Stocks Agreement. Lodge supported Nandan at the MHLC negotiations in his role as the Secretary of the Conference. The role played by Lodge took place 'behind the scenes', but was noted by the author at the first Prepcon negotiations and discussed generally by those interviewed during the course of the research. He acted as the eyes and ears of Nandan, as he worked his way around the conference participants, seeking to find and promote common ground and movement forward on the issues being debated. For example, Hughes (interview November 2000) noted that because Lodge took the time to listen and develop strong relationships with the delegations, Nandan relied on him to a great extent.<sup>63</sup>

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<sup>61</sup> See Part IV, Article 17.1 of the Fish Stocks Agreement.

<sup>62</sup> Australia's Statement made upon the adoption of the Convention said that the "Convention should have been stronger and, with a longer term view by some participants, it could have been" (MHLC 2000b: Annex 9).

<sup>63</sup> Neil Hughes, an official with Environment Australia, was a member of Australia's MHLC delegation.



It was Nandan's close association with the region which reassured the Oceanic participants that their interests were being protected. From the MHLC reports written by Tarte, the Opening and Closing Statements presented by Nandan, and comments made by observers such as Sydnes (2001), it is clear that Nandan's commitment to the Fish Stocks Convention and its application and benefit to the Oceanic region was foremost in his tireless chairing of the MHLC negotiation process. That the region achieved what it did in the WCPT Convention is in part due to his work on their behalf. Observers such as Sydnes (2001: 807) comments that because of the way the negotiations were structured, Nandan's leadership was pivotal through his agenda-setting and his chairing of all substantive negotiations, and his proposing and drafting new provisions. Therefore, "he was a source of entrepreneurial and intellectual leadership throughout the MHLC process" (Sydnes 2001: 807).

The commitment shown by Nandan and Lodge to achieve a favourable outcome for the region is upheld by Tarte's (1999b: 3) comments that by MHLC4 the Asian fishing states had become dissatisfied with the way the negotiations were being steered by Nandan.<sup>64</sup> Sydnes (2001: 802) argues that the Asian fishing states are the real "losers" in the process, because of the opposition they face "domestically from politicians and the fishing industry". Therefore, the leadership and support provided by Nandan and Lodge at the MHLC negotiations did help to fashion a Convention that would provide a backbone for the conservation and management efforts of the Oceanic states.

#### **Section five: The roles of other key actors**

This Chapter has so far dealt with the MHLC5-MHLC7 negotiations, the contentious issues which were debated at those meetings, and the role of the Forum membership and that of the foremost of the Asian fishing states, Japan. It is important also to examine the roles of other key actors in the MHLC process. These include the United States, France, Canada, China, Korea, Taiwan, Indonesia and the Philippines.

#### *United States*

The United States has been involved with tuna fisheries in the region since World War II and has, since signing the Multilateral Fisheries Treaty in 1987, been a strong supporter of the region's conservation and management measures. This support manifested itself in a push for co-operation between fishing and Oceanic states to control unregulated high seas fishing in the early 1990s.<sup>65</sup> The United States supported the Fish Stocks Agreement and saw the benefits of its application in establishing an organisation comprising Oceanic and fishing states to conserve and manage fisheries resources across their migratory range in the western and central Pacific Ocean (WCPO). This attitude would cause friction during the MHLC negotiations, but

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<sup>64</sup> This was also raised by a variety of delegates during interviews.

<sup>65</sup> In Chapter Five I discussed the United States' promotion of fishing and Oceanic states' co-operation at a Multilateral Fishing Treaty meeting in December 1991.



eventually the United States yielded to pressure by the Oceanic states to allow them to maintain sovereign rights over their in-zone fisheries.<sup>66</sup> From early on in the MHLC negotiations the United States adopted a supportive role towards the aspirations of the Oceanic states. However, on issues which were seen as opposing its fisheries foreign policy aims, the United States was more inclined to cross the floor to side with the views of other fishing states. As discussed in Chapter Five, the United States was, naturally, preoccupied with its national interests, both economic and strategic.

By MHLC3, there was a clear indication of the differences between the interests of fishing and coastal states. The United States, for example, was firmly allied with the FFC membership and other coastal states on issues relating to monitoring, control and surveillance (MCS) and the precautionary approach. Alternatively, the United States was united with fishing states in relation to membership of the future Convention, total allowable catch (TAC) and an objection clause.<sup>67</sup> The United States was diplomatic in advancing its proposals and ideas and keen to be seen by other delegations as helping, not obstructing, the process. This was achieved not only by funding several of the MHLC negotiating rounds, but also by proposing and issuing draft articles throughout the negotiations, for example, on institutional structures, budget and finance, the observer program, transshipment, compliance, boarding and inspection and transparency. In addition, the United States chaired working groups on measures such as transshipment, observers and the VMS, prepared a paper on allocation, and suggested a list of Highly Migratory Species species to be covered.<sup>68</sup>

Other initiatives raised by the United States included the support of independent scientific advice to the Commission; a proposal to allow flexibility in the Commission's funding formula; and a draft article in relation to non government organisations (NGOs) as observers in the Commission. This initiative met with opposition from Japan, a strong opponent of NGO participation. Thus, as Tarte remarks, the "US has emerged as an increasingly pivotal actor in terms of drafting and proposing text (1999b: 25). It is the most prodigious in its contributions." On issues where its strategic interests were paramount, the United States was also vocal, for example, its support of Taiwan's participation as a contracting party and its opposition to voting rights for territories. To achieve its strategic aims, the United States was not afraid to pressure the Oceanic states by reminding them of "its financial contributions and its fishing operations in order to reflect the possible consequences of it not being a party to the convention (which may follow if it did not get its way on certain issues)" (Tarte 1999b: 25). As Tarte (2000a: 8) remarks elsewhere, the most important issue for the United States by the MHLC7, was decision

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<sup>66</sup> Article 7 (1) of the WCPT Convention notes that "Conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of highly migratory fish stocks in their entirety. To this end, the members of the Commission have a duty to cooperate for the purpose of achieving compatible measures in respect of such stocks".

<sup>67</sup> See United States Country Statements to various MHLC meetings and Tarte 1998c.

<sup>68</sup> See Tarte's various MHLC reports.



making. In discussions with delegates, they agreed that had its chambered voting system proposal not been accepted by the meeting, it would have been unlikely that the United States would have signed the Convention. Nevertheless, the WCPT Convention must have been seen by the United States' delegation to be in its best interests, if participation of other powerful fishing states, such as Japan, could be assured. It was, after all, the United States that proposed a preparatory conference, to be convened by the depository government, which would meet on an ad hoc basis during the interim period before the WCPT Convention enters into force (Country Statement MHLC 2000a). The United States played a very careful role throughout these negotiations, wary of upsetting its strategic and economic relations with either the Forum membership or its Asian interests. It succeeded, apart from the anxious comments made to me by Oceanic delegates in relation to the ramifications of the chambered voting system. It also achieved its other goals, for example, the non-voting rights of its territories and the participation by Taiwan. If Japan does sign on to the WCPT Convention, these negotiations will herald a major achievement in United States foreign policy.

### *France*

As France has three territories in the region (New Caledonia, Wallis and Futuna, and French Polynesia) it sat at the MHLC negotiating table as a full member. France's involvement in Oceania's regional organisations originated with the establishment of the Pacific Community in 1947. One of its preoccupations during the MHLC negotiations was to ensure that the scientific work carried out by the Pacific Community was not undermined. It participated in the MHLC process by, for example, being part of a working group which met at the conclusion of MHLC3 (along with Taiwan, Japan, New Zealand and the United States) to review allocation methods used by other regional fisheries organisations (see Tarte 1999a: 8). France proposed membership for its three territories, as each had participated in their own right at the negotiations, but France would remain responsible for their external affairs. France (Country Statement MHLC 2000b) referred to "the diversity of evolving statutes existing in the Pacific area" and noted that New Caledonia and French Polynesia would have, eventually, competence to become signatories and voting members. At MHLC7 there was support from New Zealand on France's position, but after intense negotiations with the United States, France yielded to United States persuasions not to allow membership for territories. Because of this, France abstained from the final vote on the adoption of the convention. France's strategic considerations prevail through its maintenance of colonies in the Pacific region. While its nuclear testing program yielded to the demands of global forces, including the united forces of the Oceanic states, France realises the importance of the region to its fishing industry and its financial commitment to and involvement in the Pacific Community. For these reasons France will want to have a meaningful role in the future WCPT Commission and be seen as a fishing state which is sympathetic to the Oceanic states.

*Canada*

At the MHLC4 negotiating round (where it was an observer), Canada pressed for membership of the MHLC process. It had to demonstrate ‘real interest’ in the region’s fishery as either a fishing or coastal state. Nandan agreed to Canada’s membership at the end of MHLC4, a move not welcomed by Japan, who argued Canada did not have a “significant fishing presence in the area” (Tarte 1999a: 10). It was Nandan’s view, however, that Canada should be granted membership because of its “history of southern albacore fishing in the region; geographic status as a Pacific nation; its strong support for fisheries development in the region; and for fisheries conservation and management (including the UNIA)” (Tarte 1999a: 11). Canada went on to play an active role in the negotiations by supporting the Chair’s draft text on issues such as voting, along with FFC, Indonesia and Philippines. Canada, in line with the views expressed by the United States, Australia and New Zealand, believed in the separation of the scientific committee and the provision of scientific services, a belief not shared by the Asian fishing states (Tarte 1999b: 23). At MHLC6, Canada attempted to persuade the meeting to extend the eastern boundary of the Pacific to include its east coast to enable coverage of northern albacore. The FFC opposed this idea. The Chair noted Canada’s proposal, but it was not taken on board. (Tarte 2000a: 22). Canada raised the issue again in its Statement at MHLC7, but to no avail (MHLC 2000b). One delegate noted that Canada “preached environmental concerns, but was selfish” (anonymous). It is hardly surprising. Prior to the Fish Stocks Agreement, Canada fought a fierce battle to protect its Grand Banks ground-fish stocks, and lost. Its push for northern albacore protection through the WCPT Convention highlighted the inadequacy of existing agreements, namely the IATTC. Canada’s long-term support for fisheries in the WCPO and its own struggle to protect diminishing stocks will ensure the region has an ally at the Commission’s negotiating table.

