REGIONAL CO-OPERATION IN INTERNATIONAL ENVIRONMENTAL LAW IN THE SOUTH PACIFIC REGION

by

Dr B. Martin Tsamenyi*

1. Introduction

International co-operation in dealing with environmental matters has assumed increasing significance since the 1970s. The focus in the South Pacific has been the development of conventions and regional institutions to deal with the environmental problems in the region. This article surveys this development, noting the factors that have shaped regional co-operation in environmental management in the South Pacific and the significant legal developments in the region.

2. A Common Ocean Environment

(a) The South Pacific Environment

The South Pacific is usually defined as comprising all the independent States and territories located within the area of responsibility of the South Pacific Commission[1] (SPC). Altogether, twenty-two States and dependent territories are located within this region[2]. The Governing Council of the United Nations Environment Programme (UNEP) has, accordingly, designated the South Pacific region as a "concentration area"[3].

There are two noticeable characteristics of environmental law in the South Pacific. The first is that it revolves around the marine environment; and the second is the adoption of a regional approach to the solution of the region's environmental problems.

With the major exception of Papua New Guinea, which has a population in excess of three million people and a land area of over 175,000 square miles, the bulk of the South Pacific region is made up of small islands with small populations scattered throughout the Pacific Ocean[4]. The region generally lacks land-based resources. For many of these countries, the exploitation of marine resources has been, for a long time, the only means of subsistence and commercial activity. Not surprisingly, the nations in the South Pacific region have to look to the ocean as a very important resource worthy of protection.

The sharing of a common ocean environment has helped to shape the second feature of environmental law in the South Pacific, ie., regionalism.

> While the Pacific Ocean divides the South Pacific countries, it also unites them in a single environmental system. The waves, currents and weather do not respect regional boundaries, and any major alteration or contamination could have widespread effects. The resources of regional ecosystem are shared by all the

---

* Dean of Law, University of Tasmania, Australia. I am grateful to Dr Dominique De Stoop, Australia's Ambassador to Venezuela, for his useful comments on the draft of this paper. All the faults in the paper remain my responsibility.

1. See description of the SPC below.
2. These include: American Samoa, Cook Islands, Federated States of Micronesia, Fiji, French Polynesia, Guam, Kiribati, Marshall Islands, Nauru, New Caledonia, Niue, Northern Mariana Islands, Palau, Papua New Guinea, Pitcairn Island, Solomon Islands, Tokelau, Tonga, Tuvalu, Vanuatu, Wallis and Futuna and Western Samoa.
3. 'UNEP Action Plan for Managing the Natural Resources and Environment of the South Pacific Region', (1983) 29 UNEP Regional Seas Reports and Studies at 1.
4. B. Cicin-Sain & R.W. Knecht, 'The Emergence of a Regional Ocean Regime in the South Pacific' (1989) 16 Ecology Law Q. 175.

> countries. Migratory species such as the tunas, sea turtles and many birds pass in and out of many countries' jurisdiction. One country may bear the responsibility of protecting a breeding area, while another benefits from the harvest. Very little is known about the ocean transport of juvenile marine life. The population balance of marine life on an island may depend on a supply of spores or larvae from other islands up the current. The more the regional ocean system is studied, the more interactions are certain to be discovered[5].

Thus, the realisation of the fact that any major alteration, contamination or over-exploitation of the marine resources in the South Pacific Ocean by one State could have widespread consequences for the entire region, has fostered the growth of regionalism to deal with the region's environmental problems. This fact underpins all the environmental Conventions developed by the South Pacific States which are described below. For example, the Convention for the Protection of the Natural Resources and Environment of the South Pacific[6] was drawn up with the realisation that the special hydrological, geological and ecological characteristics of the region require co-ordinated and responsible management[7]. In the same spirit, the South Pacific Declaration on Natural Resources and the Environment[8] states that "the resources of land, sea and air which are the basis of life and culture for South Pacific peoples must be controlled with responsibility, and safeguarded for the benefit of the present and future generations, through sustained resource management"[9]. The declaration then recommends that:

> Regional co-operation should be further developed as an effective means of helping the countries and territories of the South Pacific to maintain and improve their shared environment and enhance their capacity to provide a present and future resource base to support the needs and maintain the quality of life of the people[10].

