

The Emergence of a Pacific or Asia-Pacific Region in Multilateral Treaty-Making: A 500-Year Perspective

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I. Introduction

At least since the time of the League of Nations, there has been serious academic discussion about regionalism and its role in the development and understanding of international law. This paper explores the concept of regionalism and uses information from the Comprehensive Statistical Database of Multilateral Treaties (CSDMT)¹ to discern whether a Pacific or Asia-Pacific region can be seen in broad patterns of multilateral treaty-making, specifically, the 500-year period from 1500–1999.

Before turning to the CSDMT, it is essential to try to agree on some definitions, firstly in broad terms and subsequently as applied to international law and to treaties. Regionalism is an important concept often seen as a feasible method for addressing international problems. But regionalism can be elusive. Like other value-laden concepts such as freedom, democracy, and federalism, it is perceived in very different ways. Jessup wrote that ‘one’s idea of what constitutes a “region” is apt to be artificial and highly subjective.’² Agreement on a general, conceptual level may evaporate quickly once a particular approach is implemented.

Regionalism was a major issue following World War II although the illusion of post-war harmony globally prevented a more functional system of regions being established. The international system that started evolving after 1945 revealed many

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1 The Comprehensive Statistical Database of Multilateral Treaties (CSDMT) is a project of the Honours Program at Behrend College of Pennsylvania State University. It originated in 1998 with a review by John Gamble of Christian L. Wiktor, ‘Multilateral Treaty Calendar: 1648–1995’ (1999) 93 *American Journal of International Law* at 565–6. Since then, many sources have been used to develop a comprehensive listing of all multilateral treaties signed during the 500-year period, 1500–1999, for analysis.

2 Philip Jessup, ‘Diversity and Uniformity in the Laws of Nations’ (1964) 58 *American Journal of International Law* 341.

deficiencies in the United Nations (UN), especially in the areas of peace and security, suggesting a compensatory rather than coordinated relationship between global and regional. However, the UN Charter does attempt to set regional organisations within the framework of the world organization,³ recognising that ‘when the world organisation becomes paralysed and impotent, States tend to seek in regional organizations the security they are unable to find on a global basis.’⁴ Charney’s view was that ‘substantial regional or bilateral arrangements’ might help to resolve ‘pressing issues of environmental protection and resource development’ before fundamental issues of ‘territorial disputes and maritime boundaries’ have been resolved.⁵ Although cynics suggest that if a global solution does not work, trying regionalism merely ignores the underlying cause.

2. Determining a Functional Definition of Regionalism

A. Regionalism and Geography

Most discussions of regionalism seem to be rooted in geography. This may be the necessary starting point, but is it sufficient? As Schindler noted:

The geographic element, however, in most cases does not delimit the extent of regions with a sufficient degree of accuracy Regional international law, as a rule, presupposes a third element: common historical traditions and values and/or common political, military, economic or social interests shared by the states concerned.⁶

Van Kleffens examined in detail the issue of whether geography alone can define a region before concluding that ‘a common ideology’ permits ‘greater cohesion’ but ‘is not essential.’⁷

Research sponsored by the UN Institute for Training and Research (UNITAR) suggested that region be defined as:

A convenient geographical area controlled by sovereign Governments whose interests in the particular subject matter to be dealt with are sufficiently compatible for them to be able to enter into effective multilateral co-operation.⁸

But this UNITAR formulation is overly simplistic in one way that is familiar to anyone who has studied international law. A region might be defined by where actions occur, which States act, or a combination of both, with nationality and territoriality as bases

3 Gerhard Bebr, ‘Regional Organizations: A United Nations Problem’ (1955) 49 *American Journal of International Law* 166.

4 Id at 167.

5 Jonathan I Charney, ‘Central East Asian Maritime Boundaries and the Law of the Sea’ (1995) 89 *American Journal of International Law* 724 at 749, 748.

6 Dietrich Schindler, ‘Regional International Law’ in Rudolf Bernhardt (ed), *Encyclopaedia of Public International Law* (2000) at 161.

7 Elco Nikolaas van Kleffens, ‘Regionalism and Political Pacts’ (1949) 43 *American Journal of International Law* at 670–671.

8 Berhanykun Andemicael (ed), *Regionalism and the United Nations* (1979) at 8.

for jurisdictional claims.⁹ This raises the question of whether the element of geography can be removed entirely. Are the British Commonwealth and La Francophonie regions (albeit regions whose definition is based on shared interest not geography)?

