PART V

THE NEW LAW OF THE SEA AND OCEAN MANAGEMENT

INTRODUCTORY REMARKS

Willy Ostreng
Fridtjof Nansen Stiftelsen pa Polhogda

Good morning, ladies and gentlemen:

The topic of this session is "The New Law of the Sea and Ocean Management." Our main concern will be to discuss to what extent and how the new law of the sea, particularly the establishment of exclusive economic zones, is likely to affect the prospects for integrated ocean management. We will try to approach this problem from three different levels: the national, the international and the supranational.

The national level will be examined in the papers of Professor Ed Miles, Director of the Institute for Marine Studies at the University of Washington, and of Mr. Steinar Andresen, project director at the Fridtjof Nansen Institute. Professor Miles will cover the North Pacific, while Mr. Andresen will deal with the case of Norway. Dr. Arild Underdal, Associate Professor at the University of Oslo, will address the international level and he will look at the domains and roles and intergovernmental institutions involved in ocean management. Finally, Dr. Clive Archer, Deputy Director of the Center for Defense Studies at the University of Aberdeen, will deal with the supranational aspect in the context of the European Community.

Our commentators have accepted a division of labor to the effect that Ms. Brit Floistad, research associate at the Fridtjof Nansen Institute, will comment on the papers of Professor Miles and Mr. Andresen, while Dr. Jerome Davis from the University of Arhus in Denmark will discuss the papers of Dr. Archer and Professor Underdal.

THE NEW LAW OF THE SEA AND OCEAN MANAGEMENT: CHANGING AGENDAS, DOMAINS AND ROLES OF NATIONAL AND INTERGOVERNMENTAL INSTITUTIONS

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PURPOSE AND OUTLINE OF PAPER

The question to be addressed in this paper can be formulated as follows: to what extent and how is the new law of the sea framework, particularly the establishment of exclusive economic zones, likely to affect the prospects for "integrated" ocean management [1], i.e., policies designed to achieve a comprehensive, balanced and coherent concept of "utility" from (interdependent) activities related to ocean space?

I propose to examine this question from the particular perspective of regime transformation as reorganization, i.e., as a "re-coupling" of management issues or problems on the one hand, and governmental actors or institutions on the other. An essential aspect of the new law of the sea "constitution" is that it authorizes a re-assignment of management authority, a re-specification of decision rights and responsibilities, thereby changing domains and roles of national authorities and intergovernmental organizations along spatial as well as functional lines. Obviously, there is more to the new law of the sea regime(s) than this "procedural component" [2]; the Convention itself also provides a number of important substantive norms and rules, intended to serve as guidelines for the behavior of governmental institutions as well as the parties subject to their jurisdiction. The particular perspective adopted in this paper does not necessarily lead us to neglect these rules and norms, rather, it leads us to treat them as more or less firm constraints on the exercise of whatever decision rights the Convention confers upon an actor [3]. Whatever shortcomings this perspective might have, it at least seems to have the advantage of being close to how most coastal state governments are likely to interpret their expanded role in managing marine activities.

Pursuing this perspective, there are two sub-questions that must be addressed.

First, how will the new law of the sea "constitution" affect the process of making marine policies, the networks of coupling between marine issues and governmental institutions? A first step towards answering that question is to examine the specification of decision rights and responsibilities found in the text of the Convention. As that text is well known to this audience, I shall confine myself to a very brief and crude summary of the formal assignment of management rights and responsibilities, focusing particularly on the areas covered by the concept of EEZs. If we want a comprehensive picture of what the new ocean management system will look like, we must,

however, also include subsidiary institutional arrangements and procedures developing -- not always in a straightforward, deductive manner -- from the new Convention in response to specific management problems. In this paper I can offer only a few tentative suggestions concerning varieties and patterns of such subsidiary arrangements.

Second, to what extent and how is this reorganization of the ocean management system likely to affect the prospects for "integrated" marine policies? This is a very complex question. At a very general level, the answer seems to depend on at least three (sets of) variables: (1) the extent to which the domains -- functional as well as spatial -- of separate management institutions or networks of institutions correspond better to distinct ecosystems and systems of marine activities than under the former regime, (2) the character of the relationships constituting each of these systems and linking them, and (3) the capacity of the institutions now in charge to develop and pursue, within their domains, a set of policies geared to accomplish a comprehensive, balanced and coherent measure of net benefits from marine activities. It seems most likely that the "score" on one or more of these variables will vary considerably from one institution, region or issue-area to another. By implication, we see that a given regime organization may generate rather different political processes and policy profiles as it is put into operation under different circumstances. I have, therefore, decided that rather than trying to come up with a sweepingly general and most likely inaccurate answer to this second question, this paper should make an attempt at exploring further what determines the answer. My paper, then, will be an attempt at taking up an auxiliary role on this panel, suggesting a conceptual framework, a grid of dimensions for analysis, which I hope can facilitate and structure meaningful comparative discussion of the other three papers, each of which examines aspects of the question as it materializes in a specific setting.

WHAT QUALIFIES AS AN "INTEGRATED" POLICY?

Before pursuing these questions we should probably define somewhat more carefully our dependent variable, i.e., the concept of "integrated" policy.

Elsewhere I have suggested that to qualify as "integrated", a policy should meet three basic requirements: comprehensiveness, aggregation, and consistency [4].

The comprehensiveness dimension measures the extent to which the scope of consequences and implications of policy decisions are recognized as premises in the making of those decisions. If comprehensiveness is low, significant consequences of decisions do not enter the considerations leading up to that decision, thus creating some kind of externality problem and possibly leading to sub-optimal policies. In formal terms, the requirement of comprehensiveness can be stated as follows:

R_1: $D \cong C$, or least $D \cong C'$, where $C' \subset C$, and $C' \propto C$.
(D = the scope and range of decision premises;
C = the scope and range of decision consequences).

The dimension of aggregation measures the extent to which policy decisions are based on an overall evaluation of their expected consequences, aggregating the various costs and benefits so as to "optimize" overall net benefits [5]. Analytically, a distinction can be made between aggregation of utility dimensions into a single utility function and the aggregation of two or more preference structures into one. For both these dimensions the aggregation requirement can be given several more precise interpretations, the most strict urging an actor or a set of actors to go for that policy option which maximizes total net benefits over all evaluation criteria considered relevant to the problem. In symbols, this interpretation can be expressed as follows:

R_2: $U^d_{max} = \Sigma\{_a(k_1 s_1),\ _b(k_2, s_2) \ldots\ _v(k_n, s_n)\}$

($k_1 s_1$ = criterion 1, and score on criterion 1 [6];
a,b,v = coefficients indicating the relative weight of each criterion, $\Sigma(a,b \ldots v)=1$).

Other interpretations would in one way or another include distributional constraints. Thus, the concept of "Pareto-optimum" incorporates threshold values for each party included in the "reference group." Such distributional concerns could perhaps be synthesized in the term "balance(d)."

Briefly stated, a consistent policy is one which is in harmony with itself, one whose different components accord with each other. Using the symbol for conjunction in the rather loose sense of "being compatible with," this requirement can formally be stated as follows:

R_3: $(p_1, p_2 \ldots p_n) \subseteq p$; and $p_1 \wedge p_2 \wedge \ldots p_n$.

(where p = overall policy "doctrine," and
$p_1, p_2 \ldots p_n$ = more specific policy decisions).

A perfectly integrated policy can then be defined as one where all significant consequences of policy decisions -- or at least a representative subset of these consequences -- are recognized as decision premises, where policy options are evaluated on the basis of their perceived effects on some aggregate and balanced measure of net benefits, and where the different policy components are consistent with each other. In other words, a policy is said to be integrated to the extent that it recognizes its scope and range of consequences as decision premises, aggregates them into an overall evaluation of options, and penetrates all policy levels and institutions involved in its execution.

Satisfying all these requirements is far from easy. The development of a perfectly integrated policy would require what Braybrooke and Lindblom have referred to as "synoptic" decision-making [7] and what Haas has termed a "rational" cognitive style [8]. Moreover, we can normally expect an inverse relationship between the requirement of comprehensiveness and the other two; other things being equal, the more comprehensive a certain policy, the more centrifugal forces are likely to be at work. In asking how the new law of the sea "constitution" affects the prospects for achieving integration of marine policies, I do not want to suggest that perfection in this respect is generally feasible or even unconditionally desirable, nor do I assume that it actually served as an important goal for all -- or even any -- of the delegations participating in UNCLOS III. From a systemic perspective, however, major shortcomings which are not based on a rational calculation balancing marginal gain and marginal cost of integration efforts may be a symptom as well as a cause of sub-optimal use of marine resources and, if so, presumably not in accord with the official purpose of UNCLOS III.

THE IMPACT OF FORMAL REGIME ORGANIZATION: LIMITS AND MECHANISMS.

