

Pacific Ocean Resources: The New Regionalism and the Global System

*Stefan Riesenfeld**

Our conference which is coming to its end has focused on a vast area which has ascended to such prominence in world affairs that our times are described as the Dawn of the Pacific Age or the Beginning of the Pacific Century.¹ Professor Watanabe has underscored the shift in outlook, economic and political power in and with respect to that region and the growing interdependence of the nations bordering or bordered by the Pacific.² The countries located within or abutting the Pacific Basin have fostered and joined in a growing network of bilateral and multilateral arrangements designed to promote cooperation in the development, protection, and utilization of the natural resources, living or nonliving, of that area and to advance and intensify inter-area trade relations. The Pacific Basin, in other words, has become step-by-step a separate and cohesive region bound together by a shared resource, the Pacific Ocean, and by common political and economic interests and trade patterns of vast volume.

The organizers of the program of the conference have called for a discussion of this development from a Latin American perspective, from an Asian perspective and from an Atlantic perspective as viewed by the most important regional organization existing today, the European Community. It is therefore only fitting that the concluding remarks—brief as they must be—should add what I would like to think of as the global perspective.

Let me remind you that the basic blueprint of a new world order designed at Bretton Woods was that of a peaceful, nondiscriminating, and open system of economic and trade relations of global dimensions and that both bilateralism and regionalism were viewed, at best, as an exception and transitional phase in the realization of the ultimate goal.

Copyright © 1989 by ECOLOGY LAW QUARTERLY

* Professor of Law, School of Law (Boalt Hall), University of California at Berkeley; J.S.D. 1940, Harvard University; J.D. 1937, School of Law (Boalt Hall), University of California at Berkeley; Dr. Jur. 1931, Breslau.

1. *Special Report: The Pacific Century*, NEWSWEEK, Feb. 22, 1988, at 42.

2. Watanabe, *Japan, the United States and the Pacific Since 1945: An Overview*, 16 ECOLOGY L.Q. 9 (1989) (this issue).

Thus the General Agreement on Tariffs and Trade (GATT),³ which survived as the remnant of the idea of the International Trade Organization planned in Havana, was instituted as the instrument governing world-wide liberalized, if not free, trade.

It was clear from the beginning of that system that the building of a free global trade system would not be easy and would take a sequence of negotiation rounds. For that reason and to accommodate perceived benefits of customs unions and free trade areas, article XXIV of GATT excepted arrangements of that type from the sweep of the most favored nation treatment requirement which is the central provision of the system.

As a result, international integration schemes either in the form of customs unions or free trade areas arose in many regions of the world, especially in the form of multinational arrangements. The most important of them today is the European Community,⁴ which combines twelve nations with approximately 320 million inhabitants and constitutes—even discounting the massive interregional trade—perhaps the most important trading block in the world. Although it maintains extensive trade relations with the Asian Pacific nations, its most significant ties are with the sixty-six so-called ACP nations,⁵ institutionally organized by the Lomé III-Treaty.

In Latin America likewise several economic integration schemes were established on the regional or subregional level. The most ambitious of them aimed at the gradual establishment of a free trade area encompassing all of South America, the so-called Latin American Free Trade Area (LAFTA), set up by the Treaty of Montevideo concluded in 1960, while two other ones organized common markets, namely the Andean Common Market, created by the Pact of Cartagena, and the Central American Market. LAFTA failed to achieve its scheduled progress and was replaced in 1984 by the Latin American Integration Association. The new organization, which joins the South American republics and Mexico, comprising a total of 350 million inhabitants, reactivated the drive for regional economic integration and can boast significant advances.

3. General Agreement on Tariffs & Trade, Oct. 30, 1947, 61 Stat. 5, T.I.A.S. No. 1700, 55 U.N.T.S. 187.

4. Technically, the European Community consists of three distinct organizations: the European Coal and Steel Community, the European Economic Community, and the European Atomic Community, with common institutions—Parliament, Council, and Court—among which the EEC is by far the most important one.

5. ACP stands for African, Caribbean, and Pacific, encompassing the newly independent nations in the indicated regions that have preserved special relations with their former colonial powers. For the text of the Lomé III-Treaty, see 29 O.J. EUR. COMM. (No. L 86) 3 (1986). Currently 66 ACP nations are parties to the Lomé III-Treaty.