B. The Interrelationship between Globalisation and Universalism

A functional definition of regionalism is no mean feat and cannot be achieved in isolation. One must confront related concepts such as ‘globalization’, ‘globalism’, and ‘universalism’. Dupuy imagined a conversation with Friedmann wherein Professor Friedmann proclaimed, ‘one might almost be tempted to say that globalization is universalism minus **conscience**’.¹⁰ This tongue-in-cheek phraseology reflects a feeling that problems facing the world are best solved in a comprehensive way and that proximate solutions, for example regionalism, are at least a compromise and may represent a total abandonment of principle. During World War II, Potter expressed frustration with regionalism:

Thus, not only is regionalism a reactionary principle when considered in relation to recent developments towards universalism, but it also tends to sanctify, crystalize, and institutionalize elements of selfishness and opposition to the general welfare which, if not thus dignified, might gradually be eliminated or assimilated to the advantage of all concerned.¹¹

Most scholarship appearing in the last two decades takes a more positive view of the relationship between regionalism and globalization or universalism. Mittelman opined that ‘regionalism is the framework within which globalization operates’,¹² while Mavi described regionalism and globalization as ‘alternative ways of approaching and solving international issues’.¹³

C. The Inclusion of Regionalism within International Law and Treaties

International law scholarship does not generally appear to use regionalism as a principal organizing construct. Introductory texts in international law often do not have chapters on regionalism *per se*, although the topic invariably emerges while discussing different substantive areas, such as human rights or trade.

Typical is Joyner’s recent text that hardly mentions regionalism in the introductory chapters but deals with it when the traditional subfields of international law require.¹⁴

9 See Mark Janis & John Noyes, *International Law: Cases and Commentary* (2001) at 715–23.

10 Pierre-Marie Dupuy, ‘International Law: Torn between Co-existence, Co-operation and Globalization’ (1998) 9 *European Journal of International Law* at 282.

11 Pittman Potter, ‘Universalism versus Regionalism in International Organizations’ (1943) 37 *American Political Science Review* at 850.

12 James H Mittelman, ‘Rethinking the “New Regionalism” in the Context of Globalization’ (1996) 2 *Global Governance* 189–190. Also see discussion in John Gamble, Emily Allen & Nicole Dirling, ‘International Law and Globalization’ (2003) 30 *Syracuse Journal of International Law and Commerce* at 4–5.

13 Viktor Mavi, ‘The World Community and the Changing Notions of Universalism and Regionalism’ (1992) 34 *Acta Juridica Hungarica* at 60.

14 Christopher Joyner, *International Law in the 21st Century: Rules for Global Governance* (2005) at 78.

One finds the same thing in texts from 50 years ago. Briggs provided a brilliantly concise *tour d'horizon* of international law covering many subjects as they evolved over centuries, except regionalism.¹⁵ This is in marked contrast to international relations where textbooks make regionalism a core component.¹⁶

Notions of regionalism can be found in many court cases and in treaty provisions. In the *Asylum* case, the International Court of Justice confronted the issue and found that regional customary international law was possible although the Colombian government had not 'proved the existence of such a custom.'¹⁷ In the *Right of Passage* case, the International Court of Justice found regional customary law in 'practice ... accepted as law by the parties.'¹⁸

There certainly are thousands of treaty provisions wherein general or global treaties make assertions about regional matters. The Covenant of the League of Nations devoted relatively little attention to regionalism in part because '... regional alliances or pacts ... were all too readily held to blame for the outbreak of the First World War.'¹⁹ Article 21 of the Covenant hardly seems enthusiastic about regionalism, stating: 'Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe doctrine, for securing the maintenance of peace.'²⁰

The UN Charter provisions on regionalism are well known:

Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.²¹

This stance is more positive than the Covenant in that it permits, even encourages, regional responses to problems. However, regional arrangements appear to be limited to international peace and security.²² To cite just one more example, the 1982 *UN Convention on the Law of the Sea*, perhaps the quintessential general multilateral treaty since the Charter, says relatively little about regionalism. The preamble to that treaty could have mentioned regional international law, but instead marginalises the issue by saying only 'that matters not regulated by this Convention continue to be governed by the rules and principles of general international law.'²³ A treaty this comprehensive could not avoid regionalism but references are relatively rare.

15 Herbert W Briggs, *The Law of Nations: Cases, Documents, and Notes* (2nd ed, 1952) at 17–24.

16 Charles Kegley, *World Politics: Trend and Transformation* (10th ed, 2006) at 14. This is the most widely used international relations text in the world. The text discusses levels of analysis in the introductory chapter and deals with regionalism in many portions of the book.

17 *Asylum (Colombia v Peru) (Judgments)* [1950] ICJ Rep 266.

18 *Right of Passage over Indian Territory (Portugal v India)* [1960] ICJ Rep 6.

