

SOVIET FISHING IN THE SOUTH PACIFIC: THE MYTHS AND THE REALITIES

By

B. Martin Tsamenyi*
S.K.N. Blay**

1. Introduction

One of the significant concepts that has emerged from the United Nations Law of the Sea Conference is that of the Exclusive Economic Zone.¹ The 1982 Law of the Sea Convention (the 1982 Convention) gives the Coastal State sovereign rights over living and non-living resources in the Exclusive Economic Zone.² One group of countries that is benefiting significantly from this concept is the small island nations in the South Pacific Ocean (SPIS).³ Despite the many obvious advantages of their marine environment, the SPIS lack the expertise that can enable them to fully exploit the living resources of the Exclusive Economic Zones. The 1982 Convention requires that where a coastal State is unable to fully exploit the living resources. These arrangements are of significant benefit to the SPIS in that they provide them with valuable foreign exchange to supplement the meagre revenue from other sources. into agreements with several Distant Water Fishing Nations (DWFNs) to exploit their fisheries resources. These arrangements are of significant benefits to the SPIS in that they provide them with valuable foreign exchange to supplement the meagre revenue from other sources.

Traditionally, the DWFNs active in the South Pacific have been Japan, Korea and the United States of America (USA).⁵ However in the mid 1980s the Soviet Union began to show interest in fishing in the South Pacific. This culminated in the signing of a fishing agreement with Kiribati in 1985.⁶ The success of the agreement encouraged the Soviet Union to approach other South Pacific Governments in an attempt to negotiate similar agreements.⁷ The Kiribati-Soviet deal was a diplomatic coup for the Soviet Union in the South Pacific. In September 1986, the Foreign Minister of Papua New Guinea, in an address to the United Nations stated:

The Soviets are positively gaining more influence in the Pacific . . . This myth about

*PhD, Senior Lecturer in Law, Faculty of Law, University of Tasmania.

**PhD, Lecturer in Law, Faculty of Law, University of Tasmania.

1. The Exclusive Economic Zone is defined as "an area beyond and adjacent to the territorial sea" (Article 55, Law of the Sea Convention), which "shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured" (Article 57, Law of the Sea Convention).

2. Art. 56.

3. The countries labelled SPIS are the developing states which are parties to the South Pacific Forum Fisheries Agency Convention. These include: Fiji, Kiribati, Nauru, Papua New Guinea, Solomon Islands, Tonga, Tuvalu, Western Samoa, Vanuatu, the Federated States of Micronesia, the Marshall Islands and Palau.

4. Art. 62(2).

5. See D Douleman, "Fishing for Tuna: The Operation of Distant-Water Fleets in the Pacific Islands Region", Pacific Islands Development Program, Research Report Series No. 3, 1986.

6. *Agreement between the Government of the Republic of Kiribati and the Sovrybflot of the Union of the Soviet Socialist Republic concerning Purse Seine and Longline Fishing within the Exclusive Economic Zone of Kiribati* 1985. For analysis of the Agreement, see D. Douleman, "The Kiribati-Soviet Union Fishing Agreement" (1987), 28 *Pacific Viewpoint* 20-39.

7. *Pacific Islands Monthly*, May 1985, at 16.

the dangers of communism are rapidly diminishing as the Soviets contact with island governments increase. The stage seems set for the Soviet Union to reach fisheries agreements with Vanuatu [and] Fiji and I would not leave out the possibility of Papua New Guinea.⁸

Soviet overtures concretised in the signing of a second fishing agreement in the South Pacific, this time with Vanuatu.⁹ These developments alarmed certain Western nations particularly the USA, Australia and New Zealand. The USA in fact tried unsuccessfully to discourage Kiribati from entering into any fishing agreement with the Soviet Union.¹⁰ Even though the agreements with Kiribati and Vanuatu have since lapsed, there are possibilities that they may be re-negotiated. In recent times, there have been indications of Soviet desires to negotiate new agreements with other nations in the South Pacific including Australia. These new Soviet initiatives have revived the debate over Soviet fishing interests in the region. This comment examines the arguments advanced against Soviet fishing in the South Pacific.

