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# Preface: Japan, the United States, and Pacific Ocean Resources

*Harry N. Scheiber*

The history, present condition, and future prospects of the Pacific Rim nations have become in recent years a major preoccupation of scholars, journalists, and policymakers throughout the world. There is much talk of a long-predicted "Pacific century" dawning, and of how the dynamics of economic growth in the region will affect the world community. In the United States, however, attention to Pacific Rim issues has centered mainly upon the interrelationships of the United States and Japan as economic superpowers in the Pacific Basin, or else upon their interrelationships in the context of Soviet and Chinese ambitions. The question of resource use and conservation in the Pacific, of such urgent concern to the future of the global environment, has not been considered with as much prominence.

Hence, when the organizers planned the 1988 conference at Berkeley on Japan, the United States, and Pacific Ocean Resources as a tribute to the late Sho Sato, our basic purpose was to move beyond the familiar pathway of analysis and to consider in a comprehensive way the historical, legal, and policy issues regarding Pacific Ocean resources. In light of the many dimensions of Japanese-U.S. interaction in this arena, we sought to illustrate larger issues in ocean law and the environment by reference to the two superpowers: Japan and the United States are among the leading fishing nations, in some respects rivals and in others natural allies on law of the sea issues. Each one controls an Exclusive Economic Zone that is rich in fishery resources. Each has a stake in mineral development of the seabed and each participates prominently in the Antarctic agreements. Each is faced with the need to deal with important new regional groupings in the South Pacific and Latin America. And finally, because each of them is so dominant economically, each has a domestic environmental regime that, despite major substantive differences, has a vast impact on other nations and on international ocean activities generally. Moreover, the approach we defined accurately reflects deep interests of Professor Sato, whose activities on behalf of comparative U.S. and Japanese law went hand in hand with his enduringly important scholarly work on resource management and environmental regulation.



tained Yield Concept, and the immediate political context of the 1952 International North Pacific Fisheries Convention. The other historical contribution—one that was not actually presented at the Sho Sato Conference but rather invited by the Editors for inclusion as soon as its existence became known to them—is a remarkable memoir by the Hon. William C. Herrington, recounting his work as a diplomat in advancing the abstention concept in Japanese-North American diplomacy and (later) in United Nations deliberations on the law of the sea.

Although Japan was a reluctant participant in the 1952 Convention, in later years Japan and the United States became jointly involved to varying degrees in the highly complex arrangements for the maintenance of a delicate political balance and a putative conservationist resource regime in the Antarctic. The part played by these two nations, but also the larger range of issues associated with the Antarctic, are examined in great depth in the study by Professors Robert Friedheim and Tsuneo Akaha, as well as in Professor Christopher Joyner's incisive commentary and extension of the inquiry.

If the future of the Antarctic remains fragile and uncertain, the South Pacific is an arena in which an ocean regime that surely would have been characterized as "futuristic"—if not to say "fantastical"—even twenty years ago, has emerged as a reality in a very brief span of time. The Forum nations, as shown by Professors Biliana Cicin-Sain and Robert Knecht in their essay on uses of the Exclusive Economic Zones as "building blocks," and in the commentary by Professor Jon M. Van Dyke, are innovating in ways that open new conceptual and political frontiers; and the response of the established powers has highlighted another feature of ocean law and international politics that is a main theme in several of our papers—the kaleidoscope-style shifting of coalitions by which the states of the world community respond to specific challenges.

In a group of papers on national experiences and policies of major Pacific nations and regions, these and other features of historic and current developments in ocean regimes are etched in clear lines. Thus Dean Donald M. McRae, in a paper presented as the Conference's featured dinner address, gives an insightful review of lessons from Canada's experience with bilateral and multilateral agreements and with the need to innovate in the new context of law of the sea developments. His study reminds us of the universality of such influences, with an impact on all the resource regimes of the Pacific Rim as well as on regimes emerging elsewhere in the oceans of the globe. At a more general level, he cautions that analysis must also take account of the historical overlay: "Present day problems of oceans management implicate past disputes over jurisdiction."

Latin America is often neglected in analyses of the developments commonly celebrated as evidence of an emerging "Pacific century." The

incisive essay by Professor Eduardo Ferrero Costa makes clear why such neglect distorts the reality of Pacific Basin developments. Analysis of today's regionalism in the Pacific area, he shows, must take account of the various new alliances and initiatives in South America since 1980—initiatives that carry forward efforts that Peru and her allies spearheaded, in their controversial campaign for recognition of extended offshore jurisdiction, more than forty years ago.