The perspective adopted in this paper rests on the assumption that formal organization "matters." Before we proceed to develop and apply this perspective, it seems appropriate to point out that the assumption itself is not as evident or universally valid as it might seem. At least two sets of constraints serve to limit the decision "latitude" of an institution in which formal authority is vested and in at least two kinds of situations who decides on what would not affect policy outputs. The two sets of constraints are: (1) substantive norms and rules and countervailing rights which serve to narrow the scope of permissible action (though rarely to just one option); in the case of international resource regimes, decision and/or property rights are often modified by granting user's rights or enjoyment rights to others [9]; and (2) relationships of power or influence, superimposing what may be called an informal structure of power upon a formal structure of authority and thereby eroding, amplifying or perverting the latter (though rarely, if ever, completely). The two kinds of situations in which the allocation of decision rights would not affect outputs are: (1) the happy and rare circumstance where the set of values, interests and perceptions of all potential decision-makers are perfectly identical, and (2) the existence of what might be called a "strongly dominant" policy option, i.e., an option being ranked above all other alternatives on all preference structures relevant to the decision. The latter possibility is clearly more than merely an empirically empty logical construct. Of course, none of these reservations should lead us to reject the assumption that formal organization can and often does affect policy substance. Rather, the main implication is that when trying to predict or explain such

effects, we should recognize that the relationship between formal structure and policy output may be a fairly complex one, amplified, weakened or in other more intricate ways "disturbed" by several exogenous factors.

How, then, can a respecification of who may or should decide on what affect the extent to which the requirements of policy integration are met? In very general terms the answer has at least two partly interrelated components:

1. By respecifying institutional domains, i.e., the scope and range of management jurisdiction. Seen from the perspective of a "manager," a respecification of his domain probably affects what we may call his horizon of decision premises, mainly through altering the scope and range of (legitimate) application of whatever decisions he may make. Seen from the perspective of issues, recoupling actors to problems may in a very broad sense change the problem-solving capacity and solution concepts that are brought to bear on a problem.
2. By changing decision rules and procedures, thereby affecting the relative weighting of different preference structures and evaluation criteria. Introducing new decision rules and procedures may be simply an implication of a reassignment of domains, such as transferring, for example, management responsibility for a certain issue-area from an intergovernmental organization to a coastal state government, but it can also be used as a distinct strategy of reorganization in its own right. While respecification of domains is related primarily to the requirement of comprehensiveness, altering decision rules primarily affects aggregation, while both may leave some impact on policy consistency.

Let us now briefly explore how these two dimensions of reorganization can be used to study the effects of the expanded role of the coastal state in managing marine affairs.

THE REORGANIZATION OF THE OCEAN MANAGEMENT NETWORK

In any system of marine activities one can distinguish at least three potential roles [10]: that of "owner" of natural resources, that of producer/"operator", and that of consumer of the goods or services produced through the activities in question. To each of these roles we can attribute a certain perspective, shaped by a dominant concern predisposing for a certain policy orientation. The predisposition of the resource owner will be to optimize his rent from the natural resources themselves. The operator can be expected to strive to optimize net benefits from his production activities, i.e., the factors of labor and capital. The consumer's dominant concern is, we assume, (the costs of) demand satisfaction. These roles are

inextricably linked in a relationship of interdependence. Not only does consumption presuppose production, but the idea of production would lose its instrumental value if there were no one to consume its products and the natural resources themselves acquire instrumental value because someone would like to "consume" them in one way or another and because someone undertakes to make them available for consumption. Accordingly, the overall character of the relationships among these dominant role concerns will correspond to the structure of a mixed-motive variable-sum game, where the actual configuration of identical, complementary and incompatible interests very much depends on the characteristics of the particular activity system in question. Moreover, any actor may find himself in two or more of these roles. Thus, in most cases a coastal state will itself harvest and consume some of the resources it owns and thereby to some extent internalize all three kinds of concerns. However, the actual amount of "multiple role-taking" varies considerably from actor to actor and from one issue-area to another.

The 1982 Law of the Sea Convention can be seen in part as a more or less specific reassignment of formal (decision) rights and obligations among these categories of roles, primarily those of owner and operator [11]. At the risk of horrifying the distinguished members of the legal profession, I would suggest that the main features of this reassignment, as far as the areas covered by exclusive economic zones are concerned, can be brought out in a summary -- albeit very crude -- fashion by comparing Tables 1 and 2.

With one very important exception -- mineral resources of the continental shelf -- the law of the sea framework in the period between UNCLOS II and UNCLOS III more or less implicitly vested management rights and duties over marine activities outside a normally narrow belt of territorial waters and a somewhat wider fishery zone with the operator(s). With the exceptions mentioned, the resources outside these limits were generally considered common property, a concept which, for all practical purposes, implied that the role of owner converged with that of operator [12].

UNCLOS III authorized a widening of the belt of the territorial sea and the establishment of exclusive economic zones extending up to 200 miles from the baselines, in fact granting each coastal state property rights to the resources in its zone and prescribing a common property status for resources outside the EEZs, with a fairly complex institutional arrangement designed to give effect to that concept as far as the deep sea-bed is concerned. Particularly in the international community, management rights and responsibilities tend, it seems, to be coupled to property rights. Conforming to this logic, the overall pattern of reorganization prescribed by the 1982 Convention is a transfer of management rights and duties from the role of operator to that of "sea-owner." Within the limits of the EEZs the decision rights of the coastal state are most extensive with regard to what might be called "extractive" activities, and for at least one "disposive"

Table 1. A crude summary of the allocation of decision rights over certain marine activities occurring (primarily) in areas included in EEZS, after UNCLOS III

Decision rule	Operator state	Owner state
Unilateral	scient. research transp./communic. cables/pipelines	mineral res. fish: coast. stocks sedent. species artif. islands dumping
"intra-role"		catadromous species cross-boundary stocks
Joint "inter-role"	poll. control meas. (part. vessel-gen.) highly migr. species anadromous spec.	

Table 2. A crude summary of the allocation of decision rights over certain marine activities occurring (primarily) in the areas now included in EEZs. Situation between UNCLOS II and UNCLOS III.

Decision rule		Operator state	Owner State
Unilateral		scient. research transp./communic. cables/pipelines	min. resources on cont. shelf strictly local stocks
	"intra-role"	most marine fisheries	
Joint		pollution control measures	
	"inter-role"	anadromous & catadromous spec.	

activity, dumping. For activities like transportation/communication and scientific research the decision rights of the sea-owner are in significant respects circumscribed by the granting of certain user and to some extent enjoyment rights to others. As an interesting digression, it may be argued that this functional differentiation of management authority is generally tolerable only because marine inter-use linkages involving two or more nations are by and large weak.

The establishment of exclusive economic zones also in several respects implies a contraction of management authority, as one -- or in some cases two or a few -- coastal state is now authorized to pass and enforce regulations previously requiring the unanimous acceptance of all significant operator states involved. We may say that the 1982 Convention prescribes a unilateralization or at least a "few-lateralization" of decision rights concerning activities occurring within the EEZs, particularly with regard to extractive activities. Although in some instances modified by countervailing relationships of power, this contraction of formal authority is to some extent likely to alleviate the state of paralysis and deadlock frequently encountered in previous efforts at managing marine activities through intergovernmental negotiations.

For several issues or problems the specification of decision rights in the Convention is not very clear. Thus, in quite a number of articles the Convention defines a problem as in some respect a collective domain and urges the states concerned to cooperate in order to solve it, thereby leaving the further specification of appropriate institutional arrangements to the governments and international organizations concerned. Moreover, even where the Convention explicitly and clearly states who is entitled to decide on what and how, it seems likely that such provisions will in some cases be more or less modified, either by the inertia or persistence of existing arrangements or by the development of new (supplementary) procedures presumably better adapted to the specific circumstances in question.

Whatever the significance of the 1982 Convention, it seems a fairly safe prediction that a literal interpretation of its articles will never amount to an entirely accurate description of how marine activities are actually governed. In this respect the Convention is likely to share the fate of most other constitutions.

If this is so, what will the pattern of subsidiary institutional arrangements supplementing and modifying the provisions of the Convention look like? We do not yet have the full answer to that question, as the adaptation to the new legal framework is in some instances a prolonged process still under way. Moreover, the variety of already established arrangements is such that no adequate description can be given in a few lines. All I can do here is to offer a few tentative suggestions.

It seems to me that most of the policy-making interaction between a coastal state and other parties concerning activities

related to its exclusive economic zone belong to one out of three main modalities: announcement, consultation, and negotiation [13]. The label "announcement" here means that the coastal state simply informs others about its decisions. The announcement may come before or after the decision is made and the coastal state may take into account the interests of others, but the latter play no part in the making of that decision. In the procedure of consultation, the coastal state makes a unilateral decision, but before doing so it engages in some kind of "sounding out," inviting others to present their views or requests. By contrast, negotiation is a procedure of joint decision-making, consensus (agreement) being the basic decision rule.

The formal assignment of decision rights made in the Convention clearly provides a number of clues concerning the circumstances in which announcement and negotiation can be expected. More generally, however, the kind of procedure is likely to be determined primarily by three variables: the strength [14] and symmetry of interdependence, primarily in the issue-area concerned [15], and the friendliness of the overall relationship between the parties. Table 3 summarizes my guesses regarding the relationship between these variables and pattern of policy-making procedure.

