9. The Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean: Implementation Challenges from a Historical Perspective
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Introduction
The negotiation of the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (the WCPF Convention)\(^1\) from 1997 to 2000 signaled a major turning point for Pacific Islands coastal States and distant water fishing nations (DWFNs) in the Western and Central Pacific. It was the first time these two groups of States sat together at the table to work out a mechanism for broad-based management of the highly mobile and highly valuable tuna stocks of the region. The negotiations also marked the beginning of a process of building an international regime that would promote the long-term conservation and sustainable use of the region’s tuna fisheries. In many respects this process is still unfolding, despite the adoption of the WCPF Convention and its subsequent entry into force in June 2004.

The WCPF Convention establishes a broad-based regime for the collective management of tuna and other highly migratory stocks in the region. It has been described as a ‘third generation’ treaty, building on the 1982 United Nations Convention on the Law of the Sea (LOSC)\(^2\) and the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (United Nations Fish Stocks Agreement or UNFSA).\(^3\) One of the common characteristics linking these three treaties is that they all encompass high seas and areas under national jurisdiction. Drawing on Article 64 of the LOSC and various sections of the UNFSA, the WCPF Convention seeks to promote cooperation between coastal States and fishing nations “with a view to ensuring conservation and promoting the objective of optimum utilisation of highly migratory fish stocks through their range.”\(^4\)

It is the contention of this chapter that the implementation challenges now facing the members of the WCPFC regime – and in particular the Pacific Islands States –

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\(^1\) WCPF Convention
\(^4\) WCPF Convention, Preamble.
may be in part understood by reviewing the origins of the WCPF Convention and its evolution. The analysis thus takes an historical perspective by highlighting what have – over time – been the main challenges impeding and undermining cooperation between States in the management and conservation of tuna stocks in the Western and Central Pacific region.

The chapter begins with a short overview of the background to the WCPF Convention. It then examines what was an early challenge to the region’s implementation of the LOSC: overcoming reluctance on the part of Pacific Island States to cooperate with DWFNs in broad based management and conservation of the tuna fisheries. This reluctance to cooperate gave way to a second major challenge: a lack of shared understanding especially between Pacific Island coastal States and DWFNs about the scope and method of cooperation. This characterised the period leading up to the negotiation of the WCPF Convention, as well as influencing the negotiation process itself. The third key challenge that will be covered here relates to a more contemporary challenge: overcoming capacity constraints – particularly on the part of Pacific Island States – in implementing conservation and management measures. This section looks at how this problem was dealt with in the WCPFC negotiations and the Convention, focusing in particular on the development of Article 30. The chapter concludes by suggesting that all three challenges are to some extent intertwined and continue to influence the level and effectiveness of cooperation between Pacific Island States and DWFNs in the region.

A Brief Background to the WCPF Convention

In many respects, the negotiation of the WCPF Convention marked the final phase of a process that began with the formation of the Pacific Islands Forum Fisheries Agency (FFA) in 1979. Article III of the FFA Convention recognised that “effective cooperation for the conservation and optimal utilization of the highly migratory species of the region will require the establishment of additional machinery to provide for cooperation between all coastal States in the region and all States involved in the harvesting of such resources.” This was with a view to fulfilling responsibilities under what would become Article 64 of the LOSC.5

For reasons that will be explained more fully below, this “additional machinery” did not begin to be developed until the mid 1990s; that is over 15 years after the establishment of the FFA. This is despite pressure and prompting from several major DWFNs in the region to develop a broad based “Article 64 type”

5 Nandan, 1997; Article 64 requires that coastal states and other states whose nationals fish in a region for highly migratory species ‘shall cooperate directly or through appropriate international organizations with a view to ensuring conservation and promoting optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone’.

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international tuna management organization for the region, comprising DWFNs and coastal States.

