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The Emergence of a Regional Ocean Regime in the South Pacific

Biliana Cicin-Sain**
Robert W. Knecht***

INTRODUCTION

The introduction of 200-mile resource zones into a large area of formerly open ocean can have a dramatic impact on the character of the area. This is especially true for ocean areas that contain numerous island groupings such as those existing in the South Pacific. Virtually overnight, isolated tiny island nations acquire the legal right to resources within and underlying vast areas of the surrounding ocean. In the process, widely separated island nations become members of a neighborhood consisting of the now adjoining 200-mile zones.

Paralleling the actions of other coastal nations, the establishment of 200-mile zones in the South Pacific in the last decade by twenty-two self-governing South Pacific island nations and island territories created a

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set of adjoining exclusive economic zones (EEZ's)² and fishery zones³ which now almost completely fill an ocean area spanning more than four time zones and 25 degrees of latitude. As shown in Figure 1, the 200-mile zones created in the late 1970's and early 1980's markedly changed ocean resource jurisdiction in the South Pacific. Close to 40% of what had been open South Pacific ocean was brought under national resource jurisdiction. Virtually all resources and economic uses in this vast region—which totals more than 30 million square kilometers—are now under the control of the island nations.⁴ Kiribati, for example, with 690 square kilometers of land area, now controls 3.6 million square kilometers of sea area.⁵ If Papua New Guinea is excluded from the calculation, the ocean areas that came under the control of the island nations would be, on the average, about 300 times larger than their land areas. This is in great contrast to other coastal nations around the world. The United States, for example, has the largest EEZ in the world, but its ocean to land ratio is significantly smaller.

Since the establishment of these 200-mile zones, the Pacific island nations have adopted three important regional treaties that significantly affect the exploitation of ocean resources and the use of ocean space in the South Pacific: the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States in 1987 (Tuna Treaty),⁶ the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region in 1986,⁷ and the South Pacific Nuclear Free Zone Treaty in 1985.⁸ These regional agreements signal the emergence of a new regional ocean regime in the South Pacific. This new regime reverses previous patterns of use, which favored developed nations, and instead introduces a regime that is regional in scope and that retains a significant portion of the benefits of

² Under the concept of the Exclusive Economic Zone (EEZ), coastal nations have "sovereign rights" for the purpose of exploring, exploiting, conserving, and managing virtually all resources and economic uses within 200 nautical miles of their shorelines, while maintaining the traditional high seas freedoms of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to those freedoms (such as those associated with the operation of ships, aircraft and submarine cables and pipelines). United Nations Convention on the Law of the Sea, Oct. 7, 1982, arts. 56-58, U.N. Doc. A/CONF.62/122, 21 I.L.M. 1261 [hereinafter 1982 Convention].

³ Fishery zones have a legal basis similar to EEZ's except that the coastal nation asserts jurisdiction only over the fishery resources in its 200-mile zone. See H. Buchholz, LAW OF THE SEA ZONES IN THE PACIFIC OCEAN 74-75 (1987).

⁴ Kotobalavu, supra note 1, at 117.

⁵ Id. at 122.


⁷ Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, Nov. 25, 1986, 26 I.L.M. 38 [hereinafter SPREP Treaty].

FIGURE 1
The principal thesis in this Article is that the governance of ocean resources and space in the South Pacific is in a process of transition. Until the late 1970's, an externally imposed ocean regime prevailed in the area, whereby outside actors—through the use of incentives, manipulation, and the exercise of power—largely determined the modes of resource exploitation and the use of ocean space and kept the lion's share of the resulting benefits. Developed nations thus looked upon the South Pacific Ocean as a place freely to get their tuna, test their weapons, and, prospectively, dump their waste.9 The late 1970's saw a shift toward a new regime mode: a regionally negotiated ocean regime in which the South Pacific island nations establish the rules so that the benefits of ocean exploitation and use increasingly remain within the region.

Because of the unprecedented size and scope of the ocean regime emerging in the South Pacific, its development is of considerable interest to ocean policy specialists and to ocean resource managers in other regions of the world. The South Pacific is at the forefront in the implementation of concepts developed at the 1982 Law of the Sea Convention (1982 Convention), particularly with regard to the uses of the EEZ. Ocean developments in the South Pacific may well set precedents for other developing coastal nations to follow.

To explore these questions, Part I of this Article provides an overview of the characteristics of the South Pacific region and of the major geopolitical changes in the area in recent years. These include decolonization and independence, the growth of indigenous regional organizations, and the erosion in the influence of the Western powers that dominated the area since the Second World War. This Part also examines the concept of ocean regionalism and describes the distinctive nature of the South Pacific as an ocean "region" separating it from other ocean regions.

Part II examines the processes and outcomes of the negotiations by South Pacific island nations in the 1980's of three regional arrangements (on fisheries, the environment and natural resources, and nuclear activities) that significantly affect the governance of ocean resources and space. The genesis, major elements, and provisions for administration of each treaty are reviewed briefly.

Part III discusses the theory of resource regimes and ocean regimes, focusing on the effects of EEZ's on island nations.

Building on the earlier discussion of resource regimes and ocean regimes, Part IV explores the extent to which each regional agreement fits
the characteristics of a "regime," that is, the extent to which each establishes a system of rules and rights that are recognized by both outsiders and insiders, and that includes mechanisms for insuring compliance, interpreting rules, and adapting to change. The section concludes with speculation on the emergence and evolution of a multifunctional ocean regime.

Part V examines the possible implications of ocean governance developments in the South Pacific from within and outside the region. First, the implications of growing ocean regionalism on the economic and political integration of the South Pacific are explored. To what extent, if any, will heightened common regional action on ocean affairs contribute to growth in regional integration? Second, the Article considers whether ocean developments in the South Pacific could influence the economic or political alignments of the newly self-governing island nations of Micronesia. It then discusses the extent to which island nations in other ocean regions could be motivated to create ocean regimes similar to those in the South Pacific, as well as some of the implications posed for the law of the sea, particularly regarding the use of EEZ's as a mechanism for coordinated regional political action.

Finally, the paper concludes with reflections on U.S. policy toward the South Pacific, and the need for change in the U.S. approach toward the region.

I

THE SOUTH PACIFIC: A RAPIDLY CHANGING REGION OF THE WORLD

As is evident in Figure 1, the South Pacific region is predominantly water, with about 10,000 small islands scattered throughout the area. Most of the inhabited islands have small land areas and contain small populations. The major exception is Papua New Guinea, which has a population of more than three million people and a land area of over 175,000 square miles. Land resources are generally scarce in the South Pacific islands, with notable exceptions. Phosphate is plentiful in Nauru, but it is being rapidly depleted. Papua New Guinea has substantial resources in the form of timber, gold, and other minerals. Soil fertility on

10. The general description in this Part is based on three sources: R. Crocombe, The South Pacific (1983); D. Stanley, supra note 9; The Emerging Marine Economy of the Pacific (C. Gopalkrishnan ed. 1984).

11. Six self-governing island nations or territories have land areas less than 100 square miles (American Samoa, Cook Islands, Nauru, Pitcairn, Tokelau, and Tuvalu); four have land areas between 100 and 1000 square miles (Kiribati, Niue, Tonga, and Wallis and Futuna); and four have land areas between 1000 and about 10,000 square miles (Fiji, New Caledonia, Vanuatu, and Western Samoa). The World Almanac and Book of Facts 1988, at 601-28, 650-748 (1987) [hereinafter World Almanac].

12. Id.
the smaller islands tends to be poor, which means that in most cases agriculture is on a subsistence level. Coconut products are the only major food export, although bananas, sugar, and palm oil are also shipped overseas.

In socioeconomic terms, the islands generally have a high population growth rate on account of high fertility and relatively low death rates. However, this is offset somewhat by high emigration rates to Pacific Basin countries. There is a general state of economic underdevelopment, high unemployment, and high energy costs. Persistent problems exist in the balance of trade and in the balance of payments. Tourism and military expenditures are limited to relatively few islands, particularly in the Fiji and Vanuatu groups (for tourism) and Kwajalein in the Marshall Islands (for space and military activities). Existing industry and tourism are predominantly in the hands of foreigners, including substantial Japanese investment in the area.

As a result of significant missionary activity within the last century or so, there is a strong Christian influence in the region. Relatively stable democratic governments have been the norm in the region. The 1987 coups in Fiji, therefore, came as a sharp contrast to the existing situation. Until recently, the region has been pro-West and very favorably disposed toward the United States. The United States' active role in the region during the Second World War is partly responsible for this positive feeling.