2. Soviet Fishing in the Pacific in Perspective

The South Pacific ocean is currently one of the richest fishing grounds in the world.¹¹ The wealth of fishing in the region has thus attracted all major DWFNs, including the USA and Japan. The Soviet Union is one of the most developed DWFNs in the world. In the mid 1970s for example it owned and operated more than half of the world's fishing vessels over 100 gross tons in size.¹² Until the mid 1980s Soviet distant fishing efforts were concentrated mainly in the US Pacific Coast, the Indian Ocean and the African Atlantic Coast.¹³ Given the size of the Soviet fishing industry and the activities of the Soviet Union as a DWFN, its entry into the South Pacific region following other DWFNs was only a question of time and in any case inevitable. Thus the Soviet agreements with Kiribati and Vanuatu and the more recent efforts to conclude a similar agreement with Australia are hardly surprising. These economic activities have been backed by appropriate diplomatic initiatives in the region designed to facilitate co-operation. This is well evidenced by the establishment of a South Pacific desk in the Soviet Foreign Ministry, an embassy in Vanuatu in 1986 and the current attempts to establish diplomatic relations with Papua New Guinea.¹⁴

(a) Factors accounting for SPIS Willingness to Conclude Fishing Agreements with the Soviet Union

Historically the SPIS have tended to be Western orientated because of their colonial ties with Western Block States. More significantly the SPIS have also generally adopted an anti-Communist stand due principally to their Western influence and their very Christian background. What factors then explain their willingness to enter into fishing agreements with the Soviet Union? In our view two major factors account for this; the first is their

8. *The Washington Pacific Report*, Vol 5, No.2 October 1986, at 3.

9. *Agreement between the Government of the Republic of Vanuatu and the Government of the Union of Soviet Socialist Republics Concerning Fisheries*, 1986.

10. *The Washington Pacific Report*, Vol. 3, No. 18, 15 June 1985, at 3.

11. *Supra* n.5; see also G. Wough, "World Trends in the Demand and Supply of Tuna: Summary paper", *South Pacific Forum Fisheries Agency, Report No.88/28*, Honiara, Solomon Islands.

12. V. Kacynski *Distant Water Fisheries and the 200 Mile Economic Zone*, Law of the Sea Institute, Occasional paper, No. 34, 1983, p.9.

13. See C. Bilger "US-Soviet Fishing Agreement: Treaty Authorizing Soviet Fishing in US Waters", (1986) 10 *Marine Policy* 52; also W.I. Black III, "Soviet Fishing Agreements with Developing Countries: Benefits or Burden?", (1983) *Marine Policy* 163.

14. See *Papua New Guinea Hansard*, 6 September 1988 at 12-21.

economic dependence on fishing; and the second being their dissatisfaction with the tuna policies of the USA in the region.

(i) The economic factors

The emergence of the Exclusive Economic Zone concept presents a major opportunity to many countries, particularly the developing coastal states. The economic benefits they will derive from exploiting the fisheries resources in their Zones have great potential in redressing some of their economic problems. Fisheries, especially tuna, is about the only resource most of the SPIS possess. In fact, tuna is to some of the SPIS as copper is to Chile or Zaire. "The landed value of tuna taken in the South Pacific approximates US\$500 million per annum, a value almost as great as that of combined exports of Pacific island countries ... and rivaling the value of mineral exports".¹⁵ For most of the SPIS, Exclusive Economic Zone fisheries exploitation is central to their national development strategy. Thus, the Kiribati National Development Plan 1983-86 recognises that:

Marine resources are the most valuable natural resources currently available to Kiribati. The wealth of 1,015,000 square nautical miles of ocean encompassed by the 200 nautical mile fisheries zones declared around [the country] provides the greatest single prospect for the development needed to re-establish the economy.¹⁶

To the SPIS, the foreign exchange that can be derived from fishing agreements with any State wishing to pay for their fishery resources is a vital means of economic survival. This is especially the case with Kiribati.