The aggregation of interests is likely to be most balanced in cases where the procedure of negotiation applies and least balanced where the pattern of interaction fits the announcement mode. It should be pointed out, however, that the relationship between procedure and substantive balance will not necessarily be neat and clearcut. Thus, unilateral decisions, e.g., reflecting relationships of power or responsiveness, may give due regard to concerns and interests of other parties, while negotiation outcomes may be quite skewed.

THE LIKELY IMPACT ON PROSPECTS FOR POLICY INTEGRATION

What, then, does this reorganization of the ocean management network portend for the integration of marine policies? As indicated in the introduction, the answer very much depends on the specific circumstances pertaining to what makes up our empirical frame of reference. But before just resigning ourselves to the comfortable (?) conclusion that each case is different and has to be considered in its own terms, we should at least try to identify the main dimensions along which cases differ and along which the answer must be sought. Let us first examine the likely impact on the achievement of comprehensiveness.

Comprehensiveness can be seen as a function of at least two categories of determinants: one may be labelled organizational or structural, the other cognitive or perceptual. We are here concerned with the former and the latter will be considered only to the extent it is affected by measures of reorganization. Viewed from this perspective, the main independent variable that we should examine appears to be the congruence between

Table 3. Hypothesized pattern of policy-making procedures.

	Symmetry of Interdependence	
"Friendliness"	Low	High
High	N>C>A	N>C>A
Neutral	C>A>N	N>C>A
Low	A>C>N	?
High	C>N>A	N>C>A
Neutral	A>C>N	?
Low	A>C>N	A>C>N

Legend: A = announcement
C = consultation
N = negotiation
> = more likely than

Table 4. Domain boundaries under regimes of operator and sea-owner management.

	OPERATOR STATE	SEA-OWNER STATES
SPACE	Includes only areas where own activities take place	Includes only territorial sea, EEZ
USE	Includes only activities in which own nationals take place	Includes only activities occurring in TS or EEZ
SUBJECTS	Includes only own nationals	Includes only subjects operating in TS or EEZ

institutional domain and corresponding system(s) of ecology and human activities.

We may assume that an actor's domain will make up the core of his premise horizon. He certainly may take into account also those parts of the environment which somehow affect his "welfare," but this "task environment" is likely to enter his calculations primarily as parameters, within the constraints of which he will manipulate dimensions within his domain so as to promote his values and interests. Domain boundaries can be specified along at least four dimensions: time, space, issues (uses), and subjects (actors); for the latter three a regime based on sea-owner management will tend to differ from one based on operator management, as indicated in Table 4.

Please note that this table is intended to bring out only the logic of the pure ideal-types. In fact, the role of operator and that of owner will, of course, to some extent frequently be taken by one single state. Moreover, as different geographical areas may be used for (partly) different purposes by different actors, the boundary defined along one of these dimensions may affect what is actually covered within domain boundaries along one or both of the other two dimensions.

The scope and range of consequences of policy decisions are determined by characteristics -- essentially by relationships of interdependence -- of the systems into which the implementation of a decision is an intervention, including systems of human activities and ecosystems. While domain boundaries can be precisely defined, system boundaries are frequently blurred; in fact, it is a basic proposition of ecology that everything is somehow related to everything else. The political implication of this proposition is not that only an all-purpose, universal world government will have a sufficiently comprehensive domain. Interdependence is a matter of degree and we can easily find boundaries beyond which linkages are too weak to transmit ramifications of any practical significance to public policy. Moreover, even when we find that the domain of an institution covers only part of its target system(s), all we can legitimately infer is that the requirement of comprehensiveness may be threatened. In order to conclude that sub-comprehensiveness creates a policy problem, the relationship between domain and system(s) must be such that an actor's premise horizon covers not only a subset of actual consequences, but also such that it includes a non-representative subset, distorting his cost-benefit evaluation of policy options [16]. If so, we face a risk of sub-optimal policies and the general mechanism of impairment is probably best known under the label of "externalities." It basically works like this: if some of the benefits of your policy do not enter your calculations ("positive externalities"), we tend to have "too little" of that policy. Conversely, if your policy has negative consequences which are not recognized as decision premises, you tend to produce "too much" of that policy. Both these kinds of externality problems pertain to the new as well as to the previous law of the sea regime, but their ramifications are likely to be somewhat different, as indicated in Table 5.

Table 5. Linkages not internalized, and likely externality problems under regimes of operator and sea-owner management.

	OPERATOR STATE	SEA-OWNER STATES
SPACE	Linkages to areas with no activities by own nationals. Serious externality problems rare.	Linkages to areas outside own "territory." Serious externality problems may arise, particularly with regard to "things that move."
USE	Linkages to activities other than those engaged in oneself. Some externality problems likely, particularly in intensively used areas.	Linkages to activities outside own "territory." Serious externality problems rare.
SUBJECTS	Linkages to other actors. Serious externality problems likely under certain conditions.	Linkages to subjects operating outside own "territory." Moderate externality problems, but likely to be aggravated because of biased aggregation.

Considering each of the dimensions included in Table 5 separately, it seems that the average net effect of the reassignment of management rights and responsibilities prescribed by the 1982 Convention can be summarized as follows. Along the spatial dimension the establishment of EEZs tends by and large to reduce comprehensiveness, particularly if compared to the domains of intergovernmental regulatory commissions. Serious externality problems will have to be tackled through intergovernmental cooperation in some regions, e.g., semi-enclosed seas, and for some activities, fisheries on certain stocks. With regard to inter-use linkages the impact is less clearcut, but as many of these linkages appear to be primarily subnational in scope and hence covered by an EEZ, comprehensiveness seems to have increased more often than declined. Since national governments tend to be differentiated into issue-area segments, the concentration of authority with the coastal state is, however, hardly a sufficient condition for comprehensiveness in functional scope. With regard to the range of subjects included domains clearly tend to be more comprehensive under the new regime, but this observation should be tempered by the reminder that the aggregation of preferences is also affected by the reorganization and here the balance is hardly improved.

These tentative conclusions refer primarily to the orientation of the coastal state. To the extent that sea-owner and operator roles do not overlap and to the extent that decision rights are still retained by the latter, we should ask also how the reorganization of the ocean management network tends to affect his premise horizon. Our general hypothesis would be that insofar as the operator's domain and access to marine resources is restricted, his incentives to consider the full scope and range of consequences of his actions will in some respects be weakened. The impact of such a possible narrowing of premise horizons on policy will, we suspect, be substantially limited by the fact that such a contraction seems most likely where his decision rights are most circumscribed. Since the allocation of management authority differs from one issue-area to another, the attendant externality problems may perhaps be most often encountered with regard to inter-use linkages.

Broad generalizations like those offered above are, however, of moderate interest as the extent to which domains are congruent with, or representative of, target systems varies substantially from one case to another. Exact and definite answers can be given only with reference to a specific setting.

One final observation: the reassignment of decision rights may affect also the institutional capacity that is geared to various policy issues and, by implication, what we have called the cognitive determinants of comprehensiveness. Suffice it here to point out that by expanding the management role of the coastal state, UNCLOS III also contributed to making the sea-owner's own institutional capacity more critical to the handling of marine affairs within its economic zone. Some coastal states, particularly among the group of developing countries,

are likely to find that their own capacity for predicting the ramifications of alternative policy decisions is not quite up to the task. In this respect, however, the new law of the sea regime(s) hardly differs radically from the one it replaces.

With regard to the requirement of aggregation, the implications of the 1982 Convention can be described in terms of two related, but analytically separable dimensions: (1) a reallocation of decision rights from the role of operator to that of sea-owner, and (2) a contraction or concentration of participation rights in the making of marine policies, leading to a unilateralization or at least a "few-lateralization" of important issues. The former dimension is related primarily to the distributional aspect of aggregation, the determination of who shall have what, why, when and how. The latter can be more directly related to the efficiency aspect, i.e., the achievement of joint (group) gain. Let us briefly explore likely consequences along these two dimensions, beginning with the latter.

With some exceptions, notably activity systems where one actor contributed a very large proportion of total effort and output, regulatory intervention under the regime of operator management was by and large a matter to be decided through negotiations among all significant operators concerned. Under the decision rule of consensus the outcome of such negotiations tended to conform to "the law of the least ambitious program," meaning that the fate of any regulatory measure was determined essentially by that (significant) party being least enthusiastic about that particular measure [17]. Faced with partly conflicting interests, the decision mechanism of multilateral negotiation frequently grounds to a halt, unable to cut through the frustrations of a rotating veto. As a consequence of such aggregation deadlocks, situations characterized by "collective inefficiency" developed and deteriorated, particularly with regard to the exploitation of common property renewable resources.