(b) The Environmental Problems in the South Pacific in Perspective

Because of its isolation from major commercial centres of the world, small population and lack of industrialisation, the South Pacific region is relatively free from the usual environmental problems characteristic of other regions of the world such as marine pollution, trans-boundary pollution, acid rain and industrial pollution. For example, the South Pacific is not located on any major tanker routes and thus the possibilities of the region being affected by oil spills are negligible. Apart from mineral processing in a few countries such as Papua New Guinea, there are no significant industrial activities in the region to cause pollution on a grand scale.

The South Pacific does have its own environmental problems. In 1981, the South Pacific Regional Environmental Programme (SPREP)[11] co-ordinated the preparation of eighteen country reports and thirteen topic reviews for presentation to the Conference on the Human Environment in the South Pacific in 1982[12]. The reports and topic reviews provide a clear indication of the environmental concerns in the South Pacific region. The most common problems identified are associated with marine fisheries conservation, damage to reefs and lagoons, radioactivity and the disposal of toxic chemicals[13]. These issues have

---

5. A.L. Dahl and I.L. Baumgart 'The State of the Environment in the South Pacific'(1983) 31 UNEP Regional Seas Report and Studies 2.
6. Text in 26 ILM 38 (1987).
7. See preamble.
8. *Supra* n.3 at 13.
9. Declaration 2.
10. Declaration 12.
11. See discussion of SPREP below.
12. See discussion below.
13. For a comprehensive discussion, see A.L. Dahl and I.L. Baumgart, *Supra* n.5

been addressed in the environmental Conventions in the region to be discussed below.

3. The Institutional Framework for International Environmental Law in the South Pacific

The development and implementation of International Environmental Law in the South Pacific is co-ordinated by four main organisations. A brief description of these organisations is necessary.

(a) The South Pacific Conference

The South Pacific Conference (SPC) was established by the "Canberra Agreement" of 1947 and has evolved from a co-ordinating group of former colonial powers to a regional organisation on which both metropolitan powers and independent regional governments are represented and to which observers from interested States and organisations outside the region have access. The Commission of the SPC is based in Noumea, New Caledonia. The SPC provides technical advice, training, assistance and dissemination of information in social, economic and cultural fields. It is barred by its charter from concerning itself with political issues and has concentrated its activities on grass roots development work. It has also been concerned with better environmental protection in the region and has promoted technical and other programs to achieve this end.

(b) The South Pacific Forum

The Forum was established in 1971 as an annual conference of Heads of State and Government of the independent and self-governing countries of the region to address all issues of regional interest. Given the level of participation at the annual conference, many of the issues addressed by the Forum are of major political significance to the region. The Forum has sought to encourage and promote regional co-operation in the expression of trade and economic development of Pacific Island countries. The Forum Secretariat has also focused on issues that are of major environmental interest, such as waste management.

(c) The South Pacific Regional Environmental Programme (SPREP)

At the forefront of developing regional environmental policies in the South Pacific is SPREP. In 1982, a conference on the Human Environment in the South Pacific was organised in Rarotonga, capital of the Cook Islands, and attended by all the South Pacific nations and some metropolitan powers. The conference adopted the South Pacific Declaration on Natural Resources and the Environment and agreed on the Action Plan for Managing the Natural Resources of the South Pacific (the "SPREP Action Plan").

The Action Plan was designed to achieve a number of inter-related objectives including the following:

* to help the countries of the South Pacific to maintain and improve their shared environment and to enhance their capacity to provide a present and future resource base to support the needs and maintain the quality of life of the people;
* to promote the assessment of the state of the environment in the region including the impacts of human activities on land, fresh water lagoons, reefs and ocean, the effects of these on the quality of the human environment, and the human conditions which have led to these impacts;
* to develop management methods suited to the environment of the region which will maintain or enhance environmental quality while utilising resources on a sustainable basis;
* improvement of national legislation and the development of regional agreements to provide for responsible and effective management of the environment;
* the strengthening of national and regional capabilities, institutional arrangements and financial support for the protection of the environment in the South Pacific[14].