In 1985 Kiribati's budget was US \$12 million. Prior to the conclusion of the fishing agreement with the Soviet Union in 1985, it was estimated that revenue from distant-water fishing agreements yielded about US\$1.5 million annually or approximately 13-14 per cent of the budget. With revenue from the Soviet Agreement, the combined income from Kiribati's distant-water fishing agreements will account for about 25 per cent (US\$3 million) of the budget.¹⁷

Thus, fishing agreements with DWFNs have become vital means of achieving economic self-sufficiency in many of the SPIS. In this regard, the fishing agreements with the Soviet Union were consistent with the overall development strategies of some of the SPIS.

(ii) Dissatisfaction with USA Tuna Policy

Before the USSR-Kiribati fishing agreement in 1985, tuna fishing in the waters of the South Pacific states was dominated by the USA and Japan. However, the efforts of the USA in the South Pacific were jeopardised by its own long-standing policy of non-recognition of coastal States' jurisdiction over tuna fishing. Unlike the SPIS, and indeed, the majority of countries in the world, the USA holds the view that highly migratory species, especially tuna, do not come under the exclusive jurisdiction of coastal States beyond 12 nautical miles of their coasts. The official explanation for the USA position is that because highly migratory species travel over great distances and across the waters of many countries, they would be better managed by an international body consisting of coastal states and DWFNs.¹⁸

15. M. Shepard and L. Clark, *South Pacific Fisheries Development Assistance Needs*, Consultancy report prepared for FAO and UNDP, 1984 p.5.

16. *National Development Plan, 1983 — 1986* Tarawa, 1982, at 96.

17. D. Douleman, "The Kiribati-Soviet Union Fishing Agreement" *supra* n.6 at 23.

18. See W.T. Burke, "Highly Migratory Species in the New Law of the Sea" (1984) 14 *Ocean Development and International Law* 303-309; B.M. Tsamenyi, "The South Pacific States, the USA and Sovereignty over Highly Migratory Species", (1986) 10 *Marine Policy* 34-36.

The implementation of this policy in the South Pacific resulted in a number of US fishing vessels being seized by the SPIS for illegal fishing¹⁹ and the subsequent imposition of sanctions by the USA on these countries under the *Fishermen's Protective Act* and the *Fishery Management and Conservation Act*.²⁰

The move by some of the South Pacific States to negotiate fishing agreements with the USSR partly reflects their discontent with the USA tuna policy. As early as 1982, Congressman Paul McClosky, Jr. warned the US Congress concerning the likely ramification of the USA tuna policy in the Pacific:

There is a far greater danger, however vis-a-vis our continuing efforts to deny expansion of Soviet influence in the Pacific Basin . . .

These South Pacific nations have, until now, been among our closest friends and have supported us on many international issues of great importance. Even now, Fijian troops are maintaining the peace in troubled Middle East. A continuance of strong-arm tactics against a small country such as Papua New Guinea may endanger long standing friendships far more valuable to us than a slight increase in tuna costs through acceptance of licensing fees by our tuna industry.²¹

President Reagan admitted as much in 1987 when he stated:

This dispute [i.e. the tuna dispute] has resulted in a cycle of tuna vessel seizures and consequential USA imposed trade embargoes that has resulted in serious erosion of our good relations with the countries of the region [i.e. the South Pacific] and has provided the Soviet Union with an opportunity to exploit these differences through fisheries agreements.²²

It is against this background that one must analyse the recent attempt by the USA to negotiate a fishing agreement with the SPIS. The resultant agreement, the *Treaty on Fisheries between certain Pacific Island countries and the United States of America* (the Treaty on Fisheries) was concluded in 1987 after three years of negotiation. The treaty attempts to avoid the jurisdictional disputes between the USA and the SPIS. First, it allows USA fishing vessels access to the Exclusive Economic Zones of the SPIS subject to certain regulatory controls, the basic controls being the procurement of fishing licences by USA fishermen. The consideration for the issue of fishing licences to USA fishing vessels is the payment of licence fees valued at US\$60 million over five years. This financial package clearly shows the political significance the USA attaches to the Treaty. Second, the USA undertakes not to impose trade restrictions on the party to the treaty as a result of any enforcement measures taken against a USA fishing vessel by the governments of the SPIS.