In the mid 1990s, responding to a concern about the status of some fish stocks in the region, as well as moves at the international level to elaborate on relevant provisions of the LOSC relating to the management and conservation of highly migratory and straddling fish stocks on the high seas (the UNFSA), increased dialogue began to take place between FFA member countries and DWFNs. This dialogue was primarily of a technical nature, tailored to promote cooperation on specific issues: the December 1994 Multilateral High Level Conference on South Pacific Tuna Fisheries, followed by the September 1995 Vessel Monitoring System (VMS) technical consultations and the July 1996 technical consultation on the collection and exchange of fisheries data.

What eventually grew out of this ad hoc dialogue, as well as out of a FFA-based process to examine future management arrangements in the region between 1995 and 1996, was a decision by the FFA leaders to invite DWFNs to a second multilateral high level conference, to be held in Majuro in June 1997, to begin a process of developing comprehensive management and conservation arrangements for the region’s tuna stocks, throughout their migratory range. It was this 1997 conference that formally launched what is now known as the MHLC (Multilateral High Level Conference) process at which the WCPF Convention was negotiated.

The Majuro Declaration, adopted in June 1997, set a timeframe of three years for the negotiation of a legally binding arrangement to facilitate cooperation in the management and conservation of tuna stocks throughout their migratory range in order to ensure long-term sustainability. Although the Majuro Declaration provided a foundation upon which to begin negotiations, as will be pointed out below this belied some fundamental differences between participants about the nature and scope of the proposed arrangement. In part, this reflected the lack of consensus on key provisions of the UNFSA – which provided the major framework for the MHLC negotiations.

Negotiations on a first draft text of a regional arrangement, prepared by Conference Chairman Ambassador Satya Nandan, who had also chaired the UNFSA negotiations, began at the next session of the MHLC in June 1998 in Tokyo. These negotiations continued over the next two years at four more sessions of the conference, all of which were held in Honolulu, Hawaii. At the final session (MHLC7) in September 2000, the text was finalized and the WCPF Convention was formally adopted by a vote.6

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6 There were 19 votes in favor, two against and three abstentions. By 2000, the MHLC process included all 16 FFA states, plus the following states and entities: France, Japan, South Korea, China, the US, Canada,
It is beyond the scope of this chapter to provide a detailed discussion of the provisions of the WCPF Convention. In terms of institutional arrangements, however, the WCPF Convention establishes a Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC). There is also to be a Scientific Committee and a Technical and Compliance Committee, to provide advice and make recommendations in their respective areas of competence. In addition, a permanent Secretariat to service the WCPFC is established, to operate according to the principle of cost-effectiveness. The WCPF Convention also provides for a separate committee to be established by the WCPFC to make recommendations on management and conservation measures pertaining to fish stocks occurring mostly in the northern part of Convention Area.7

As part of its final act, MHLC7 also adopted a resolution establishing a Preparatory Conference to undertake some of the preliminary work of the WCPFC pending the entry into force of the WCPF Convention and formal establishment of the WCPFC and its subsidiary bodies. The Preparatory Conference (or PrepCon as it came to be called) had the challenging task of providing a “smooth transition” to the new management and conservation regime, elaborating on or clarifying those parts of the WCPF Convention that remained to be resolved: including the funds of the WCPFC and scheme of contributions, participation of territories, the role of the so-called Northern Committee, the scientific arrangements and the location of the WCPFC headquarters.8

The first session of the PrepCon was convened by New Zealand, as depositary of the WCPFC, and chaired by retired New Zealand diplomat Ambassador Michael Powles. Altogether seven sessions were held, including the final session which merged into the inaugural meeting of the WCPFC in December 2004 in Pohnpei.9 The WCPF Convention entered into force in June 2004 with thirteen ratifications, all of whom were members of the FFA. At the first session of the WCPFC, the recommendations of the PrepCon covering the areas noted above were formally adopted.