Professor Choon-ho Park, in a study of Korean-U.S. fishery relations in the Northeast Pacific, explores the larger meaning of a fascinating episode in fisheries diplomacy. His brief account of recent Korean efforts at developing a salmon fishery also serves to highlight the importance of "internal" national developments that will have an impact on regional and ocean-wide policies and relationships. In a detailed study of environmental legislation and its enforcement in Japan, Professor Nobuo Kumamoto examines the domestic dimensions of policies affecting natural resources and the implications of these policies for relations in a regional and global context. Complementing these analyses is the brief essay by Gunter Weiss, Esq., on how the European Community is responding to Pacific regional developments. That the Soviet Union is not given comparable attention is a manifest gap in the coverage of analysis, one that might have been filled properly had our conference resources permitted an even wider scope.

Echoes of virtually all the issues worked out among Canada, Japan, and the United States in 1952 are to be found in the later deliberations that culminated in the Exclusive Economic Zone provisions of the Law of the Sea Convention that are now accepted by most nations in the global community. These issues produce new problems, however, as the transition to a new ocean regime goes forward, a process illustrated vividly in Professor William T. Burke's study of the problem of "straddling" fishery stocks in "high-seas donuts" (areas of the high seas bounded entirely by the EEZ claims of coastal nations). Although his geographic focus is in the Northeast-central Pacific, Professor Burke's analysis has more general significance for principles of ocean management under a law of the sea regime.

The final two Articles remind us that our analysis of the Pacific Rim and its ocean resources cannot neglect developments in other regions or concerns with shared global objectives. Taking as the main case in point U.S. policies that require economic sanctions—including denial of access to fisheries within the U.S. offshore zone—Professor David D. Caron considers the putative advantages of such sanctions and the perils they pose both for the United States and for ocean law. Also cautionary, while taking an even more embracing view of community interests, is Professor Stefan Riesenfeld's closing essay, which eloquently expresses concern as to the outcome of contemporary regionalism as a counterforce

to the globalism that prevailed (albeit in the Cold War context) in the aftermath of World War II.

It is astonishing to consider that Professor Riesenfeld's own great work on ocean fisheries law, *Protection of Coastal Fisheries under International Law*, was completed almost exactly half a century before this Symposium's publication. In that study, he spoke in a voice that has lost neither profundity nor timeliness: "The protection and conservation of natural resources is one of the burning problems of our age," he warned. "Land and sea alike are exposed to this danger of depletion." In light of his long concern for these problems, and his learned contributions over several decades to the discourse on international law and ocean affairs, and in light of his own long collegueship with Sho Sato, it was particularly fitting that Riesenfeld should have had the last word at this conference. Characteristically, his "last word" was a message that challenged head-on some of the presumptions and conclusions of other contributors, a message that can serve as an agenda for a considerable variety of future scholarly efforts in the area we set out to explore.

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A few words in the way of acknowledgement to others can hardly do justice to the debts that I, as principal organizer, and my colleagues on the Boalt faculty have incurred. Above all, I want to thank Dr. James J. Sullivan, Director of the California Sea Grant College Program, and his staff, especially Ms. Lindy Nagata, not only for the Program's critical financial support but for long and frequent discussions of the conference's evolving conceptual design. It bespeaks the importance of the subject in Dr. Sullivan's own research that he interrupted a Fulbright year in Japan to participate in the conference itself. Dean Jesse H. Choper of Boalt Hall School of Law was similarly supportive, both intellectually and with regard to the means for the work. Professor Edward Rubin, chairperson of the Sato Fund Committee, handled many of the administrative aspects, and Professor Joseph Sax provided invaluable advice and encouragement.

Professor David D. Caron, one of the authors, was also an organizer and contributed in vital ways to the evolving design; he too carried some heavy administrative burdens at times. His specialized knowledge of ocean law and marine affairs were of great importance indeed to the rest of us involved in the conference.

Again, a befitting connection is joined: Caron is a former Editor-in-Chief of the *Ecology Law Quarterly*, which generously agreed to adopt the conference as a symposium issue. All the contributors soon came to appreciate the remarkable energy and academic talents of the current editorial board and staff, who have demonstrated great dedication in seeing the project through to publication.

Finally, the Sho Sato Fund Committee and the organizers gladly thank the Canadian Government and the University of California at Berkeley's Center for the Study of Law and Society, Institute of International Studies, and Korean Studies Program for their generous financial contributions to the conference and to the larger project that culminates with this publication. Ms. Cathy Hill of Boalt Hall provided expert staff coordination.

As a personal word, I would add that, with so many others in the Boalt Hall community, I was beneficiary over many years of the wise scholarly counsel and seemingly boundless courtesy of the late Sho Sato; he is greatly missed by his colleagues, and we are hopeful that this publication will serve as an appropriate tribute and memorial.