Despite the USA-SPIS rapprochement as evidenced by the Treaty on Fisheries, the basic mistrust held by the SPIS remains. The SPIS appear to have learned a lesson from their previous experience of putting all their "fisheries eggs" in one negotiating basket with the

19. E.g. the *Dancia* incident involving Papua New Guinea in 1982 and the *Jeanette Diana* dispute involving the Solomon Islands in 1984. For a discussion see B.M. Tsamenyi, *ibid*.

20. The *Fishermen's Protective Act* provides for compensation for USA tuna fishermen whose vessels are seized for fishing illegally in the fisheries zones of foreign countries. The *Fishery Management and Conservation Act* reinforces the USA tuna policy and makes provision for the imposition of an embargo on importation of fish products from any country that seizes a USA fishing vessel for taking tuna without a licence. See T. Meron, "The Fishermen's Protective Act; A Case Study in Contemporary Legal Strategy of the United States", (1975) *American Journal of International Law*, 209-309, Tsamenyi, *supra* n.18.

21. "It is time to abandon our contention that we can control fishing in our own 200 mile zone while still claiming the right to fish for tuna within other nations' 200 mile zone" per McCloskey, Jr. Statement on the floor of the House, 11 March 1982, at 4-5.

22. "Letter of Transmittal to the Senate of the United States" *International Legal materials*, Vol. XXVI, No. 4, July 1987, 1051.

USA. Indeed from the SPIS perspective it would seem that the “diversification” in their fisheries agreements makes good economic and political sense. So long as they show a willingness to accommodate the Soviet Union, they believe the USA is likely to adopt a more favourable approach in its tuna policy in the region. If the current Treaty on Fisheries is anything to go by then the judgment of the SPIS has been vindicated.

3. Objections to Soviet Fishing

The SPIS accommodation of the Soviet Union in their waters has brought not only a rapprochement with the USA but also severe criticisms from their Western allies — the USA, Australia and New Zealand, and considerable opposition from political factions in some of the SPIS themselves. There are two fundamental objections to Soviet fishing in the South Pacific. These are premised on (1) the security implications for the region and the western alliance as a whole of Soviet presence in the South Pacific and (2) alleged wasteful practices of Soviet fishing vessels. These arguments are analysed below.

(a) The Security Argument

The basic objection to Soviet fishing in the South Pacific is that it could lead to the establishment of Soviet military and intelligence bases in the countries with whom they sign the agreements, and ultimately in the whole of the South Pacific.²³ The general view is that this will be the case particularly if the Soviet Union is allowed port access in these countries. Even without port access, the view is held that such agreements “highlight the fact that the USSR is interested geographically, politically, and economically in the region”.²⁴ The agreements, it is argued, “serve to lay the foundation not only for fishery access, but also for future alternatives that will enter into USSR’s mix of foreign policy options”.²⁵ Thus, according to some western commentators the fishing agreements with Kiribati and Vanuatu were a disguised attempt by the Soviet Union to establish military presence and influence in the South Pacific. One commentator is even more forthcoming in his views when he says:

Only the most naive of citizens can harbour the slightest doubt that the Russian fishing fleet . . . is an integral part of the Soviet intelligence-gathering system. Every trawler sprouts the most elaborate of antennae arrays . . . and they [the trawlers] appear in the most interesting of places . . . whenever there are such events or major political interests.²⁶

Other commentators see the Soviet presence in the South Pacific in much wider terms by linking it with the balance of power relations in the South East Asian region. Collin Rubenstein for instance has argued:

While communist forces in the Philippines threaten the loss of United States access to Clark Field and Subic Bay, the Soviet Union aims to secure a Grenada-like strategic toe-hold in Vanuatu. The first component of Soviet strategy has been to obtain commercial fishing agreements. One cannot underestimate the surveillance, interdiction, resupply, even potentially the rearming capacity that commercial fishing ship access to Vanuatu will give Soviet forces in the Pacific. A recent report suggests that Moscow plans to position underwater acoustic monitoring devices in the waters off Vanuatu, which could be the forerunner to the establishment of safe, deep sanctuary for Soviet nuclear-armed submarines. The use of this acoustic monitoring

23. *Pacific Islands Monthly*, May 1986, 6.