Since economic regionalism developed into a worldwide phenomenon, it cannot be surprising that similar ideas were conceived and fostered by the nations bordering the Pacific and that it became accepted to look to the Pacific from that perspective.

The idea of a regional organization of the countries of the Pacific Basin or of the rim countries of the Pacific Basin is more than a quarter of a century old. Lyndon Johnson expressed his endorsement of a broad-based regional organization of the Asian countries bordering the Pacific in his speech on April 7, 1965 at the Johns Hopkins University. Professor Kiyoshi Kojima proposed a free trade area, consisting of Australia, New Zealand, Japan, Canada, and the United States in 1956.⁶ Yet although the Japanese government formally endorsed some kind of organization of the Pacific Basin not long thereafter and found support by other Pacific nations, the joint demarche did not result in tangible results despite the fact that the initiative was studied intensively and systematically.⁷ Perhaps the main reason for the failure of the project was its cold reception on the part of the United States Government on the ground that a Pacific free trade area is not consistent with the commitment of the United States to an open, multilateral, global economic system.⁸ The conflict between Regionalism and Globalism has not subsided since that time, and the purpose of my address is to voice my fear that the United States might maneuver itself into an untenable position by pursuing conflicting policies at the same time.

As you all know, the United States at present is engaged in a new round of negotiations intended to improve and expand the system of GATT which was initiated with the appointment of a Preparatory Committee in November 1985 and was formally opened by a Ministerial meeting at Punta del Este in September 1986. The Declaration of Punta del Este⁹ tentatively fixed the agenda for the so-called "Uruguay Round" and established two negotiation groups, one on goods and one on services. The United States pressed for an ambitious range of topics, including free trade in agricultural products and protection of intellectual property. Although GATT permits special exceptions for free trade ar-

6. KIYOSHI KOJIMA, *JAPAN AND A PACIFIC FREE TRADE AREA* (1971).

7. See generally W. ROSTOW, *THE UNITED STATES AND THE REGIONAL ORGANIZATION OF ASIA AND THE PACIFIC, 1965-1985* (1986).

8. *The Pacific Community Idea: Hearings before the Subcomm. on Asian and Pacific Affairs of the House Comm. on Foreign Affairs*, 96th Cong., 1st Sess. 36, 43 (1979) (statement of Hugh Patrick, Professor of Far Eastern Economy, Yale University). Professor Patrick and Professor Drysdale of the Australian National University authored a study for the Foreign Relations Committee of the U.S. Senate, in which they argued the desirability of U.S. participation in a new Organization for Pacific Trade and Development (OPTAD) and the diminished reliance on the universalist approach. SENATE COMM. ON FOREIGN RELATIONS, 96TH CONG., 1ST SESS., *AN ASIAN-PACIFIC REGIONAL ORGANIZATION: AN EXPLORATORY CONCEPT PAPER* (Comm. Print 1979).

9. For the text of the Declaration, see GATT ACTIVITIES 1986, at 15 (1987).

eas, such exceptions are basically inconsistent with a nondiscretionary global trade system.

Especially confusing is the fact that at the same time at which Canada and the United States have expressed the political will to strengthen GATT, they have successfully concluded negotiations establishing the Canada-U.S. free trade area which, while paying lip service to GATT, actually may be viewed as weakening the basic ideas of GATT. The new agreement contains specific rules pertaining to trade in agricultural products¹⁰ and products of the sea, including:

- (d) fish, shellfish and other marine life taken from the sea by vessels registered or recorded with a Party and flying its flag;
- (e) goods produced on board factory ships from the goods referred to in subparagraph (d), provided such factory ships are registered or recorded with that Party and fly its flag;
- (f) goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside the territorial waters, *provided that Party has the right to exploit such seabed*.¹¹

Since Canada has signed the U.N. Convention on the Law of the Sea (1982 Convention) while the United States has taken the opposite position, the meaning of the "right to exploit" portends difficulties and disputes.

The foregoing remarks do not mean to imply that the concept of a *Pacific Community* is an empty notion or that the development of common interests of the nations in and bordering the Pacific Region is not a legitimate end to be pursued by the United States. The protection of and access to the Pacific fisheries is a matter of special concern, in part called for as a response to the sprawling network of bilateral fishing agreements concluded in recent years between the European Community and the APC states or other African nations. Such agreements include arrangements with Angola,¹² the Comores,¹³ Equatorial Guinea,¹⁴ Guinea,¹⁵ Guinea-Bissau,¹⁶ Madagascar,¹⁷ Mauritania,¹⁸ Morocco,¹⁹ Mozam-

10. Canada-United States, Free-Trade Agreement, ch. 7, arts. 701-711, 27 I.L.M. 293, 316 (1988).

11. *Id.* art. 304, 27 I.L.M. at 296 (emphasis added).