19 Waldemar Hummer & Michael Schweitzer, 'Regional Arrangements' in Bruno Simma (ed), *The Charter of the United Nations: A Commentary* (2002) at 813.

20 Yale Law School, *The Avalon Project: The Covenant of the League of Nations* (1924) <<http://www.yale.edu/lawweb/avalon/leagcov.htm>> accessed 15 June 2006.

21 *United Nations Charter*, adopted 26 June 1945, 892 UNTS 119 (entered into force 24 October 1945).

22 Simma, above n19 at 815.

When examining more than 5,000 treaties, admittedly macroscopically in the CSDMT, regionalism manifests itself most clearly in the idea of laterality. We use the term ‘laterality’ in a straightforward way, including the number and type of parties involved, but acknowledge that some would distinguish between ‘multilateral’ and ‘multipartite.’²⁴ One of the variables in the CSDMT categorizes each treaty according to whether it is plurilateral (subscription limited) or general (open to all States). This is a good example of an important empirical characteristic of treaties that is seldom cast in legal terms. Rosenne’s exhaustive analysis found that the Vienna Conference on the Law of Treaties considered four options: (1) the plurilateral treaty, (2) the treaty in a simplified form, (3) a general multilateral treaty, and (4) a restricted multilateral treaty.²⁵ However, virtually none of these attempts survived into the final phase of the negotiations.²⁶ The Vienna Convention²⁷ itself ‘provides absolutely no help in drawing distinctions based on laterality.’²⁸

There have been other attempts to put a finer point on the distinction between plurilateral and general treaties, including by Sørensen who referred to:

Collective treaties or general multilateral treaties ... commonly signed by a substantial number of states, which are open to accession by others and which are designed to lay down general rules applicable independently of the numbers or political magnitude of the parties.²⁹

It is extremely difficult to determine whether this ‘general rules’ criterion has been met, a fact that Sørensen himself implicitly acknowledges.³⁰ While finer cuts are possible,³¹ dividing all multilateral treaties into the general and plurilateral groups is a workable solution permitting several kinds of analysis of regionalism in the Asia-Pacific.

23 *United Nations Convention on the Law of the Sea*, adopted 10 December 1982, 1833 UNTS 3 (entered into force 16 November 1994).

24 See Charles Fenwick, *International Law* (4th ed, 1965) at 518; and A D McNair, *The Law of Treaties* (1961) at 30.

25 Shabtai Rosenne, *The Law of Treaties: A Guide to the Legislative History of the Vienna Convention* (1970) at 112.

26 Taslim Olawale Elias, *The Modern Law of Treaties* (1974) at 6.

27 *Vienna Convention on the Law of Treaties*, opened for signature on 23 May 1969, 1155 UNTS 331, (entered into force 27 January 1980) art 55. Article 55 deals with laterality by only with the issue of the number of parties: ‘Reduction of the parties to a multilateral treaty below the number necessary for its entry into force unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of parties falls below the number necessary for its entry into force.’

28 John Gamble, ‘Multilateral Treaties: An Assessment of the Concept of Laterality’ (1980) 3 *Loyola of Los Angeles International and Comparative Law Review* at 24.

29 Max Sorensen, *Manual of Public International Law* (1968) at 125–126.

30 *Id* at 126.

31 Gamble, above n28 at 27.

3. Regionalism — The Asia-Pacific Anomaly?

One of the most enduring themes about regionalism—and one that we hypothesise will be manifested in treaties—is the relationship between regionalism and globalism or universalism. In the 1960s, Claude wrote:

Theoretical debate as to the superiority of the regional or the universal approach to international organization for the handling of political and security problems is a rather sterile exercise, for experience suggests that statesmen need not, and do not, choose one of these approaches to the exclusion of the other.³²

Falk and Mendlovitz's seminal work of the 1970s noted that the 'regional actor can be either a useful intermediary or an obstructive alternative to UN action.'³³ Mavi further put the matter well:

Regionalists usually claim that co-operation of states within a specific region is the most effective one, since the homogeneity of political systems, economic interests, cultural traditions and other common values constitute a natural basis for more closer (sic) relations between participating states. They also warn universalists, on account that the latter fail to take into consideration the heterogeneity of the world community, that assumption of universalism is a premature idea³⁴

The rejoinder of the universalists that 'the interdependency of nations and the magnitude of tasks facing mankind ... the inadequacy of regional efforts, the impossibility of definition of regions, and the dangers of regionalism.'³⁵ To complicate matters further, some argue there is a new kind of regionalism far different than that emerging immediately after World War II. This new regionalism is characterised by greatly increased levels of direct foreign investment.³⁶ Rather than being an alternative to universalism, this new regionalism is 'a direct result of the success of multilateral liberalization' and 'plays a key role in expanding and preserving the liberal trade order.'³⁷ This new regionalism provides 'the means by which new countries enter the multilateral system.'³⁸

Cho's elaborate analysis saw at least two stages beginning in the 1960s with the 'First Regionalism' 'driven mainly by strategic motivations' and 'motivated principally by political considerations.'³⁹ The 'Second Regionalism' that started in the 1980s and accelerated in the 1990s was vastly more successful at least in terms of economics.⁴⁰ Cho envisioned the possibility of a grand synthesis between regionalism and

32 Inis Claude, 'The OAS, the UN and the United States' in Joseph Nye (ed), *International Regionalism: Readings* (1968) at 3.