In terms of ethnic and cultural traditions, the region is made up of three major groupings: Melanesian, Polynesian, and Micronesian. Notwithstanding major differences among these groups, a strong indigenous philosophical orientation is attributed to the region as a whole—the so-called "Pacific Way." This way of looking at the world emphasizes a consensus approach to decisionmaking. This view holds that relations among Pacific peoples have been marked with harmony, brotherhood,

13. See generally R. Crocombe, supra note 10; D. Stanley, supra note 9.
15. Melanesia is by far the largest grouping and encompasses over 66% of the population of the Pacific islands and includes New Caledonia, Papua New Guinea, Solomon Islands, and Vanuatu. Micronesia—straddling the Equator—is composed of a series of islands with small land masses including the Commonwealth of the Northern Marianas, Federated States of Micronesia, Guam, Kiribati, Nauru, Marshall Islands, and Palau. Polynesia stretches from New Zealand in the south to Hawaii in the north, and Easter Island in the far east, and includes American Samoa, Cook Islands, Niue, Tahiti, Tokelau, Tonga, Tuvalu, and Western Samoa. See R. Crocombe, supra note 10, at 14-15. Fiji can be regarded as part of Melanesia or Polynesia or of both—Fijians are physically similar to Melanesians but culturally closer to Polynesians. See id. at 11.
16. The term "Pacific way" was originally coined by Prime Minister Ratu Sir Kamisese Mara of Fiji. See R. Crocombe, The Pacific Way: An Emerging Identity 1 (1976).
and courtesy for one another. Decisions for action are reached after all opinions have been voiced and a consensus is achieved; mutual respect prevails. Opinions differ, however, on whether the Pacific Way is a recent development or represents a more deeply rooted tradition.\textsuperscript{17}

Until the mid-1960's, the region had been dominated by the Western powers of France, Great Britain, and the United States. While most of the major powers have given up their dependencies and colonies, France continues to rule its dependencies in the region: French Polynesia (Tahiti), New Caledonia, and Wallis and Futuna. Because of French unwillingness to decolonize and the continuation of French nuclear tests in the area, France was not well regarded in the region. However, the South Pacific Forum, at its nineteenth meeting in Tonga in September 1988, was "encouraged" by the framework agreement negotiated by the newly elected French Government in August 1988, which put in place a process intended to lead to an act of self-determination in 1998.\textsuperscript{18} Great Britain no longer plays a significant role in the area, except in foreign assistance. Since the end of World War II, the U.S. has maintained a low profile in the region. Most of the military presence has been in the North Pacific, with bases in Guam, Hawaii, Johnston Island, and Kwajalein in the Marshall Islands. U.S. policy towards the region can be described as one of benign neglect. Although the United States seems interested in denying access to the area to other, potentially hostile powers, it does not appear inclined to do much else in the region. Most U.S. aid has been provided under the aegis of multilateral programs, and only recently has a bilateral program been established with Fiji. The United States maintains a low-profile diplomatic presence in the region, with embassies only in Fiji, Papua New Guinea, and Solomon Islands.

The strongest U.S. irritant to the region has been the action of U.S. tuna boats operating under an official U.S. policy that does not recognize the rights of coastal nations to assert jurisdiction over migratory fishery resources such as tuna in their 200-mile exclusive economic zones.\textsuperscript{19} Although some licenses were purchased in the early 1980's, U.S. tuna vessels regularly violated the 200-mile zones in the region.\textsuperscript{20} The United States' failure to respect the 200-mile zones of the newly independent

\textsuperscript{17} For a discussion of various views on this question, see id.; R. Kiste & M. Hammet, Information Flows in the Pacific Island States (Center for Pacific Islands Studies, University of Hawaii, Apr. 1986).

\textsuperscript{18} South Pacific Forum (19th mtg.), Press Communiqué (Sept. 1988).

\textsuperscript{19} Under the Magnuson Fishery Conservation and Management Act (FCMA), tuna is defined as highly migratory species and is explicitly excluded from U.S. jurisdiction. 16 U.S.C. §§ 1802(14), 1812 (1982). FCMA reserves the right of the United States not to recognize the exclusive fishery zones of any nation that "fails to recognize and accept that highly migratory species are to be managed by applicable international fishery agreements." Id. § 1822(e).

\textsuperscript{20} A particularly troublesome incident was the seizure of the U.S. tuna vessel, the \textit{Jeannette Diana}, by the Solomon Islands Government in 1984. For a discussion of the incident, see Tsamenyi, \textit{The Jeannette Diana Dispute}, 16 OCEAN DEV. & INT'L L. 353 (1986).
nations of the South Pacific has seriously hurt its prestige in the area.\textsuperscript{21}
Feelings toward the United States have also been negatively affected by the continuing close alliance between the United States and France and the U.S. failure to condemn continued French nuclear activity.

While U.S. prestige in the region has waned in recent years, that of other countries has grown. The nations that have developed the strongest and closest relationships with the islands of the South Pacific in terms of aid, advice, and the education of their leaders have been Australia and New Zealand. Furthermore, Japan recently has been playing a strong economic role in the region, both in terms of investment and foreign assistance. The European Economic Community, the United Kingdom, and Canada are also providing significant economic assistance to the region.

The past two decades have seen some dramatic changes in the region, changes that are working to alter significantly the relations between the Pacific island nations and other Pacific powers. These are: (1) decolonization; (2) growing regional organization; and (3) the so-called Soviet penetration of the area.

\textbf{A. Decolonization}

One of the most dramatic developments has been the rapid decolonization of the region. Nine independent nation-states have been established since 1962, five of them since 1975: Fiji (1970), Kiribati (1979), Nauru (1968), Papua New Guinea (1975), the Solomon Islands (1978), Tonga (1970), Tuvalu (1978), Vanuatu (1980), and Western Samoa (1962).\textsuperscript{22} In addition, the Cook Islands and Niue have become “freely associated” with New Zealand, while the Federated States of Micronesia, the Marshall Islands, and (soon) Palau have become “freely associated” with the United States.\textsuperscript{23} The only significant remaining colonial relationships in the region are between France and New Caledonia.

\textsuperscript{21} For a critique of the U.S. position on tuna, see O'Malley Wade, \textit{A Proposal to Include Tuna in U.S. Fishery Jurisdiction}, 16 Ocean Dev. & Int'l L. 255 (1986).

\textsuperscript{22} \textit{World Almanac}, supra note 11, at 674-734.

\textsuperscript{23} The concept of “free association” was set forth in the United Nations General Assembly Resolution 1541 of December 15, 1960, which established the principles to be utilized in determining when entities governed by other countries had reached the status of self-government and thus were no longer “colonies.” The resolution defines “free association” as an association between two entities that is “the result of a free and voluntary choice . . . through informed and democratic process.” G.A. Res. 1541, 15 U.N. GAOR Supp. (No. 16), U.N. Doc. A/4684 (1961). In a relationship of “free association,” there must be respect for the individuality and the cultural characteristics of the area and its people. The most essential element is that the people of each of the freely associated states must unilaterally have “the freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional processes.” \textit{Id}. Finally, the people have the right to develop their own constitution without any outside interference. \textit{Id}. at 29-30. In the usual context, “freely associated” states are self-governing, except in matters related to external affairs and defense.
French Polynesia, and Wallis and Futuna. The new island nations of the South Pacific have naturally taken their independence seriously and indeed some, such as Vanuatu, have chosen to become nonaligned.

B. Growth of Indigenous Regional Organizations

The growth in the number of independent nations has been paralleled by the growth of regional organizations. The first regional organization, the South Pacific Commission, was created in 1947 by the colonial powers in the region (France, Great Britain, the Netherlands, and the United States). The organization was established to maintain the stability of the region and to provide needed technical assistance, especially in the areas of education, health, and economic development. Political matters were explicitly prohibited from the purview of the Commission. In addition to the metropolitan powers, the membership included most of the island dependencies in the region. Early (and continuing) efforts were devoted to agriculture and technical assistance in the area of fisheries and related activities.

The South Pacific Commission apparently served reasonably well until about 1965 when island members became dissatisfied with the Commission and its orientation. Richard Herr, in a 1976 study of the region, summarized the changes as follows:

Island leaders sought with increasing clarity of vision to replace trusteeship with collegial cooperation, non-politicism with political commitment, and technical expertise with direct financial assistance. Underlying this development was a conscious acceptance of the organization's regionalism value but with a twist not to the liking of some metropoles. In the second half of the 1960's a belief emerged from some quarters of the Pacific that the European states were interlopers within the region and therefore even their continued presence in the [South Pacific Commission] was opened to question.

In 1965, the first purely indigenous regional organization, the Pacific Islands Producers Association (PIPA), was formed by Fiji, Tonga, and Western Samoa. PIPA was designed to get a better price for bananas in New Zealand for these three island producers. More importantly, in

25. Interview with the Secretary-General of the South Pacific Commission and his staff, in Noumea (July 1987).
27. U. NEEMIA, supra note 24, at 25.
1971, under the leadership of Prime Minister Ratu Mara of Fiji,\textsuperscript{28} the independent and self-governing nations in the region formed the South Pacific Forum. This was the most significant regional development up to that time. Representatives from seven Pacific nations (Australia, the Cook Islands, Fiji, Nauru, New Zealand, Tonga, and Western Samoa) formed the unusual group.\textsuperscript{29} There was neither formal structure to nor a permanent home for the organization. The Forum would meet annually in different capitals throughout the region, and the assembled heads of government would discuss the issues of the moment and, where possible, adopt coordinated positions. There was no established procedure, no formal process or function, no public records kept, and no observers allowed in these meetings. Brief communiques issued after each meeting provided the only official information regarding what transpired.

The South Pacific Forum, whose membership has now grown to fifteen,\textsuperscript{30} has evolved into a remarkably effective political instrument in the region, as measured by the regional organizations and activities it has spawned. These include the South Pacific Bureau of Economic Cooperation (SPEC),\textsuperscript{31} the Pacific Forum Line,\textsuperscript{32} the Forum Fisheries Agency,\textsuperscript{33} and its Ocean Resources Management Training Program\textsuperscript{34} at the Univer-

\textsuperscript{28} Fiji had become independent just at the time the South Pacific Forum was being formed. See id. at 26.

\textsuperscript{29} Id.

\textsuperscript{30} Current Forum members include Australia, the Cook Islands, the Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Papua New Guinea, Solomon Islands, Tonga, Tuvalu, Vanuatu, and Western Samoa. POLITICAL HANDBOOK OF THE WORLD 1988, at 773 (A. Banks ed. 1988).

\textsuperscript{31} The South Pacific Bureau of Economic Cooperation (SPEC) was formed in 1973 to carry on certain economic activities of the Forum nations. It also became the secretariat to the South Pacific Forum. It took over the operations of PIPA and assisted in the creation of a regional shipping line (the Pacific Forum Line) and a regional airline (Air Pacific). See U. NEEMIA, supra note 24, at 27-29.