12. *Agreement of April 30, 1987*, Council Decision 87/474 (EEC) of Sept. 17, 1987, 30 O.J. EUR. COMM. (No. L 268) 64 (1987).

13. *Agreement of October 23, 1987*, Council Regulation (EEC) No. 1494/88 of May 3, 1988, 31 O.J. EUR. COMM. (No. L 137) 18 (1988).

14. *Agreement of June 15, 1984*, Council Regulation (EEC) No. 252/87 of Jan. 19, 1987, 30 O.J. EUR. COMM. (No. L 29) 1 (1987).

15. *Agreement of February 7, 1983*, Council Regulation (EEC) No. 253/87 of Jan. 19, 1987, 30 O.J. EUR. COMM. (No. L 29) 9 (1987).

16. *Agreement of May 22, 1986*, Council Regulation (EEC) No. 1171/87 of Apr. 28, 1987, 30 O.J. EUR. COMM. (No. L 113) 1 (1987).

17. *Agreement of January 28, 1986*, Council Regulation (EEC) No. 1709/87 of June 15, 1987, 30 O.J. EUR. COMM. (No. L 160) 11 (1987).

bique,²⁰ Senegal,²¹ Seychelles,²² and São Tomé and Príncipe.²³

Obviously the protection of fisheries within the Exclusive Economic Zones or the coastal fishing zones extending to 200 nautical miles requires limitations on the catch quotas open to foreign nations, and it is within the power of the coastal state to select the nations entitled to share the resources within its jurisdiction. The 1982 Convention²⁴ contains only a few directives regarding the disposition of the living resources. Article 61 states that the overall goal is conservation. Article 62 proclaims the objective of optimal utilization, leaving any surplus to (a) states that have habitually fished in the zone; (b) fishing people of land-locked nations;²⁵ or (c) fishing people of geographically disadvantaged states.²⁶

In the United States it is particularly the tuna fishing industry that may look to foreign fishing areas. Article 64 gives a few special rules for highly migratory species, which include certain tuna species. Otherwise there are no detailed norms for distribution of surplus, and political factors prevail.

Regional cooperation in trade and resource conservation and sharing is both necessary and desirable. Nevertheless, regionalism should not be at the expense of a global perspective of the ultimate needs of mankind.

18. *Agreement of May 14, 1987*, Council Regulation (EEC) No. 4143/87 of Dec. 14, 1987, 30 O.J. EUR. COMM. (No. L 338) 1 (1987).

19. *Agreement of February 25, 1988*, Council Regulation (EEC) No. 2054/88 of June 23, 1988, 31 O.J. EUR. COMM. (No. L 181) 1 (1988).

20. *Agreement of December 11, 1986*, Council Regulation (EEC) No. 2143/87 of July 13, 1987 30 O.J. EUR. COMM. (No. L 201) 1 (1987).

21. *Agreement of June 15, 1979*, Council Regulation (EEC) No. 2212/80 of June 27, 1980, 23 O.J. EUR. COMM. (No. L 228) 16 (1980), as last amended by *Agreement of November 20, 1985*, Council Decision 85/557/EEC of Dec. 17, 1985, 28 O.J. EUR. COMM. (No. L 361) 86 (1985), and supplemented by *Protocol of January 28, 1988*, Council Regulation (EEC) No. 1493/88 of May 3, 1988, 31 O.J. EUR. COMM. (No. L 137) 1 (1988).

22. *Agreement of December 3, 1986*, Council Regulation (EEC) No. 1708/87 of June 15, 1987, 30 O.J. EUR. COMM. (No. L 160) 1 (1987).

23. *Agreement of May 27, 1987*, Council Decision 87/518/EEC of Oct. 19, 1987, 30 O.J. EUR. COMM. (No. L 300) 31 (1987).

24. United Nations Convention on the Law of the Sea, Dec. 10, 1982, Annex I, U.N. Doc. A/CONF.62/122, 21 I.L.M. 1261, 1329.

25. *Id.* art. 69.

26. *Id.* art. 70.