33 Richard Falk & Saul Mendlovitz (eds), *Regional Politics and World Order* (1973) at 4.

34 Mavi, above n13.

35 Id at 61.

36 Wilfred Ethier, 'The New Regionalism' (1998) 108 *The Economic Journal* at 1150.

37 Id at 1160.

38 Wilfred Ethier, 'Regionalism in a Multilateral World' (1998) 106 *Journal of Political Economy* at 1244.

39 Sungjoon Cho, 'Breaking the Barrier Between Regionalism and Multilateralism: A New Perspective on Trade Regionalism' (2001) 42 *Harvard International Law Journal* at 427.

40 Id at 428.

multilateralism producing a '*jus gentium* of international trade',⁴¹ although Cho leaves many questions unanswered. Is international trade different from other areas? Could the new international trade regime represent a region defined in terms other than geography?

To what extent does an Asia-Pacific region emerge from an examination of all multilateral treaties concluded over our 500-year period? Discerning such a region is a tall order because the compound term 'Asia-Pacific' has yet to find a broadly-accepted meaning. There have been attempts to define the region. Hemmer and Katzenstein explain:

Debates about regional definitions and regional institutions are also occurring in Asia and are similarly influenced by the choices made in the aftermath of World War II ... there is no accepted definition of the Asia/Pacific Region. Indeed there exists not even a standard convention for writing it. Asia Pacific, Pacific Asia, Asia-Pacific (sic), Asia/Pacific, Pacific Rim, and Asia and the Pacific are all used. A collective regional identity cast in a multilateral institutional form, however has been slower to emerge in Asia than in Europe.⁴²

In contrast, Nesadurai, referring to economic regionalism in the 'Asia-Pacific', defines it as 'States bordering both the western and eastern rims of the Pacific Ocean, coinciding effectively with the membership of Asia-Pacific Economic Cooperation (APEC),'⁴³ while alternatively, Lawson, stated in her writings that:

I use the term "Pacific Asia" to refer collectively to East and Southeast Asia. "Asia" is obviously much more extensive geographically — extending from eastern Turkey through West Asia (otherwise known as the Middle East) to Central Asia and South Asia as well as Southeast and East (or Northeast) Asia.⁴⁴

Neither of these delineations of an Asia-Pacific region is clear enough to be unambiguously applied to multilateral treaties. Data from the CSDMT shows that the greatest concentration of treaties involved China, Japan, the Korean peninsula, Australia, New Zealand, several Association of Southeast Asian Nations (ASEAN) States, as well as some Pacific Islands. These findings do not seem to show a distinct 'Pacific Rim' region. However, we applied a broad definition of 'Asia-Pacific' that includes all States along the entire Pacific Rim or contained therein.

Since the CSDMT includes all multilateral treaties, its greatest strength is its understanding of the 'forest' of treaties. This forest of treaties contains towering trees such as the constitution of ASEAN.⁴⁵ ASEAN was created in 1967 to foster regional cooperation, '[d]esiring to establish a firm foundation for common action to promote

41 Id at 465.

42 Christopher Hemmer & Peter J Katzenstein, 'Why Is There No NATO in Asia? Collective Identity, Regionalism, and the Origins of Multilateralism' (2002) 56 *International Organisation* at 601–602.

43 Helen Nesadurai, 'The Global Politics of Regionalism: Asia and the Asia-Pacific' in Mary Farrell, Bjorn Hette & Luk Langhove (eds), *Global Politics of Regionalism* (2005) at 169.

44 Stephanie Lawson, 'Culture, Values and Regional Integration in Asia: Critical Reflections on the Politics of Regional Identity' in Woosik Moon & Bernadette Andreosso-O'Callaghan (eds), *Regional Integration – Europe and Asia Compared* (2005) at 178.

regional cooperation in Southeast Asia in the spirit of equality and partnership and thereby contribute towards peace, progress, and prosperity in the region.⁴⁶

According to the Bangkok Declaration of 1967, the purpose of ASEAN was:

... to accelerate the economic growth, social progress and cultural development in the region through joint endeavours in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful community of Southeast Asian nations, and ... to promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries in the region and adherence to the principles of the United Nations Charter.⁴⁷

One finds a fundamentally different situation in APEC in that it is **not** based on a multilateral treaty. Rather, APEC is a forum for dialogue. Perhaps we should call it a soft Intergovernmental Organisation?