14. Supra n.3.

The SPREP Action Plan was intended to provide a framework for environmentally sound planning and management, suited to the needs and conditions of the countries and people in the region and to enhance their own environmental capabilities.

The geographical scope of SPREP is defined as the terrestrial areas, fresh waters and archipelagic waters of the 22 Pacific Island States and Territories served by the SPC. Participating governments address environmental issues with implications for the Action Plan at meetings of the Forum and the SPC. The program is managed by biennial meetings of participating governments and serviced by a small secretariat (the SPREP Secretariat) based in Noumea, New Caledonia. The SPREP Secretariat's roles are the development of regional environmental expertise, co-ordination of provision of expert assistance to governments, facilitation of environmental monitoring and research, and facilitation of information exchange. The SPREP Action Plan has provided a sound basis for regional approaches to environmental issues and the SPREP Secretariat is the principal body in the region concerned with environmental issues.

(d) The Forum Fisheries Agency (FFA)

The FFA was established in 1979 as an independent agency under the auspices of the South Pacific Forum. It has a mandate to promote and regulate the development of the fisheries within the Exclusive Economic Zone of the South Pacific nations. The FFA is based in Honiara in the Solomon Islands. So far the FFA's activities have focused on harmonising and facilitating the implementation of fishing policies in the region and encouraging co-operation in relation to and with distant water fishing states[15].

4. Regional Conventions

To date, five regional environmental Conventions have been concluded by the South Pacific States. These conventions deal with what the countries in the region have perceived as the most important environment problems facing them. This section describes these conventions in chronological order.

(a) The Convention on Conservation of Nature in the South Pacific

The first environmental Convention of a regional scope in the South Pacific was the Convention on Conservation of Nature in the South Pacific. This Convention was concluded in Apia, Western Samoa, on 12 June 1976. It has limited membership. The parties are Australia, Cook Islands, Fiji, France (on behalf of its colonial territories) and Western Samoa. The Convention entered into force in June 1990.

The principal objective of the Apia Convention is the conservation, utilisation and development of natural resources in the South Pacific for the benefit of present and future generations. The Convention provides for the conservation of wildlife, especially endangered and migratory species, the establishment of "protected areas", and for co-operative programs between Contracting parties. More specifically, it requires Contracting parties to encourage the creation of protected areas to safeguard representative samples of natural ecosystems occurring therein (particular attention being given to endangered species), as well as "superlative scenery, striking geological formations, and regions and objects of aesthetic interest or historic, cultural or scientific value"[16].

The hunting, killing, capture or collection of specimens (including eggs and shells) of the fauna, and destruction or collection of specimens of the flora in national parks, is prohibited by the Convention except when carried out by or under the direction or control of the appropriate authorities or for duly authorised scientific investigations[17]. Among other

---

15. For a discussion of activities and achievements of the FFA, see Herr R. ed. *The Forum Fisheries Agency: Achievements, Challenges and Prospects* Suva, Institute of Pacific Studies, University of South Pacific, 1990.
16. Article II, 1.
17. Article III (3).

requirements, each Contracting Party must also protect as completely as possible the species included in a list it is required to establish of its indigenous fauna and flora that are threatened with extinction[18]. The Convention, however, provides that a Contracting Party may make appropriate provision for customary use of areas and species in accordance with traditional cultural practices[19].

(b) The Forum Fisheries Agency Convention (FFA)

Negotiations during the Third Law of the Sea Conference led to the recognition of the concept of the exclusive economic zone (EEZ) in international law. The extension of marine resource jurisdiction in the form of the EEZ presented major economic opportunities to the countries in the South Pacific region. The general lack of natural resources by most of these countries is compensated by the abundance of fisheries resources, especially various species of highly migratory species within their EEZs. Experts believe that the combined EEZs of the South Pacific States is currently the most productive fisheries ground in the world[20]. Revenue from the exploitation of marine fisheries forms an important, if not the most important source of development for most of the South Pacific States[21]. As such, fisheries conservation has become a significant aspect of international environmental law in the South Pacific. This is achieved through the framework of the Forum Fisheries Agency Convention. The preamble to the FFA Convention expresses the "common interest of the South Pacific States in the conservation and optimum utilisation of the living marine resources of the South Pacific region and in particular the highly migratory species".