The concentration of decision rights regarding activities occurring within the limits of an EEZ clearly provides increased capacity for cutting through international conflicts of interests, as it -- albeit only for some issues and regions -- replaces the mechanism of (multilateral) negotiations with one of unilateral decisions. Even where international negotiations are still required, the reaching of agreement is in several instances likely to be facilitated, in part thanks to a reduction in the number of participants, perhaps also because the potential for package deals may be higher in stable, bi- or few-lateral relationships. It should be emphasized, however, that even with regard to extractive activities we are still far from the concept of unitary, rational actor management. Also, at the level of national governments, centrifugal forces are at work and the decision mechanisms in operation, typically some mix or hybrid of hierarchy, numerical aggregation and negotiation, are not always capable of avoiding deadlocks and paradoxes.

Now, cutting through intriguing configurations of conflicting interests frequently inflicts pain upon one or more of the parties and at least most actors will not prefer any cut-through to deadlock, in fact, this is precisely why we have deadlocks. The reallocation of decision and property rights prescribed by the Convention clearly puts in the hands of the coastal state governments powerful tools for redistributing net benefits of marine activities and it would be naive to assume that these states would not take advantage of this opportunity [18], though the extent to which they are able, or consider it wise, to do so may vary considerably.

The consequences of a reallocation of decision rights for the distribution of benefits can most clearly be demonstrated for actions that can be described as producing a net benefit to one party and a net cost to another. Tables 6-8 are attempts at indicating what are likely to be the policy propensities on such issues under alternative decision rules. The party benefitting and presumably initiating an event is labelled "sender," the party negatively affected is labelled "receiver."

In studying the very crude hypotheses suggested in these tables, three caveats should be noted. First, not all actions can be meaningfully conceptualized in these terms. Some actions increase benefits for all parties in a given reference group, other actions would produce a universal net loss. For issues or issue dimensions where gains and losses of the different parties are positively and strongly correlated, the allocation of decision rights will normally be less critical. Second, the categories of sender and receiver do not necessarily correspond to the roles of operator and sea-owner respectively. Third, it should be clearly recognized that the policy propensities hypothesized, particularly in Tables 6 and 7, may be substantially modified by relationships of power or responsiveness. In fact, under certain conditions -- which probably are rarely met in international marine affairs -- unilateral decisions produced by "sender" or "receiver" would at least approximate those of a unitary "neutral" manager [19]. Despite these reservations, we suggest that the tables can be used as a starting point for exploring how a reallocation of decision rights will affect the distribution of benefits from regime activities.

The impact of the reorganization of the ocean management network on the requirement of policy consistency will not be explored here. Suffice it to suggest that two main effects can be expected. The increase in aggregation capacity presumably resulting from the concentration of authority with the coastal state is likely to contribute to consistency. On the other hand, differentiation into exclusive economic zones may pose a threat to the standarization of certain kinds of regulations, such as those pertaining to fishing gear. It yet remains to be seen which of these effects will turn out to be the stronger.

Table 6. Hypothesized intervention propensities for 16 different situtations where "sender" causes harm to "receiver." Unilateral decision rights vested in "sender."

			RECEIVER		
		Few		Many	
		Little	Much	Little	Much
SENDER Few	Little	N>C>R	N>R≈C*	N>C>R	R≈N>C*
	Much	N>C>R	N>C>R	N>C>R	N>R>C*
Many	Little	N>C>R	N>C>R	N>C>R	N>R>C*
	Much	N>C>R	N>C>R	N>C>R	N>C>R

Assumed basic orientation of "sender":
Optimize own benefits from the activity system in question, but accept trade-offs to other issue-areas when the gains of the trade substantially exceed loss.

Legend:
- C = sender has to give compensation to receiver
- N = not intervene at all
- R = impose restrictions on sender's activities
- > = more inclined to
- * = based on the assumption that some kind of bargaining relationship can be established between the two, and that receiver's basic orientation mirrors that of sender

Few/many refer to the number of nationals affected.
Much/little refer to the average strength of these effects.

Table 7. Hypothesized intervention propensities for 16 different situations where "sender" causes harm to "receiver". Unilateral decision rights vested in "receiver".

			RECEIVER		
		Few		Many	
		Little	Much	Little	Much
SENDER Few	Little	R>C>N	R>C>N	R>C>N	R>C>N
	Much	R>C>N	R>C>N	R>C>N	R>C>N
SENDER Many	Little	R≈C>N*	R>C>N	R>C>N	R>C>N
	Much	C≈R>N*	R>C>N	R>C>N	R>C>N

For explanations, see Table 6.

Table 8. Hypothesized intervention propensities for 16 different situations where "sender" causes harm to "receiver". Decision rights vested in "neutral", unitary manager.

			RECEIVER		
		Few		Many	
		Little	Much	Little	Much
SENDER Few	Little	N>C≈R	R>C>N	R>N>C	R>C>N
	Much	N≈C>R	R≈C>N	N>R≈C	R>C>N
SENDER Many	Little	N>C>R	R≈C>N	N≈R≈C	R>C>N
	Much	N>C>R	C>R>N	N>C>R	R>C>N

Assumed basic orientation of manager:
Maximize "joint benefit. When in doubt, sympathize with "victim".
For explanation, see Table 6

CONCLUDING REMARKS

Will the new law of the sea "constitution" improve the prospects for achieving integrated marine policies? As explained in the introduction, the purpose of this paper has been to suggest a framework for thinking systematically about that question, rather than to produce a substantive general answer. In fact, the main substantive conclusions that can be offered on the basis of this "analytical preface" point to the intriguing complexity of the problem. This complexity can be synthesized in two main propositions.

First, our "dependent variable" -- the degree of policy integration -- is itself a complex concept and reorganizational measures intended to improve integration along one dimension frequently reduce integration along another. Thus, particularly at the international level measures designed to improve comprehensiveness may threaten aggregation, measures designed to increase aggregation (cut-through) capacity frequently will impair at least the balance, perhaps also comprehensiveness, and so on. The upshot of this is not that the sum of short-comings of international regimes for a given issue-area will necessarily be constant. Rather, it should serve as a sobering reminder that the characteristics of what we have called an integrated policy will frequently not be nicely linked in a relationship of strong positive co-variance and, accordingly, that measures promoting one of these characteristics may negatively affect some other. The reorganization of the ocean management network provides good illustrations in this respect.

Second, the eco-systems and the systems of human activities to which the new law of the sea regime(s) apply are, in important respects, very different and so are the spatial domains actually produced by the provisions of the Convention, as well as the institutional capacity and "political energy" geared to each domain. The main implication of this is that even when referring to one single dimension of policy integration, the impact of the new regime(s) will vary considerably from one area, issue or actor to another. Accordingly, precise and definite answers to our question will have to be given with reference to specific settings. And this is precisely what my fellow speakers on this panel will try to do.

NOTES

1. For a more elaborate discussion of this concept, see Arild Underdal, "Integrated marine policy. What? Why? How?," Marine Policy, vol. 4, 1980, pp.159-169.
2. The term is borrowed from Oran R. Young, "International Regimes: Problems of Concept Formation," World Politics, vol. 32, 1980, pp.331-356, in particular pp.336-338. See also his book Resource Regimes. Natural Resources and Social Institutions, Berkeley, University of California Press, 1982.

3. Unless supported by relationships of power or responsiveness, several of these substantive rules and norms will, I suspect, turn out to be rather elastic constraints.
4. Underdal, op. cit., note 1.
5. The somewhat vague notion "optimize" is used here and in several other contexts in this paper in order to avoid being hit by the argument made in several studies that the behavior of actors frequently does not conform to the more precise and strict concept of "maximize."
6. The term "criterion" is used here to refer to distinct aspects or dimensions of "utility," as well as to separate preference structures.
7. David Braybrooke and Charles E. Lindblom, A Strategy for Decision: Policy Evaluation as a Social Process, New York, The Free Press, 1963.
8. See Ernst B. Haas et.al., Scientists and World Order. The Uses of Technical Knowledge in International Organizations, Berkeley, University of California Press, 1977. See also Ernst B. Haas, "Why Collaborate? Issue Linkages and International Regimes," World Politics, vol. 32, 1980, pp. 357-405.
9. See Oran R. Young: Resource Regimes, note 2.
10. This typology is not claimed to be exhaustive; for example, the role of "manager" could have been added.
11. The role of consumer is linked to the management of marine activities mainly through the market mechanism of demand.
12. In order to give political effect to the concept of common property resources at the international level, certain kinds of institutional (organizational) arrangements are normally required. One such arrangement is the one prescribed in the Convention with regard to the deep sea-bed.
13. This typology of procedures is not claimed to be exhaustive. Moreover, in practical use, the distinction between (pre-decisional) announcement and consultation and that between consultation and negotiation, may be quite blurred.
14. The strength dimension could have been split into at least two more specific variables: the amount of values controlled and "issue density." What I have in mind here is primarily the former. The latter seems to be more clearly related to the degree of "institutionalization" of an arrangement. See Robert O. Keohane, "The demand for international regimes," International Organization, vol. 36, 1982, pp.325-355, in particular pp. 339-340. In Table 3 strength is seen from the perspective of the coastal state.
15. By this formulation I do not want to exclude the possibility of linkages or tie-ins to other issue-areas. Rather, what I want to suggest is that

interdependence relationships in the issue-area concerned on most occasions are likely to be considerably more important than are corresponding relationships in other issue-areas.