APEC is the only inter-governmental grouping in the world operating on the basis of non-binding commitments, open dialogue and equal respect for the views of all participants. Unlike the World Trade Organisation or other multilateral trade bodies, APEC has no treaty obligations required of its participants. Decisions made within APEC are reached by consensus and commitments are undertaken on a voluntary basis.⁴⁸

If the analysis in Hyun-Seok Yu's article is correct, and the United States is acting as a hegemon in the region, it would seem that APEC members are going along with it voluntarily. Yu contends:

The most critical factor behind the difficulties of APEC is that there is no shared perception of common interests among member countries. Put simply, many Asian members have not been persuaded by the idea that US-pushed trade and investment liberalization is beneficial to all.⁴⁹

This opinion seems to be supported by data from the CSDMT that a single, distinct 'Pacific Rim' region does not yet exist.

45 See ASEAN webpage <<http://www.aseansec.org/64.htm>> accessed 18 June 2006. ASEAN was established on 8 August 1967 in Bangkok by the five original Member Countries, namely, Indonesia, Malaysia, Philippines, Singapore, and Thailand. The ASEAN Declaration states that the aims and purposes of the Association are: '(i) to accelerate the economic growth, social progress and cultural development in the region through joint endeavors in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful community of Southeast Asian nations, and (ii) to promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries in the region and adherence to the principles of the United Nations Charter.'

46 Ibid. ASEAN Charter original members included the Philippines, Thailand, Singapore, Malaysia, and Indonesia. Later, Brunei Darussalam joined in 1984, Viet Nam joined in 1995, both Laos and Myanmar joined in 1997, and Cambodia joined in 1999.

47 *Association of Southeast Asian Nations, Original Agreement*, signed 8 August 1967, 1331 UNTS 22341.

48 See APEC webpage <http://www.apec.org/content/apec/about_apec.html> accessed 14 June 2006.

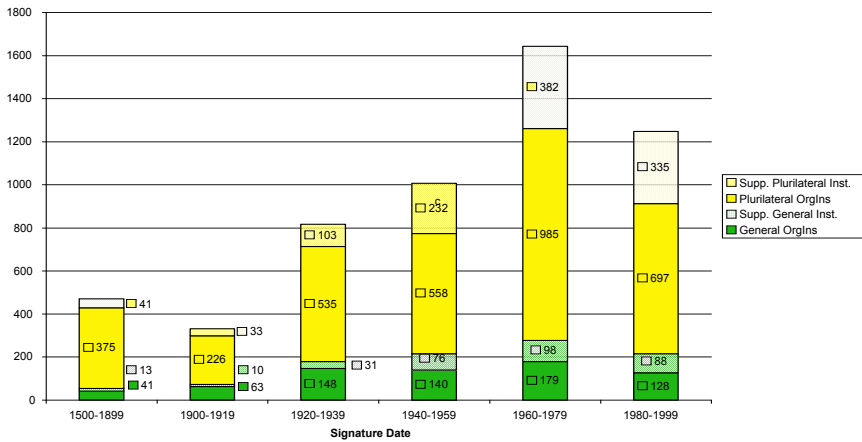
49 Hyun-Seok Yu, 'Asian Regionalism: A Post-Crisis Perspective' in Woosik Moon & Bernadette Andreosso-O'Callaghan (eds), *Regional Integration – Europe and Asia Compared* (2005) at 36.

4. Regionalism in the CSDMT

Figure 1 provides an overview of 500-years of multilateral treaty-making, although it is important to note that this is a macroscopic picture. Treaties are placed on a timeline according to signature date, the most accurate and least ambiguous way of displaying trends in treaties. Since multilateral treaties were made at a much faster rate after 1900, we have lumped all treaties before that date into a single group (the leftmost bar in Figures 1 and 2); there were only 470 treaties signed over the 400-year period 1500-1899. Treaties from 1900-1999 are displayed in equal time periods of 20 years, making comparison and analysis easier.

The graph distinguishes between general (bottom portion) and plurilateral (top) treaties. We also accommodate another very important distinction. Most treaties are what we call ‘original instruments,’ represented by the larger solid bars. These treaties are not explicitly linked to, or dependent upon, earlier treaties. The majority of treaties are original instruments and most of these are relatively insignificant, *ad hoc* actions that have no possibility of triggering a derivative treaty. However, there are many treaties that, while they must be accepted by State parties to enter into force, are dependent upon and/or derivative from earlier treaties. These include protocols, amendments, and extensions. Some are significant, others trivial, but they clearly are qualitatively different from the original instruments. We use the term ‘supplementary instruments’ to describe these.