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7 That is north of 20 degree North latitude. See WCPF Convention, Article 11, par.7.
Challenge One: Overcoming a Reluctance to Cooperate

As noted earlier, there was a delay of some 15 years between the formation of the FFA in 1979 and the first tentative steps towards broad-based cooperation with the DWFNs. It would be a further six years before the adoption of the WCPF Convention. To a certain extent, this lag could be viewed as both necessary and natural, allowing time for the countries of the region to consolidate their newfound tenure rights under the LOSC. Moreover, as Ambassador Satya Nandan observed in his opening address to the Majuro MHLC in 1997:

While it is true that there has been a long delay in establishing a cooperative mechanism with a participation that would include coastal states and distant water fishing nations, the delay may have worked to the advantage of both sides. As a result of long experience, governments and fisheries managers in the region are now in a better position to understand the issues.¹⁰

But the prospect of cooperating with DWFNs in the management and conservation of the tuna fisheries of the Pacific was also one that many countries viewed with reluctance – if not trepidation. This was for a number of reasons.

The “long experience” alluded to by Ambassador Nandan above included a history of conflict and distrust between Pacific Island States and key DWFNs. The United States (US) had initially refused to recognise the sovereign rights of coastal States over highly migratory species (namely tuna) in their exclusive economic zones (EEZs). This reflected their reading of Article 64 of the LOSC as well as the political influence of the powerful American Tunaboat Association – an industry lobby group. Relations with the US only improved in the late 1980s, following a shift in US policy and the conclusion of the Multilateral Fisheries Treaty in 1987.¹¹

Relations with Japan, which is traditionally the dominant DWFN in the Pacific, had also been fraught. Although Japan entered into bilateral access agreements with Pacific Island States (thereby recognising the sovereign rights of coastal States), it exploited its dominance in the region as a fishing power and aid donor to negotiate agreements on terms highly favourable to its industry. Despite the cooperative efforts of the FFA States, and in particular the sub-regional Parties to the Nauru Agreement (PNA), Japan refused to pay more than a nominal access

¹¹ The full title is Treaty on Fisheries between Governments of Certain Pacific Island States and the Government of the United States of America.
fee. It also insisted on making aid conditional on access, and incorporating aid as part of the access fee.\textsuperscript{12}

Conflicts between the Pacific Island States and DWFNs were made more intractable by the obvious power disparities between the DWFNs and Pacific Islands (ameliorated only in part by regional cooperation). The failure to translate new-found tenure rights into real or substantial economic benefits was seen in part to be a function of the acute political and economic inequalities between the US, Japan and other DWFNs on the one hand, and the Pacific Island States on the other.\textsuperscript{13} There was a palpable sense of vulnerability among Pacific Island States – alluded to by Satya Nandan in his closing address to MHLC7\textsuperscript{14} – and a belief that their interests would not be served by such cooperation.

This leads to another reason why there was a reluctance to cooperate towards management and conservation: the overriding priority and preoccupation of Pacific Island States – at least in the early years – was to strengthen the exercise of their sovereign rights over their EEZs in order to maximize economic benefits from their marine resources.

Thus, the South Pacific Forum meeting in 1977 decided that the role of the proposed FFA should be limited to assisting member governments in the exercise of their sovereign rights to manage fisheries in their EEZs. The key strategy of the Pacific Islands States from the late 1970s was to maximize economic returns through the selling of licenses largely to foreign fishing vessels in exchange for access to their EEZs. Access agreements were thus the main instrument through which the tuna resource was managed, and have remained so according to some observers.\textsuperscript{15}

The role of the FFA (and PNA) was to assist members to “collectively establish their new marine tenure rights, increase the local economic benefits derived from their fisheries resources, and improve their negotiating position with the distant water fishing nations fishing in the 200 mile zones.”\textsuperscript{16} Pacific Island States thus viewed the tuna resource primarily as an economic resource. Conservation considerations were secondary to economic objectives. Moreover, “the perception that tuna represents an economic opportunity from which to build an economic