The FFA has, since its establishment, developed into an effective organisation with significant resources and international clout to control access to the EEZs of the South Pacific States. Under the auspices of the FFA, the South Pacific States have developed effective harmonised policies with respect to conservation, surveillance and enforcement of fisheries jurisdiction and common minimum terms and conditions with regard to distant water fishing nations.

(c) The South Pacific Nuclear Free Zone Treaty

The earliest environmental issue of regional concern in the South Pacific was the testing of nuclear weapons by some Western powers in the region. The United Kingdom and France have carried out nuclear tests in different parts of the South Pacific at different times. France has continued its nuclear tests in the South Pacific despite considerable international opposition by South Pacific Forum countries[22]. Regional opposition to French nuclear activity in the Pacific culminated in the Nuclear Test Cases in 1974[23]. Since then, France has shifted from atmospheric to underground tests. In 1980, a new dimension was added to the radio-active debate in the South Pacific when Japan announced a plan to dump low-level industrial nuclear waste into the Pacific Ocean[24]. Intense opposition from the South Pacific States persuaded Japan to abandon its plans.

These developments led to a unified opposition to nuclear testing within the South Pacific region. From its establishment in 1971 the South Pacific Forum has been the

---

18. Article V.
19. Article VI.
20 See Copes, P., 'Tuna Fisheries Management in the Pacific Islands Region', in Doulman, D. (ed), *Tuna Issues and Perspectives in the Pacific Islands Region* East-West Centre, Honolulu, 1987, at 13.
21. See M. Sherpard & L. Clark, *South Pacific Fisheries Development Needs* FAO & UNDP, 1984, at 5.
22. See B. Danielsson, & M.T. Danielsson, *Mururoa: Mon Amour - the French Nuclear Tests in the Pacific* Penguin Books, 1977.
23. *Australia* v. *France* [1974] ICJ Reports 253; *New Zealand* v. *France* [1974] ICJ Reports 457.
24. See *Far Eastern Economic Review*, 7 November, 1980 at 40, 82; *Pacific Islands Monthly*, November 1980, at 35; D.P. Finn, 'Nuclear Waste Management Activities in the Pacific Basin and Regional Co-operation on the Nuclear Fuel Cycle' (1983) 13 *Ocean Development and International Law*, 215-216.

primary institution through which the self governing states of the region have expressed their disapproval of nuclear testing which eventually culminated in the adoption of the South Pacific Nuclear Free Zone Treaty (SPNFZ Treaty) in 1985.

The operative sections of the SPNFZ Treaty[25] prohibit the testing, manufacture, acquisition and stationing of nuclear explosive devices in the territories of the parties to the Treaty and Article 7 prohibits the dumping of nuclear waste at sea by the parties within the "South Pacific Nuclear Free Zone". "The Territories" are defined to include the internal waters, territorial sea and archipelagic waters, the sea-bed and sub-soils beneath the land territory and airspace above them. The "Nuclear Free Zone" is also defined to include the broader two hundred mile EEZ of parties and the pockets of the high seas in between the EEZs.

The SPNFZ Treaty also included three Protocols, the first of which is open for signature by France, the United Kingdom and the United States who are the three non regional powers with territories within the "Nuclear Free Zone". Parties to Protocol 1 would be subject to articles 3, 5 and 6 of the Treaty. Protocols 2 and 3 are open for signature by the five nuclear powers[26]. Parties to them undertake not to use, or threaten to use a nuclear explosive device against parties to the treaty or territories within the zone of parties to Protocol 1. They are also under an obligation to refrain from testing any nuclear explosive device anywhere within the "Nuclear Free Zone".