16. The possibility of representative subsets should not be dismissed as merely an academic construct.
17. For a more elaborate analysis of this problem, see Arild Underdal, The Politics of International Fisheries Management: The Case of the Northeast Atlantic, Oslo, Oslo University Press, 1980.
18. For an interesting case-study of the American experience in the management of marine fisheries under the EEZ regime, see Young, op. cit., note 2, chapter 6. This case-study can be found also in Ocean Development and International Law Journal, vol. 10, 1982, pp.199-274.
19. See the well-known article by Ronald H. Coase, "The Problem of Social Cost," Journal of Law and Economics, vol. 3, 1960. One reason why the Coase argument rarely, if ever, fully applies to intergovernmental relations is that state governments are complex actors, at best occasionally approximating the ideal of a unitary, rational actor.

NATIONAL AND INTERNATIONAL PREMISES IN OCEAN MANAGEMENT: THE CASE OF THE NORTH PACIFIC

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INTRODUCTION

The concept of the exclusive economic zone implies that the scope of coastal state authority is expanded over territory (ocean space) as well as over a much wider range of activities occurring therein than ever before. This condition imposes on coastal states the need to attempt to define and derive some notion of national net benefit from the resources and activities occurring in the zone. This further implies the need for explicit identification of objectives, formulation of alternative strategies for getting there, and some calculation of direct, indirect and opportunity costs incurred by each alternative strategy. In a word, therefore, the emergence of exclusive economic zones has accentuated the need for coastal states to formulate coherent national marine policy in a coordinated fashion. However, since bio-geophysical conditions and patterns of ocean use vary around the world, each set of policies must be congruent with the specific geographic location and patterns of ocean use in which they are to be applied.

The focus of this paper is, therefore, state policy in the context of extended coastal state jurisdiction in the North Pacific Region. By state policy we mean the assumptions, objectives, strategies and effects underlying the authoritative decisions of state actors and their observable behavior with attendant effects. The North Pacific Region is defined as extending from about 30 degrees North latitude to the northern tip of the Bering Strait [1].

The specific questions which we pose and attempt to answer in this paper are:

1. To what extent is state policy the result of primarily national assumptions and objectives?
2. To what extent is state policy reflective of primarily regional needs and conditions?
3. Are there observable differences in objectives, strategies and effects flowing from the primacy of national versus regional premises?
4. To what extent does the condition of extended coastal state jurisdiction facilitate the emergence of integrated (or coordinated) marine policy a la Underdal [2], i.e., to what extent does extended jurisdiction lead to official perceptions of the need to manage interdependent marine activities?

The issues which will form the substance of the analysis will be:

1. Fisheries;
2. Marine Scientific Research;
3. Marine Transportation;
4. Marine Pollution; and
5. The Conditions and Conflicts of Multiple Use of Ocean Space.

Fisheries and marine scientific research are primarily regional problems. In the case of fisheries, there are substantial interconnections between fisheries on both sides of the North Pacific since the Japanese, South Korean and Soviet fleets fish in both the Northwest and the Northeast Pacific. There is also substantial intermingling of some stocks, most particularly salmon, fur seals, herring, and pollock. In the case of marine scientific research, while the objective problem is primarily regional, i.e., the study of the entire ocean system of the North Pacific, the regional infrastructure and regional policies are quite limited.

Marine transportation presents primarily global problems, albeit with significant regional implications, while, on the other hand, both marine pollution and multiple use conditions/conflicts present primarily local (subnational) problems with limited regional implications.

FISHERIES

From the perspective of fisheries, the North Pacific in 1976 was a region with very large annual production, i.e., about 20 million metric tons (mmt) or about 28 percent of the total world catch. Like the North Atlantic, it was a region inhabited primarily by advanced industrial countries with large distant-water fleets but, unlike the North Atlantic, the number of countries was small (only seven) and jurisdictional conflicts were less plentiful, complicated and acute. In fact, the North Pacific was one of the regions of the world oceans least affected by the phenomenon of extended coastal state jurisdiction over fisheries.

The stakes were high: for the People's Republic of China and North Korea 100 percent of their marine catch was taken in the North Pacific; for Japan 91 percent and for South Korea 90 percent of their marine catch came from the region. For the US and Canada only about 13 percent of their total marine catch came from the region, while for the USSR the North Pacific accounted for about 33 percent of its total catch. The emergence of extended fisheries zones in the region between 1976 and 1977 was, therefore, a major convention-breaking event heartily supported by some and equally dreaded by others. Let us see how state policy responded to this event.

In the first place, it is evident from the catch data provided above that the coastal states of the east (the US and Canada) would have the most potentially to gain from the introduction of extended fisheries zones. It is equally clear that the coastal states of the West would have the most to lose; however, losses to be sustained by the USSR were far less than

those faced by Japan and the Republic of Korea. But it is not possible to argue that the driving force for extension of jurisdiction over fisheries was in the North Pacific. Actions taken by the US and Canada during 1976-1977 have to be understood in a global context and problems in the Northwest Atlantic may have loomed larger than problems in the Northeast Pacific. This was certainly true for the USSR and Canada, if not for the US. In any event, the Fisheries Conservation and Management Act (FCMA) of the US became law on April 13, 1976. This Act established a 200-mile exclusive fisheries zone effective March 1, 1977. In the spring of 1976 the Government of Canada also announced that a 200-mile zone would go into effect on January 1, 1977.

These two moves triggered a response by the USSR which, in turn, triggered a chain reaction of unilateral extensions across the entire North Pacific. The policy problem facing the USSR at that time has been described as follows:

> Extensions of coastal state jurisdiction off North America affected 18 percent of the USSR total catch in 1975. But, more importantly, extensions by coastal states in the Northeast Atlantic, while affecting only about 240,000 MT of Soviet catch, posed a problem of protecting Soviet stocks against fishermen of northeastern Atlantic states, in whose waters Soviet fishermen would no longer be allowed to fish. However, once extension of jurisdiction was considered by the USSR, there was no reason to limit the extension to the North Atlantic, given the global phenomenon and the size of Soviet resources in the Northwest Pacific [3].

For Japan the problem as a whole was global. In 1975 the total Japanese marine catch was about 9.6 mmt. About 5.5 mmt (57 percent) were caught within what would have been a Japanese 200-mile zone, while about 3.7 mmt (38 percent) were caught within the potential 200-mile zones of other countries [4]. Of the latter, about 2.8 mmt (78 percent) were caught within the potential zones of the US and the USSR. Almost all of these catches were in fact taken on both sides of the North Pacific.

For the Republic of Korea the problem was even worse since the North Pacific accounted for about 90 percent of its total catch. Only one-third of this fell in the US potential zone. Two-thirds were covered by the potential USSR zone and the Republic of Korea maintained no diplomatic relations with the USSR.

Once the USSR extended its own jurisdiction on December 10, 1976, Japan had no choice but to extend its jurisdiction in order to protect itself from continued near-shore fishing by Soviet fleets off its coasts. Japan, therefore, extended its own jurisdiction on May 2, 1977 to take effect July 1. This, in turn, triggered extension by North Korea on June 21, 1977 to take effect August 1. However, the North Korean action

established an economic zone and included a military security zone of 50 miles. Initially, the Japanese fleet was completely excluded, thereby incurring a loss of about 80,700 mt, but a private agreement in September 1977 restored access for the Japanese.

Neither the People's Republic of China nor the Republic of Korea extended its own jurisdiction. The Japanese zone did not apply on the South Korean side, thereby facilitating continuation of the Korean/Japanese reciprocal agreement. Japan also continued to have access to East China Sea fisheries under agreements with China.

In an attempt to assess how state policy has responded to the difficulties and opportunities presented by extended coastal state jurisdiction, we shall focus on Japan and the US primarily.

The emergence of extended coastal state jurisdiction between 1976-1977 presented the Government of Japan (GOJ) with the following problems [5] in rapid succession:

1. A major reduction (approx. 500,000 mt) in the Japanese catch within the Soviet zone. This was reduction of 41 percent since the Japanese catch in the Soviet zone before January 1, 1977 was on the order of 1.2 mmt. Japan had further to sustain about a 15 percent reduction of its catch within the US zone.
2. Such a severe reduction in catch sustained over such a short period of time necessitated a significant reduction in fleet, thereby precipitating a major unemployment problem among fishing families. This situation precipitated a crisis for the GOJ since 1,081 vessels had to be retired within one year, most of those (1,054) from the Soviet zone [6].
3. Abnormally steep increases in domestic fish prices, partially instigated by hoarding. This eventually stimulated a consumer revolt and apparently a net decline in fish consumption relative to meat and dairy products.
4. Major increases in access fees at a time when the fleet was experiencing significant increases in operational costs as a result of fuel price hikes since 1973.
5. Dislocations in the fish processing industry as a result of significant declines in catch and, therefore, raw product.
6. Increases in demands for joint ventures as a condition of access or in order to maintain an adequate flow of raw material. These have increased from 77 projects in 1973 to 184 in 1982 [7].