Figure 1
Trends in Universalism versus



The overall distribution of treaties is 82 per cent plurilateral and 18 per cent general with these variations among time intervals:

Table 1

TIME INTERVAL	% PLURILATERAL/ % GENERAL
1500–1899	88/12
1900–1919	78/22
1920–1939	78/22
1940–1959	79/21
1960–1979	83/17
1980–1999	88/12

The plurilateral grouping is far more numerous for each time interval, but general treaties were used relatively more often beginning early in the 20th century and continuing through the mid-1970s.

Another important finding from Figure 1 is the relative frequency of supplementary instruments. The pattern here is quite clear and probably confirms the intuition of most who have studied treaties. The portion of supplementary instruments is about 10–12 per cent through 1920, increasing thereafter. By about the 1950s, it levels off and remains fairly constant at about 30 per cent.

Figure 1 permits a much more precise statement about aggregate trends in multilateral treaty-making. Many scholars assert — usually based on no more than a hunch — that the glory days of treaty-making have passed. Usually they do not say exactly when or how they know.⁵⁰ A much more precise statement is possible: *the greatest level of activity in terms of new treaties occurred around 1970 with the rate declining somewhat thereafter but remaining at a high level compared to all the rest of the 20th century. Further, since the 1950s, more treaty activity has taken the form of supplementary instruments.*

Regionalism is one of about 20 variables⁵¹ included in the CSDMT and one of the most problematic due to the imprecision of the concept. The following table shows regional concentrations based principally on head notes, but supplemented by information from other variables:

50 Allan Gottlieb & Thomas Franck, 'Engaging Stakeholders in Treaty-Making and Implementation', Paper presented at the 72nd Biennial Conference of the International Law Association, Toronto, 4–8 June 2006, <<http://www.ila2006.org>> accessed 5 October 2007.

51 Headnote, name of instrument, treaty series and location, laterality (plurilateral/ general), signature date, force date, relation to IGOs, topic category #1 (UNs about 300, eg, whaling), topic category #2 (about 30, eg, maritime/oceans), topic category #3 (about 10, eg, economic), dispute settlement provisions, reservations provisions, duration clause (for the treaty, duration clause (for parties), length of text, official languages, regional link, and instrument type (non-binding, supplementary, etc).

Table 2

REGION	NUMBER OF TREATIES
Asia/Pacific	269
Europe/Other	1,280
Europe/EEC	279
Latin America	421
Africa	182
North America	19
Middle East	41
Multiple Regions/Other	263

Figure 2 shows trends among treaties with a discernable regional focus. Information was aggregated somewhat from the preceding table, for example the 19 treaties focusing on North America are too few to represent on the graph. A number of plurilateral treaties have a focus other than geography, such as the Organization of Petroleum Exporting Countries (OPEC); they do not meet the definition to be included in this group. We use the same time intervals as in Figure 1 and so the atypicality of the leftmost bar should be borne in mind.

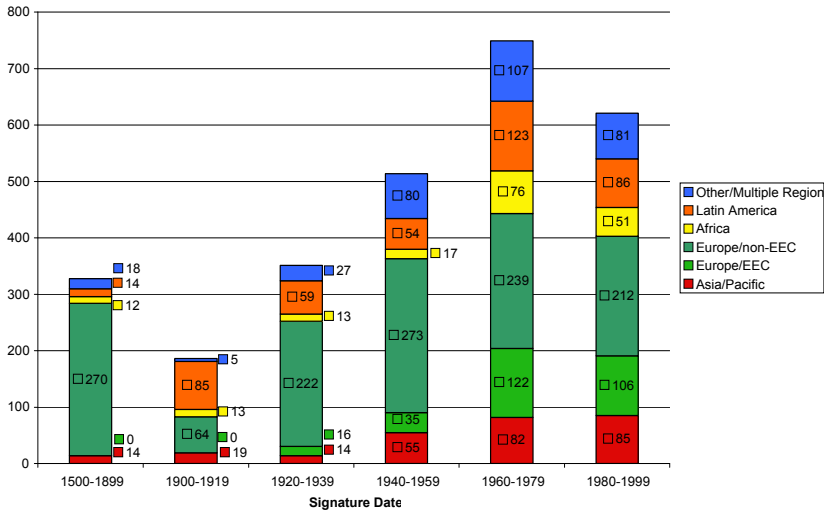
Dealing first with our primary focus, the Asia-Pacific segments of the bars, one sees a steady increase in treaty activity throughout the 20th century. This is significant because every other region shows the trend noted earlier — a peak in treaty activity in about 1970 and a modest decline thereafter. A reasonable interpretation is that an Asia-Pacific region still is coalescing. Of course, it is such a large and diverse portion of planet Earth that it might never develop to the extent of more discrete regions such as Latin America. Data in the table might suggest a nascent Asia-Pacific region. The portion of all regional treaty activities comprised by the Asia-Pacific group is interesting. It begins at 11 per cent for the first 20 years, declines to 4 per cent, stays at 11 per cent for 40 years and increases to 14 per cent for the final two decades. The strength of the Asia-Pacific region as manifested in multilateral treaties increased both in absolute and relative terms from 1920 until 1999, a statement that can be made about no other region.