\textsuperscript{12} Tarte, 1998.
\textsuperscript{13} Schurman, 1998.
\textsuperscript{14} ‘In dealing with this region account has to be taken of the feelings and vulnerability of some of the world’s smallest states when they enter into a cooperative arrangement … with some of the largest and most powerful countries. It would be insensitive to disregard or ignore this reality; equally it would be insensitive to impose on this group of countries a regime which would add further to their sense of vulnerability.’(Nandan, 2000)
\textsuperscript{15} Aqorau 2003.
\textsuperscript{16} Schurman, 1998.
base for survival” influenced the attitudes of the Pacific Islands States for most of the post-independence era.\textsuperscript{17}

It is important to highlight these political and economic issues because they remain pertinent today. The protection of sovereign rights and the pursuit of economic benefit remain cornerstones of many countries’ ocean policies in the region. This is how national interest continues to be defined and viewed. Overcoming a reluctance to cooperate\textsuperscript{18} has thus required a delicate and difficult balancing act between protecting sovereign rights on the one hand and promoting international cooperation on the other; and between maximizing short-term gain on the one hand and long-term benefits on the other.

**Challenge Two: Agreeing on a Mechanism for Cooperation**

The lag in establishing a broad-based fisheries management and conservation regime in the region was not only due to a reluctance by Pacific Island States to cooperate with DWFNs, but also due to the different (if not conflicting) views and expectations about what the scope and framework of cooperation should be.

The shift to cooperative management and conservation efforts in the Pacific region occurred in a two-stage process. The first stage was acceptance of the need to focus on fisheries management and conservation issues. The second was acceptance by Pacific Island countries of the need to cooperate with DWFNs in the development of management and conservation measures. On the latter issue, however, a key point of contention was who would dictate the pace and direction of cooperation: DWFNs or Pacific Island coastal States. This in turn rested on different interpretations of relevant LOSC provisions.

Initial attempts to address fisheries management in the early 1990s were mainly undertaken unilaterally by the FFA member States. Driven in large part by FFA, these efforts found expression through newly revised Minimum Terms and Conditions (MTCs) of access adopted as part of the PNA’s Second Implementing Arrangement in 1991. These included measures that pertained to the high seas, as well as the EEZs: provision of high seas catch data, whenever fishing takes place within an EEZ as well as on the high seas; and a ban on transshipment at sea. Another attempt at management by the PNA that occurred in the early 1990s was the adoption of the Palau Arrangement in 1992. This came into force in December 1995. It provided a framework for the management of the purse seine fishery in the Western and Central Pacific.

\textsuperscript{17} Aqorau, 2003.

\textsuperscript{18} This applies to cooperation among Pacific Island States as well as to cooperation between Pacific Island States and DWFNs.
In justifying these measures to skeptical (if not hostile) DWFNs, the FFA claimed that member States had a “legitimate interest in the conservation and management of highly migratory species on the high seas in order to exercise more effectively their sovereign rights within EEZs.”

The Palau Arrangement was particularly important to the FFA States because it was seen as a way of rebutting claims by DWFNs, especially by Japan, that there needed to be an international tuna management organisation for the region, comprising DWFNs and coastal States. Japan wanted a broad-based fisheries organisation in the region that would give Japan and other DWFNs some say over resource allocation and utilization. The FFA responded that the Palau Arrangement precluded the need for such an organization since it limited purse seine licenses and hence fishing effort in the EEZs of the Western Pacific.

It is important to note the changing international context which influenced the dynamics of regional fisheries policy and diplomacy at this time. To a certain extent these regional initiatives taken by FFA/PNA were an attempt to influence the outcome of evolving law of the sea negotiations and to position themselves favorably in the negotiations that were unfolding at the UN. According to the FFA, Pacific Island States needed to “ensure that no inroads are made to the principle of sovereignty over highly migratory species while within areas of national jurisdiction.”