While a certain level of panic was observable in 1976-1977, the GOJ eventually responded with an impressive and largely effective series of policy actions. These included the following:

1. Provision of assistance to components of the Japanese fleet facing serious difficulties. This assistance included

compensation to vessel owners whose vessels had to be retired, assistance to fishing families in relocation, etc.;
2. Assistance to portions of the fleet for paying access fees in the form of soft loans;
3. Continuation of subsidies to offset increases in fuel price;
4. Foreign and technical cooperation as indirect parts of the fishing access "package" in zones of developing countries;
5. Investment in identification of new fishing grounds;
6. Comprehensive government regulation of the Japanese fleets as a whole given the internal licensing system. This allowed the Government, as arbiter, to seek to distribute costs and gains equitably across the fleet in response to the new situation; and
7. Continuation of tight control over the Japanese internal market with the use of import restrictions (e.g., on surimi) where necessary.

It is worth noting that the policy of the GOJ, especially the investment in identification of new fishing grounds, has been so successful that there has been virtually no change in the Japanese total marine catch. Norio Fujinami shows that between 1970 and 1973 the Japanese distant-water and offshore fleets accounted for about 33 percent each of the total marine catch, but that the distant-water catch actually began to decline as early as 1974 [8].

For example, the distant-water catch in 1973 was 3.988 mmt, while the offshore catch was 3.984 mmt. In 1977 the figures were 2.657 mmt and 4.924 mmt. In other words, the offshore catch had increased significantly even in the year the fleet sustained a 500,000 mt net reduction in the Soviet zone. In 1981 the figures were 2.042 mmt and 5.916 mmt respectively. The offshore production continues to increase dramatically, while the distant-water production continues to decline dramatically. Note also that of the 2.042 mmt produced by the distant-water fleet, about 1.3 mmt came from the US zone in the Northeast Pacific. Access to that zone is, therefore, critical to the continued existence of the Japanese distant-water fleet in its present form.

Let us now return to the first three questions posed at the beginning of this paper.

In the case of Japan it is not possible to sort out the sources of policy as between national and regional needs and conditions. The fact is that for fisheries the Japanese national situation is coterminous with the global situation given the size and deployment of the Japanese fleets. The GOJ and the industry, therefore, seek to preserve access or at least to minimize a decrease in catch and continuing increases in access fees. Given the distribution of the Japanese catch, the North Pacific Region is absolutely critical.

In addition, the GOJ has the capacity to come to the assistance of those parts of the Japanese fleet harder hit by the new regime and to try to develop alternative strategies. In this, the GOJ has been remarkably successful in this between 1977 and 1983. Its fisheries policy is comprehensive, systematic, aggregative within the fisheries sector, and effective.

Turning now to the United States, the situation is not so clear. There is considerable murkiness surrounding the issue of what exactly are US objectives with respect to the fisheries resources in its zone. The single clearest objective is to control and reduce the level of foreign fishing within the US zone, but this by itself is not a sufficient basis for sensible policy and it does not even begin to touch the issue of how the US should define national net benefit from these resources.

The FCMA itself is not of much help because, while the Act does state objectives, they are at such a high level of generality as to be virtually useless in dealing with specific fisheries in specific places. For example, the Act enjoins the Secretary of Commerce and the Regional Councils to:

1. Conserve stocks and to restore stocks depleted by foreign fishing. In doing so, managers are to:
   a. Assure a continuity of food and recreational benefits;
   b. Avoid irreversible or long-term adverse effects; and
   c. Maintain a multiplicity of options for the future;
2. Determine the Optimum Yield (OY) for each fishery, defined as that amount of fish which will yield the "...greatest overall benefit to the nation;"
3. Conform to the six national standards; and
4. Promote the US fishing industry.

The scope of an assessment of US fisheries policy as a whole is much too large for this paper. The assessment which follows emphasizes, therefore, the Northeast Pacific and deals only with three sub-issues: (1) the extension of management authority and control over stocks for the purpose of conservation; (2) policies designed to phase out foreign fishing and promote the development of US harvesting and processing capacity; and (3) the efficacy of the decision-mechanism created by the FCMA, in particular the North Pacific Fishery Management Council.

Management and Control

The major targets of US management concern in the Northeast Pacific are shown in Table 1. When Fishery Management Plans (FMP's) are implemented, they contain stringent controls on foreign fishing operations. FMP's set Optimum Yields (OY's), which are calculated from Acceptable Biological Catches (ABC's). Conservation requirements are built into ABC's in addition to desired rates of rebuilding particular stocks. Equilibrium yields (EY's) are also calculated. The OY can be a plus or minus deviation from the ABC for ecological or social reasons.

Table 1. Major targets of management concern for the United States in the Northeast Pacific Ocean.

Fishery Management Plans (FMPs)	International Arrangements
Tanner Crab (C. bair & C. opilio)	High Seas Salmon
King Crab (P. camtschatica)	Pacific Halibut (H. stenolepis) U.S./Canada Salmon Interceptions
Bering Sea and Aleutian Isl. Groundfish	Northern Fur Seals (C. ursinus)
Gulf of Alaska Groundfish	
Troll Salmon (Alaska)	
Bering sea Herring (C. harengus pallasi)	
Pacific Groundfish	
Pacific Salmon	

The foreign allocations, called Total Allowable Level of Foreign Fishing (TALFF), are obtained by subtracting the expected domestic annual harvest (DAH) from the OY. In certain fisheries, e.g., tanner crab, king crab, salmon, no TALFF is permitted since the domestic fleet is able to harvest the entire OY.

Management regulations include area and time closures to protect spawning grounds and populations, limits on the incidental catch of particular species, gear restrictions, and the like. Originally, observer coverage of foreign fishing operations was maintained at a 20 percent level but this is now moving to 100 percent. There is also a substantial surveillance/enforcement effort in operation throughout the year [9]. In addition, the management system does have the capacity to provide rapid in-season adjustment given the fluidity of conditions in the field.

Clearly, on this dimension the system created by the FCMA has facilitated a much improved management performance. The critical ingredient is that coastal state authority to manage is no longer in question. On the other hand, while the jurisdictional problem is solved vis-a-vis the foreigners, it is not solved internally as between State Governments, the Federal Government and the Regional Councils.

With respect to international arrangements the performance has been good in most cases. For example, the problem of Japanese fishing for salmon of North American origin on the high seas has now largely been solved with the re-negotiation of the International North Pacific Fisheries Convention/Commission (INPFC). The negotiation of article 66 of the 1982 Law of the Sea Convention on anadromous species was actually driven in 1974 primarily by the Pacific situation and only secondarily by the Atlantic situation. This article acknowledges that the state of origin has the primary interest in and responsibility for anadromous species. However, in return for this recognition and for the prohibition on high seas fishing for such species, the state of origin is required to consult with states fishing those stocks with respect to setting total allowable catches (TAC's), enforcement beyond national jurisdiction, etc.

The FCMA of 1976 largely incorporated the provisions of article 66 as they were at that time and it required the re-negotiation of the INPFC and other international arrangements to which the US was a party. Re-negotiation of the INPFC was aimed at settling the issue of Japanese high seas fishing for salmon of North American origin so that the US and Canada were involved in a joint approach here. Re-negotiation began in 1977 and a Protocol was concluded in 1978. The management regime agreed upon operates on an area/time closure system. The estimated reduction in Japanese interceptions was expected to decline from 2,545,000 fish to 400,000 - 670,000 fish.

The FCMA also required the re-negotiation of the International Pacific Halibut Convention/Commission (IPHC) between the US and Canada. This was successfully completed in 1979 after considerable uncertainty, which actually threatened

the life of the Commission. The arrangement has been preserved and the terms of reference of the Commission broadened to include economic concerns. This means that the Commission can now consider issues relating to effort regulation, as well as maximizing physical yield.

The North Pacific Fur Seal Convention/Commission (NPFSC) has also been re-negotiated twice, in 1976 and 1980. There were differences of view between the other members and the US over the approach taken by the US and mandated by the Marine Mammal Protection Act. In particular, the problem concerned the operational significance of the concept of "optimum sustainable population" which is difficult to detect. In spite of the uncertainty generated by this difference in point of view, the Convention was again extended in 1980.

The issue of US/Canada salmon interceptions is the only outstanding international issue. A Convention was negotiated between 1977 and 1982 which deals with the entire interception problem. It is a very difficult issue for both sides, especially the US. It is not yet clear whether the Convention completed in 1982 will be accepted and ratified by the US.

Except for the US/Canada salmon interception issue, it is fair to say that US policy has produced effective responses to international arrangements where they have been needed, i.e., where the coastal state by itself is unable to ensure adequate management and control of the stocks and the fisheries. Failures of US fisheries policy in the North Pacific, as elsewhere, do not relate to conservation, but more broadly to the issue of what does and should the US want to do with the fisheries resources in its EEZ. It is indeed difficult to find any clear, operational objectives stated or evidenced by the US in the Pacific beyond to conserve the stocks and to phase out the foreigners.