The existing security arrangements of each party to the Treaty have not been affected under Article 2. Nuclear powered vessels and ships carrying nuclear weapons may pass through the waters of the South Pacific without restriction. Furthermore Article 5 (2) recognises states' sovereignty by allowing each nation to decide whether it will permit entrance to its ports by vessels with nuclear power or weapons. These provisions were included to accommodate the security interests of the United States of America which is the major military power in the region.

To date, only China and the Soviet Union have become parties to the relevant Protocols. The lack of participation by the major nuclear States significantly undermines the effectiveness of the Treaty.

(d) The Convention for the Protection of the Natural Resources and Environment of the South Pacific Region (the SPREP Convention)

The most comprehensive legal instrument dealing with the South Pacific environment is the SPREP Convention. It purports to lay down general environmental guidelines to achieve its objectives. The genesis of this Convention can be traced to the 1982 Rarotonga Conference on the Human Environment in the South Pacific (referred to earlier). Between 1983 and 1985, four separate meetings of experts were held in the South Pacific Commission Headquarters, in Noumea to finalise the SPREP Convention and its Protocols. This was followed by a conference of the Protection of the Natural Resources and Environment of the South Pacific Region between 17-25 November 1986 to adopt the text of the Convention[27].

The SPREP Convention was formulated specifically "to strengthen the implementation of the general objectives of the Action Plan for Managing the Natural Resources and Environment of the South Pacific Region" referred to above[28]. The geographical coverage of the SPREP Convention comprises the 200 nautical mile EEZs of all the parties and pockets of high seas which are enclosed by the EEZs[29]. Under Article 3, parties may, by

---

25. Article 3-5 and 6.
26. USA, France, UK, USSR, China.
27. See 26 ILM (1987) p.38.
28. See Preamble, SPREP Convention.
29. Article 2(a).

subsequent notification to the Depository, add further areas under their jurisdiction to the Convention area.

The substantive obligations in the Convention are contained in Articles 5 through 16.

Article 5 imposes a general obligation on the parties to endeavour, either individually or jointly to take all appropriate measures in conformity with international law and the provisions of the Convention to prevent, reduce and control pollution of the Convention Area, from any source, and to ensure sound environmental management and development of natural resources. In this regard, parties are to be guided by "existing internationally recognised rules, standards, practices and procedures"[30]. The parties are also required to establish laws and regulations for the effective discharge of their obligations under the Convention[31].

Articles 6 to 12 regulate all manner of pollution. They require the parties to take all appropriate steps to prevent, reduce and control pollution of any kind emanating from vessel discharge, land-based sources, seabed activities which discharge into the atmosphere, disposal of toxic discharges into the atmosphere from activities in areas falling under national jurisdiction, radioactive and hazardous waste and nuclear testing in the Convention Area.

Articles 13 and 14 address the protection of coastal areas and wild flora and fauna. Coastal areas are to be protected against erosion caused by coastal engineering, mining activities, sand removal, land reclamation and dredging[32]. Article 14 obliges the parties to establish protected areas such as parks and reserves within their jurisdiction and to take all appropriate measures "to protect and preserve rare or fragile ecosystems and depleted, threatened or endangered flora and fauna as well as their habitat within the protected areas".

Article 15 deals with "pollution emergencies" by calling on the parties to develop and promote individual and joint contingency plans for responding to incidents involving pollution or threat of pollution within the Convention Area.

The formulation of Environmental Impact Assessment is made an integral part of the protection of the South Pacific environment under the SPREP Convention. Thus, under Article 16, the parties agree to develop and maintain technical guidelines and legislation giving adequate emphasis to environmental and social factors when taking decisions with regard to the exploitation of their natural resources or in the planning of major projects which might have adverse environmental consequences.

There are two Protocols to the SPREP Convention. The first Protocol concerns co-operation in combating pollution emergencies in the region. It requires the parties to co-operate with each other in taking all necessary measures for the protection of the South Pacific from pollution incidents[33]. The forms of co-operation include:

* exchange of information relating to the laws, regulations, institutions and operational procedures relating to the prevention and the means of reducing and combating the harmful effects of pollution incidents[34].
* prompt reporting of pollution incidents by government officials and by vessels flying the flag of a contracting Party.