\textsuperscript{32} The Pacific Forum Line was created in 1977 to provide shipping services to the region. It involved a significant amount of capital investment by member nations and from external sources. See id. at 29-33.

\textsuperscript{33} The Forum Fisheries Agency (FFA) was established in 1979 by the Forum after several years of study. Id. at 35. Recognizing that the South Pacific region probably holds one-third of the world's tuna resources, the South Pacific Forum leaders were anxious to capitalize on this valuable asset. In creating the FFA, they hoped to ensure that nations with foreign fishing fleets operating in the South Pacific paid appropriate fees to the nations in whose fishing zones they were operating. See Copes, Tuna Fisheries Management in the Pacific Islands Region, in TUNA ISSUES AND PERSPECTIVES IN THE PACIFIC ISLANDS REGION 3, 13-19 (D. Doulman ed. 1987) [hereinafter TUNA ISSUES]; see also Gubon, History and Role of the Forum Fisheries Agency, in TUNA ISSUES, supra, at 245.

\textsuperscript{34} The Ocean Resources Management Program at the University of the South Pacific was established in 1986 under the auspices of the South Pacific Forum Fisheries Agency and the University of the South Pacific with major funding from the Canadian International Development Agency. The program provides training and policy and technical assistance to island government leaders from the region on marine resources management.
vity of the South Pacific (itself a regional entity). Other important measures of the Forum's success, of course, are the three regional treaties it has spearheaded, which are described in Part II of this Article.

While these developments were occurring in the South Pacific, the Third United Nations Conference on Law of the Sea (UNCLOS III) was taking place in Caracas, Geneva, and New York. By the mid-1970's, the 150 nations of the conference had agreed on the legitimacy of 200-mile zones adjacent to coastal states within which the states had "sovereign rights" over essentially all resources and economically important uses, with the exception of navigation and other traditional high seas freedoms. In the mid-1970's, many coastal nations unilaterally began to declare 200-mile economic zones or fishing zones without waiting for the formal conclusion of a law of the sea convention.

It is interesting to note that in the South Pacific, the emergence of independent states occurred almost simultaneously with the law of the sea negotiations. Pacific island nations were well represented at the UNCLOS III meetings and actively participated. Indeed, as a result of this confluence of circumstances, the concepts of self-government and extended maritime jurisdiction were intertwined virtually from the beginning. During the 1970's, Fiji exercised a strong leadership role both in the region and in UNCLOS III. Even today, the United Nations Special Representative of the Secretary General for Ocean Affairs and the Law of the Sea is Ambassador Satya Nandan, Fiji's representative to UNCLOS III.

C. New Foreign Entrants into the Region

In recent years, both the Soviet Union and Libya have attempted to establish a more visible presence in the South Pacific. For more than a decade, the USSR has been courting the nations of the region. In response to Soviet offers of help in identifying mineral deposits in the South Pacific, the United States, New Zealand, and Australia formed a tripartite consortium to provide similar assistance to the island nations. This activity has come under the aegis of the Committee for the Co-ordination of Joint Prospecting for Mineral Resources in South Pacific Offshore Areas (CCOP/SOPAC). This major regional entity is concerned with the

35. In 1970, the University of the South Pacific, a university aimed at serving the educational needs of the region, was established in Suva, Fiji. While growth and maturation of the University has not been without difficulty, it appears to be playing an important role in educating the population of the region. See U. NEEMIA, supra note 24, at 38, 83-87, 106-08.
37. Nine independent nations were established between 1962 and 1980. See supra text accompanying note 22.
mapping and exploration of ocean mineral and hydrocarbon resources. The USSR remains active in the technical committee of CCOP/SOPAC and, indeed, at an October 1988 meeting of the organization in Fiji, tabled a major new offer of oceanographic assistance to the states of the region. Since the early 1980's, the USSR has been seeking fishing rights in the region and in 1985 made the first agreement with Kiribati in this regard. The $1.5 million that the Soviets paid for access to Kiribati’s EEZ for one year represented 3% of the nation’s budget. That agreement expired after one year because the parties failed to agree on a price for a second year of fishing. In 1987, Vanuatu and the Soviet Union agreed on a one-year fisheries access agreement that allowed the Soviets port rights and landing rights for their fishing crews. The USSR is currently discussing similar fishing arrangements with other island nations and is opening a diplomatic mission in Port Moresby. The Libyans are in the process of establishing a diplomatic presence in Vanuatu but their other activities in the region remain largely speculative.

Not surprisingly, the U.S. military establishment became nervous over the growing presence of the Soviet Union in the region. In congressional testimony in September 1986, representatives of the U.S. Department of Defense outlined a wide range of possible motives and activities that the Soviet Union could advance by using fishing rights as an ostensible reason for being in the region. These include surveillance of U.S. military activities on Kwajalein; the enhancement of Soviet space and satellite operations, and of Soviet military communications capabilities; the potential establishment of support facilities for deep-seabed mining activities; and the attainment of air access and landing rights. Other observers, however, tend to diminish the significance of the Soviet

39. CCOP/SOPAC was established in 1972 under the sponsorship of the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) and with funding provided by the United Nations Development Programme (UNDP) to assist its island member countries in investigating the mineral and hydrocarbon potential of their offshore areas, in the management of their coastal zones, and in the training of their nationals.

40. Id.


43. Id.

tures and instead attribute this activity to a normal desire by the Soviet Union to establish a presence in a region of the world where before it had none.\textsuperscript{45}

\textbf{D. The South Pacific as an Ocean Region}

The South Pacific area defies easy categorization as a marine region. A region, as defined by Alexander, is "an area of the earth's surface differentiated from other areas by the existence within it of a certain association of features that are not present outside the region. The distinguishing criteria for the region may be physical in nature, or may represent demographic, economic, political, or other elements."\textsuperscript{46} Regions may also be defined on other bases. A management region, for example, might be created to govern a particular function, resource, or activity, whereas a geostrategic region could be formed where national interests meet and interact within a geographically contained area.\textsuperscript{47} The concept of "region," then, can apply both to natural regions based on some physical phenomena, as well as to areas delineated by human constructs. As Morgan describes it, "[t]hey are defined and delineated by people for various purposes and with a variety of motives in mind. The regional boundaries are frequently difficult to recognize, and in many cases they are more in the category of frontiers rather than boundaries."\textsuperscript{48}

To date, regions in the ocean have been mostly delineated according to the following factors: (1) a physical or natural character, and (2) an institutional or legal nature.\textsuperscript{49} Marine regions have also been defined following the prescriptions of international law\textsuperscript{50} and on the basis of a management problem or need.\textsuperscript{51}

The South Pacific area fails to satisfy a number of the criteria that define a region. It is not a semi-enclosed sea in any geographic sense and


\textsuperscript{47} Morgan, Marine Regions and Regionalism in Southeast Asia, 8 MARINE POL'Y 299, 301-02 (1984).

\textsuperscript{48} Morgan, Marine Regions: Myth or Reality, OCEAN & SHORELINE MGMT. (in press).

\textsuperscript{49} Id. at 4-7.

\textsuperscript{50} For example, article 123 of the Law of the Sea Convention authorizes states bordering enclosed or semi-enclosed seas to coordinate the management of living and nonliving marine resources in the area. 1982 Convention, supra note 2, art. 123.

\textsuperscript{51} For example, the Regional Seas Program of the United Nations Environment Programme (UNEP) has encouraged the establishment of regional seas programs for the purpose of preventing pollution in ten regions around the world in addition to the South Pacific. Regional seas programs have been set up in the following areas: East Asian Seas, Eastern Africa, Kuwait/Persian Gulf, Mediterranean, Red Sea and Gulf of Aden, South Asian Seas, South East Pacific, South Pacific, West and Central Africa, and Wider Caribbean. Morgan, supra note 48.
has no special hydro-oceanographic coherence. Furthermore, the area does not qualify as a region in an economic sense. Most of the international trade of the area involves economic relations between the Pacific island states and larger outside nations such as Japan, the United States, Australia, and New Zealand. While many of the nations are small and underdeveloped, there is much diversity in both size and resource endowment between nations, e.g., Papua New Guinea and Tuvalu. Similarly, while in cultural terms it is arguable that the commonalities involved in defining a Pacific islander culture and world view separate this area from other areas around the world, at the same time the great cultural differences that separate the Melanesian, Polynesian, and Micronesian cultural and ethnic groupings, and the great ethnic, cultural, and linguistic diversity that exists within each of these groupings, must be recognized.

Two major bases for defining the South Pacific as a region are the political and environmental concerns that appear to be shared by the governments and peoples of the independent and self-governing islands of the area. The shared political concerns in the region involve strong feelings of anticolonialism, as well as strong feelings of nationalism with regard to the incursion of uninvited outsiders into South Pacific territories. Much of this sentiment can be boiled down to a “we-they” outlook. Independent Pacific islanders resist intrusion by the outside powers that for a long period used the resources and space of the South Pacific ocean rather freely for their own benefit.

The shared environmental concerns are closely related to the political concerns. Islanders fear that outside powers will use the region for disposal of nuclear wastes and that continued nuclear testing will adversely affect the area. Viewed this way, the characteristics that define the South Pacific as an ocean region thus have much more to do with shared political and environmental concerns, both largely of a defensive nature, rather than with any geographical, economic, or cultural aspects.