Moreover, the management system currently in being is incapable of efficiently resolving internal allocation problems within the US fleet as between line, pot and trawl gear. An internal equity problem is also in evidence in that the Alaskans display a tendency to treat <u>all</u> non-Alaskans as equally foreign. Measures taken with respect to certain fisheries, e.g., king crab, have led the Seattle group on several occasions to charge discrimination and to seek help from their Congressional representatives and the Federal Government.

This confusion over desirable policy is most evident when one subjects the FMP's to detailed scrutiny. During the first four years of the North Pacific Council's existence (1976-80), objectives tended to be stated very broadly and they appeared to have no organic connections either to the Plan or its regulations. The situation has improved slowly, but is constrained by the repeated unwillingness of the Council to specify beforehand what the objectives for each fishery are to be. Only in one case, Halibut Limited Entry, was the Council willing to do this. The refusal to identify objectives before planning begins is in effect the abdication of a serious policy responsibility, which then devolves on the lowest operating

level within the Council structure, i.e., the Plan Development Teams.

Apparently, the only policy prescriptions on which the players are agreed are to conserve the stocks and to restrict the foreigners. There is no consensus on what the US should do with its own resources and the decision mechanism itself is unlikely to produce such a consensus.

Promoting US Harvesting and Processing Capability

On this issue, let us begin with an assessment of US policy development concerning joint ventures.

This problem emerged in the first year after the creation of the North Pacific Council (1977) and was triggered by two proposals, one made by the Korea Marine Industry Development Corporation (KMIDC) and one made by a joint venture (Marine Resources Company) between Bellingham Cold Storage and Sovrybflot [10]. Both called for deliveries of fish to foreign processing vessels in the US zone by domestic fishermen. The North Pacific Council explicitly disapproved the KMIDC proposal for 1977 and the Pacific Council took no action on the Marine Resources application, thereby killing it for 1977. The Chairman of the North Pacific Council then sought the guidance of the NOAA General Counsel's Office on the question in May, 1977.

The initial policy enumerated by NOAA declared, inter alia, that foreign flag processing vessels must have permits to process fish in the US zone, but that fish caught by US vessels for foreign processors would not count against that country's allocation. This policy was strenuously opposed by the US processors and large-boat fishermen based on Kodiak Island. The policy in effect protected the interests of the small-boat fishermen of southeastern Alaska who were most interested in making these deliveries.

It was clear that when the issue first arose, the US had no policy on the question. Once the May 1977 policy statement met strong opposition, the National Marine Fisheries Service (NMFS) reversed itself for the 1978 season. The NMFS then declared that joint ventures would be permissible when the OY would not be exceeded, the capability of the US harvesting sector exceeded the capability of the US processing sector, and foreign vessels had the capability and interest to process fish caught by US harvesters.

This new policy suddenly stimulated very strong opposition from within the Federal Government, in particular from the Departments of the Treasury and State. Treasury objected that the FCMA did not give to the Department of Commerce the authorization to regulate or enhance the capacity utilization of the US fish processing industry. The effect of this new policy, said Treasury, would be to require 100 percent utilization of domestic processing before permits could be issued to foreign vessels and this was without regard to demand conditions or rates of efficiency. Furthermore, the regulation was

accompanied by no economic assessment of impacts on fishermen, processors, harvesters, and consumers.

The Department of State objected that Commerce was seeking to impose import controls on food and that this would jeopardize broader US objectives in international trade. Both Treasury and State were in effect charging that NMFS policy was unintegrated and, as a result, would generate harmful effects in other areas. This charge was correct. The NMFS had had no policy in the beginning and was reacting merely to political pressure which induced a series of reversals.

The North Pacific Council was pushing for the application of the interim policy and the interests of domestic processors. Furthermore, the Council was demanding that fish caught by US fishermen in joint ventures be deducted from that country's foreign allocation. On the other hand, the NMFS reversed itself again in response to the attack from Treasury and State. It then declared that the special interests of US processors would not be a necessarily limiting condition on the approval of joint venture permits.

Having lost the fight within the Executive Branch, the domestic processors switched to the Legislative Branch. Two bills were introduced into the House and Senate on their behalf. Both State and Treasury opposed these, but lost. Congress acted for the processors and amended the FCMA to this effect on August 28, 1978. The new policy contained in the "Processor Preference Amendment" states that joint venture applications would be approved only if US processors either do not have the capacity to process the amount of fish requested or will not utilize their capacity on those species. This meant a change in the formula for deriving the TALFF. Instead of TALFF = OY - DAH, the modification implied that TALFF = OY - DAH + DAP, where DAP is the domestic annual processing capability and intent.

This uncoordinated performance on joint ventures policy is not the only problem. A variety of pre-existing pieces of legislation, like the Jones and Nicholson Acts, have seriously adverse implications for the development prospects of the US groundfish industry. The scope of joint venture opportunities is severely constrained by these Acts which do not permit landing of fish in US ports by foreign built and owned vessels and which do not permit US purchase of foreign built processors for operation in the US zone.

At the same time, as Robert Stokes has pointed out, these Acts do not preclude one additional option for joint ventures where US fishermen would employ foreign built processors outside three miles, but either transfer the product to a US built vessel for delivery to a US port or deliver the fish to a foreign port in the foreign built vessel [11].

These attempts were begun in 1980 and generated a storm of opposition from US shipbuilders, US fishermen who had invested in US built vessels at higher cost than foreign built vessels, and US fishermen depositing vessel investment funds in the

Federal Government's Capital Construction Fund, since there would be a substantial penalty if the funds were used to purchase a foreign built vessel [12].

At this time, 1980, it was anticipated that market forces would lead to the development of the US groundfish industry in the Northeast Pacific. Now, however, it is clear that market forces by themselves will not be enough [13]. In order for US industry to develop on the basis of presently underutilized, i.e., by the US fleet, groundfish resources off Alaska, a concerted policy is required, but this is not yet forthcoming.

The Decision System

Let us now turn to an assessment of whether the decision system currently in operation in the Northeast Pacific is likely to produce coherent, integrated fisheries policy. We focus here on the North Pacific Fishery Management Council, although much of what is said has implications for the entire regional council system created by the FCMA [14]. A diagram of the North Pacific Council decision system is presented in Figure 1.

Two characteristics are remarkable about that decision system. One is the large number of players. The second is the porosity of the system to special interests who have access to all levels. Such a system implies the primacy of political pressure and a high sensitivity of constituted authorities to external pressures. Timothy Hennessey sees this as a virtue [15]. He argues that the constitutional structure of the FCMA uses strategic interactions between the Federal Government and the regional councils plus interaction within and between councils to minimize the effects of information limitations. He argues further that the system substitutes social interaction for comprehensive analysis and deliberately uses conflict as a mechanism of discovery. In this context, a multiplicity of decision points maximizes a diversity of viewpoints and preferences.

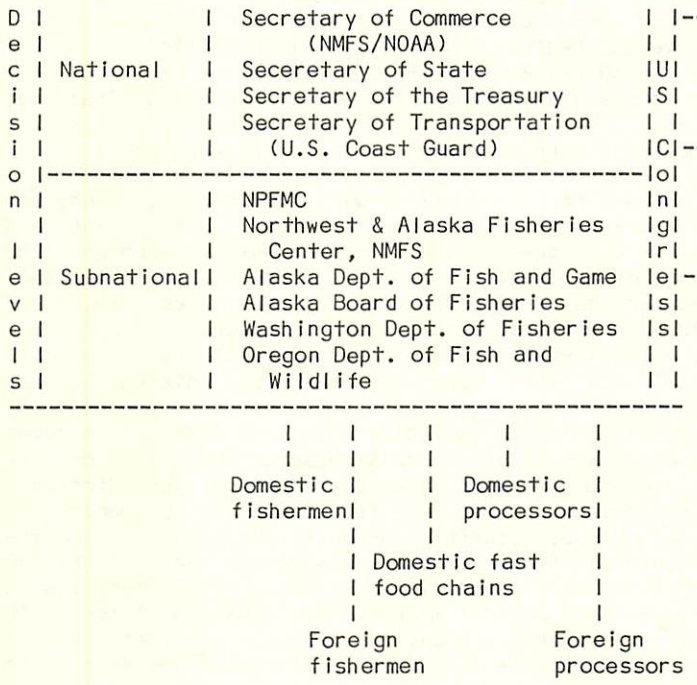
We think this is a correct description of the process, but we do not think it a virtue. We think this approach entails very high transaction costs which, when combined with fractionated authority, produces a marked incapacity to produce coherent, integrated fisheries policy.

When one asks what is at stake in this decision system, the answers point to three values: (1) for the foreign fishermen, the supreme value is allocation; however, regulations are also important because they have significant impacts on fishing patterns and, therefore, on costs of operations; (2) for the US harvesters and processors, the issues are primarily rate of foreign phase out, rate of development of domestic capability, and access to foreign markets; and (3) for all players, the issues are access to centers of decision-making and, particularly for constituted authorities, the issue of the right to manage.