*China*

China’s views were at sharp variance with those of the FFC membership throughout the negotiations. For example, China strongly opposed participation by NGOs (Tarte1998c: 8). Along with Taiwan and Japan, it believed in minimizing enforcement and compliance mechanisms within the convention, and it strongly supported Japan’s new draft text at MHLC4 (Tarte 1999a: 8). Like other Asian fishing states, China was opposed to observers on vessels, citing their foreign culture, the cost involved and the logistics required for their presence. In addition, China opposed the draft convention’s boarding and inspection provisions, arguing that it was not a member of the Fish Stocks Agreement and did not agree with these provisions (Country Statement MHLC 1999b). China had opposed the Fish Stocks Agreement because it believed that the Agreement “eroded flag state freedom and jurisdiction on the high seas (Tarte 2001c: 15) Throughout the negotiations, however, one issue remained constant. That was China’s refusal to accept Taiwan’s participation in the negotiations as anything except an



observer (Country Statement MHLC 2000b). By MHLC7, China, like Japan and Korea, still pushed for an objection procedure, in the face of the chambered voting system advanced by the United States (Tarte 2000b: 3). In the light of Japan's stand at MHLC7, China offered tempered support, aware of its need not to get the United States and others offside. When the MHLC7 negotiations agreed to make Taiwan a member, although not explicitly, and bound it to the convention on its entry into force, China showed its displeasure by abstaining in the final vote on adoption of the convention, but did, however, sign the Final Act. China could become a powerful fishing force in the region. Its involvement in this process is, therefore, critical. In spite of its displeasure at Taiwan's circuitous inclusion, China will participate in the Precon process and will want to sit at the Commission's negotiating table, with Taiwan.

### *Korea*

Korea firmly believed that the Fish Stocks Agreement "eroded flag state freedom and jurisdiction on the high seas (Tarte 2001c: 15). These views on the Agreement shadowed Korea's support for the WCPT draft negotiating text throughout the MHLC process. At MHLC4, Korea offered public support for the alternative draft convention text submitted by Japan (Korea's Statement MHLC 1999a). Korea, like China, Taiwan and Japan, believed in minimising monitoring, control and surveillance measures (MCS) within the convention. For example, along with other Asian fishing states, Korea opposed the presence of observers on vessels, citing the costs involved, their foreign cultures and the logistics required for their presence (Tarte 1998c: 9, 1999a: 14). Furthermore, Korea agreed with Japan that any references to the precautionary approach should be removed from the text. At MHLC5, Korea argued that "coastal states did not have the legal right to allocation within EEZs and that to claim ownership of tuna within EEZs was 'unreasonable'. The MHLC Chair, Nandan, corrected Korea on this issue (Tarte 1999b: 11). Other opposing views included Korea's belief that coastal states should not have special rights to high seas pockets. Korea, like Taiwan and Japan, insisted that VMS data should go to a flag state first and then be retransmitted to the Commission (Tarte 1999b; 13). Korea supported Japan's idea of merging the scientific services with the scientific committee and gave some support at MHLC7 for Japan's position. Korea, like Japan, voted against the Convention's final draft, but did sign the Final Act. Korea's supporting role for Japan throughout the MHLC negotiations reflected the dynamics of their bilateral relationship. Historically, Japan funded Korea's purse seine expansion into the region and, like Taiwan and China, is very conscious of their industry's reliance on Japan's domestic tuna economy.

### *Taiwan*

Taiwan, like China, Korea and Japan, believed in minimizing enforcement and compliance mechanisms within the convention (Tarte 1998c: 9). Taiwan's overriding concern was to be



included as a contracting party, and it enjoyed full membership in the MHLC process.<sup>69</sup> For example, Taiwan was part of a working group which met at the conclusion of MHLC3 (along with France, Japan, New Zealand and the United States) to review allocation methods used by other regional fisheries organisations (Tarte 1999a: 8). Like other Asian states, Taiwan opposed the presence of observers on vessels, citing cost, their foreign cultures and the logistics required for their presence. Taiwan believed, as did Korea and Japan, that VMS data should go to a flag state first and then be retransmitted to the Commission (Tarte 1999b: 13). Taiwan agreed to be bound by the Convention once it enters into force, without its membership being explicitly stated, thus denying Taiwan contracting party status. Taiwan signed a separate arrangement providing for its participation in the Precon and its agreement to be bound by provisions of the Convention. Taiwan's eagerness to achieve some degree of legitimacy within the global community of states may have resulted in less recognition, rather than more, within the WCPT Convention. There was a sense among those FFC delegates interviewed that Taiwan could have bargained more for greater status, given its projected level of contributions to the WCPT Commission and its programs.<sup>70</sup> Nevertheless, the Taiwanese delegation appeared pleased with the result at the conclusion of the MHLC negotiations (interviews, various).

### *Indonesia*

At MHLC4 Indonesia raised its opposition to the fish caught by its domestic fishing fleet within its EEZ being included when calculating funding contributions (Tarte 1999a: 17). Furthermore, Indonesia insisted its archipelagic waters were sovereign territory and therefore should not be included in the convention area (see Country Statement MHLC 1999b). This was behind Indonesia's push for a defined western boundary. Indonesia supported the Chair's draft text on issues such as voting, along with the FFC, Canada and Philippines, and also backed the FFC's claims for special rights to high seas areas and high seas pockets (Tarte 1999b: 12). At the Chair's request, Indonesia mediated with China and Taiwan to try and resolve their differences over membership in the lead-up to MHLC6 (Tarte 1999b: 5). Though this was not achieved, Indonesia was seen to play an active role in the MHLC negotiations and was perceived by the Oceanic delegates as providing solidarity on a range of issues. This will do Indonesia no harm in the future as its industry expands into the Oceanic region.

### *Philippines*

The Philippines supported the Chair's draft text on issues such as voting, along with FFC, Indonesia and Canada. At MHLC5, however, there was "a strong push by the Philippines to further water down the restrictions on transshipment, arguing that this provision was 'too

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<sup>69</sup> Note the very pointed remarks made in Taiwan's Statement at MHLC6, "...it would be a major defect were Taiwan not to be rendered a Contracting Party status, should this Conference so agree". Taiwan stressed its views on this issue again in its Country Statement at MHLC7.

<sup>70</sup> Some pro-Taiwan FFC delegates noted that Taiwan could pay as much as 20 per cent towards the Commission's budget.



negative' and should take into account the characteristics of the fishery (and the economic need of small vessels to transship)" (Tarte 1999b: 14). These views were supported by Papua New Guinea, which allows Filipino purse seiners to transship at sea within its EEZ (Tarte 2000a: 21). For reasons different to those of the traditional fishing states, the Philippines expressed opposition to the VMS, mainly in relation to their traditional fishing boats, arguing that they would not be able to afford to operate the VMS, nor would the government support it. These arguments met with opposition from the United States and New Zealand, both of whom argued that any exemptions could 'unravel' the VMS requirements (Tarte 2000a: 20, see also Country Statements MHLC 1999b). Thus the Philippines was prepared to argue against fisheries conservation and management measures when national interests prevailed. Papua New Guinea's support for the Philippines over transshipment needs is interesting and must reflect their confidence in the accuracy of the Philippines' transshipment records. It may also be a reflection of trust within their bilateral fisheries relationship. Nevertheless, these attitudes on the VMS and transshipment are not helpful in the pursuit of a united approach to fisheries conservation and management within the WCPT region.

The participation by these states in the MHLC process demonstrated the importance of national interests and how these were reflected in their differing strategic aims within the negotiations. States like Canada and the United States were keen to see strong measures relating to monitoring control and surveillance issues. However, the United States was prepared to exert its power with the Oceanic states on those issues which reflected its concerns as a fishing state, for example, the Convention area, decision-making, participation of territories, and the issue of high seas pockets. In addition, the United States needed to ensure that its strategic goals, whether economic or political, were met. In the same way, France also played a cautious role; on the one hand wishing to influence any measures which would impact on its own fishing industry, while also protecting its own presence in the region, whether through the Pacific Community or through its territories. Indonesia and the Philippines, as more recent players in the region's tuna fishery, wanted to secure their own fishing industries. Indonesia, in particular, allied itself with the Oceanic states and their conservation and management goals. Taiwan, China and Korea were always going to ally themselves with Japan, given their reliance on Japan's domestic tuna market. This was both strategic and practical. The WCPT Commission's negotiating table will comprise many differing views. The challenge will be to ensure that these views reflect the goals and aspirations of the WCPT Convention.

**Section six: An overview of the WCPT Convention**

It is necessary to examine the WCPT Convention before drawing any final conclusions about the MHLC process. In the Introduction, I acknowledged the MHLC process as a remarkable feat of multilateral diplomacy. There are differing perspectives on the length of the MHLC negotiating process. Some observers, such as Sydes (2001: 807) believe the “focused negotiations, MHLC3 to MHLC7, was little more than two years”. The longer perspective, recognising the resources required by the Oceanic states to maintain their involvement from that first MHLC1 meeting in December 1994 to the conclusion of MHLC7 in September 2000, is more accurate. This included the Intersessional meetings which interspersed the negotiating process.

**The road to the WCPT Convention**

Meeting	When	Reason
MHLC1	December 1994	Preliminary discussions on improving co-operation on issues such as compliance and data collection.
Technical Intersessional	September 1995	Discussions on improved provision of catch and effort data and establishing a framework for data collection.
Technical Intersessional	July 1996 and November 1996	Discussions on the regional vessel monitoring system (VMS)
MHLC2	June 1997	Aim for a Declaration to commit all parties to co-operate in regional arrangements to achieve compatible management measures.
Technical Intersessional	December 1997	Fisheries management consultations.
Technical Intersessional	March 1998	Discussion of monitoring, control and surveillance issues.
Workshop	May 1998	To discuss the application of the precautionary approach.
MHLC3	June 1998	Discussion of the draft articles (circulated by Satya Nandan in advance of the meeting) for a Convention.
MHLC4	February 1999	To negotiate key aspects of the draft convention.
MHLC5	September 1999	To continue the negotiations as well as to consider the development of an interim regime.
MHLC6	April 2000	Final working session to resolve outstanding issues and to elaborate on the structure of the interim regime.
MHLC7	August/September 2000	Resolution of any outstanding issues, conclusion of the WCPT Convention and its opening for signature.