The FFA States played an active role in the UN Fish Stocks Conference: fifteen out of sixteen members attended the final session in 1995 which adopted the UNFSA by consensus. This reflected the importance which they attached to the proceedings, and in particular the significance the UNFSA would have for future management arrangements in the region. But the way in which the UNFSA was understood in this regard is important to note. It was seen by FFA as providing a framework that promotes “good order on the high seas and the effective conservation and management of high seas resources.” (Italics added). It was not considered to be the basis for managing EEZs except indirectly.

In 1995 and 1996, the Forum Fisheries Committee’s (FFC) Sub-committee on Future Management Arrangements developed a proposed framework for regional tuna management. This approach called for cooperation among Pacific Island States to develop harmonised and competent in-zone arrangements. Coastal States

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20 See Tarte, 1998 p. 105,120. These claims by Japan were made in the context of consultations on a multilateral access agreement between FFA states and Japan that took place in 1989 and 1990, as well as during subsequent consultations in 1993 on the revised MTCs.
22 FFA, 1996.
could thus set a high standard of conservation and management for their in-zone fisheries that, according to the principle of compatibility, would also have to apply to the high seas. Pacific Island coastal States would thus be in a stronger position to negotiate with DWFNs on the establishment of an “Article 8” arrangement essentially to deal with high seas issues. 23

Despite having the backing, in principle, of the FFC, as well as of one of the architects of the UNFSA, Ambassador Satya Nandan, 24 this “complementary management” approach was in the end shelved in favour of one that provided for direct and immediate negotiation with the DWFNs on a regional management and conservation regime. This was an approach favored by the DWFNs, but one that Pacific Island States were not necessarily comfortable with. On the eve of the Majuro MHLC it was apparent that countries were going into the talks with quite different expectations and degrees of commitment. Among FFA members, there were some who wanted to keep to the same general format as MHLC1 (in 1994), that is an exchange of views on broad issues, and not proceed too quickly into negotiations. There was also a view within the FFC that the UNFSA, which provided the legal requirement for cooperation with DFWNs, was essentially about high seas fisheries. It did not prescribe broad-based cooperation in the management and conservation of in-zone fisheries. Any regional arrangement should be viewed as a “multilateral arrangement for consultation purposes and not for the DWFNs to become decision makers in the management of the tuna resources from within our EEZs.” 25

In contrast, the position of DWFNs was not to differentiate between EEZs and high seas for the purpose of management and conservation. Rather they generally advocated a single regime to manage stocks through their migratory range. It was argued that this was the only way to achieve effective conservation and management, and it could be done without detracting from the sovereign rights of

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23 One of the areas LOSC elaborated on in the UNFSA (Article 7) was the requirement that conservation and management regimes inside the EEZs and those established for the adjacent high seas are compatible; so that the same or similar standard will apply to the stock in its entirety. Article 8 of the UNFSA calls for the establishment of regional fisheries management organisations or arrangements.

24 In 1996, Satya Nandan suggested that members of the FFA should:

‘enhance their level of cooperation through the FFA by establishing common fisheries management policies which each State will then apply in its area of national jurisdiction. They should assist each other in training, manpower development and research, in data collection and exchange, and in the coordination of the levels of allowable catches in their respective zones and in the region as a whole, in order to ensure that a precautionary approach to the management of resources is taken … They should develop a coordinated and integrated management approach in order to strengthen the leadership role of the coastal States in the management of the resources of the region as a whole’. (Nandan, 1996).

25 Nauru Country Statement, FFC Special Thirty-Third Ministerial Meeting, 9 - 10 June 1997. The Pacific Island States sought an explicit recognition of coastal state sovereign rights within EEZs in the Majuro Declaration. However Australia and New Zealand expressed some concern that too much emphasis on coastal State rights may be counter-productive and overly confrontational.
coastal States. Both the US and Japan vigorously advocated this approach, although the US supported strong enforcement measures for the high seas, while Japan preferred a weaker enforcement regime (reflecting its opposition to provisions in the UNFSA).²⁶