The second protocol, deals with the prevention of pollution of the South Pacific by

---

30. Article 5(4).
31. Article 5(5).
32. Article 13.
33. Pollution incident is defined to mean a discharge or significant threat of a discharge of oil or other hazardous substance, however caused, resulting in pollution or an imminent threat of pollution to the marine and coastal environment or which adversely affects the related interests of one or more of the Parties and of a magnitude that requires emergency action or other immediate response for the purpose of minimising its effects or eliminating its threat. Article 1(1).
34. Article 4.

dumping. It requires parties to take all appropriate measures to prevent, reduce and control pollution by dumping in the South Pacific, including the territorial seas, EEZ and the continental shelves of the parties. This Protocol provides a comprehensive list of substances the dumping of which is prohibited, and other substances the dumping of which require permits. There is also a detailed regulation of dumping sites and the methods of packaging and the dumping of substances in the permissible category[35].

The SPREP Convention is by far the most popular regional environmental instrument in the South Pacific. Article 31 of the Convention requires ten ratifications to bring it into force. This was achieved only in late 1990. The fact that only a portion of South Pacific countries have become parties to the Convention may be explained in terms of the subject matter and the comprehensive scope of the Convention in regulating the conduct of the parties. The implementation of the SPREP Convention would require concessions to be made to national sovereignty in many respects. It is therefore not surprising that the South Pacific States have adopted a cautious approach to bringing the SPREP Convention into force. The SPREP Convention is the real test for the effectiveness of developing regional environmental law standards in the South Pacific. The strength of the SPREP Convention will be tested in the near future as the number of environmental problems facing the South Pacific nations increase.

(e) The Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific

The most significant international environmental law issue in the area of fisheries conservation in the South Pacific by the beginning of the 1990s was the issue of driftnetting. Nations of the South Pacific became alarmed when, in the 1988/1989 season, Japanese and Taiwanese driftnetting vessels descended upon the region to engage in wide-scale tuna fishing on the high seas[36]. Most of these vessels had previously been operating in the North Pacific and Indian Oceans but had moved to the South Pacific due to a rapid decline in the fisheries stock in the North Pacific and Indian Oceans[37]. The South Pacific states became greatly concerned about the possible environmental and economic effects of such a dramatic increase in driftnetting on the region's tuna supplies. Following intense diplomatic initiatives at the regional level and within the United Nations, the South Pacific States succeeded in prohibiting driftnet fishing in the South Pacific Ocean. This was remarkable given that driftnet fishing in the region is essentially a high seas activity and arguably subject to the well established freedom of the high seas.

By way of background, it is important to explain that driftnets, also known as gillnets because of the manner in which they entangle the fish, is an extremely efficient and cost-effective way of fishing. The word driftnet can mean a small gillnet that is commonly used to catch fish close to the shore but it has become synonymous with the large-scale monofilament plastic nets that are used on the high seas and which can be up to 60 kilometres long and set to depths of 15 metres below the surface. The Japanese have been driftnetting in the South Pacific since the 1970's. From 1975 over ten vessels have engaged in driftnetting in the New Zealand area, annually[38]. It was not until the 1987/88 fishing season that driftnetting vessels moved into the South Pacific region on a large scale. The vessels came from distant water fishing nations of Japan, South Korea and Taiwan and targeted the variety of tuna known as albacore. Like most varieties of tuna, albacore is a

---

35. Annex 3.
36. See D.M. Johnston, 'The Driftnetting Problem in the Pacific Ocean: Legal Considerations and Diplomatic Options' (1990) 21 *Ocean Development and International Law*, 5.
37. J.H. Adams, 'The South Pacific Albacore Fishery', address to SPACHEE, Suva, Fiji, 30th August 1989.
38. UN Resolution 44/225 entitled 'Large-Scale Pelagic Driftnet Fishing and its Impacts on the Living Marine Resources of the World's Oceans and Seas', United Nations Resolutions and Decisions Adopted by the General Assembly during the first part of its 44th Session, 29th September 1989, p.292.

highly migratory species that spawns in the summer at around 20 degrees south. The juvenile fish migrate south whilst the mature fish remain nearer the equator. In the cooler, southern water of the sub-tropical convergence zone at 35-40 degrees south, the juvenile albacore form surface swimming schools which are fishable by surface methods including driftnetting[39]. It is at this point in their migration that the distant water fishing nations have conducted driftnetting in the high seas outside of the South Pacific states' EEZs.