The fact that the Oceanic states maintained their commitment of sparse resources is testament to their willingness to negotiate a Convention that would help safeguard their tuna resource into the future. The WCPT Convention (which comprises twelve Parts and four Annexes<sup>71</sup>) gives practical meaning to the United Nations' Fish Stocks Agreement, through its application to the conservation and management of a robust tuna fishery, such as that of the Western and Central Pacific Ocean (WCPO). The WCPT Convention states that its primary objective is "to ensure, through effective management, the long-term conservation and sustainable use of highly migratory fish stocks in the western and central Pacific Ocean" (Part I, Article 2). As Aqorau (2002: 6) notes, this objective originates from the principle elucidated in the Fish Stocks Agreement that "highly migratory fish stocks must be managed throughout their migratory range both in areas under national jurisdiction and areas of high seas".<sup>72</sup> Furthermore, "the WCPT Convention reasserts the rights and duties of States under the LOSC and the United Nations Fish Stocks Agreement" (Aqorau 2002: 7). It is to enter into force upon ratification by three northern states (fishing states) and seven southern states (coastal states). "If, within three years of its adoption, this Convention has not been ratified" by three northern states, "this Convention shall enter into force six months after the deposit of the thirteenth ratification" (Article 36, Part XII, WCPT Convention). This provision was included to avoid the delay of its entry into force by fishing states (see Tarte 2001a: 36). Nevertheless, as Tarte (2001a: 36) then mentions, the Convention will be difficult to enforce without fishing state participation. In addition, as fishing states will bear the major financial burden of the Commission's activities, unless a wide range of fishing states ratify the Convention, the burden will fall on those fishing states who have done so (see also Jack 2001).

Cordonnery (2001: 4) notes:

[T]he primary mechanism for the implementation of the convention is a commission which is to be established with a secretariat and two committees dealing with compliance and scientific issues. The Commission will be the decision-making body and has the authority to:

determine the total allowable catch and adopt such conservation and management measures that may be necessary to ensure the long-term sustainability of stocks; ensure that conservation and management measures on the high seas are compatible with areas under national jurisdiction; establish cooperative mechanisms for effective monitoring, control, surveillance, and enforcement, including a vessel monitoring system; promote peaceful settlement of disputes; and compile and disseminate statistical data while maintaining confidentiality (see also Part III, Article 10 (a), (b); Article 10.1 (i); Article 10.1(n) and Article 10.1(e), WCPT Convention).

<sup>71</sup> Part I (General Provisions); Part II (Conservation and Management of Highly Migratory Fish Stocks); Part III (Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean); Part IV (Obligations of Members of the Commission); Part V (Duties of the Flag State); Part VI (Compliance and Enforcement); Part VII (Regional Observer Programme and Regulation of Transshipment); Part VIII (Requirements of Developing States); Part IX (Peaceful Settlement of Disputes); Part X (Non-Parties to this Convention); Part XI (Good Faith and Abuse of Rights); and Part XII (Final Provisions). Annex I (Fishing Entities); Annex II (Review Panel); Annex III (Terms and Conditions for Fishing); and Annex IV (Information Requirements).

<sup>72</sup> See Article 7 (1)(b), Fish Stocks Agreement.

*Precautionary approach*

An important aspect of the Commission's roles in conserving and managing the region's tuna resources concerns that of the precautionary approach. In relation to the Commission's responsibilities to apply "certain principles of conservation and management including the precautionary approach, Aqorau (2002: 7) notes that the Convention (Article 6.1(a), (b) and Article 6.3) "contains a weakened provision on the application of the precautionary approach largely in part through the insistence of Japan that such an approach was generally unknown in tuna fisheries management" (see also MHLC6 Report). Aqorau (2002: 7) queries whether the Commission is "obliged to apply the precautionary approach?" From another perspective, the Commission is required to take into account any reports or recommendations by the Scientific Committee and that those would be based on "assessments and analyses prepared by scientific experts" (Cordonnery 2001: 7). Thus, it is not just a matter of whether the Commission is obliged to apply the precautionary approach, but also whether the Commission is "capable of adopting conservation measures in the face of scientific uncertainty" (Cordonnery 2001:7). As Cordonnery (2001: 7) goes on to suggest, gaps in scientific data, and therefore scientific "uncertainty", can result in "powerful arguments for reluctant states not to adopt proposed conservation measures". Thus, the dilemmas surrounding such obligations and capabilities have the capacity to undermine the effectiveness of the Commission's work to ensure that conservation and management measures are upheld.

*Total Allowable Catch*

Still within the ambit of conserving and managing the region's highly migratory fish stocks are the Commission's responsibilities in its determination of Total Allowable Catch (TAC) and whether the subsequent allocation of quota should include tuna harvested within an EEZ. Cordonnery (2001: 8) notes that the Oceanic states are currently in the process of reviewing their fisheries legislation and putting into place national fisheries management plans to secure their right to set national EEZ quotas and rights of access.<sup>73</sup> This was an issue about which the FFA membership was unequivocal during the MHLC negotiations. It raises the question of whether "the Commission has powers over areas under national jurisdiction" (Aqorau 2001: 15). Aqorau (2001: 15) believes that because of this "it is necessary to distinguish between the application of the WCPT Convention and the jurisdictional competence of the Commission". The Convention makes it clear that it includes all highly migratory stocks, except for sauries<sup>74</sup> (see Article 1 (f)). Nevertheless, as Aqorau notes (2001: 16), "the powers of the Commission are "without prejudice" to the sovereign rights of coastal States" (see Article 10.1, WCPT Convention). Furthermore, because the Commission's TAC and allocation responsibilities are

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<sup>73</sup> For example, Papua New Guinea adopted a Plan in November 1998; the Republic of Vanuatu adopted a Plan in August 2000; and the Federated States of Micronesia adopted a Plan in January 2001 (see Jack 2001: 28).



confined to the Convention area, conservation measures may prove difficult, given the open western and northern boundaries (see Cordonery 2001: 8). Some observers fear that the uncertainty over the weighting given to historical catch, for example, may lead to the Oceanic states being allocated a “much reduced share of the TAC” (Tarte 2001c: 22). In addition, if issues such as the TAC become bogged down at the Commission’s negotiating table, “conflicts over perceived economic interests could undermine the effective implementation of the convention” (Tarte 2001c: 23).

### *Decision-making*

This leads into an examination of the Convention’s decision-making procedures which originate in Article 20 of the WCPT. Observers have called these provisions “innovative”, “novel” and “controversial” (see Aqorau 2002: 12 and Jack 2001: 38). For example, Annex 1 of the WCPT requires that fishing entities “agree to be bound by the regime established by this Convention”. Further, that they “shall participate in the work of the Commission, including decision-making”. This goes beyond the duties of an entity laid down in the Fish Stocks Agreement and reflects the desire of the Oceanic states to secure Taiwan’s participation. In another innovative step, Article 21(6) of the WCPT Convention allows a review panel to evaluate specific decisions, as sought by an individual member. This step marks a divergence from the more traditional decision by an individual member to ‘opt-out’ (see Jack 2001: 39). As Aqorau (2002: 13) notes, the opt-out clause “impeded international fisheries organisations”. Until the review panel has brought down a decision, no individual member “shall be required to give effect to the decision in question” (Article 20.7 WCPT).

A further innovative, but controversial, decision-making provision relates to Articles 20.2 and 20.3 of the WCPT Convention. For “decisions on questions of substance”, consensus is mandatory (Cordonery 2002: 5). These include rules of procedure, budget and TAC allocation. Where consensus cannot be reached, a three-fourths majority of those present shall be sought in two chambers, one containing the members of the South Pacific Forum Fisheries Agency (FFA) and the other chamber comprising non-FFA members. In addition, “in no circumstances shall a proposal be defeated by two or fewer votes in either chamber (Article 20.1). Cordonery (2002: 5) believes that this provision has two ramifications for the decision-making process. First, “the adoption of conservation and management measures may be prevented by the opposition of any three nonmembers of the FFA”. Second, “despite the fact that the objection procedure was rejected, any member which has voted against a decision may seek a review of the decision by a review panel” (Cordonery 2002: 5). As mentioned earlier, while the review panel is considering its decision, no member has to enforce that decision. Thus,

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<sup>74</sup> Japan was successful in having sauries omitted from the WCPT Convention, as it is a fish stock that does not occur within the Convention area.

the delays caused by the review panel's deliberations may have ramifications for any conservation and management measures which the FFA membership wishes to promote.

### *Convention area*

This discussion has focused on the major aspects of the WCPT Convention, such as the budget, conservation and management issues (including the Convention area) and decision-making. There are also other issues on which countries failed to reach agreement during the MHLC negotiations, such as compliance and enforcement, VMS, observers and transshipment and which have been left to the WCPT Commission to resolve and implement. Further, the lack of delimitation for the western and northern boundaries to the WCPT Convention area will create difficulties for the conservation and management of skipjack, yellowfin, bigeye and albacore tuna. Skipjack and yellowfin tuna are found outside the WCPT Convention area in the archipelagic waters of the Philippines and Indonesia. Thus, the stocks are not managed in their entirety under the WCPT Convention. In addition, bigeye tuna's migratory pattern extends from the East coast of the Pacific to the West coast of the Pacific. For bigeye to be managed in its migratory range, the WCPT Convention would need to be extended to the West coast of the Americas. Moreover, between 10 and 20 per cent of albacore tuna are located east of the WCPT Convention area, requiring co-ordination and management with the North American trawl fleet.<sup>75</sup>

### *Interim regime*

In his Closing Statement at MHLC4, Satya Nandan raised the suggestion of putting an interim regime in place pending the entry into force of the WCPT Convention (Annex 7 MHLC 1999a). The establishment of Precon was agreed to at MHLC7. The responsibility for convening its first session rested with New Zealand as the depositary of the WCPT Convention (see Annex, Resolution 1, WCPT Convention).<sup>76</sup> The Precon would:

prepare draft rules of procedure for the commission and the provisional agenda for the first meeting of the commission. The Preparatory Conference is to make recommendations concerning the establishment of the headquarters of the commission and the budget for the first financial period, including a scheme for contributions to the budget. It will also formulate recommendations on the collection of data and information, the establishment of a record of fishing vessels, and the implementation of Articles 11, 12, 13, 14, 24.8, 24.9, 24.10 and 30.30<sup>77</sup> of the Convention (Cordonery 2002: 12).

Membership of the Precon is restricted to the MHLC parties, "including non-signatories and territories" (Syndes 2001: 803). Therefore, even though countries such as Japan have not signed the Convention, they are entitled to participate in the Precon process. Precon

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<sup>75</sup> See Jack 2001 for a detailed discussion on this issue.

<sup>76</sup> This thesis will only examine Precon 1 and Precon 2, both of which took place before submission of the thesis.

<sup>77</sup> These articles relate to subsidiary bodies of the Convention; functions of the Scientific Committee; scientific services; functions of the Technical and Compliance Committee; the Vessel Monitoring System (VMS); the participation by developing states.



membership by observers to the MHLC process, such as the European Union, Mexico and Peru, has been denied. They can, however, attend as observers. Precon 1 took place at Christchurch from 23-28 April 2001<sup>78</sup> and was chaired by the retired New Zealand diplomat, Mr Michael Powles.

