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Commentary

on

Japan, the Pacific Fisheries, & the
North Atlantic Triangle:
The Route to the
North Pacific Fisheries Convention
(A paper by Harry N. Scheiber)

Professor Scheiber's paper provided me with new insights into the field of U.S.-Canadian relations and the North Atlantic Triangle—that of Pacific fisheries. My own field is the Canadian North, specifically the Northwest Passage, and international fishing disputes have not yet become an issue in these frozen waters.

I was struck by the similarities between the Pacific fisheries issue and the issues of the Arctic in the twentieth century. In both instances, the issue was approached from the foundation of the North Atlantic Triangle, but as resolution was sought, through the course of negotiations, the Canadian-American leg of the triangle was lengthened and strengthened—arguably at the expense of, but not necessarily to the detriment of—the Anglo-Canadian leg. It became increasingly evident in both cases that while Britain was instrumental and foundational to John Bartlet Brebner's North Atlantic Triangle, Brebner's characterization of the U.S. and Canada as the "Siamese Twins of North America who cannot separate and live" was, in the pragmatic sense, even more true.

In highlighting some of the similarities, one can see the complexity of both case studies. While one initially appears to be an economic issue—fishing, and the other a legal issue—international strait vs. internal waters, both involve a

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myriad of issues: economic, legal, political, diplomatic, and military, with domestic and international pressures and implications. Interestingly, the similarities can first be seen by comparing the research sources. There are some of the same government sources—record groups at the National Archives of Canada and the National Archives of the U.S., and government papers from both nations; the same cases from the International Court of Justice; and some of the same secondary sources—law review articles, Law of the Sea monographs, and diplomatic history classics like John Holmes' *The Shaping of Peace*.

The period of Professor Scheiber's paper, 1931-53, focussed on the Japanese and their fishing interests in the Pacific, all the way to the North American west coast. Japan's "threat" to North America was not just seen through the economic lens. President Franklin D. Roosevelt identified the Japanese threat to Pacific salmon fisheries and recognized the need to consider extending U.S. jurisdiction beyond the three-mile territorial sea. At the same time, he saw the need—ahead of his military advisors—for continental defense with Canada, as he cast a wary eye on Japan as a *security* threat. While the defensive bilateral measures were later directed against the Soviet Union during the Cold War, the military cooperation of the late 1930s, formalized with the Permanent Joint Board on Defense in 1940, was aimed at the Japanese. Thus, when the United States and Canada identified a common enemy, they put aside bilateral tensions—economic, territorial, even diplomatic—and joined together as allies. This was true of taking on Japan in the western coastal waters of North America and true of taking on Japan in continental arctic defense.

As Professor Scheiber pointed out, there were not only tensions between the nations of the North Atlantic Triangle and Japan, and not only tensions between members of the Triangle, but also tensions within each government of all the nations. The same has been true of issues concerning the Arctic. While the State Department was more sensitive to the Canadians over sovereignty issues (much to the relief of the Prime Minister's Office and the Department of External Affairs), the American military was seen as arrogant and intrusive by the Canadian government. Yet the Canadian *military* has, by and large, experienced smooth working relations with the American military. This dichotomy between the military and government is evident in various Record Groups found at the National Archives of Canada. With Canada lacking sufficient personnel, money, resources, and equipment to defend its huge territorial responsibilities, it has been forced to swallow a bitter pill and collaborate with or heavily rely upon the Americans. Yet, the proud and professional Canadian military would rather "share" than be left behind—it has made the best of a difficult situation. And always in Canada, the Arctic has been the last arena to gain funding and the first to find its programs on the government budget's cutting room floor. Of course, all this could change drastically if global warming continues.

The *Corfu Channel Case* (1949) laid out the definition and rights of passage in international straits. The Northwest Passage met the geographic definition but not, at the time, the functional definition of an international strait. The 1951 *Anglo-Norwegian Fisheries Case*, which laid the groundwork for nations to institute straight baselines and the United Nations Territorial Sea Convention, provided Canada with a tool to close off the entrances to the Passage. But, if warming makes the Northwest Passage a feasible commercial route, the legal status of the Passage will reawaken, and the Canadians will be on much weaker ground in claiming it as internal waters with no right of passage.

There are, of course, important differences between the Pacific Fisheries issue and the Arctic/Northwest Passage issue. Most apparent is the fact that Canada joined with the United States to win relief from the threat of Japanese distant fishing off its western coast (while Australia and other coastal states were left vulnerable to the Japanese). Yet, with the Northwest Passage, it is the United States that posed, and still poses, the greatest challenge to Canadian claims and interests. While the “predatory nature” is not a threat to an economic staple (i.e., fish), the United States *is* a threat to Canadian sovereignty claims and arguably, to the environmental protection Canada wants to maintain in these waters. And, ironically, today the greatest Pacific salmon fishing dispute is not between the North American partners and Japan, but between the partners themselves.

Another difference between the two cases has to do with freedom of the seas. While both nations, and of course Great Britain, staunchly support freedom of the seas (and for a long time the three-mile territorial sea), Canada found itself a spokesman for the coastal states at Law of the Sea conferences. Even with a blue ocean navy, Canada saw its role as largely that of a coastal state, arguing for the rights of the coastal states to achieve economic security through greater control of their fishery resources.

There are more similarities and differences between the two cases, such as the aversion to setting precedents, and the role of the media in heightening both issues. But I would like to end with an open-ended question. Historically, both Canada and the United States have maintained an Atlantic focus—Great Britain remains among each nation’s staunchest allies. Even with diverse populations, there seems to be a set of core values, an intangible but real tie to the mother country. Yet, it is also true that both North American nations are increasingly focused on their other neighbors and other interests. With NAFTA tying Canada and the United States to a western hemispheric trade bloc, with Pacific Rim organizations like APEC drawing their attention, and with NATO expanding eastward, one must ask if there is room for and/or value in Brebner’s original North Atlantic Triangle.