The use of driftnets has been widely condemned due to its environmental impact. The driftnet has been nicknamed the "wall of death" because it indiscriminately catches and kills virtually every living creature that comes into contact with it[40]. According to UN Resolution 225, driftnets are "highly indiscriminate and wasteful fishing method which is widely considered to threaten the effective conservation of living marine resources such as highly migratory and anadromous species of fish, birds and marine mammals"[41].

Following intense diplomatic negotiations, the South Pacific States adopted the text of the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific[42] (hereafter the Driftnet Convention) in Wellington, New Zealand in November 1989.

The objective of the Driftnet Convention is to prohibit the use of driftnets[43] in the "Convention Area" which is defined as "the area lying within 10 degrees North latitude and 50 degrees South latitude and 130 degrees East longitude and 120 degrees West longitude"[44]. This encompasses the EEZs of the South Pacific States and also the pockets of high seas in between the EEZs. But the Driftnet Convention has a conservation objective beyond simply prohibiting the use of driftnets in the region. In a broader sense, the Convention is designed to achieve international co-operation in fisheries management and conservation as mandated by the Law of the Sea Convention. Thus under Article 8, the parties agree to "co-operate with each other and with appropriate distant water fishing nations and other entities or organisations in the development of conservation and management measures for South Pacific albacore tuna within the Convention Area".

The Driftnet Convention stipulates a number of measures to achieve its objectives. By Article 3 parties are required to discourage the use of driftnets in the region in several ways. These include:

(i) not to assist or encourage the use of driftnets within the Convention Area;
(ii) to take measures consistent with international law to restrict driftnet fishing activities within the Convention Area, including prohibiting the use of driftnets within areas under their jurisdiction and prohibiting the transhipment of driftnet catches within areas under their jurisdiction;
(iii) to prohibit the landing of driftnet catches within their territory;
(iv) to prohibit the processing of driftnet catches in facilities under their jurisdiction;
(v) to prohibit the importation of any fish or fish product, whether processed or not, which was caught using a driftnet;
(vi) to restrict port access and port servicing facilities for driftnet fishing vessels; and
(vii) to prohibit the possession of driftnets on board any fishing vessel within areas under their fisheries jurisdiction.

A major difficulty with prohibitive conventions is that their implementation ultimately requires the co-operation of states whose interests are directly affected. In relation to the

---

39. 'Trying to Stop the Slaughter' *Pacific Islands Monthly* 8 July 1989.
40. D.M. Johnston, *supra* n.36.
41. U.N. Resolution 44/225; *supra* n.38.
42. Text in 29 ILM 1449 (1990).
43. See Article 3.
44. Article 1(a)(i).

Driftnet Convention, "it is obvious that continuation of such driftnet fishing would be in the hands of its opponents"[45].

The strategy adopted by the South Pacific States to facilitate compliance with the Driftnet Convention was the adoption of two Protocols in Noumea, on 20 October 1990. Both Protocols require the parties to take a number of actions, which would facilitate the implementation of the Driftnet Convention. In particular, parties are:

(a) to prohibit their nationals and fishing vessels registered under their laws from using driftnets within the convention area;
(b) to convey to the FFA information regarding the implementation of the Protocol, including scientific analysis on the effects of different fishing activities relevant to the Convention Area;
(c) not to assist or encourage the use of driftnets within the Convention Area; and
(d) take measures consistent with international law to restrict driftnet fishing and the transhipment of driftnet catches within areas under its fisheries jurisdiction.