### *Precon 1*

In interviews with Precon 1<sup>79</sup> participants all stressed that the first meeting was right to proceed slowly and to limit itself to discussion on draft rules of procedure. This was done in large part to quell the unease felt by Asian fishing states that the “wide scope” of the Precon’s functions would lead to the establishment of a “de facto regime” (Sydnes 2001: 803). States such as Korea, China and Taiwan believed the Precon process should be restricted to “preliminary and basic tasks” and were opposed to the Precon “considering or adopting recommendations for interim conservation and management” (Tarte 2001b: 3). Such beliefs were linked to their concerns throughout the MHLC process of the wide-ranging powers and functions of the future WCPT Commission (see also Tarte 2001b: 3). A dissenting attitude was struck by Japan when it failed to attend Precon 1, largely out of protest at the shape and content of the WCPT Convention and the refusal by other conference participants to re-open aspects of the instrument.<sup>80</sup> Japan’s non-attendance was of real concern to the United States because of the increasingly limited support domestically for the Convention that would result from the refusal of another major fishing state to become a party to it. Other issues of concern at Precon 1 focused on the insistence of French territories to be given voting rights and decision-making powers in the Commission “commensurate with their levels of political autonomy” and the determination by the Europeans for full participation (see Tarte 2001b: 4). These issues had remained contentious since the last MHLC negotiating round.

The level of concern felt by the United States in relation to Japan’s absence was reflected in its proposal for an additional agenda item. It proposed the possibility of a meeting with Japan to allay its concerns surrounding the WCPT Convention. The Philippines, China, Taiwan, Korea and Canada supported the item. As Tarte (2001b: 4) notes, the proposal caused disquiet among the FFA membership, fearing a reopening of the Convention text, the overshadowing and undermining of Precon 2 by parallel discussions, and the financial implications of another meeting. In agreeing to the meeting, the FFA membership stressed its

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<sup>78</sup> This was in line with the requirements of Annex 1, Resolution 1 of the WCPT Convention, which states “the first session of the Conference shall take place no sooner than 180 days and no later than 240 days after the Convention is opened for signature”. That is, between six to nine months after the conclusion of MHLC7 (September 2000).

<sup>79</sup> All 16 FFA members attended, as well as the United States, Canada, the Philippines, Indonesia, China, Korea, Taiwan, New Caledonia and the European Union.

<sup>80</sup> In a ‘Circular at the Request of the Government of Japan’, distributed at Precon1, it was stated that the “present Convention adopted at the 7<sup>th</sup> MHLC meeting last year does not constitute an appropriate basis to form the future relevant and workable regional fisheries organizations because the negotiations for the Convention did not follow due process seeking good faith negotiations, as stipulated in the relevant provisions of UNCLOS and UN Fish Stock Agreement”.

position that ‘there would be no re-opening or weakening of the final text of the convention or resolutions’(Tarte 2001b: 4).

The issue of participation by territories received cautious support from the United States, which noted that they needed to meet ‘a predetermined standard’ in order to vote or participate in decision making (Tarte 2001b: 4). This issue would be discussed again at Prepcon 2. On the subject of European Union membership, wide concern was voiced to me during interviews with Oceanic delegates as to with whom the region would deal, for example, Spain or France, or the European Union itself (see also Tarte 2001b: 4). The European Union was not invited to join the Prepcon as a member. No decision was made at Prepcon 1 as to the location of the WCPT Commission, although several Oceanic states were interested in nominating for the headquarters. Two budgetary groups were formed, one to focus on organisational and budget issues, the other to focus on the provision of scientific advice to the Commission. An organisation fund was set up to resource the establishment of an Interim Secretariat and to fund subsequent Prepcon meetings (see Tarte 2002a and [www.ocean-affairs.com/PrepCon](http://www.ocean-affairs.com/PrepCon)).

Apart from the consternation among participants at Japan’s absence, the anger by the European Union at the meeting’s refusal to grant it membership, and the continued unease felt by Oceanic delegates about aspects of the WCPT Convention, Prepcon 1 was a sound beginning to a process which would end with the entry into force of the WCPT Convention. In the interests of budgetary constraint, no intersessionals were held, apart from the meeting with Japan, which was expected to take place before Prepcon 2.<sup>81</sup> Given Japan’s importance to the region’s tuna industry, its isolation from the process was not a desirable outcome for either fishing or coastal states. Therefore, persuading Japan to participate would be the major preoccupation of the Prepcon membership.

### *Prepcon 2*

Prepcon 2 took place at Madang, Papua New Guinea, from 25 February to 1 March 2002.<sup>82</sup> Immediately prior to that meeting, an Informal Consultation was convened to discuss the reservations held by a number of states, including Japan and Korea, on aspects of the WCPT Convention. Japan refused to attend the Consultation because “there was no provision in the agenda for amendments of the convention text” (Tarte 2002a: 3).<sup>83</sup> As mentioned above, at Prepcon 1, the FFA membership had been united in its stand to not reopen the Convention text.

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<sup>81</sup> For a full outline of Prepcon 1 and 2 and their achievements, see <http://www.ocean-affairs.com/PrepCon.html>, the website of the Prepcon process.

<sup>82</sup> All 16 FFA members attended, as well as China, Korea, United States, Taiwan, France, Wallis and Futuna, New Caledonia, Canada, Philippines, Indonesia, and the European Union. Russia also made an appearance at Prepcon 2. The United Kingdom and French Polynesia did not attend.

<sup>83</sup> As will be recalled from discussions on the MHLC process, fishing states like Japan and Korea had been opposed to various aspects of the Convention, including decision making, dispute settlement, application of the precautionary approach or references to the Fish Stocks Agreement, boarding and inspection on the high seas, the role of observers on vessels, provision of data under the VMS and the convention area (see Tarte 2002a: 3).



Thus, it appeared the positions were polarised. In light of the entry into force of the Fish Stocks Agreement, the Precon Chair, Ambassador Powles informed the Consultation that it was now “quite appropriate to refer to it in the convention text, especially given that the WCPF convention built on the UN Fish Stocks Agreement” (Tarte 2002a: 3). Because of this, the Consultation concentrated on measures such as flag state rights and responsibilities (relating to monitoring, control and surveillance) and enforcement. A major outcome of that Consultation was Korea’s acknowledgment that it was not necessary to reopen the Convention text.

Another concern at the Consultation was the issue of overlap with other fisheries bodies on the boundaries of the WCPT Convention. Specifically these were the CCSBT (Convention for the Conservation of Southern Bluefin Tuna); the IATTC (Inter-American Tropical Tuna Commission); and the IOTC (Indian Ocean Tuna Commission).<sup>84</sup> The Consultation developed a set of recommendations to address future co-operation with these bodies. The second reason given by Japan for its refusal to attend the Consultation was the denial by other negotiating states to allow the European Union membership to the Precon process. With reservations, the meeting assigned the European Union ‘special’ observer status, which allowed it to sit at the table and participate fully in discussions. It was, however, denied membership of the Precon and could only accede to the Convention once it entered into force. More importantly, the European Union agreed not to reopen the text, denying Japan a powerful ally (Tarte 2002a: 4).

During the Precon 2 meeting, China’s head of delegation, Liu Xiabing, was elected as vice-Chair of the Precon (Tarte 2002a: 6). This was a new position and arguably reflects the potential power of China as a fishing state in the region. The terms of reference for a third working group which would deal with monitoring, control and surveillance issues were drafted during the meeting. Consensus was not reached within the FFC on what country should host the new WCPT Commission, instead a vote culminated in the Federated States of Micronesia being selected. In all, nine FFC members had nominated for this prestigious honour, including Papua New Guinea, the host of Precon 2, and Tonga.<sup>85</sup> Because of the division with the FFC membership, unity once again was put aside in favour of self-interest by several of the Oceanic states. Following Precon 2, the FFC meeting held on Pohnpei in the Federated States of Micronesia in May 2002 focused on forging a united membership ahead of what was expected to be “a crucial preparatory conference in the Philippines in November (Pacific Island Report 8.5.2002). Both Tonga and Papua New Guinea opposed the Federated States of Micronesia’s bid.

Other issues discussed at Precon 2 included the FFC’s request that, because of financial concerns, not more than two Commission meetings be scheduled each year. This

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<sup>84</sup> For details see [www.ocean-affairs.com/PrepCon](http://www.ocean-affairs.com/PrepCon).

<sup>85</sup> The Federated States of Micronesia beat Papua New Guinea by nine votes to seven in a secret ballot of the FFA membership. Nine other Oceanic states had applied to host the Commission. They were: Fiji, Papua New Guinea, the Federated States of Micronesia, Tonga, the Cook Islands, Kiribati, Vanuatu, Samoa and the Marshall Islands (Pacific Islands Report 28.2.2002).

request received general support among the participants. In addition, the participation in the process by non-government organisations was also raised, as well as the “participation of territories in the decision making process of the Commission (Tarte 2002a: 7). This issue was not resolved. However, France, the United States and New Zealand agreed to consult inter-sessionally to reach consensus.<sup>86</sup> With the European Union being granted special observer status, the meeting was optimistic that Japan would attend future meetings.

Tarte (2002a: 13) argues that limited progress was made at Precon 2 on issues of importance to the region, such as the special requirements fund, the budget formula, the continued use of existing regional (compliance) programs and the uncertainty of whether the Precon process “will take steps to recommend provisional total allowable catches in the convention area”. This reflects the continued approach taken by the Asian fishing states to pursue a “slow and incremental approach to the work of the PrepCon” (Tarte 2002a: 13). As concluded by Tarte (2002a: 13), the real risks caused by the delay in making key decisions could jeopardize “the status of the fish stocks and the benefits” of this Convention.

The two Precon sessions reviewed in this thesis made incremental advances on the work achieved by the conclusion of MHLC7. The refusal by Japan to participate in the process has, in some ways, allowed for good progress to be achieved on the draft rules of procedure, studies on scientific needs and information from other organisations, participation by territories and observers, such as the European Union, the headquarters of the new Commission, and general issues surrounding budget requirements and funding for the participation of developing states. Nevertheless, for the Precon process to move forward and for the WCPT Convention to gain recognition among fishing states, Japan needs to participate. By doing so, the United States Congress may look more favourably at ratification, as well as other Asian fishing states, such as Korea and China. That said, the more substantive and outstanding issues which await deliberation and decision by the Precon process, and later by the Commission, will test the unity and strength of the Oceanic states.