Europe, as expected, is the 800 pound gorilla on the graph. The first 400 years of treaty-making consist of 82 per cent European treaties; treaties reflect a Euro-centric world. After 1920, we show separate 'Europe/non-EEC' and 'Europe/EEC'⁵² categories because of the huge influence of the European Communities. The Latin America group was significant early, the largest group for the 1900-1919 period, and it remained steady during the middle half of the century, before increasing markedly from 1960-1979. One can see clear evidence of two important features of Latin

52 We define 'EEC' in the broadest sense starting with Benelux and continuing with the ECSC, the EEC and finally the EU.

America: relatively early escape from colonialism and the failure to develop regional integration comparable to that of Europe. Africa shows very low participation levels until 1960 with major increases thereafter showing that independence produces greater treaty activity.

Figure 2
Trends in Regionally Focused Treatie



Another perspective, supplementing that provided from the graphs, comes from a content analysis of headnotes as an indicator of regional identity. The largest concentration of treaties (a total of 1,559) focuses on Europe with 38 per cent of those explicitly using the terms 'Europe' or 'European'. This suggests a level of regional integration unmatched anywhere else in the world.

We did not find a single Latin American equivalent of the term 'Europe'. The second highest concentration of treaties — a total of 421 — is found in Latin American treaties. Of these, 29 per cent use the terms; 'Inter-American', 'Latin American', or 'Pan American' to describe the regional focus of the treaty and its participants. Interestingly, the term 'Central America' appears 18 per cent of the time. The African continent is a relatively distinct geographic entity. However, there are only 182 multilateral treaties focusing on Africa and the terms 'Africa' or 'African' are found in only 30 per cent of these. We found an unusual pattern in North America where there are only 19 plurilateral treaties focusing on the North American continent. Of these however, 63 per cent (12) specify 'North American' as the region addressed in the treaty. Does this indicate a growing sense of regionalism? The actual number of treaties is quite low but so is the number of States. The tendency to use the regional designator — North America — is higher than for any other region.

Asia-Pacific is the most diffuse of any region; the experts cited earlier got it right. In fact, rather than a definitive Asia-Pacific or Pacific-Asia area, we found a multiplicity of regions. A total of 269 multilateral instruments deal with East Asia, South East Asia, Oceania and the various island nations found in the Pacific Ocean. The term 'South Pacific' is used on 34 occasions, or 13 per cent of the time. 'Southeast Asia(n)' and 'Southeast Pacific' occur 31 times, or 11½ per cent of the total.

Table 3

Name	Number (per cent)
Asian	9 (3%)
Asia(n)-Pacific	10 (4%)
Asian and the Pacific	5 (2%)
Asian – Oceanic	4 (2%)
Indo-Pacific	6 (2%)
North Pacific	6 (2%)
North Pacific Ocean	8 (3%)
Southeast Asia(n)	25 (9%)
Southeast Pacific	6 (2%)
South Pacific	34 (13%)
<u>TOTAL</u>	<u>113 of 269</u>

From Table 3, we can observe that the seeds of an Asia-Pacific region might exist. The strongest sub-regional group is the South Pacific, and, notwithstanding the membership of APEC, a distinct Pacific Rim has yet to manifest itself. An Asia-Pacific identity, or at least a desire to establish an Asia-Pacific identity, also emerges from the language of multilateral treaties themselves. Our analysis of treaties shows some evidence of an embryonic Asia-Pacific identity. Several notable examples are: (1) the *Agreement Establishing a Cultural and Social Center for the Asian and Pacific Region* of 1968,⁵³ (2) the *Constitution of the Asia-Pacific Telecommunity* of 1976,⁵⁴ (3) the *Agreement Establishing the Asia-Pacific Institute for Broadcasting Development* of 1977,⁵⁵ and (4) the *Charter of the Asian and Pacific Development Centre* of 1982.⁵⁶

53 *Agreement Establishing a Cultural and Social Center for the Asian and Pacific Region*, signed 1 August 1968, 653 UNTS 427 (entered into force 1 August 1968).