II
NEGOTIATION OF NEW REGIONAL ARRANGEMENTS

Having set the stage in the sections above, we turn now to the specific developments that initially stimulated this study. Since 1985, three significant treaties have been negotiated in the South Pacific region: the

52. While arguably the ecological systems related to tropical tuna represent a large marine ecosystem in the area, this ecosystem extends beyond the South Pacific area and thus does not sufficiently define the region.
54. Incidents such as illegal fishing by U.S. tuna boats have evoked nationalistic sentiments. Van Dyke & Nicol, U.S. Tuna Policy: A Reluctant Acceptance of the International Norm, in TUNA ISSUES, supra note 33, at 105, 112-14.
fisheries access treaty with the United States; the Convention for the Protection of Natural Resources and the Environment of the South Pacific; and the South Pacific Nuclear Free Zone Treaty. For each agreement, we seek to understand its genesis and motivation, its major elements, particularly the regulatory aspects, and the manner in which the treaty is to be administered. However, because each of these treaties relates to the EEZ’s of the island nations involved, we first discuss the actions taken in 1976 to coordinate the establishment of 200-mile EEZ’s in the region.

A. Establishment of 200-Mile Zones

As discussed earlier, the South Pacific Forum, made up of the leaders of the self-governing Pacific island nations, has been the preeminent regional policy body in the South Pacific since its first meeting in August 1971. At a special meeting in October 1976 in Suva, Fiji, the members formally declared their intentions in three areas related to ocean resources: (1) to establish 200-mile EEZ’s at appropriate times and after consultation with one another; (2) to harmonize fishery policies in the region and adopt a coordinated approach in negotiations with distant-water fishing nations; and (3) to establish a South Pacific fisheries agency to promote the conservation and rational utilization of the fish stocks of the region.

At the next regular meeting of the South Pacific Forum in Port Moresby, Papua New Guinea in August 1977, the Forum decided “to establish a South Pacific Regional Fisheries Agency open to all Forum countries and all countries in the South Pacific... who support the sovereign rights of the coastal state to conserve and manage living resources, including highly migratory species, in its 200 mile zone.” At the ninth Forum meeting in Niue in September 1978, the Forum nations rejected a draft convention that would have allowed distant-water fishing nations to be members of the regional fisheries agency and reaffirmed their support for the regional membership position taken at the Port Moresby Meeting.

Thus, the Forum settled the extensive controversy over the nature and membership of the regional fisheries agency, firmly reasserting the principle of coastal nation control over tuna resources and excluding distant-water fishing nations from membership in the agency.

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55. Tuna Treaty, supra note 6.
56. SPREP Treaty, supra note 7.
57. SPNFZ Treaty, supra note 8.
59. Id. at 166-67.
60. Id. at 169-70.
61. The Forum Fisheries Agency Convention was adopted by the South Pacific Forum at Honiara, Solomon Islands in July 1979. Id. at 173.
This development led in due course to the establishment of the Forum Fisheries Agency (FFA) in May 1979 at Honiara, Solomon Islands; the convention creating the agency was approved at the tenth South Pacific Forum Meeting in July 1979 at Honiara. The FFA was to play a key role a half dozen years later in the negotiations leading to the Tuna Treaty with the United States.

The decision to establish 200-mile zones made at the special meeting of the Forum Nations in Fiji in October 1976 was followed closely by extensions of jurisdictions by nineteen island nations and territories.

B. The Tuna Treaty with the United States

As the site of some of the world’s richest fishing grounds for tuna, the South Pacific has attracted distant-water fishing vessels from Japan, South Korea, Taiwan, the United States, and a number of other nations. Much of the U.S. tuna fleet shifted its effort to the South and West Pacific in the early 1980’s because of declining fish stocks, increased problems of access in the Eastern Pacific, and global tuna markets.

62. Id. at 170.
63. See Table 1. The table also indicates which entities signed the three treaties.

Table 1. 200-Mile Zone Declarations and Signatories to 3 Regional Treaties Among Pacific Island Entities

<table>
<thead>
<tr>
<th></th>
<th>200-Mile Claim*</th>
<th>Fisheries Treaty</th>
<th>Environment Treaty</th>
<th>SPNFZ Treaty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Western Samoa</td>
<td>1977</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Cook Islands</td>
<td>1977</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Tokelau</td>
<td>1977</td>
<td></td>
<td></td>
<td>X</td>
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<tr>
<td>Solomon Islands</td>
<td>1978</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>New Caledonia</td>
<td>1978</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>French Polynesia</td>
<td>1978</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Papua New Guinea</td>
<td>1978</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Fiji</td>
<td>1978</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Kiribati</td>
<td>1978</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<tr>
<td>New Zealand</td>
<td>1978</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<tr>
<td>Niue</td>
<td>1978</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<tr>
<td>Vanuatu</td>
<td>1978</td>
<td>X</td>
<td></td>
<td>X</td>
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<tr>
<td>Nauru</td>
<td>1978</td>
<td>X</td>
<td></td>
<td>X</td>
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<tr>
<td>Tuvalu</td>
<td>1979</td>
<td>X</td>
<td></td>
<td>X</td>
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<tr>
<td>Tonga</td>
<td>1979</td>
<td>X</td>
<td></td>
<td>X</td>
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<tr>
<td>Australia</td>
<td>1979</td>
<td>X</td>
<td></td>
<td>X</td>
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<tr>
<td>Marshall Islands</td>
<td>1979</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Federated States of Micronesia</td>
<td>1979</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Palau</td>
<td>1979</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

*Year of first claim of a 200-mile maritime zone (EEZ or fisheries zone). Table compiled from sources cited supra note 4 and note 24.

64. An excellent set of discussions on the biology and economics of tuna fisheries in the Pacific island region may be found in TUNA ISSUES, supra note 33.
65. The El Niño phenomenon, which was especially strong during 1982 and 1983, depleted Eastern Pacific fisheries by interfering with the upwelling of nutrients that normally sustains a large fish population in that area.
The Tuna Treaty grew out of a prolonged dispute between the United States and Pacific island nations over the extent to which coastal nations had jurisdiction over tuna stocks in their 200-mile zones. The United States took the position that such stocks could only be managed on an international basis with participation of both coastal states and distant-water fishing nations. The Pacific island nations countered that the 1982 Convention supported their view that coastal nations had jurisdiction over tuna resources in their EEZ's. The dispute led to the arrest of four U.S. tuna boats and subsequent action by the United States to prohibit the importation of tuna and tuna products from one of the nations, Solomon Islands.66

Because the relations between the United States and the island nations of the region were being severely strained by the controversy, negotiations on a regional licensing agreement between sixteen Pacific island nations and the United States began in 1984. The U.S. negotiating team was led by the State Department and included, as advisors, representatives of the U.S. tuna industry. Leadership of the Pacific islands negotiating team shifted among the various countries in the regions, while major technical and strategic support in formulating the islanders' position came from the FFA. After a long and difficult effort spanning ten negotiating sessions, agreement was reached at the tenth round in Tonga in October 1986.67

The Treaty entails a package of approximately $60 million of payments and financial aid by the United States over five years. About $2 million a year is to be paid in fishing vessel license fees and industry assistance and about $10 million in U.S. foreign aid with relatively few strings attached. Despite the existence of two funding sources (the U.S. tuna boats and the U.S. Government), FFA member states regard all payments, including the foreign aid component, as access fees. In accordance with an agreement among FFA member states, approximately 85% of these funds are to be allocated among the Pacific island nations according to the amount of fish caught in each nation's EEZ, with the remainder to be divided evenly among all of the participating nations. Significant portions of certain 200-mile zones, especially in the Solomon Islands, have been excluded to allow development of the local fishing industry.68

It has been estimated that the Treaty gives licensed U.S. vessels access to about ten million square miles of the South Pacific.69 This represents an area somewhat larger than the combined area of the 200-mile zones of the participating island nations because the treaty area, which

66. See Van Dyke & Nicol, supra note 54, at 105-15.
67. Id. at 117-22.
68. Id. at 120-21.
has been established using a series of relatively long straight lines that incorporate the assembly of 200-mile zones, also includes the enclaves of high seas totally surrounded by the EEZ's of participating nations (see Figure 2). U.S. negotiators may have believed that adopting a treaty area that was not created solely from the 200-mile zones of the island states places them in a better position to argue that the Treaty is consistent with the U.S. view that highly migratory species such as tuna are to be managed by international agreements among the concerned states under article 64 of the 1982 Convention.  

The financial terms finally agreed to in the Tuna Treaty are substantially more generous than those initially discussed by the U.S. negotiating team, although still considerably less than the amount first requested by the Pacific island states. Many believe that it was the entry of the USSR into South Pacific fishery affairs in 1985 that, indirectly at least, was responsible for the U.S. willingness to raise the ante.

The conclusion of the Tuna Treaty with the United States signaled a significant change in the patterns of exploitation of tuna resources. In 1984, distant-water fleets took approximately 600,000 tons of tuna from the region, estimated to have a market value exceeding $660 million. But these distant-water fishing nations paid access fees equal to less than 3% of the market value of the fish. Under the new treaty with the United States, the $12 million a year the U.S. will pay the region is equivalent to about 9% of the value of the 1984 U.S. tuna catch in the region. While this represents a significant change in the distribution of benefits derived from tuna harvesting, officials in the FFA have suggested that 10% of the harvest is the target figure from the Pacific islanders' perspective.