Intractable measures, such as determining allocation in relation to total allowable catch were not resolved at the MHLC negotiations and will be left for either the Precon process or the Commission to resolve. Negotiations between fishing states over the issue of allocation will be a battle between those who will strenuously defend their access rights and the Oceanic states who will see it as an opportunity to ensure sustainability, achieve a fair return, increase the domestication of the tuna industry and with it, improve indigenous control. This is compounded by the financial burden of running the Commission and its programs that will be borne, in large part, by fishing states. This may lead to the fishing states exerting pressure on those individual island states that are attempting to achieve the objectives of collective fisheries diplomacy at the Commission’s negotiating table, to force them to instead support those objectives that are more

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<sup>86</sup> See [www.ocean-affairs.com/PrepCon](http://www.ocean-affairs.com/PrepCon)



favourable to the fishing states. There are also funding issues for the Oceanic states. As Tarte (2001c: 23) notes, the island states “will be dependent on the good will of the more powerful and wealthy nations and on assistance from related regional and international organizations”.

Aqorau (2002), Cordonnery (2002) and Jack (2001) are observers who believe that the WCPF Convention is a positive step. Aqorau (2002: 24-245) comments that the Convention provides the means of economic opportunity for the Oceanic states by:

strengthening the way in which the tuna resource is managed and empowering them to harness the resource in ways that could enhance development of the resource.

These three observers reflect legal perspectives on the Convention. Their positive observations must be balanced by the need for Asian fishing states’ participation and the continued co-ordination by the Oceanic states of conservation and management measures within EEZs (Jack 2001: 47). In addition, the decision-making process reflected major concessions to fishing states (Cordonnery (2002: 12), and fishing states may use the WCPF Convention to erode the control exercised by the Oceanic states over the tuna resource (Aqorau 2002: 25).

Looking instead at the political economy of Oceania’s tuna resource, it is argued that the outcomes of the MHLC negotiations, as illustrated above, reveal a decline in effectiveness in achieving the objectives of collective fisheries diplomacy. This decline appears to be a reflection of the story of collective diplomacy generally in Oceania.

## CONCLUSION

Working within the security-centric agenda of World War II, Australia's Foreign Minister H.V. Evatt and New Zealand's Prime Minister Peter Fraser were preoccupied with ensuring that the Oceanic region would comprise stable, pro-west developing colonies in the post-War environment. As part of this preoccupation, the concept of a South Seas Commission was devised in 1944. The colonial powers of the United States, France, the United Kingdom, and the Netherlands succumbed to their persuasive arguments and the South Pacific Commission (SPC) was established in 1947. While at that time the SPC was governed by metropolitan powers who believed they had initiated the concept of Oceanic regional co-operation, there had been informal inter-island communications in the region's pre-colonial era. This was reflected in inter-island trading for such prized possessions as stone and shell money, inter-island marriages and military alliances. In its pre-colonial form, a co-operative conservation ethic governed, for the most part, the judicious extraction of land and sea resources, overseen by families, villages, or chiefly systems. That co-operative philosophy was overwhelmed by the island region's integration within the global economy during the colonial era, but re-emerged within the apparatus of more formal structures of regional co-operation, exemplified specifically by collective diplomacy initiatives.

From the late 1960s, the Oceanic states witnessed a remarkable growth in collective diplomacy and from the 1980s, of its subset, collective fisheries diplomacy. The starting point for this thesis was that the effectiveness of this collective diplomacy is puzzling, given the prevalent belief that small, seemingly powerless states/microstates are weak in their relations with big, powerful states (see Keohane 1986). Furthermore, there was a decline in the effectiveness of collective diplomacy generally from the mid-1990s and from the late-1990s for collective fisheries diplomacy in particular. This outcome is also puzzling: having strengthened its control over regional co-operative endeavours it might be expected that the region would retain its control. These puzzles led to the central question governing this thesis. That is, why has the effectiveness of collective diplomacy undergone a rise when we would expect failure, and a decline when we would expect success?

The years of cumulative success in regional co-operation originated as part of a desire for indigenous control of regional organisations, such as the SPC. It led to the establishment of the South Pacific Forum where leaders could discuss and make their own decisions about issues affecting the region. The region benefited from strong indigenous leadership in that first wave of decolonisation and this helped to strengthen regional cooperation. The fact that Australia and New Zealand were prepared to support regional initiatives was indicative of the Cold War environment and the fact that the initiatives would not negatively affect their own foreign policy priorities. They were encouraged in this attitude by the United States which perceived Australia and New Zealand as the region's gatekeepers. The major issue to cause controversy with the



United States during those Cold War years was the decision by the region, including Australia and New Zealand, to implement the *South Pacific Nuclear Free Zone* (SPNFZ).

Together with a range of other collective diplomacy initiatives the region demonstrated to the world its support of emerging international environmental norms. Again, these norms were not new to the region but were connected to that pre-colonial conservation ethic over land and marine resources. The region's support of these norms has to be considered in the international political environment. I argue that during the Cold War era the successes in fisheries diplomacy were mainly as a result of Oceania's diplomatic cohesion and effectiveness. Until 1987, rather than displaying paternalistic attitudes towards the Oceanic states, the United States did nothing to curtail the non-compliant behaviour of its fishing fleet in the region. The fleet's activities defied those conservation and management norms laid down by the *United Nations Convention on the Law of the Sea* (UNCLOS) and upheld by the region. The bargaining trade-offs by fishing states were bilateral in nature and did not extend to all Oceanic states. The trade-offs may have tempted those affected Oceanic states but it did not deter them from united action at the Forum Fisheries Agency (FFA), including the implementation of various sub-regional arrangements, input into the UNCLOS negotiations, and a united front at the *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* (Fish Stocks Agreement) negotiations.

In relation to the prominence of conservation norms as championed by Australia and New Zealand and reinforced by UNCLOS, I argue that the region acted alongside their efforts. They demonstrated their support for these norms by finalising a range of regional and international regimes designed to protect the environment, such as the *Climate Change Convention*, the *Convention for the Protection of the National Resources and Environment of the South Pacific Region* (SPREP Convention), the *Convention on Conservation of Nature in the South Pacific* (Apia Convention), the *Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific* (Driftnet Fishing Convention), the UNCLOS and the Fish Stocks Agreement negotiations. International norms were influenced by actions of the Oceanic States, for example, the UNCLOS and the Fish Stocks Agreement. It should not be seen as international versus local because these international norms were already influenced by local norms. It should be recalled, for example, that Palau was the first country in the world to conclude a nuclear-free zone constitution (1979).

The above discussion has demonstrated how I understand the rise of collective diplomacy generally. How do I understand its decline? Again, there are internal and external factors that have brought about a decline in the effectiveness of collective diplomacy. The end of the Cold War was one factor, together with the global and regional instability that became visible after its demise. Once the Cold War had ended, the primacy of the neo-liberal agenda

could be championed globally. This began with the World Bank and the International Monetary Fund (IMF) lauding the benefits of good governance and linking the provision of funding to those concepts. As a result, donor states began exhorting these principles to their 'clients' as a condition of the provision of aid. The donor states realised that in Oceania, for example, the best way of delivering this message was to channel their funding through multilateral agencies, such as the Forum. This was considered a much easier method than through bilateral aid programs as it was then up to the regional organisation to pressure its membership to follow these principles.

From the mid-1990s Australia and other donors were more inclined to want results for their aid. This placed increased pressure on the Oceanic states to conform to donor demands. The elite were co-opted and therefore less assertive in their collective diplomacy against the donor community. If the decisions taken by the region's leaders (the elite) have not been discussed or implemented with the general population's involvement, then effective regional co-operation has been compromised. Furthermore, if the general population is excluded from the reform process (except as a casualty), then the legitimacy of such a process is questionable. As Sutherland (2000: 459), cited in Chapter One notes, this reform process has been "driven primarily by external forces, particularly donors". From the mid-1990s, regional co-operation generally has been in decline, as it was not inclusive of the populace and also because it was imposed on the region by external forces. For this reason, the absence of strong leadership has been a factor contributing to the decline of collective diplomacy.

Does this story of the rise and decline in collective diplomacy differ from the story of the rise and decline of collective fisheries diplomacy? Answered simply, not to any great extent.

In light of the historical examination of collective fisheries diplomacy in this thesis, how do we understand its rise and subsequent decline? First, to understand what caused the rise of collective fisheries diplomacy, we need to go back to the UNCLOS 111 negotiations and the participation of the independent Oceanic states. The UNCLOS 111 negotiations came about because of changing global norms in ocean governance. The active participation by developing coastal states defied the pressure of the maritime powers. This defiance was to be repeated even more strongly at the Fish Stocks negotiations, where strengthening environmental norms successfully challenged those fishing states wishing to retain the status quo regarding freedom to exploit high seas fisheries.

The Oceanic states were not alienated by the concepts associated with environmental norms. Rather, these norms reflected the pre-colonial customs and culture of the island communities. The UNCLOS did eventually result in grudging acceptance on this issue by fishing states, except for the United States. It took the defiance of small states/microstates such as Kiribati and Vanuatu to bring about the rehabilitation of the United States fleet and with it, the acceptance of the UNCLOS regime. The finalisation of the Multilateral Fisheries Treaty stands apart as an outstanding example of the effectiveness of collective diplomacy cooperation.



The significance of that Treaty lies in the way that it provides the region with a tool by which it could measure the activities of other fishing states. It has been an outstanding factor in measuring the rise in effectiveness of collective fisheries diplomacy. This has been demonstrated in the decline of under-reporting and non-reporting by fishing states from the early to mid-1990s (FFA 1999b).

By the mid-1990s, the region had implemented wide-ranging controls designed to protect the sustainability of the tuna resource, to facilitate a fair return and to encourage development of the region's domestic tuna industry. These demonstrate the effectiveness of collective diplomacy. These measures were enhanced by the region's involvement at the Fish Stocks negotiations and the important leadership of Satya Nandan at those negotiations. Nandan's leadership resulted in the text of the Fish Stocks Agreement reflecting the concerns of the Oceanic states in relation to high seas fishing.

It was not until the second half of 1999 that collective fisheries diplomacy displayed some disturbing cracks. That this turning point was later than that of collective diplomacy generally may be because until then the region's fisheries goals and aspirations were in line with those of its external supporters. How do we understand the decline in the effectiveness of collective fisheries diplomacy? There were several internal and external forces. For example, by sidelining individual Oceanic states at the MHLC process, fishing states could encourage the divisions within the FFC down PNA lines. Fishing states could also obstruct the negotiations. These forces were assisted by disunity, a loss of cohesion and poor leadership within the FFC bloc at the MHLC5 and the MMC6. Poor leadership by the FFC Chair compounded this disintegration of unity and cohesion at the MHLC5 and the MHLC6, resulting in the draft negotiating text being watered down although, it must be conceded, it was still too strong for the wishes of some fishing states. Nevertheless, in the examination of how we understand the rise of collective fisheries diplomacy, it is clear that the latter negotiating rounds demonstrate a decline of collective fisheries diplomacy.