In addition, Protocol 2 allows each party to take measures consistent with international law to:

(a) prohibit the landing of driftnet catches within its territory;
(b) prohibit the processing of driftnet catches in facilities under its jurisdiction;
(c) prohibit the importation of any fish or fish product caught using a driftnet;
(d) restrict port access and port servicing facilities for driftnet fishing vessels; and
(e) prohibit the possession of driftnets on board any fishing vessel within areas under its fisheries jurisdiction.

In an effort to achieve wider international co-operation in banning or minimising the use of driftnets in the South Pacific, a group of South Pacific States sponsored a resolution at the United Nations General Assembly. On 22 December 1989, the General Assembly adopted, without vote, a resolution entitled "Large-scale pelagic driftnet fishing and its impact on the living marine resources of the World's Oceans and Seas"[46]. The resolution noted the fact that "many countries are disturbed by the increase in the use of large-scale pelagic driftnets . . . to catch living marine resources on the high seas of the World's Oceans and Seas". Expressing concern about the negative impact of driftnetting on the living marine environment, the resolution noted two important points:

(i) that all members of the international community have a duty to co-operate globally and regionally in the conservation and management of living resources on the high seas, and a duty to take, or to co-operate with others in taking, such measures for their nationals as may be necessary for the conservation of the living resources of the high seas; and
(ii) that all members of the international community have a duty to ensure the conservation and management of living marine resources and the protection and preservation of the living marine environment within [and outside] their EEZ.

The U.N. resolution then recommended a number of actions aimed at eliminating the use of driftnets as a fishing method:-

(i) DWFNs involved in large-scale driftnet fishing are to co-operate with the international community and especially with coastal states and the relevant international organisations to collect and share scientific data in order to assess the impacts of driftnet fishing on the living marine environment;
(ii) concerned members of the international community are to review the available

---

45. W.T. Burke, '*Driftnets and Nodules: Where goes the United States*?', (1990) 20 *Ocean Development and International Law* 237.
46. U.N. Resolution, 44/225; *supra* n.38 above.

data by 30 June 1991 to determine the impact of pelagic driftnet fishing on the living resources of the marine environment;

(iii) the imposition of a moratorium on large-scale pelagic driftnet fishing on the high seas by 30th June 1982;

(iv) the taking of immediate action to reduce progressively large-scale pelagic driftnet fishing activities in the South Pacific region;

(v) the cessation of driftnet fishing in the South Pacific by 1 July 1991; and

(vi) the immediate cessation to further expansion of large-scale driftnet fishing on the high seas of the North Pacific and all high seas outside the Pacific Ocean[47].

In late 1990, Japan which is the biggest user of driftnets in the South Pacific agreed to cease driftnet fishing in the South Pacific one year ahead of the UN deadline[48] of July 1991. The success of the driftnet campaign once again illustrated the gains to the South Pacific of regional co-operation in international environmental matters.

5. Conclusion

Despite the relatively underdeveloped economies of the South Pacific States, they have been able to address major environmental issues threatening their survival. The adoption of a regionalist strategy has so far provided effective results. Through regional co-operation, the South Pacific States have acknowledged that their respective territories are part of a larger environmental system that requires a co-ordinated approach.

The relative isolation of the South Pacific States from the major centres of international activity, coupled with their small sizes and weak economies have provided a sense of inward development. Whilst this has fostered the growth of regionalism, there is danger that the South Pacific States would be relegated to the fringes of international activity in international environmental matters unless they begin to participate actively in general global environmental issues. Contemporary international environmental issues such as the depletion of the ozone layer, the greenhouse effect and biological diversity have implications which transcend regional boundaries. These issues are going to test the strength of regional co-operation in environmental matters in the years to come.

---

47. The resolution however stated that this moratorium would be lifted should effective conservation and management measures to prevent unacceptable impacts of such fishing practices and to ensure the conservation of the living marine resources of that region be implemented.

48. See K. Mangnall 'Muller Battles On', *Pacific Islands Monthly*, September 1990, p.16.

QLD. UNIVERSITY OF TECHNOLOGY LAW JOURNAL