The administrative and enforcement duties under the Treaty have been divided among the participating parties. The FFA is designated to act as "administrator" on behalf of the South Pacific island nations under a separate agreement among Pacific Island parties. Among its other administrative duties, it will receive and disburse payments made under the Treaty and receive and distribute reports from licensed vessels fishing in the treaty area as well. The United States is charged with ensuring that U.S. fishing vessels licensed under the Treaty will comply with the Treaty

70. Wolfe, The International Implications of Extended Maritime Jurisdiction in the Pacific, in INTERNATIONAL IMPLICATIONS, supra note 1, at 130-33.
71. Id. at 132.
72. See Kotobalavu, supra note 1, at 118.
73. Id.
74. Id. at 118-19.
75. Interview with the staff of the Forum Fisheries Agency, in Honiara, Solomon Islands (Aug. 1987).
provisions. The Treaty can be amended by a unanimous vote of the parties.

The Treaty took effect on ratification by the United States and ten Pacific island nations on June 14, 1988, with President Reagan's approval of the implementing U.S. legislation and the deposit of the U.S. instrument of ratification with the government of Papua New Guinea in Port Moresby.

C. The Convention for the Protection of the Natural Resources and Environment of the South Pacific Region

Underlying this Convention are the concerns of the Pacific island nations about the state of the environment in the region and the fears that the seemingly vast Pacific Ocean will be an attractive site for the dumping of civilization's noxious wastes. Another major concern involves the potential impacts of nuclear activities, especially those from continued testing of nuclear weapons in the region.

In 1974, the newly created United Nations Environment Programme (UNEP) established the regional seas program as a way of supporting regional (multinational) approaches to the problems of combating marine and environmental degradation and encouraging regional management of marine and coastal areas.

Following an earlier suggestion by the South Pacific Commission (SPC), a coordinating group was formed in 1980 consisting of representatives of the SPC, the South Pacific Bureau of Economic Cooperation (SPEC), the Economic and Social Commission for Asia and the Pacific (ESCAP), and the UNEP, to undertake preparations for a conference on the environment of the South Pacific. As a result, the Conference on the Human Environment in the South Pacific was held in Raratonga in March of 1982. National reports were received from eighteen countries in the region and thirteen topic reviews were prepared identifying the environmental problems of individual countries and of the region.

The Conference resulted in three important accomplishments: (1) the South Pacific Declaration on Natural Resources and the Environment; (2) an Action Plan for managing the natural resources and environment of the South Pacific region; and (3) an agreement on the administrative and financial arrangements needed to support the implementation of the Action Plan and on the work program for the next

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76. Tuna Treaty, supra note 6, art. 2.
77. Id. art. 8.
78. The ten Pacific island nations included the Federated States of Micronesia, the Republic of Kiribati, and Papua New Guinea. Id. art. 12.
phase of what was by then being called the South Pacific Regional Environment Programme (SPREP).  

After four additional years of discussion and planning, primarily under the leadership of the SPC but with advice and guidance from a number of other groups, including the thirteenth meeting of the South Pacific Forum, a high-level conference was held in Noumea in November 1986 to adopt an international convention to create the regional legal framework necessary to achieve the goals of SPREP. In addition to the Convention itself, two Protocols were also to be drafted—one involving pollution emergencies and the other dealing with the prevention of pollution by dumping. Both the Convention and the two Protocols were completed at the Conference and opened for signature at Noumea, New Caledonia.  

The Convention requires parties to take all appropriate steps to prevent, reduce, and control pollution emanating from vessel discharges, land-based sources, seabed activities, discharges into the atmosphere, disposal of wastes, storage of toxic and hazardous wastes, and nuclear testing in the Convention Area. Also, nations are called upon to prevent environmental damage, specifically coastal erosion, caused by coastal engineering, mining activities, sand removal, and dredging.  

The first Protocol—the Protocol Concerning Cooperation in Combating Pollution Emergencies in the South Pacific Region—mandates the adoption of national emergency plans to be coordinated with the appropriate bilateral and subregional contingency plans. The second Protocol—the Protocol for the Prevention of Pollution of the South Pacific by Dumping—creates a regional agreement and establishes lists of substances, the dumping of which is prohibited (Annex 1), and lists of substances requiring special or general permits (Annexes 2 and 3).  

The Convention Area is defined as comprising the 200-mile zones of twenty-three self-governing island nations (including Australia’s East Coast and eastward islands) and island territories, as well as those areas
of the high seas that are enclosed from all sides by these 200-mile zones (see Figure 3).  

Controversial issues during the negotiations included: (1) the way in which nuclear weapons testing was to be handled, and (2) the extent to which areas of high seas were to be included within the Convention area. Regarding the first issue, parties to the Treaty eventually agreed to a carefully worded provision that made it clear that the environmental effects of nuclear testing were of considerable concern to the island nations of the region. As to the second issue, the geographical coverage of the Treaty, the United States opposed the inclusion of extensive areas beyond the 200-mile zones of the participating island nations and territories, but eventually agreed to the inclusion of totally surrounded enclaves, but not fingers or corridors of high seas, as was favored by Kiribati and other nations.

Administration of the Convention and the Protocols, for the most part, is assigned to the South Pacific Commission, with a lesser role given to the Director of the SPEC. Amendments to the Convention and its Protocols can be made with the approval of two-thirds of the parties. The Convention will enter into force 30 days after the deposit of at least 10 instruments of ratification, acceptance, approval, or accession. As of July 1988, this had not yet occurred.

D. The South Pacific Nuclear Free Zone Treaty

No region on earth has experienced the negative effects of nuclear arms to a greater extent than the Pacific basin. The Japanese cities of Hiroshima and Nagasaki suffered the only wartime use of atomic weapons. Since then the [South Pacific] region has been used repeatedly for nuclear testing. From 1946 to 1983, the United States, France, and Britain together conducted 213 atmospheric or underground nuclear tests in the Pacific Ocean. After persistent and loud regional protests, Japan and the United States have shelved plans for dumping and storing low-level radioactive materials in the Pacific Ocean. Guam is the permanent,

87. See id. at 66.
88. See SPREP Treaty, supra note 7, art. 12. If the provision banned nuclear testing entirely, then France, the only country still testing in the area, would not have been party to the convention. See generally D. STANLEY, supra note 9, at 10 (discussing the history of nuclear testing in the region).
90. SPREP Treaty, supra note 7, arts. 21, 29, 33.
91. Id. art. 24.
92. Id. art. 31. Only five instruments need be deposited for the Protocols to enter into force. Id.
93. As of the end of 1987, twelve self-governing nations had signed the SPREP Convention and two (Cook Islands and Marshall Islands) had ratified it. See The Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, 1 PAC. IMPACT: Q. REV. S. PAC. COMM’N 32 (1988).
FIGURE 3
and, so far only, central Pacific base for both large nuclear stockpiles and nuclear-armed planes, ships, and submarines. Nuclear powered and armed American and other foreign ships crisscross the region. American military ships are accepted at all countries in the South Pacific except Vanuatu and New Zealand. Unarmed U.S. missiles are shot and tracked from Vandenberg Air Force Base in California to Kwajalein Atoll in the Marshall Islands. The Soviet Union has used an area near the Cook Islands for missile tests... China uses the international waters east of the Solomon Islands.94

Australia first introduced the idea of a nuclear-free zone in the South Pacific at the fourteenth meeting of the South Pacific Forum held in Canberra in 1983.95 The fifteenth Forum, meeting in Tuvalu in 1984, decided that such a zone should be established in the South Pacific at the earliest possible opportunity.96 The completed South Pacific Nuclear Free Zone Treaty (SPNFZ Treaty) was signed at Raratonga, Cook Islands on August 6, 1985.97 The Treaty entered into force on December 11, 1986, when Australia became the eighth Pacific nation to ratify the Treaty.98 In many respects, the Treaty represented the culmination of strong anti-nuclear feelings that had been present in the South Pacific region since the early 1970's.99

The SPFNZ Treaty, commonly called the Treaty of Raratonga, prohibits the testing, manufacture, acquisition, and stationing of nuclear weapons in the territory of the parties to the Treaty, as well as the dumping of nuclear wastes at sea by parties.100 For the purposes of testing, manufacture, acquisition, and stationing of nuclear weapons, the Treaty defines “territory” to encompass the land, internal waters, territorial seas, archipelagic waters, seabed, and subsoil beneath the land of the signing nations. In contrast, the Treaty defines the nuclear free zone more expansively to include the broader 200-mile zones of the parties and very extensive areas of the high seas as well (see Figure 4).101 It is important to note that the Treaty specifically states that nothing in the Treaty is meant to infringe on the freedom of navigation or overflight.102
FIGURE 4
Administration of the SPNFZ Treaty is detailed in article 8. The parties are to "establish a control system for the purpose of verifying compliance with their obligations under this Treaty." The control system, to be administered by the Director of the SPEC, consists of reports, exchanges of information, consultations, the application of safeguards by the International Atomic Energy Agency, and a complaints procedure.\(^\text{103}\)

Three Protocols were prepared in association with the Treaty. The Protocols require the nuclear powers (China, France, the United Kingdom, the United States, and the USSR) to commit to abide by the Treaty's provisions in their territories in the region; not to contribute to violations of the Treaty or to threaten the use of nuclear weapons against the parties; and to refrain from testing nuclear devices in the entire nuclear free zone. The SPNFZ Treaty and the Protocols do not disturb existing security arrangements and each Pacific island nation has the right to make its own decisions about the visits or passage through its territory of foreign ships and aircraft.\(^\text{104}\)

To date, only the USSR and China have signed the Protocols appropriate to them.\(^\text{105}\) The United States, believing that the SPNFZ Treaty could undermine its nuclear deterrent capability, disrupt the balance of power in the world, and encourage strategically sensitive areas, such as Western Europe, to create their own nuclear free zones, has stated that it will not sign the Protocols at present.\(^\text{106}\) France obviously will not sign, given its strong desire to maintain its nuclear testing program in French Polynesia. The United Kingdom presumably is following the U.S. lead in not signing.