The thesis set out to answer the central question concerning the rise and decline in the effectiveness of collective diplomacy aimed at asserting control of fisheries conservation and management. It is concluded that the reasons behind how and why collective diplomacy rose and declined apply also to the rise and decline of collective fisheries diplomacy. As a major natural resource for the Oceanic region, the conservation and management of the tuna fishery represents the past, the present and the future. The region's ability to exercise control over this natural resource is dependent on unity and cohesion. Without a unified stance, it is demonstrated that the region's ability to exercise that control is diminished. As a collective force, these island states are capable of great achievements in collective diplomacy and defy those who may dismiss the power of seemingly disparate, isolated small states/microstates in a 'sea of islands'.

Oceanic state/ territory	Coloniser	Date colonised	History of Independence
American Samoa (a)	Germany United States	1884 1899	1899 (Remains an unincorporated United States territory)
Cook Islands	United Kingdom New Zealand	1888 1901	1901 1965
Federated States of Micronesia	Spain Germany Japan United States	1886 1898 1919 1945	1898 1919 1945 1986 (Entered into Compact of Free Association with the United States)
Fiji	United Kingdom	1874	1970
French Polynesia	France	1887	(Remains a French territory)
Guam	Spain United States	1565 1898	1898 (Remains an organised territory of the United States)
Hawai'i	United States	1898	1959 (Became a United States state)
Kiribati (a)	United Kingdom	1892	1979
Marshall Islands	Spain Germany Japan United States	1885 1898 1919 1945	1898 1919 1945 1986 (Entered into Compact of Free Association with the United States)
Nauru	Germany Australia	1886 1918	1918 1968
New Caledonia	France	1853	(Remains a French Territory)
Niue	Germany United Kingdom New Zealand	 1900 1901	1899 1901 1974 (Entered into Compact of Free Association with New Zealand)
Northern Mariana Islands	Spain Germany Japan United States	1668 1899 1919 1945	1899 1919 1945 1978 (Entered into a Commonwealth Covenant with the United States)

(a) Between 1884 and 1899, American Samoa and Western Samoa was one country (Samoa) and under German colonial control.



Oceanic state/ territory	Coloniser	Date colonised	History of Independence
Palau	Spain	1886	1899
	Germany	1899	1919
	Japan	1919	1945
	United States	1945	1994 (Entered into Compact of Free Association with the United States)
Papua New Guinea	Germany (north)	1884	1914
	United Kingdom (south)	1884	1906
	Australia	1906/1914	1975
Pitcairn Island	United Kingdom	1838	(Remains a dependent territory)
Samoa	Germany	1884	1899 (Split into Western and American Samoa)
Western Samoa (c)	Germany	1899	1920
	New Zealand	1920	1962
Solomon Islands	United Kingdom	1883/1899	1978
Tokelau	United Kingdom	1892	1948
	New Zealand	1948	(Remains a dependent territory)
Tonga	Germany	(Surrendered any claim in 1899)	
	United Kingdom	1899 (b)	
Tuvalu (d)	United Kingdom	1892	1978
Vanuatu (e)	United Kingdom and France (Established a condominium)	1906	1980
Wallis & Futuna	France	1842	(Remains a French territory)
West Papua (f)	Holland	1898	1963 (Remains an Indonesian territory)

(a) Formerly known as the Gilbert Islands.

(b) A treaty of friendship was signed between Tonga and the United Kingdom in 1900, which gave the United Kingdom control over foreign affairs. Tonga was never a colony, "but its affairs, both internal and external, were extensively guided and influenced by Great Britain" (Kiste 1994: 27).

(c) Now known as Samoa.

(d) Formerly known as the Ellice Islands.

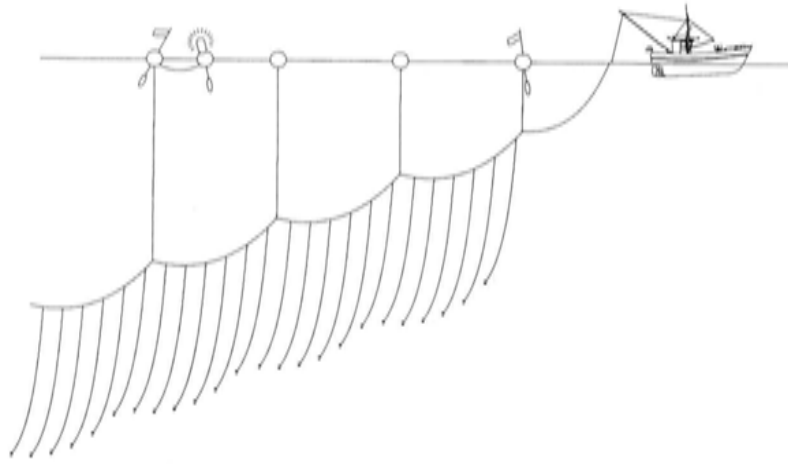
(e) Formerly known as the New Hebrides.

(f) Also known as West New Guinea and Irian Jaya.

(Sources: Bennett (1994), Denoon (1997), Department of Foreign Affairs and Trade Pacific Island Country Briefs (1999, 2001), Fieldhouse (1965), Firth (1997), Hanlon, (1994), Hempenstall (1994), Henningham (1994), Hezel (1984, 1995), Hoadley (1992), Kent (1980), Kiste (1994), Peattie (1988), Thompson (1994), Van Dyke (1992).

Figure App.1

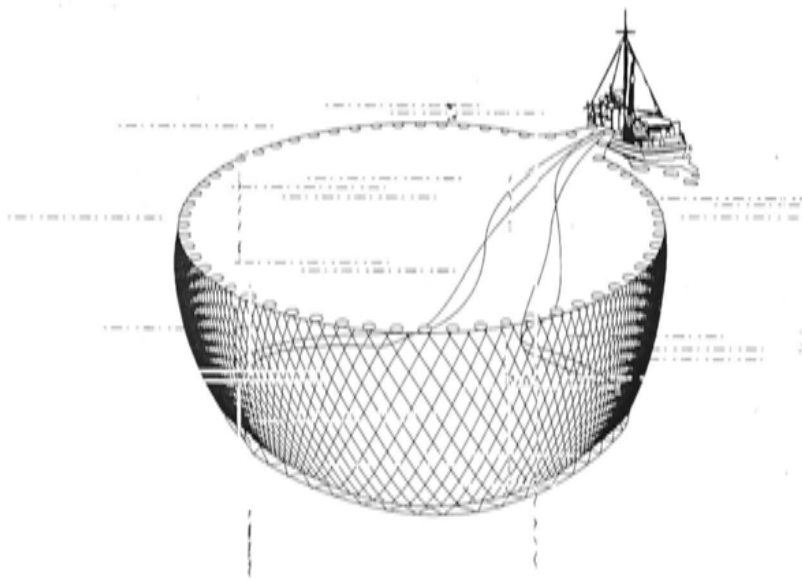
Commercial Fishing Methods



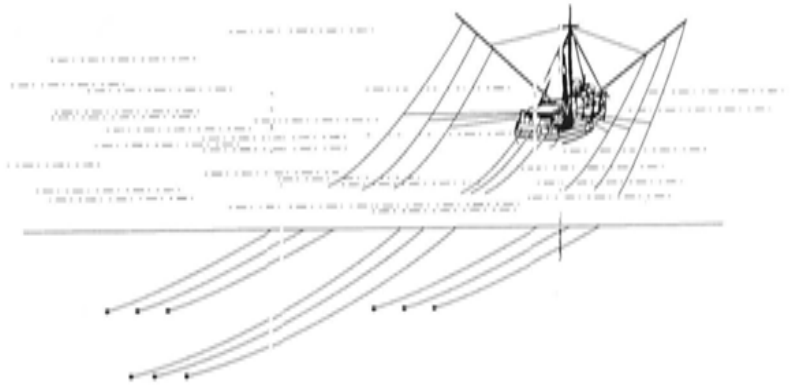
Longline fishing



Pole and line fishing



Purse seine fishing



Troll fishing



### THREE MAIN COMMERCIAL TUNA EXTRACTION METHODS AND RELEVANT OCEANIC TUNA SPECIES

#### *Longline Fishing*

States engaged in longline fishing in the Western and Central Pacific Ocean (WCPO) include American Samoa, Australia, China, Cook Islands, Federated States of Micronesia, Fiji, French Polynesia, Indonesia, Japan, Kiribati, Republic of Korea (Korea), Marshall Islands, New Caledonia, New Zealand, Papua New Guinea, Philippines, Samoa, Solomon Islands, Taiwan, Tonga, United States and Vanuatu. Fujinami (1987: 58) notes that longlining vessels came about through “technological advances in the late 1800s”. Albacore, bigeye and yellowfin are targetted by the longline method (SPC 1998).

Albacore is not a surface-swimming species. A worldwide drop in albacore prices resulted in a “significant decline” of longline catches, particularly during the 1980s. The species has seen an increase in landings in the 1990s (Kearney 1989: 38). Bigeye is not normally a surface-swimmer, but its harvesting as bycatch is increasing because of the prevalence of deeper purse seine sets. While bigeye is considered under-exploited, little is known about the species to make this assertion confidently (Kearney 1989: 38). As the price for albacore is lower than for either yellowfin or bigeye, it is destined for tuna canning. For example, the two canneries operating at Pago Pago in American Samoa need more than 30,000 tonnes of albacore per annum (FFA 1998: 17). Canned albacore is prized particularly in the United States as ‘white meat’ tuna (FFA 1998: 17).<sup>1</sup> Yellowfin is targetted by both longline and purse seine methods, as the more juvenile of the species are surface swimmers (caught by purse seiners), the more mature of the species swimming at deeper depths (caught by longliners).<sup>2</sup> Observers are cautious about increasing fishing limits for this species because of their longer life span and greater maximum size achieved. This “longer life and associated lower natural mortality” makes them vulnerable to over-fishing (Kearney 1989: 38).

The use of satellite navigation allows longline vessels to locate fishing grounds with accuracy.<sup>3</sup> These vessels are an expensive acquisition, costing approximately US\$1.3 million, pursuing “mid and deep-layer” tunas which are older than surface swimming tunas (FFA 1998: 9). Longline gear:

<sup>1</sup> Yellowfin tuna and skipjack, considered inferior to albacore, are marketed as “light meat” tuna.

<sup>2</sup> Campbell and Nicholl (1994: 123) point out that juvenile yellowfin targetted by purse seining are around one year old and weigh approximately five kilograms. In comparison, adult yellowfin targetted by longlining are around two-and-a-half years old and weigh approximately twenty-seven kilograms.