24. W.I. Black III, *supra* n.13 at 163.

25. *Ibid.*

26. *Pacific Islands Month*, May 1985, 16.

device could conceivably provide an excellent haven from which Soviet submarines could loiter safely in a very well-protected position and be capable of attacking almost any target in the area of the Pacific Rim. If carried out, such a port facility could fundamentally alter the regional balance of power.²⁷

Undoubtedly, the Soviet Union will derive benefits from the fishing ventures in the South Pacific. Quite apart from the direct economic gains from its fishing activities, it also stands to gain from the mutual benefits of improving its political and cultural relationship with the SPIS. But the question is whether such gains could and should be extended to include intelligence gathering exercises on the basis of which one can reasonably suggest an exclusion of the Soviet Union from fishing in the region. There are at least five arguments which clearly show the flaws and indeed the fallacy of the security objections to Soviet Fishing in the South Pacific:-

- (1) The Soviet Union has been fishing in the South Pacific for close to two decades. In fact, "Soviet tuna vessels have been operating in the Central and Western Pacific since the 1970s and are known to have fished illegally in the Exclusive Economic Zones of some of the countries in the (South Pacific) region, for example the Federated States of Micronesia and Papua New Guinea".²⁸ Thus, current Soviet fishing agreements with the SPIS may be seen as attempts to formalise an already existing presence. The fishing agreements do not constitute a new threat to the South Pacific region.²⁹
- (2) The notion that the Soviet Union requires fishing agreements to gather intelligence in the South Pacific is ludicrous. The Soviets have been present in the Pacific region since the 1880s and currently maintain large diplomatic missions in Australia and New Zealand.³⁰ In the absence of formal accreditation (except in the case of Vanuatu) it is understood that these missions have the responsibility for providing liaison with and gathering intelligence on countries in the region that may interest the Soviet Union.³¹
- (3) It is doubtful whether the Soviet Union necessarily requires a fishing agreement with the SPIS to gather intelligence in the South Pacific. Under the 1982 Law of the Sea Convention, all Soviet vessels including warships and submarines have a right of transit through the territorial seas of the SPIS without permission in pursuance of the right of innocent passage.³² The rules on innocent passage under the Convention are more permissive than the navigational rights usually granted to foreign fishing vessels. In any case, it is standard practice to exclude the territorial seas from foreign fishing activities in fishing agreements. It would therefore seem easier for the Soviets to use their submarines and other vessels to gather intelligence, if, indeed coming closer to shore, as these vessels are able to do, facilitates gathering intelligence.
- (4) The Soviet Union has had a fishing agreement with New Zealand since 1978.³³ The fact that this agreement has been renewed thrice and lasted so long is itself

27. C. Rubenstein "The USSR and Its Proxies in a Volatile South Pacific", *The Heritage Lectures*, No. 161, 1988, 5.

28. *Supra* n.17 at 34.

29. *Ibid.*

30. *Ibid.* at 33.

31. *Ibid.* at 34. See also D.A. Ballendorf, "Soviet Threat: the Shadow and the Substance", *Pacific Islands Monthly*, October 1985, at 51.

32. Arts. 17-20, Law of the Sea Convention.

33. *Agreement on Fisheries between the Government of New Zealand and the Government of the Union of Soviet Socialist Republics*, 1978, *New Zealand Treaty Series*, No. 5, 1978-9.

an eloquent testimony that the agreement has been working to the mutual benefit of both nations. Indeed it has never been suggested or shown that New Zealand's security has been jeopardised by this fishing agreement. In this regard it is significant to note that the United States which is a leading objector to Soviet fishing agreements in the South Pacific has itself had a fishing agreement with the Soviet Union since the 1960s.³⁴ If Soviet fishing agreements posed security threats, then logically one would have expected these objecting nations to stay away from these agreements. Their acceptance of the fishing agreements for themselves while at the same time objecting to them for the SPIS seems to suggest rather cynically that what is good for them in their relationship with the Soviet Union is not good for the SPIS.