By refusing to sign the SPNFZ Protocols, the United States in particular disappointed the nations of the South Pacific,\(^\text{107}\) given the strong effort made by Australia and others to draft language that did not disturb existing U.S. security arrangements in the area.\(^\text{108}\) Indeed, some South Pacific island governments, notably Vanuatu and Solomon Islands, felt that the Treaty was not tough enough because it allowed nuclear ships to continue docking at individual island nations.\(^\text{109}\) However, with regard to the prohibition against peaceful nuclear explosions and the ban on

\(^{103}\) Id. art. 8.

\(^{104}\) Id. art. 2; Protocols to SPNFZ Treaty, 24 I.L.M. at 1459.


\(^{106}\) See Nester, supra note 94, at 1-2; see also Lewis, U.S. Bars Free Zone For Group of Pacific Nations, N.Y. Times, Feb. 5, 1987, at A8, col. 3.

\(^{107}\) Nester, supra note 94, at 2.

\(^{108}\) See id. at 20-24.

\(^{109}\) Id. at 22. Anti-nuclear activists in Australia even dubbed the South Pacific Nuclear Free Zone established by the Treaty as the "Clayton Zone" after a local non-alcoholic drink—"Clayton, the 'beer' that you have when you're not having beer."
dumping of radioactive wastes, the SPNFZ Treaty is stronger than the 1967 Treaty of Tlatelolco, which created a nuclear free zone in Latin America.\footnote{110}

III
DEFINING RESOURCE REGIMES AND OCEAN REGIMES

In his classic work on resource regimes, Oran Young defines resource regimes as "social institutions that serve to order the actions of those interested in . . . the resource."\footnote{111} He calls this an "institutional" perspective, in contrast to the more usual economic or ecological view of resource allocation and use.\footnote{112} The core of every resource regime, according to Young, is a structure of "rights" and "rules" that serves "both to define the regime itself and to determine the opportunities available . . . to actors subject to the regime . . . . A right is anything to which an actor is entitled by virtue of occupying a recognized role."\footnote{113} Rules, on the other hand, are clear guides to action that members of some specified group are expected to follow.\footnote{114} According to Young, whereas "rights commonly safeguard the freedom of individual actors to do certain things, rules typically spell out restrictions on the freedom of actors to do as they please."\footnote{115} Young adds a "compliance mechanism" as the third principal component of resource regimes, because rights are not always respected and rules that are widely accepted and acknowledged to be authoritative are often violated.\footnote{116}

Regarding the origins of resource regimes or the processes through which these institutions arise, Young suggests that regimes tend to form or develop in three ways: spontaneous, negotiated, and imposed. "Spontaneous [regimes] do not involve conscious coordination among participants, do not require explicit consent on the part of subjects or prospective subjects, and are highly resistant to efforts at social engineering."\footnote{117} "Negotiated regimes," in contrast, are "characterized by conscious efforts to agree on their major provisions, explicit consent on the

\footnote{110} Treaty for the Prohibition of Nuclear Weapons in Latin America, Feb. 14, 1967, 22 U.S.T. 762, T.I.A.S. No. 7137, 634 U.N.T.S. 281. The SPNFZ Treaty differs from this Treaty in several respects. First, the SPNFZ Treaty bans all nuclear explosions while the Treaty of Tlatelolco allows detonations for peaceful purposes. Second, the SPNFZ Treaty prohibits storage and dumping of nuclear wastes in the region and the Treaty of Tlatelolco does not. Finally, the SPNFZ Treaty allows member states to permit nuclear weapons on their territory whereas the Treaty of Tlatelolco does not.

\footnote{111} O. Young, Resources Regimes: Natural Resources and Social Institutions 15-16 (1982).

\footnote{112} Id. at 10-15.

\footnote{113} Id. at 20.

\footnote{114} Id. at 25.

\footnote{115} Id. at 27.

\footnote{116} Id. at 36.

\footnote{117} Id. at 95-96.
part of individual participants, and formal expression of the results." Finally, "imposed regimes" are "fostered deliberately by dominant powers or consortia of dominant actors . . . do not involve explicit consent on the part of subordinate actors, and . . . often operate effectively in the absence of any formal expression." In imposed regimes, dominant actors get others to conform to regime rules "through some combination of coercion, co-optation, and the manipulation of incentives."

A. Ocean Resource Regimes

Ocean resource regimes fit well into the framework developed by Young. For example, resource regimes concerning fisheries, offshore oil and gas development, and ocean dumping are found within areas of the ocean under the jurisdiction and control of the United States. Within specified areas, rights are created, rules are issued, and compliance mechanisms are established to govern the resources or uses in question.

Traditionally, the most important element of an ocean resources regime has been the area within which specific resources could exist. Increasingly, however, space without regard to specific resources is being seen as a valuable asset. This is due, in part, to the attractiveness of the oceans as potential repositories for the unwanted wastes of industrial societies, and to the growing number of ocean users (such as offshore oil developers) requiring long term commitments of a given portion of ocean space.

The concept of ocean space as a resource received additional impetus from the wholesale adoption of 200-mile maritime zones around the world. Although the EEZ has been viewed as a sui generis zone—neither high seas nor territorial sea—the implementation of the idea of national sovereign rights for the purpose of exploiting EEZ resources could lead to claims extending national sovereignty from the land to the EEZ ocean area. Developing coastal nations, viewing the ocean as a prime source for national development, might regard the EEZ as an extension of their national territory for all practical purposes. Thus, the EEZ could come to be seen as part and parcel of the nation-state over which

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118. Id. at 97.
119. Id. at 98.
120. Id.
national control is exercised. Moreover, for all coastal nations, notwithstanding their state of development, proper management of EEZ resources will require monitoring the space in which those resources exist and preventing activities (such as pollution and dumping) that could harm ocean resources.

Ocean space is particularly important to island nations with small land masses. A hypothetical, though typical, island roughly circular in shape and 20 miles across, has a land area of about 300 square miles. A three-mile territorial sea brings an additional 200 square miles (of ocean) under the control of this island state. A 200-mile EEZ, however, brings the resources of an additional 120,000 square miles of ocean under the control of the island government. Because island nations may view the EEZ as a valuable addition to their resource wealth, it is expected that they will increasingly view the 200-mile EEZ's as a critical part of their national heritage. This notion has developed in archipelagos such as Indonesia, where there is a strongly held view that the nation consists of both land and water.125

The ocean space contained within the EEZ's of small island nations may even be viewed as a form of compensation for their deficiencies in land area; it may represent virtually the entire resource legacy of the nation. Furthermore, the island may perceive its economic future by how that area of ocean is used. In addition, according to island nations, the 200-mile zone is a tangible reality—it already exists, has a firm legal standing, and may be seen on official maps. This is in contrast to other ocean resources such as fish and ocean minerals. The former can be highly mobile and difficult to locate, and its abundance can fluctuate with the season and other unknown factors. The latter, for the most part, are seen as a more remote and nebulous prospect by most South Pacific nations. Hence, the 200-mile ocean zones themselves and the expanse of ocean that they encompass are likely to have greater symbolic and practical importance to island nations like those in the South Pacific.

B. Types of Ocean Resource Regimes

Traditionally, ocean resource regimes have dealt with exploitable resources such as fish, oil and gas, and hard minerals, as well as environmental attributes such as water quality, sensitive habitats, and the protection of rare or endangered species. A given exploitative resource regime extends over a particular ocean zone. In the U.S. system, for example, the outer continental shelf represents a resource regime for oil and gas, and the 200-mile fisheries conservation zone represents a regime for fisheries conservation and management. Regimes aimed at exploitation contain ground rules that describe how to access the resources in

125. Morgan, supra note 48.
question, what type of royalties will be paid to the government, and similar concerns.

Resource regimes aimed at controlling certain uses of the ocean, such as the disposal of wastes, contain rules for gaining access to the ocean, specify the location of dump sites, and detail the environmental safeguards to be followed. Regimes having protection as their main goal contain rules placing prohibitions on the taking of certain species or the modification of given habitats within prescribed ocean areas.

Ocean resource regimes can exist within a single political entity like the United States, or they can apply internationally. Similarly they may encompass the world's oceans as a whole or be applied to a single region. Given the nature of ocean resources, the mobility of most living marine resources, and the dynamic character of the ocean itself, both ocean problems and ocean opportunities often can be effectively addressed only through the cooperation of adjoining or nearby nations. The question of what types of ocean regions have been defined in the South Pacific is centrally important to us and is addressed in Part IV of this article.

Much of the national, international, and regional experience with ocean resource regimes has been with what may be called functional or sectoral regimes. These are regimes aimed at governing a single resource or ocean use. Increasingly, however, marine managers and marine policy analysts are realizing that single-use approaches to ocean management create conflicts among users and weaken their ability to do areawide planning and to make tradeoffs among alternative uses. As a result, they are moving to create general purpose or multiple-use ocean regimes that are more compatible with the interconnected nature of ocean resources and processes. The extent to which the superimposition of several functional ocean regimes over roughly the same ocean area in the South Pacific begins to take on some of the characteristics of a multiple-use ocean management regime is examined in more detail in the next Part.


IV
THE EMERGING OCEAN REGIME

To what extent do the actions taken so far by the Pacific island nations suggest the emergence of a regional ocean regime in the South Pacific? To the extent that such a regime is developing, is it sui generis, that is, unique to the South Pacific region, or does it follow more established patterns? In answering these questions, it is necessary to analyze the character of any emerging regime and its broader implications for other ocean resources such as ocean minerals.