<sup>3</sup> Vessels also use “echo sounders for detecting fish beneath the surface, radar for detecting sea bird activity, sea water *temperature* sensors and radio direction finders used to locate buoy-mounted transmitters which mark the location of the end of a line-set” (Campbell and Nicholl 1994: 90).

## Oceania's four commercially-important Tuna species



Albacore (*Thunnus alalunga*)



Bigeye Tuna (*Thunnus obesus*)



Skipjack (*Katsuwonus pelamis*)



Yellowfin Tuna (*Thunnus albacores*)

*Source:* Food and Agriculture Organisation of the United Nations, 1996.



consists of a mainline (which can be up to 130 km in length) to which branchlines (or snoods) with baited hooks are attached. By attaching buoys to the mainline (usually 300-350 m spacing) a series of catenaries (also known as 'baskets') are formed (Campbell and Nicholl 1994: 89).

For example, a Japanese longliner of 52 gross registered tonnes (GRT) could set its gear between 100 and 120 km long, with around 2,000 branch-lines, each with baited hooks set down as deep as 300 metres. To set the longline can take up from 4 to 6 hours and hauling up the longline can take from 7 to 15 hours (FFA 1998: 9). Veitayaki (1995: 40) notes that the process is now mechanised, using "automatic hauling, baiting and shooting machines". The harvested tuna are either frozen on board or chilled on board awaiting airfreight to the fresh tuna market. Those chilled tuna "must be at market within ten days of being caught if quality is to be maintained" (Hunt 1998: 64). With the development, by Japan, of ultra-low temperature (ULT) operations in the 1960s, tuna can be frozen on board at  $-55^{\circ}$  Celsius.<sup>4</sup> ULT means that fishing boats can operate at sea for longer periods, transshipping their frozen catch either in port or onto mother ships (FFA 1998: 8). Once the frozen tuna have been airfreighted to Japan, they are kept in ULT cold stores.<sup>5</sup> Frozen or fresh tuna can be eaten raw. Alternatively, it "is cooked, salted, dried, as fish cake, and as fish 'ham'" (Owen and Troedson 1994: 235). It is estimated that raw tuna comprises more than 80% of the Japanese market (Owen and Troedson 1994: 235).<sup>6</sup>

The FFA notes that several states in the region have become interested in longlining for tuna (FFA 1998: 8). For example, the Federated States of Micronesia, Fiji, Papua New Guinea, French Polynesia, New Caledonia, Palau and the Solomon Islands. These states are interested because this:

technique is able to target large (over 25 kg) high-value tunas, especially bigeye (the most tropical tuna species) and yellowfin (the second most valuable) which can be exported in fresh chilled form for sale as *sashimi* on, principally, Japanese markets ((FFA 1998: 8).<sup>7</sup>

Airfreighting of chilled yellowfin and bigeye tuna comprises approximately 23% of the Japanese market, with ULT frozen yellowfin and bigeye accounting for the balance (FFA 1998: 16). Crews for longline vessels originate from China, Indonesia or the Philippines. On occasions, Fijian or ni-Vanuatu crew is employed (FFA 1998: 43).

The longlining fishing industry is being monitored critically because it allows indiscriminate bycatch of, in particular, seabirds such as the albatross. While other fishing methods, such as trawling and recreational fishing can also attract the albatross, the albatross

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<sup>4</sup> This ULT method ensures that the frozen tuna maintain both texture and colour, making it acceptable as a *sashimi* grade product in Japan (FFA 1998: 34).

<sup>5</sup> According to Cozens, there is a six-month shelf life for frozen tuna (Interview, 19.10.2000). Peter Cozens, Strategic Studies Centre, University of Victoria at Wellington.

<sup>6</sup> Raw tuna is eaten as *sashimi* or *sushi*. "Sashimi refers to slices of raw tuna served with shredded Japanese radish (*duikon*), a small amount of green paste (*wasabi*) made from horseradish, and soy sauce (*shoyu*). Sushi is served in bit-sized snacks consisting of sliced tuna served on or in small rice-balls (*sushi-meshi*), seasoned with vinegar, salt and sugar" (Owen and Troedson 1994:235).

<sup>7</sup> While Japan is the principal buyer of *sashimi*-grade tuna, emerging markets are gaining an increasing share of the *sashimi* trade. These include Hawai'i, the United States West Coast, Sydney (Australia) and Asian buyers, particularly Korea (FFA 1998: 8).



follow the longline vessels, ready to swoop down to the bait on the branch lines, as they are being set.<sup>8</sup> Bergin (1997: 65) estimates that some albatross populations have dropped by as much as ninety percent. Gear modification is mandatory for longline vessels fishing in Australian waters.<sup>9</sup> Japan and Taiwan have also introduced gear and operational modifications aimed at eliminating bird bycatch (Bergin 1997: 65).

### *Purse seine fishing*

States engaged in this method of fishing in the WCPO include Australia, the FSM, Indonesia, Japan, Kiribati, Korea, Mexico, New Zealand, Papua New Guinea, the Philippines, Russia, the Solomon Islands, Taiwan, the United States and Vanuatu (SPC 1998). According to FFA (1998: 88) statistics, around 75% of the global purse seine fleet is either owned or controlled by corporations in eight countries: France, Spain, Japan, Taiwan, South Korea, Mexico, Venezuela and the United States. All but one of these purse seine fleets operates in the WCPO. Tuna purse seining, the invention of United States West Coast fishermen early last century, targets surface swimming tuna, such as skipjack and juvenile yellowfin (Doulman 1987c: 134).<sup>10</sup>

Skipjack are known to travel thousands of kilometres during their short life and are prolific reproducers. They start spawning after turning one, with a mature female capable of producing “between 1 and 3 million eggs in a year” (Kuk 1994:29). The skipjack are “indicative of a resource capable of sustaining tremendous catches” far more than their current levels of exploitation (Kearney 1989: 38). The breakdown, generally, of the purse seine catch is that skipjack comprises 70% of the haul and juvenile yellowfin the remainder. Campbell and Nicholl note that there is also a small bycatch of juvenile bigeye with the purse seine method (1994: 53, see also Kearney 1989: 38). Purse seine tuna harvested in the WCPO account for approximately half of the global canned tuna industry, thus making the global canned tuna market dependent upon the region’s supply. The major canneries are located in American Samoa and Thailand (Hunt 1998). Other canneries located in the Philippines, Indonesia, Puerto Rico and Fiji are alternative destinations.<sup>11</sup>

Purse seiners can utilise helicopters, from which spotters determine the composition, or aggregation of the tuna school. The United States fleet, which is comprised of family, or individual operations, uses helicopters, as does the Korean purse seine fleet. On the other hand, by using lookouts, Japanese vessels operate as a group and exchange information as to the

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<sup>8</sup> “... bigger birds such as albatross, may take the whole bait into their beak and some swallow bait, get hooked in gullet and drown as the line sinks ...[S]maller birds, such as petrels and shearwaters, may take only part of the bait and fly away, but these birds also get hooked on longlines” (Bergin 1997: 65).

<sup>9</sup> Bergin (1997: 70) highlights Australia’s active role in eliminating bird bycatch. Australia is also committed to measures to eliminate bird bycatch in the southern bluefin tuna industry (CCSBT: the Commission for the Conservation of Southern Bluefin Tuna).

<sup>10</sup> Doulman (1987: 134) writes that the first United States tuna purse seiner “was commissioned by the Van Camp fishing and canning corporation in 1916”.

<sup>11</sup> There is also the cannery at Noro in the Solomon Islands, which until recently was a joint venture operation founded in 1973 between the Solomon Islands government and Taiyo Fishery Company (previously known as Solomon Taiyo, and now known as Soltai) (Hughes 1987).



location of fishing grounds (Doulman 1987d: 144). Because of the time (and money) taken to search for fish aggregations, accurate information is essential to establish whether the fish are large enough to warrant the cost of making a set. This “involves placing a net around a school of fish and closing the net at the base” (Veitayaki 1995: 41).<sup>12</sup> As Veitayaki (1995: 41) notes, it is an effective method of catching tuna because:

Once a school of fish is detected, one end of the seine is taken by a small boat which will move away from the vessel in such a direction that the school is encircles. The vessel, on receiving the end of the seine from the small boat, winches in the wire cable, closing the bottom on the seine and forming a bag-like fence around the fish. The other lines are then winched in, reducing the area inside the net. The netted area is continually reduced to a minimum before the net is brought alongside the vessels and hauled aboard.

There is also a need to consider the wear and tear on the gear and nets before making a decision to make a set (Campbell and Nicholl 1994: 64, 65).

The cost of the nets used in the purse seine industry can cost US\$600,000, with the vessels themselves costing as much as US\$18 million new and as much as US\$9 million for a vessel which may be up to 15 years old (FFA 1998: 8). Crew costs are considered the major outlay for any of the purse seine fleets. It is difficult to find experienced crew.<sup>13</sup> Purse seine crews originate from China, Indonesia, the Oceanic islands and the Philippines. These crews generally undertake the unskilled jobs on board such as deck work. The skilled officer positions are filled by increasingly hard-to-find experienced nationals.<sup>14</sup> Purse seiners operating in the WCPO average in size between 200-300 GRT. Most purse seiners operating globally today are classified as “super seiners” given their ability for in excess of 400 tonnes to be kept in the vessel’s refrigerated hold (FFA 1998: 88).<sup>15</sup>

Given the deeper depths at which longliners operate, the tuna are of greater maturity than those caught by purse seiners. Hence, the economic value of yellowfin caught by longliners is 2.6 times greater than that caught by the purse seine method, with observers noting that harvesting of yellowfin in the WCPO is at sustainable levels (Cartwright 1999: 3). Skipjack stocks are considered abundant in the WCPO.<sup>16</sup> From statistical analysis, it is clear that juvenile yellowfin can bring higher prices than skipjack. This makes an incentive for captains to search

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<sup>12</sup> Campbell and Nicholl (1994: 64) note two types of tuna schools. The first are the eastern Pacific tuna, which are found “in association with dolphins. This differs from tuna in the central and western Pacific, which are found around “floating objects such as logs”. No rationale yet exists as to why tuna from the two regions differ.

<sup>13</sup> Purse seine fishing is considered the four ‘d’s’: “dirty, dangerous, difficult, and distant (i.e. far from home) (FFA 1998: 115).