- (5) It could perhaps be argued on behalf of the objecting nations that countries such as New Zealand and the USA can safely enter into fishing agreements with the Soviet Union and even grant them port facilities because unlike the poor fragile economies of the SPIS, they have the sophistication and know-how to contain any security threat that may come with the fishing agreements. The basic flaw with this argument is that it does not address the principal issue in the debate i.e. do Soviet fishing agreements pose any security threats? It only tends to reinforce the view that the fishing agreements are not inimical to the security of the nations which have entered into them. If there were any real security threats the advanced nations with whom the Soviet Union has entered into fishing agreements would have uncovered such threats given their sophistication and know-how in intelligence matters. In any case, any argument that the SPIS are not sophisticated or advanced enough to deal with the security threats that may come with Soviet fishing agreements smacks of the paternalism that has been known to characterize North-South relationships. The entry into treaty relations is an essential attribute of State sovereignty, and it is a right every State must be capable of exercising without external interference. To suggest that the SPIS are fragile economies and that they lack the appropriate sophistication to exercise what is after all a sovereign right is an affront to their sovereign integrity.

(b) Wasteful Fishing Practices

The second reason for objecting to Soviet fishing agreements in the South Pacific is that Soviet fishing practices are wasteful. For example, in a recent petition against Australian moves to enter into a fishing agreement with the Soviet Union, the Council for the National Interest described the Soviet fishing fleet as "vacuum cleaners" which could "inflict serious damage" on Australia's fishing industry.³⁵

The Soviet Union has signed a number of fishing agreements with several countries to date.³⁶ Many of these agreements have been renewed over the years. For example, under the USSR-New Zealand agreement, in determining whether to allocate any of the allowable catch in its Exclusive Economic Zone to Soviet fishing vessels it is agreed that New Zealand will take into consideration all relevant factors including, inter alia, New Zealand's interests, the development of co-operation between the two Governments under the agreement and the record of Soviet fishing activities off the coast of New Zealand.³⁷ The agreement has

34. Bilger, *supra* n.13 at 51-56.

35. *Financial Review*, 28 June, 1988.

36. E.g. *Agreement between the Governments of the USSR and the Guinean Republic on Co-operation in Ocean Fishing*, Conakry, 2 February 1966; *Agreement between the Governments of the USSR and the Republic of Sierra Leone on Co-operation in Fishing*, Freetown, 14 May 1976. See Sebek, *Eastern Europe and the Law of the Seas*, Vol II, 1979.

37. Article IX(2).

38. See *New Zealand Treaty Series*, No.5, 1987.

been renewed three times; the first in 1982; the second in 1984 and the third in 1986 expiring in 1990.³⁸ It is significant that the original agreement in 1978 has remained in force for 10 years without modification. There is no evidence to suggest that Soviet fishing practices under any of these agreements have been wasteful. Where the agreements have lapsed it has been due to factors such as lack of agreement over fee levels rather than wasteful fishing techniques. In any case the "vacuum cleaning" argument would seem to apply to every DWFN that uses purse-seiners, including the USA and Japan. Thus there is hardly any basis to use this argument as a justification to exclude the Soviet Union from fishing in the South Pacific region.

4. Conclusion

The South Pacific region, as one of the richest fishing grounds in the world today has come to occupy a central place in the world fishing industry. From all indications it is likely to remain in this key position for years to come and will continue to attract all the world's major fishing nations. The current debate on foreign fishing activities in the region needs to be conducted in a rational and objective manner and against a background of the framework of the United Nations Law of the Sea Convention which envisages a universal regime for international co-operation on the oceans. The negotiation of the Third United Nations Law of the Sea Convention was one area where the East and the West found a common ground for agreement and co-operation. It seems ironic that in the implementation of the Convention, East-West politics should pose obstacles in the South Pacific.

38. See *New Zealand Treaty Series*, No.5, 1987.