Building on the work of Oran Young,129 we suggest that a functioning resource regime will possess the following elements:

1. The assignment of rights and benefits as well as duties and obligations for participants in the regime.
2. The capability to issue rules that spell out the manner in which access to the resource is to be obtained and activities of the participants governed.
3. The capability to issue rules that are viewed as legitimate by both participating parties and outside parties (although all parties may not agree with all aspects of the substance of these rules).
4. The capacity to enforce the rules and effect compliance.
5. A mechanism for interpreting and revising the rules as circumstances and needs change.

Rights and obligations are spelled out in all three treaties. Rights are most clearly delineated in the Tuna Treaty where licensed U.S. fishermen have the right to fish in the 200-mile zones of islands party to the Treaty.130 Obligations to provide fees, detailed reports of fishing locations, catch rates, and related information clearly accompany the exercise of these rights.131 The SPREP and SPNFZ treaties link the right of island nations to enjoy a clean, productive, and nuclear-free environment with obligations to prevent, reduce, or control pollution of the sea from a variety of sources and to prohibit the manufacture, stationing, or testing of nuclear devices.132

Rules governing the behavior of parties also exist in all three treaties. Certainly, detailed regulations and procedures are given in the Tuna Treaty with the full expectation that they will be treated as authoritative and will be followed if U.S. fishermen desire continued access to the region. Indeed, regional standards for obtaining access are emerging and likely will be used in negotiations with other fishing nations, most notably Japan. Similarly, it is fully expected that the prohibitions contained in the SPREP convention and the SPNFZ Treaty will be respected by

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129. See O. Young, supra note 111, at 31-32.
130. Tuna Treaty, supra note 6, art. 3.
131. Id. Annex I.
132. SPREP Treaty, supra note 7, arts. 6-12; SPNFZ Treaty, supra note 8, arts. 3-7.
island nations that are parties to those treaties. Not even the nuclear powers that have declined to sign the Protocols accompanying the SPNFZ Treaty (France, the United Kingdom, and the United States) have taken the position that the SPNFZ Treaty is an inappropriate and illegitimate action by the signatory nations.

While all three treaties have provisions dealing with compliance and enforcement, the Tuna Treaty is clearly the most explicit in this regard. Not only is the United States obligated to enforce the Treaty provisions vis-à-vis U.S. fishermen, but individual island nations may also bring enforcement actions. In the SPREP Treaty, parties are requested to establish laws and regulations for the “effective discharge of the obligations prescribed in [the] convention.” An elaborate dispute settlement mechanism is built into a special annex on arbitration and article 12 of the Protocol on ocean dumping has a strong mandate to parties regarding their responsibilities for implementation and enforcement. Article 8 of the SPNFZ Treaty establishes a “control system” for the purpose of verifying compliance. As part of the control system, a consultation committee is created to investigate complaints of noncompliance. Special inspection teams are also authorized to investigate specific complaints.

Each of the three treaties has provisions for interpreting and revising the rules as conditions change. Meetings of the parties to the Tuna Treaty are called for on an annual basis, and the SPREP Convention establishes biannual meetings to assess the state of the South Pacific environment and to consider amendments. Changes to the fisheries and SPNFZ Treaties require the approval of all parties, whereas the SPREP Convention can be amended by three-fourths majority vote.

Overall, the Tuna Treaty is clearly the most specific of the three regional arrangements, especially with its explicit rules that govern the behavior of regime participants and the well defined compliance mechanisms. The environmental treaty is more general, with specific rules pertaining to only a few issues, such as radioactive wastes. However, more detailed compliance mechanisms are established in the two Protocols that accompany the Treaty. The SPNFZ Treaty has the weakest

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133. Although the fisheries enforcement capability of the Pacific island states is limited, it is growing, particularly with the help of Australia. For a recent discussion of enforcement issues, see Bergin, Fisheries Surveillance in the South Pacific, OCEAN & SHORELINE MGMT. (in press).
134. SPREP Treaty, supra note 7, art. 5.
136. SPNFZ Treaty, supra note 7, art. 8.
137. Tuna Treaty, supra note 6, art. 7.
138. SPREP Treaty, supra note 7, art. 22.
139. Tuna Treaty, supra note 6, art. 8; SPNFZ Treaty, supra note 8, art. 11; SPREP Treaty, supra note 7, art. 24.
140. See SPREP Treaty, supra note 7, art. 10.
compliance element of the three treaties. As mentioned above, the Treaty creates a control system, primarily based on the exchange of information and reports, consultations, and the like. Compliance with the associated Protocols is limited, however, because it is self-enforced and depends largely upon a nation's respect for "lawful" behavior.

Notwithstanding these shortcomings, the three treaties do fit the requirements of resource regimes as defined by Young. Moreover, there are a number of commonalities underlying all three regimes, which work to link or harmonize the individual functional regimes into something approaching a multi-functional ocean regime. These are:

A common area—the three treaties cover approximately the same general area of the South Pacific ocean. (See Figure 5.) While there are some obvious differences in the areas covered by each treaty, the EEZ's of sixteen island nations fall within all three areas: the "Treaty Area" of the Tuna Treaty, the "Convention Area" of the environmental treaty, and the South Pacific Nuclear Free Zone created by the SPNFZ Treaty.

Guiding influence of a single political body—to a greater or lesser extent, political and policy guidance for the conclusion of these treaties have come from the same body—the South Pacific Forum. While the decisions of the Forum are not binding on member states, they nonetheless are influential. The Forum was instrumental in shaping many of the key aspects of the treaties and in helping ensure successful conclusions to the negotiations. Furthermore, the Forum, its secretariat (SPEC), or its fisheries arm (the FFA) have explicit continuing roles in the administration of the three Treaties, even though the SPC clearly has the primary role in the implementation of the SPREP convention.

A common approach to decisionmaking—the use of consensus, strongly ingrained in the cultures of the South Pacific nations, was the decisionmaking approach followed in all three negotiations.

Common goals—the three agreements seek to promote the expressed goals of most of the individual island nations. The nations seek to achieve greater economic and social benefits for their peoples in a manner that is consistent with the protection and careful stewardship of the unique natural resources, environment, and culture of the South Pacific region.

Common personnel—the same negotiators often represented the island nations in the different negotiations and, hence, were readily able to work together and effectively represent both the interests of the individual states and the region as a whole.

The existence of these commonalities in the agreements creating the three regimes is, in effect, resulting in the emergence of a de facto regional ocean management regime in the South Pacific. The ocean management regime that is evolving is not one that has been consciously

141. SPNFZ Treaty, supra note 8, art. 9; SPREP Treaty, supra note 7, art. 21.
142. SPREP Treaty, supra note 7, arts. 1, 21, 26.
SOUTH PACIFIC RESOURCE REGIMES

constructed by either the individual island nations or the South Pacific Forum. Rather, it may be seen as a regime evolving out of the superimposition of the three negotiated functional regimes described above. The term "regional ocean management regime" applies because the emerging regime spans a common region, and because it deals with various resources and uses of ocean space. This emerging regional ocean management regime appears to have the following characteristics:

1. The regime involves a broad conception of "resources," including traditional resources such as fish as well as ocean space as a resource.
2. The regime uses the EEZ's of the island nations and the enclaves created by them as the primary building blocks.
3. The regime emerges from the superimposition of agreements reached in three functional areas (fisheries, environment, nuclear activities). It is, in effect, the product of negotiations, in contrast to a regime that has been imposed from the outside or one solely involving customary behavior.
4. The character of the regime tends to be protective, even defensive. The regime, in effect, involves the denial of access to the ocean region for certain kinds of dumping, nuclear activity, and unlicensed fishing. In contrast, positive elements to encourage certain kinds of behavior, such as fisheries conservation, have not been prominent, with the possible exception of the technical assistance provisions of the Tuna Treaty and the cooperative regional plans to combat pollution emergencies in one of the SPREP Protocols.
5. The regime reverses previous patterns in the distribution of benefits from the use of the resources of the region. Increased benefits from the exploitation of living marine resources are now flowing to the island nations.

What is the likely path of evolution of the emerging regional ocean management regime? To what extent will the trends that we have discerned continue into the future?

There are a number of indications suggesting that there will be continued movement toward increased influence over regional ocean uses and activities by the South Pacific Forum. In the fisheries area, the Forum Fisheries Agency has been directed by the Forum to negotiate regional access fishing agreements with the other distant-water fishing nations, such as Japan. Concluding such treaties with all of the nations that have substantial fleets in the region (or desire to fish in the South Pacific in the future) will, of course, further strengthen the ocean regime.

Because many Forum nations may face similar issues of access for the exploration and exploitation of ocean minerals as they faced in the

143. See Forum Fisheries Agency, Communiques issued after the 18th and 19th Forum meetings, table 2, note f.
fisheries situation, it is possible that an ocean minerals dimension will be added to the evolving ocean regime in the South Pacific. The future of the major existing ocean minerals organization of the region—CCOP/SOPAC—is due for reconsideration in 1989. Among the possibilities is that CCOP/SOPAC will become more closely associated with the South Pacific Forum in some way. It could become, for example, a Forum ocean minerals agency similar to the existing Forum Fisheries Agency. Alternatively, the ocean minerals function could be added to an expanded and modified FFA.  

Much will depend on the course that the South Pacific Forum wishes to take. There has been much discussion and controversy in recent years over the so-called “Single Regional Organization” in the area. This concept has been advanced principally by the Melanesian states, which believe that the Forum should essentially take over all regional activity. Others caution against this move, citing the many benefits of the continued presence of the SPC in the region, particularly its substantial funding resources from its metropolitan members and its broader membership in the region.

Whether a single regional organization develops is not a crucial factor. Certainly both regional entities can continue to coexist and work together. The Forum can continue to provide political impetus and leadership needed for joint action, while the Commission can continue to provide technical assistance, a ready-made arena for communication, and regular interchange with the metropolitan powers with interests and territories in the region.