Nowhere was the divide more marked between Pacific Island coastal States and DWFNs than on the issue of the role and powers of the proposed WCPFC, specifically in relation to allocation. Negotiations on this issue appeared to reach their most critical point at MHLC4 in February 1999. The FFA member States proposed text which would ensure that the functions of the WCPFC in respect to conservation and management measures would be limited to areas beyond national jurisdiction. This specifically included the allocation of total allowable catches (TACs). DWFNs were dismissive (if not scathing) in their response to the proposed text, with the US delegate describing it as a “non-starter” and “at cross-purposes with the Majuro agreement to manage stocks throughout their range.” This view was shared by Japan, Korea and Chinese Taipei.²⁷

As a result of these contrasting views, negotiations were not only difficult and at times fractious, but key issues were left unresolved, to become the subject of later negotiations within the WCPFC once it was established. On the issue of allocations for example, the Conference Chairman proposed to leave undefined the WCPFC’s role, referring instead to criteria and principles to guide allocation decisions. The WCPF Convention text that was subsequently adopted by the Conference, includes this somewhat ambiguous provision²⁸ what has been referred to elsewhere as a ”jurisdictional grey area” and subject to different interpretations by DWFNs and coastal States.²⁹

Such “grey areas” – the result of compromises reached as a way of meeting the deadline set by members of the MHLC process to conclude an agreement – pose major challenges to the implementation of the WCPF Convention. This is particularly in light of the continuing disagreements between participating States on key issues, such as on the method of allocation. The method of allocation will have important economic consequences for member States, thus it is expected to

²⁶ At the time of the MHLC process, the UNFSA was regarded by some observers to be a tenuous basis for negotiation given the opposition of some DWFNs (notably Japan) to key provisions of the Agreement. At MHLC5, Japan sought to remove all references to the UNFSA, arguing that it was not yet in place but also that it did not provide clear guidelines on how to implement its provisions at the regional level. It also described the precautionary approach as a ‘dangerous concept’. This position was restated at MHLC7. (Tarte, 2002a, p.288, 294).
²⁷ The US comments were not well received by FFA member States. PNG, for example, expressed ‘shock’ at the comments ‘which do not appear to recognize our rights’ (author’s notes of the meeting).
²⁸ See Article 10, 1 [g] and 10, 3.
²⁹ Swan, 2000. According to Swan: ‘the Commission is empowered, not required, to take allocation decisions … There is no express provision as to whether the allocations are for high seas fishing only’.

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be the focus of intense negotiation and bargaining. But given that this issue is to be subject to consensus decision-making (yet another compromise reached in the MHLC), it is possible that no agreement will be reached and impasses will develop, leading to the need to consider alternatives.30

The allocation issue reveals how conflicts over perceived rights and economic interests may impede cooperation and undermine the effective implementation of the WCPF Convention. It also indicates that consensus over the powers and jurisdictional competence of the WCPFC remains elusive. It is significant that at the time the WCPF Convention was adopted in 2000, it was greeted with mixed feelings and some pessimism. Most FFA members were unhappy with the last minute concession they agreed to make on the decision making provisions of the WCPF Convention. The two-chambered mechanism which had been proposed by the US was seen to represent a “significant dilution of coastal State voting power.”31

Another major concern – one that had brewed during the MHLC process but which was largely left unresolved – was how Pacific Island States would meet and discharge their obligations, as members of the WCPFC and as coastal States. Pacific Island coastal States needed to assume greater management and conservation responsibilities under the WCPF Convention. But in almost all countries, there was a severe short-fall in terms of technical, financial and legal resources to undertake these responsibilities.32 There was thus a real danger that countries were signing up to a convention that they had no means to implement, let alone the political will to enforce. This leads to the third major implementation challenge: overcoming capacity constraints – particularly on the part of Pacific Island States – in implementing the provisions of the WCPF Convention. The following section focuses on one aspect of this challenge: providing assistance and support for Pacific Island States to meet their obligations under the WCPF Convention and participate effectively in its work.