<sup>14</sup> Veitayaki (1995: 59) discusses a phantom purse seine crew: ‘The crew is mixed with an Italian captain, a Korean engineer, Portuguese chief mate and cook and other deck hands from Micronesia and Philippines. The crew are paid between US\$2-3 per tonne while the engineer and captain are paid US\$35 and US\$50 per tonne respectively. If there is no catch for 45 days the crew are paid at the rate of US\$14 a day. The captain, who flies home to San Diego once he brings the ship into port, often earns US\$25,000 per trip’.

<sup>15</sup> Most vessels can spend between 30 to 140 days at sea (Campbell and Nicholl 1994: 54).

<sup>16</sup> The Tuna & Billfish Assessment Programme at the Secretariat of the Pacific Community has had a tagging program for tuna in operation for many years (Herr 1990: 76).

for aggregations with greater levels of juvenile yellowfin, rather than skipjack (Campbell and Nicholl 1994: 65).

### ***Pole and line fishing***

States engaged in pole and line fishing in the WCPO include Australia, Fiji, French Polynesia, Indonesia, Japan, Kiribati, New Caledonia, New Zealand, Palau, Papua New Guinea, Solomon Islands, Tuvalu and the United States. This method of fishing falls between artisanal operations and the commercial purse seine industry, the method involving:

the use of bamboo poles and unbaited barbless hooks and live baits. Tuna from a sighted school or a FAD are attracted by the release of live bait and the spraying of water on the surface and are caught by hooks suspended from the poles by the fishers when the fish are in a feeding frenzy. The method requires refined skills as it requires thrusting the fish on board (regardless of size), unhooking and returning the hook to the water in a single motion. In addition, the whole activity is done at great speed because the fish must be caught in the brief moments of their frenzy, before they swim away (Veitayaki 1995: 38).

Pole and line fishing techniques target the same surface swimming fish as purse seiners, that is, juvenile yellowfin and skipjack. This fishing method is a more expensive and labour-intensive operation than purse seine fishing, although the fish caught are of superior quality and command a higher price than do fish caught in purse seine nets (Togolo 1987: 56). A pole and line vessel costs around US\$2 million and it seems there is no growth in this industry (AIDAB 1994). This concurs with Bergin's (1993: 4) estimate that the pole and line harvest has declined "from 18 percent of the estimated catch in 1989 to around 9 per cent of the estimated catch in 1991". Taya (1995: 51) outlines the drop in Japanese distant water pole and line operations as having declined by 56% from 1980 to 1993, "due to its failure to compete with the more efficient tuna purse seine fishing".

Japan is the only distant water fishing state engaged in pole and line activities in the WCPO, with 80 fishing vessels operating mainly in Micronesia and Kiribati.<sup>17</sup> Because pole and line and purse seine operation methods target surface swimming tuna, Japan has been careful to separate the fishing locations used by its pole and line and purse seine fleets, (Kuk 1994: 28). According to Waugh (1985: 13, 28), this method of fishing has always been contentious because it requires live baitfish, which is also used by the islanders for their subsistence fishing.<sup>18</sup> Not all Oceanic states have abundant stocks of baitfish in their waters (Waugh 1986: 13, 28).

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<sup>17</sup> United States pole and line operators have a few vessels around Hawaii, which falls within the WCPO region. Thus, these vessels are considered local (Hampton email communication 22.02.01).

<sup>18</sup> Baitfish is harvested in lagoon areas (Herr 1990: 127). Live baitfish is required for pole and line fishing. Oceanic states with "robust baitfish stocks" are "Papua New Guinea, Solomon Islands, and to a lesser extent Fiji and Hawaii" (Doulman and Kearney 1987: 13).



## LIST OF REGIONAL AND SUB-REGIONAL INSTRUMENTS

### *South Pacific Forum Fisheries Agency Convention (1979)*

The adoption by the South Pacific Forum of the Convention in 1979 formally established the South Pacific Forum Fisheries Agency (FFA). The Convention is the legal instrument which controls the activities of the FFA. Its membership comprises the 16 members of the Pacific Islands Forum.

### *The Nauru Agreement Concerning Co-operation in the Management of Fisheries of Common Interest, 1982 (otherwise known as the Parties to the Nauru Agreement, or the PNA Group)*

The PNA Group is comprised of those skipjack tuna-rich states of Micronesia and Melanesia. The tuna is harvested by purse-seiners and destined for the canned tuna market. These states include the Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Papua New Guinea, Tuvalu and the Solomon Islands.

### *An Arrangement Implementing the Nauru Agreement Setting Forth Minimum Terms and Conditions of Access to the Fisheries Zones of the Parties (1982)*

This First Implementing Arrangement established the Regional Register of foreign fishing vessels which is maintained by the FFA. The Register requires a recent photograph of the vessel, with its call sign and name clearly displayed. The database includes information about vessel owners, operators and masters. Vessels can be struck off the register for violations, thus losing its 'good standing' in the region. The Register also demands Flag State compliance.

### *Second Arrangement Implementing the Nauru Agreement Setting Forth Additional Terms and Conditions of Access to the Fisheries Zones of the Parties (1990)*

The Second Implementing Arrangement included additional harmonised minimum terms and conditions of fishing vessel access. These included a prohibition of transshipment at sea; and an obligation by vessel operators to pay travel costs, provide accommodation and provide full insurance for observers. The Arrangement also foreshadowed the provision of the Vessel Monitoring System (VMS). The FFA has applied these two Implementing Arrangements as Minimum Terms and Conditions (MTC) for use in negotiations between its members and fishing states.

### *Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (1987) (Multilateral Fisheries Treaty)*

Ten negotiating rounds to conclude the Multilateral Fisheries Treaty took place between 1984-1987. Its conclusion heralded acceptance by the United States of the sovereign rights of the region's coastal states to manage highly migratory fish stocks such as tuna. The FFA membership demanded United States agreement on the Regional Register, closed and limited areas, catch reporting and licensing fees.

*Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific Region (1991) (Driftnet Fishing Convention)*

Finalised after a concerted regional campaign to halt the use by Japan, Taiwan and the Republic of Korea of driftnets of up to fifty kilometres in length and ten metres deep, which were being used increasingly in the region since the late 1980s. The campaign was taken to the United Nations and supported by the United States. It resulted in a United Nations Resolution which called for a moratorium on high seas driftnet fishing.

*Palau Arrangement for the Management of the Western Pacific Purse Seine Fishery (1992) (Palau Arrangement)*

Because of over-fishing concerns regarding yellowfin and bigeye tuna harvesting, the PNA Group sought to cap the number of purse seine vessels (currently 205) fishing these stocks in the EEZ of PNA members. A Review of the Palau Arrangement was undertaken in 2000. The Review stressed the need to decrease the levels of fishing activity to sustain the stocks and to revise the Arrangement's management of the industry to effect an increase in incomes for the PNA Group (see Geen 2000).

*Niue Treaty on Co-operation in Fisheries Surveillance and Law Enforcement in the Pacific Region (1993) (The Niue Treaty)*

The Niue Treaty was finalised in an effort to enhance control over fishing fleets in the region. Bilateral or subsidiary agreements will contain specific clauses on how to facilitate cross-border surveillance and enforcement.

*Agreed Minute on Surveillance and Enforcement (1994)*

Signed between the FFA and the United States, the Minute outlines co-operation in fisheries monitoring, compliance and surveillance in the region. It is linked to the *Lacey Act* in the United States. The *Lacey Act* allows the United States to arrest and prosecute vessels entering one of its ports to discharge fish caught illegally in the region. The Regional Register is used as evidence.

*Federated States of Micronesia Arrangement for Regional Fisheries Access (1995) (FSM Arrangement)*

The FSM Arrangement encourages fishing state vessel owners to base their operations within the region by offering a discounted access fee. Access for these domestic-based operations are on terms no less favourable than those operating under either bilateral or multilateral arrangements.

*Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific (finalised in September 2000, but has not yet entered into force) (WCPF Convention)*

In accordance with the UNCLOS and the Fish Stocks Agreement, the WCPF Convention comprises a co-operative arrangement between fishing and coastal states to conserve and manage tuna stocks in the Western and Central Pacific Ocean.



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- Heikkila, Wayne, (U.S. Western Fishboat Owners Association and member of the United States' MHLC delegation), April 2001
- Professor Herr, Richard (University of Tasmania), October 2000
- Hughes, Neil (Environment Australia and member of Australia's MHLC delegation), December 2000
- Hunter, Carl (Cook Islands delegate to MHLC) April 2001
- Jimwereiy, Anton (Nauru delegate to MHLC) April 2001
- Jusseit, Hans (Australian East Coast Tuna Industry and member of Australia's MHLC delegation), April 2001
- Lack, Mary (Australian consultant, former official of AFMA and member of Australia's MHLC delegation), 1 December 2000
- Dr Lewis, Anthony (SPC and an SPC observer at MHLC) April 2001
- Lui, Vitolio (Head of Samoa's MHLC delegation), April 2001
- Miller, Geoff (AusAID and member of Australia's MHLC delegation), December 2000
- Dr Murray, Talbot (NIWA, NZ and member of New Zealand's MHLC delegation), October 2000
- Nuttall, Ruth (NZ MFAT) August 2000
- Riddell, Amanda-Jane (NZ Ministry of Fisheries and member of New Zealand's MHLC delegation) October 2000



- Dr Ridings, Penny (NZ MFAT and Leader of New Zealand's MHLC delegation), October 2000 and April 2001
- Dr Ross, Ken (External Affairs Bureau, NZ MFAT) October 2000
- Scott, Heather, (Tuna New Zealand, member of New Zealand's MHLC delegation) October 2000 and April 2001
- Dr Smith, Barney (Formerly at the SPC, now at ACIAR, c/- NSW Fisheries Research Institute) January 2001
- Tagicaki, Silipa (Fiji MHLC delegate) April 2000
- Tarte, Sandra (University of the South Pacific and an observer at MHLC) April 2001
- Thomas, Randi Parks (United States Tuna Foundation and member of the United States' MHLC delegation) April 2001
- Thoulag, Bernard (Leader of the Federated States of Micronesia's MHLC delegation) April 2001
- Professor Tsamenyi, Martin (Former FFA employee, now at the University of Wollongong) August 1999
- Dr Ward, Peter (Bureau of Resource Science, AFFA and member of Australia's MHLC delegation) November 2000 and April 2001
- Wase, Danny (Leader of the Marshall Islands' MHLC delegation) April 2001
- Weeber, Barry, (NZ Forest and Bird), October 2000
- Willock, Anna, (Former AFMA official, FFA employee and currently with TRAFFIC Oceania and the NGO representative on Australia's MHLC delegation) January 2001
- Wilkinson, Vaughan (Simunovich Fishing Company, NZ and a member of New Zealand's MHLC delegation), October 2000, April 2001

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