The South Pacific Forum will face two major challenges in the years to come. First, it must solidify the gains already made through the three treaties by aggressively implementing them and extending the same principles to other areas, such as in the fisheries negotiations with Japan. Second, it must begin the task of creating forward-looking, multiple-use marine resource arrangements for the entire region. The latter will be the more difficult task. The actions that have been taken so far largely involve the regulation and control of access to the region. In the future, attention will need to be focused on managing the conservation and ex-

144. One of the advantages in such a course of action would be to build on the considerable experience that the FFA has gained in developing successful strategies in dealing with outside economic powers. Also, some of the very valuable conceptual work that has been done on creating appropriate partnerships between Pacific island nations and outside economic powers in the case of tuna may well be useful in designing approaches to the management of ocean mining activities. See generally Doulman, supra note 41.


146. The South Pacific Commission has been credited with the initial fostering of regional unity in the 1950’s when virtually no regional cohesion existed, the period of so-called colonial regionalism. See R. Herr, supra note 24, at 337-38.
exploitation of the resources of the region and, to the extent that conflicts develop, managing multiple uses and the interactions among them. Devices to encourage certain kinds of needed development may also become important and a regionwide program for the identification and protection of natural areas of regional or international significance should also be pursued.

V

IMPLICATIONS OF OCEAN POLICY DEVELOPMENTS IN THE SOUTH PACIFIC

We now briefly consider the implications of ocean policy developments in the South Pacific on regional integration in the area, on the law of the sea, and on U.S. foreign policy in the area.

A. Regional Integration

Do the developments discussed above signal a move toward greater regional political integration in the South Pacific? Are they the early steps in a process that will lead to the eventual coalescence of the individual governments into some sort of regional governing body? Or should these developments be seen only as pragmatic steps needed to deal with the particular ocean-related problems found in the region?

Regional integration theorists have postulated a functional model involving a progression of steps in regionalism. Based largely on the model of the European Economic Community, they suggest that a regional grouping of nations might go through the following stages: First, a few acts of cooperation, largely of a symbolic nature, might be undertaken; this would be followed by specific projects involving economic cooperation. This could lead to a closer form of socio-economic integration involving the elimination of visas and custom formalities and the creation of common markets. Gradually, through spillover effects into the political arena, as the region moves closer to economic integration, more extensive political integration may become a reality.

In the South Pacific case, there has been little movement along the continuum followed in the European integration case, that is, from economic to political integration. In contrast, the South Pacific regional actions have been politically motivated since the establishment of the South Pacific Forum and economic motives, while important, have tended to be secondary.

In effect, the politically propelled coordination of regional ocean activities that has taken place so far in the South Pacific suggests that a form of quasi-political integration may be taking place on the ocean side.

147. See generally E. Haas, The Obsolescence of Regional Integration Theory (1975).
If the trends evidenced in the three treaties discussed above continue, the individual island nations of the South Pacific will have less and less flexibility over the bulk of their ocean "territories"—indeed, the most extensive and probably the richest part of their jurisdictions. And to the extent that income from their ocean zones (through the granting of access for fisheries and minerals purposes) becomes a key part of the economies of these small island nations, then conceivably they could move toward a kind of political integration based on ocean resource management.

In assessing the significance of regional actions, political scientists typically look at whether actions are largely symbolic or whether they involve commitment to the region, creating actual cost to participating nations. Does the emerging ocean regime in the South Pacific meet these two tests?

Those nations with the most valuable tuna resources may have incurred real costs. In joining the regional tuna arrangements, those nations may have foregone the possibility of greater financial rewards that might have been gained through direct agreements with nations such as the United States. Moreover, by joining a sixteen-nation collective effort, individual nations lose the opportunity to gain a certain amount of international notoriety as they deal with a world superpower desiring access to their resources. To the extent that individual island nations took a firm stand against marine pollution in SPREP, they may have foreclosed certain types of industrial activity in their own countries. Nonetheless, the actions taken by the island nations involving the three treaties do not, in and of themselves, represent an unusually strong commitment and have not, so far, entailed great costs for most of the individual island nations. Thus, it is difficult to foretell the extent to which, in the future, the "regional good" will prevail in cases where important national interests are also at stake.

**B. Implications for the Law of the Sea**

Ocean policy developments in the South Pacific raise some important questions about the way in which the law of the sea as codified and extended by the 1982 Convention will evolve. Definition of the Exclusive Economic Zone was the most difficult negotiation at UNCLOS III, with the probable exception of the deep seabed mining regime. Satisfying coastal state interests in having full access to the resources of their 200-mile zones while, at the same time, guaranteeing traditional high-seas freedoms for navigation in those same zones to the other nations of the world, was an elusive goal. After long and detailed negotiations, a carefully constructed balance was achieved by means of an interlocking web of relationships (rights, responsibilities, obligations) between coastal states and other states. As described by Robertson, "[t]he various
strands of the web have no separate vitality but can only function when connected to other parts of the whole."\textsuperscript{148} Against this backdrop, it seems doubtful that the negotiators at UNCLOS III ever visualized the kind of regionally coordinated use of 200-mile zones that, in the South Pacific, has extended over many millions of square kilometers. Specifically, the following questions arise:

1. Will EEZ's increasingly be used as building blocks for the creation of regional ocean resource regimes and as mechanisms for coordinated regional action? Or, is the South Pacific case unique in the way that EEZ's have been utilized?
2. Will aggregated EEZ's be used to control access to large ocean regions for certain types of purposes?
3. Are the checks and balances related to exclusive economic zones now contained in the 1982 Convention appropriate to the situation occurring in the South Pacific where, for example, the environmental interests of a large group of coastal states have been packaged into a single agreement?
4. Will the EEZ's themselves be used as ocean enclosure devices, as in the South Pacific, where both the EEZ's and the enclaves of high seas created by them are included in two out of three treaty areas?
5. Finally, do these developments create a situation that might, in the long term, pose a threat to free navigation and other high seas freedoms in the world's oceans, notwithstanding the clear efforts of present Pacific island leaders to the contrary?

A thorough discussion of these questions lies beyond the scope of this Article. There already are indications, however, that arrangements similar to those found in the South Pacific may be under consideration in other ocean regions. The South Pacific Forum, for example, has received inquiries from regional groupings of coastal states in Africa and in the Caribbean area. In our judgment, to the extent that the South Pacific Forum and its regional approach continue to be perceived as successful, we expect that it will be emulated elsewhere in the world, especially in other ocean areas where distant-water fishing fleets seek access to economic zones under the control of developing nations.

C. Implications for U. S. Policy

Earlier in this Article, current U.S. policy towards the South Pacific was described as one of "benign neglect." Unfortunately, it may have taken the interest of the Soviets and the Libyans in the region to get Washington's attention. Yet, with the outstanding exception of the agreement on the Tuna Treaty and the accomplishment represented by the SPREP Convention, recent actions by the United States seem des-

tined to deteriorate U.S. relations in the region even further. In particular, the U.S. decision not to ratify the SPNFZ Protocols, the dispute with New Zealand over nuclear ship visits, and the continuing failure of the United States to influence France to change its policies in the region are all viewed in a negative light.

The United States needs to take a more enlightened approach to providing technical and economic assistance to the region. As a nation, the United States has done little to parallel the excellent work of the Canadians, especially that done through their aid agency, the Canadian International Development Agency, and through the International Centre for Ocean Development, in Halifax, Nova Scotia. Education and training seem to be a very fruitful direction to pursue, yet U.S. efforts in this regard have been minimal. For example, Vanuatu has more than 300 students in training overseas, yet not one of them is studying in the United States. Rich dividends could be reaped here with relatively small investments.

The United States is nearing the end of a twenty-year process to relinquish control over the Pacific Trust Territories that it gained following the conclusion of World War II. Under agreements with the former Trust Territories, the United States will provide substantial financial assistance over the next fifteen to fifty years in an attempt to keep these new countries (Marshall Islands, Federated States of Micronesia, and Palau) within its sphere of influence. Indeed, some of these island nations could become important elements in U.S. military strategy in the Western Pacific, especially in view of the uncertain status of U.S. bases in the Philippines.

Yet, despite the substantial U.S. interest in these islands, recent U.S. actions, coupled with the initiatives being taken by the South Pacific nations, are naturally attracting the interest of the island nations to the South Pacific Forum. Already the Federated States of Micronesia and the Marshall Islands have joined the South Pacific Forum nations in the Tuna Treaty with the United States and recently have become full members of the Forum itself. It seems possible, therefore, that the ideas associated with the ocean regimes being developed in the South Pacific will spread to other parts of the Pacific as well. It is clear to us that the United States must begin to take account of these developments and ad-

149. The Canadians are funding, for example, the Regional Ocean Resources Management Training Program at the University of the South Pacific. For a description of the activities of the International Centre for Ocean Development, see Transferring Ocean Management Skills to Developing Countries: Canada's Centre for Ocean Development, OCEAN & SHORELINE MGMT. (in press).
150. Interview with Clarence Marae, Deputy Foreign Minister, Government of Vanuatu, in Port Vila, Vanuatu (July 1987).
just its posture toward the region accordingly if it is to protect its interests in the Pacific adequately.

In a nutshell, the United States and some other developed nations appear to view the island nations of the South and Central Pacific as “micro-states,” apparently judging them mainly by their land size, population, and economic significance. Policymakers should realize that the advent of the 200-mile zones in the region, along with the effective regional coordination on ocean matters that the Forum and other entities such as the South Pacific Commission have brought about, have the potential to transform these micro-states into macro ocean powers.152

APPENDIX

List of Individuals Contacted

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