**Challenge Three: Addressing Capacity Constraints**

The Majuro Declaration recognized the “need for special assistance for Pacific Island developing States and territories to enable them to participate effectively in the conservation, management and sustainable use of the highly migratory fish

30 Clarke, 2000. If Pacific Island States set their in-zone TAC, this could lead to them having control over the fishery. If the Commission allocates quotas throughout the convention area – a method used elsewhere – DWFPs could end up controlling the fishery. According to Clarke, the allocation issue may also be determined by the manner in which catch and effort data is provided. Clarke, 2000.

31 Tarte, 2001. The legacy of this pessimism continues to be felt among the FFA states, weakening their sense of ‘ownership’ over the Convention.

stocks of the region.”  
This reflected Articles 24 and 25 of the UNFSA which recognized the special requirements of developing States in relation to conservation and management, and the need to provide assistance to developing countries, particularly least developed and small island developing States, to enable them to discharge their responsibilities and participate in regional management regimes.

The need to provide assistance to developing countries has been described as a “consensus issue” in the MHLC process. However, consensus on this issue was more apparent than real. FFA States, in fact, faced strong resistance during the MHLC negotiations from some DWFNs to their efforts to give practical effect to this principle. Japan not only rejected the inclusion of references to the UNFSA in the draft text, it was also opposed to the creation of a special fund to assist developing member States, particularly to support their attendance at meetings of the WCPFC. There was also strong disagreement about how specific services of the WCPFC would be funded. These included VMS, observer program, vessel register, and scientific services. While FFA States favoured the principle of cost recovery, with costs levied against vessels operating in the area, DWFNs argued that these services should be covered by the WCPFC budget.

Many of these conflicts were eventually deferred to the PrepCon and the future Commission to resolve. The budget of the WCPFC, for example, simply referred to “due consideration” being given inter alia to the ability to pay and state of development of members in assessing their respective contributions. The actual scheme of contributions, including the relative weight of each of the components of the budget was left undefined.

References to the special needs of small island developing States appear in a number of places in the WCPF Convention: the preamble, Article 7, Article 10, Article 18, and of course, Article 30. Article 30 elaborates at length on the “recognition of the special requirements of developing States,” in line with the UNFSA provisions. It includes a commitment to assist such States with limited capacity in MCS, stock assessment and collection and exchange of fisheries data.

34 Sydnes, 2001, p. 796.
35 See footnote n 26 above.
37 The three main components of the Commission budget are an equal basic fee, a fee based on national wealth and a variable fee based – inter alia – on the total catch taken within the member’s EEZ. The Convention provides for a discount factor to be applied in the latter case to catch taken by developing state parties in their own EEZs. It was expected that contributions based on fish catch would comprise the major portion of the Commission budget.
In addition, Article 30 requires that a fund be established by the WCPFC to facilitate the effective participation of developing State parties, particularly small island developing States in the work of the WCPFC and its subsidiary bodies. Due to lack of consensus within the MHLC about the proposed fund, it was left to the WCPFC to develop guidelines and criteria for its use and administration, as part of its financial regulations. The task of developing these financial regulations was taken on by the PrepCon and this is where much of the negotiation over Article 30 occurred.

For FFA member States, a priority during the PrepCon process was to give effect to those parts of the Convention dealing with the special requirements of developing States. In fact, in a FFC statement to PrepCon 3 in Manila in November 2002, Article 30 was described as “the foundation on which the Commission will be built.” To meet the provisions of Article 30, the FFA group called for the so-called special requirements fund to be part of the core budget of the WCPFC, funded by assessed, not voluntary contributions. Allocations to this fund should be sufficient to meet the costs of participation for developing States and territories in all Commission sessions and meetings of its subsidiary body. The fund should also be sufficient to enhance the technical capacity of participants from developing States. This proposal appeared to be an anathema to a number of DWFN participants, with Korea voicing its concern that such a fund would “change the nature of the Commission to a development assistance organization.”