54 *The Constitution of the Asia-Pacific Telecommunity*, signed 27 March 1976, 1129 UNTS 003 (entered into force 25 February 1979).

55 *The Agreement Establishing the Asia-Pacific Institute for Broadcasting Development*, signed 12 August 1977, 1216 UNTS 081 (entered into force 6 March 1981).

5. Summary and Conclusions

Regionalism is not an easy subject. Some discussions of it are reminiscent of the statement of US Supreme Court Justice Potter Stewart who said that he could not 'intelligibly' define pornography '[b]ut I know it when I see it.'⁵⁷ Many scholars do not appear to know regionalism when they see it or at least do not agree on what it is. A Pacific or Asia-Pacific region is more difficult to conceptualize than most other parts of the globe. The macroscopic approach applied here required an expansive definition of 'region' to have large enough numbers to permit meaningful analysis. In the process, no doubt, a deeper, more subtle understanding of the Pacific region or regions may have been foreclosed.

The first serious scholarly attempt at quantifying treaties was undertaken more than 40 years ago by Peter Rohn when he noted:

Our ignorance of basic facts is impressive. For example, nobody knows how many treaties there are in the world today or how many there were 10 or 20 or 50 years ago. Nor is it known how the world's treaties subdivide by signatories, topics, title, duration or reliance on international institutions, dispute settlement procedures or by any other criterion. Most of these matters are considered relevant to a legal analysis of any one treaty. And yet they are ignored in the global context of all treaties.⁵⁸

Lawyers can be almost allergic to quantification. How dare we reduce the subtlety and complexity of a 300-page instrument to 20 variables, some of which seem arbitrary? The answer of course is that in-depth analysis of a 300-page treaty is enhanced not precluded; it is easier to understand individual treaties if one has some idea of the forest in which these treaty trees grow. Prudence is the order of the day; Harvard Professor and Permanent Court of International Justice Judge Manley O Hudson, who, among a myriad of other accomplishments, tabulated treaties, said '[c]ount, by all means count, but count things that count.'⁵⁹ Treaties do count; their importance to international law is axiomatic. They are not perfect as indicators of State behaviour, but, as Rohn pointed out:

Treaties were an obvious target in the search for relevant data. Treaties pervade the international system. They are important. They are made with care. They are recorded and published. They are relatively easy to standardize and categorize, and hence to quantify and cross-relate.⁶⁰

We know much more about treaties, especially multilateral treaties, than when Rohn issued his warning. The CSDMT project (see Figure 1) provides a clear summary of 500 years of treaty-making and a good deal about magnitudes and trends in treaties

56 *The Charter of the Asian and Pacific Development Center*, signed 1 April 1982, 1321 UNTS 203 (entered into force 1 July 1983).

57 *Jacobellis v Ohio*, 378 US 184 (1964) at 197 (Stewart J concurring opinion).

58 Peter Rohn, 'The UN Treaty Series Project as Computerized Jurisprudence' (1966) *Texas International Law Forum* at 168.

59 Cited in Peter Rohn, *Treaty Profiles* (1976) at 4.

60 Peter Rohn, *World Treaty Index* (1983) at 7.

and the constantly changing balance between regional and universal law. Figure 1 permits a deeper level of understanding. Many have speculated that treaty-making is in decline; we have documented this decline; it is modest and probably attributable to the settling of many issues and the creation of permanent institutions. There is a tendency to bounce between extremes — in Judge Lach's words, 'to be either a Utopian or a denier.'⁶¹ Figure 1 refutes the denier's argument. Notwithstanding important deficiencies, an enormous amount of treaty law is operating.

As shown in Figure 2, multilateral treaties can reveal a great deal about regionalism. Increased integration in Europe stands out clearly and is replicated nowhere else in the world. There is treaty evidence of increased regionalism in Latin America and Africa. The Asia-Pacific, a very expansive region, has grown stronger — the only region to show no decline after 1980. We believe it is possible to use treaty language as an indicator of emerging regional identity.

The CSDMT is almost finished with phase II that includes the collection of 20 variables for all multilateral treaties signed between 1500 and 1999. Refinements and improvements in the near future should permit better understanding of regionalism. For example, how does one accommodate the vast difference in the importance level of treaties? Signature date is a good indicator of new treaties entering the international system but an accurate measure of how many treaties are functionally operational at any point in time would be a major advance. Yes, Judge Hudson, we should improve the way we count.

61 Manfred Lachs, *The Teacher and International Law* (1982) at 13–29.