Article 30 remained the focus of intense negotiations at subsequent sessions of the PrepCon. As a way of moving the process forward, FFA members agreed at PrepCon 5 in Rarotonga to distinguish between the effective participation and the capacity building components of the Article 30 provisions. For the FFA group, while it was necessary that a “minimum level” of technical assistance for capacity building be funded from assessed contributions, there was also some scope for funding these activities from voluntary contributions. The “effective participation fund”, however, should be drawn from the Commission’s budget.

What was eventually agreed was that participation costs for developing member States would be a line item in the WCPFC’s budget, funded from assessed contributions. The financial regulations provide for the budget to include an item for the travel/accommodation of one representative from each developing State.

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38 Tarte, 2002b, p. 5. See also FFC statement to the Working Group on Organization Structure, Budget and Financial Contributions (Working Group 1).
39 Tarte, 2002b, p. 6. The reason for arguing in favor of the fund being sourced from assessed, not voluntary, contributions was because of the experience of other regional fisheries management organisations where the practice of voluntary funds had failed to facilitate effective participation of developing states. Canada supported the FFC stance but most DWFNs opposed this position.
party to the Convention and where appropriate, for territories and possessions, to each meeting of the WCPFC and of its subsidiary bodies. The financial regulations also spell out in more detail the operations and guidelines of the so-called special requirements fund, to be funded from voluntary contributions. They stipulate that the purposes of this fund are to assist in human resource development, technical assistance and technology transfer, relating to the development of fisheries and conservation and management; as well as building capacity in MCS, data collection, scientific research and in the effective exercise of flag State responsibility. Those eligible to apply for and receive assistance are developing State parties, particularly small island developing States. The WCPFC will consider and decide on these applications.41

How meaningful and useful the special assistance fund is for Pacific Island States remains to be seen. According to the report tabled at the third regular session of the WCPFC in December 2007, the special requirements fund appears to be largely inactive. It received no contributions in the past year, and only one project (to Marshall Islands – costing USD 4,042) was approved.42 But there is no doubt that the WCPFC Convention’s provisions relating to the needs and interests of small island developing States are important ‘power-points’ for the region.

Conclusion

Regional efforts to manage and conserve tuna stocks in the Pacific Islands region have been defined historically by three main challenges. As earlier suggested, these three challenges – overcoming a reluctance to cooperate, agreeing on the mechanisms for cooperation, and addressing capacity constraints affecting Pacific Island coastal States – continue to resonate. They provide a basis for understanding the implementation challenges now facing the WCPFC Convention. It is also suggested that these challenges are, to a certain extent, interconnected.

Overcoming a reluctance to cooperate will mean addressing the perceived and inherent vulnerabilities of Pacific Island States. This in turn can only be achieved by securing their rights and interests in the WCPFC, and ensuring they are not side-lined in its deliberations. As noted above, there are a number of ambiguities or ‘grey areas’ in the WCPFC Convention, reflecting the lack of consensus on key issues during the MHLC and PrepCon negotiations. How these are interpreted will have important ramifications for members’ rights and interests (and hence commitment to cooperate). These ambiguities or ‘grey areas’ in the WCPFC Convention may work against or in favour of member countries.43 But which

41 See Regulation 7 of the Financial Regulations, Western and Central Pacific Fisheries Commission, available at www.wcpfc.int
42 The balance in the fund was USD53,560. (WCPFC4-2007-FAC1/05).
members’ interests are favoured may in turn depend on how effective their participation is within the regime. Hence the importance of the budget provision for participation in the work of the WCPFC and the special requirement fund to build capacity and assist countries in the conservation and management of their tuna resource.
Bibliography


Nandan, S. Statement to the Fourth Symposium on Central Western Pacific Tuna Fisheries, Tokyo, Japan, 10 June, 1996.


Tarte, S. Japan’s Aid Diplomacy and the Pacific Islands, National Centre for Development Studies and Institute of Pacific Studies, Canberra and Suva, 1998.