If one then aggregates all issues in conflict across all fisheries, the dimensions to conflict appear to be the following:

Figure 1

The North Pacific Fishery Management Council Decision System



1. Alaskans versus foreign fishermen;
2. Alaskans versus non-resident US fishermen;
3. Small-boat fishermen versus processors;
4. Small-boat fishermen versus large-boat fishermen;
5. Large-boat fishermen versus processors;
6. Processors versus US fast food chains;
7. Alaska versus Federal (jurisdictional conflicts);
8. Alaska (ADF&G and Board of Fisheries) versus NPFMC;
9. Alaska versus Washington Department of Fisheries (salmon); and
10. US processors versus foreign-dominated processors.

These dimensions to conflict will activate coalitions and infect specific issues in ways that are both predictable and unpredictable, but predictions must adjust for the peculiar configurations of particular issues. However, several major problems appear to plague the planning process as a whole and raise serious questions about its efficacy. These are complexity, timeliness, state versus Federal versus Council jurisdictional conflicts, and conflicts of interest among Council members.

With respect to the jurisdictional conflicts, it is never really very clear who is in charge because at the heart of the FCMA is a compromise over the State/Federal jurisdictional issue. Furthermore, while the Secretary of Commerce is nominally in charge, special interests have access to the decision process at all levels and pressure can be brought to bear at all points. This is reinforced by the fact that a substantial number of Council members have financial interest in the activities which they are called upon to regulate. This conflict of interest is in fact institutionalized within the FCMA itself.

With respect to the complexity/timeliness problem, a fishery is an annual event in the Gulf of Alaska and eastern Bering Sea. However, the management process imposed is extremely complex and not timely. These requirements are in fact imposed by the NMFS and not mandated by the FCMA. NOAA regulations require a very time consuming two-tier review process with major delays arising at the Federal level because there are inadequate human resources to do the job. Planning and plan amendments are also subject to a variety of other legislation and executive orders, which all add to complexity and delays. The result is that even if no hitches emerge in the process, the amount of time required to develop an FMP by the Council through implementation by the Secretary cannot be less than 345-360 days.

A primary concern of the NOAA General Counsel's Office is that FMP's be capable of withstanding legal challenge. This requires very careful attention to the preparation of Environmental Impact Statements and to the preparation of legal and regulatory analysis of the Plans. Each of these documents tends to be larger than the heart of the Plan to which it refers. Once the Plan is in place, amendments to adapt the Plan

to changing circumstances also required until recently the full panoply of hearings, reviews, and the like. In an attempt to eliminate these problems, the North Pacific and Pacific Councils have resorted to "Framework Plans" which are more generally written and which seek to provide adequate in-season adjustment authority. It is too early to tell whether this is an effective alternative procedure.

An additional problem in the management process is that once a plan is developed, regulations have to be written. So far, this has been done in Washington, D.C. and the regulations have often become enmeshed in State/Federal jurisdictional conflicts. It is in fact not unknown for the NMFS to try to nullify a Plan the leadership does not like, but politically cannot reject, by writing regulations which have the effect of nullifying the objectives of the plan. In response, the Councils lobby to have the regulations written locally.

A series of amendments to the FCMA introduced in 1981/82 has attempted to respond to some of these difficulties by imposing strict time limits on Secretarial review and on the application of other legislation and Executive Orders. It is hoped that these will help to remedy the situation somewhat, but basic design flaws in the system remain.

To return for a moment to the first three questions posed at the beginning of this paper, US fisheries policy in the North Pacific is the result of a mix of national and regional determinants. When the determinants are primarily regional, i.e., in cases where the US alone does not have the authority to solve the management problem, US objectives have been limited, clear and generally effectively implemented. On the other hand, where the determinants are primarily national, near chaos reigns because the US does not know what it wants and in fact participants are severely divided on the issue. Moreover, the decision process which exists is incapable of producing clear, coherent fisheries policy.

MARINE SCIENTIFIC RESEARCH

First, a disclaimer is necessary. The inclusion of this issue should not carry any implication that we wish to see marine scientific research policy made in the same fashion as coordinated fisheries policy. Research policy is usually best if it is made at a variety of levels and with a good mix between mission-oriented and non-mission-oriented research and across a variety of fields. Marine scientific research is a regional policy problem in the North Pacific in the sense that opportunities exist to increase substantially the scope, comprehensiveness, and effectiveness of mission-oriented marine scientific research, especially with respect to fisheries and climate change. In both cases, successful collaboration can also facilitate step-level increases in the quality of the science produced.

The approach to cooperative research in the North Pacific which is now pursued is primarily bilateral and, to a lesser

extent, multilateral. It is done for specific, limited reasons. Therefore, transaction costs are high and the spill-over effect of results is also limited. Extended jurisdiction has in fact reinforced this bilateral tendency, especially with regard to the exchange of scientific information on the status of stocks. Not only are the transaction costs high in serial bilateral consultations, but the results are always partial since no common data base exists and there is no overall mechanism for exchanging and evaluating data and information. As a result, there is no comprehensive understanding of common problems.

A more deliberate and comprehensive approach to the planning of cooperative research in the North Pacific can yield significant results in a variety of fields beyond fisheries and more deliberate design of data and information exchange systems can increase the utility of research results and decrease the lead time between production of research results and their use for policy and management decisions. The policy issue, therefore, is regional in the sense that it poses the question whether and, if so, under what conditions, the North Pacific coastal states wish to pursue a more collective approach to the planning and execution of cooperative research programs/projects in the North Pacific on certain kinds of problems.

While the principal justification for such a decision would lie in the field of fisheries, there would also be substantial utility for the problem of ocean/atmosphere interaction with respect to climate change and comparative research on the fates and effects of pollution in the marine environment of the North Pacific. However, the work on climate will need to be coordinated with several activities in the North, West and Equatorial Pacific that are now proceeding in parallel.

The thrust for a collective approach comes primarily from governmental scientists with operational responsibilities. To a large extent, the interests of academic scientists are more diffuse, but a more collective approach would also be very useful for academic oceanographers interested in long-term changes.

If the opportunity is to be seized, a collective approach must respond to real and perceived inadequacies in the marine scientific research, data collection and exchange agendas of major North Pacific coastal states. It must offer promise of significant solutions of value to the management/operational responsibilities of coastal states which cannot be obtained without collective effort and its organizational structure must minimize both direct and interdependence costs to the coastal states involved.

So far, government scientists from Japan, the USSR and the US are the most interested participants in moves toward a more collective approach and have been pursuing the idea in a non-governmental forum. Canadian scientists have not been strong supporters because most of their interests lie elsewhere and they fear skewing of these interests as a result of official commitments by the Government of Canada to such an enterprise.

The Governments of the US, Japan and the USSR have shown favorable interest in the idea, but efforts toward a more collective approach have been derailed in the US as a result of infection of the issue by external concerns of high politics. The first difficulty came in the form of the sorry state of US/Canadian relations in the late 1970's. Soon thereafter followed the Soviet invasion of Afghanistan and the Reagan Administration's adoption of a much more hostile posture toward the USSR than had been the case previously. These events effectively curtailed non-governmental strategies, which have now been held in abeyance.

The marine scientific research issue in the North Pacific is, therefore, similar to those fisheries issues which have been treated internationally even after the extension of coastal state jurisdiction. The facts are that problems of importance are perceived and these cannot be solved effectively by actions of any coastal state acting alone. Furthermore, the results of joint action appear to be potentially significant. These opportunities triggered non-governmental attempts at the working scientist/administrator level within a context of awareness and interest by governments. Whenever the current unrelated barriers are removed, these explorations can continue.

MARINE TRANSPORTATION

The policy problems in this category, while they have their manifestation in the North Pacific, are global and national rather than regional. More specifically, they raise issues concerning the organization and conduct of the global commercial shipping system and national policies adopted to derive maximum benefit from location, capabilities, patterns of foreign trade, and other similar variables. Trade is a big issue, but the North Pacific is only one component, albeit a rapidly growing one, in the global system.

It has been estimated that North Pacific trade contributes about 25-30 percent of world seaborne trade in value and tonnage [16]. The Japan/US link is the dominant trade relationship, while Japan is the dominant trading nation. The most significant regional policy issue is the rivalry between the Soviet Far East Shipping Company (FESCO) and the trans-Pacific liner conferences and the national policies of the US, Canada and Japan in response. However, FESCO rivalry in the North Pacific is symptomatic of a global problem of rivalry by Soviet shipping lines, in which the North Atlantic seems also to be a significant target.

The Soviet merchant fleet has grown rapidly between 1960 and 1973 and especially between 1962 and 1966 [17]. It has increased from 605 vessels of 9 million dwt in 1960 to 1,520 vessels of 13.4 million dwt in 1973. This development paralleled a rapid growth in Soviet seaborne trade, especially between 1959 and 1961. Concomitantly, the Soviet merchant fleet began to move into the lucrative cross trades on the North Atlantic and North Pacific in order to earn hard currency.

There they operated outside the conference system at rates at least 15 percent below those of the conference system [18].

The expansion of Soviet seaborne trade has been fed by Soviet development of Eastern Siberia, Kamchatka and Sakhalin Island. In turn, this triggered the rapid development of FESCO and the Pacific ports of Nakhodka and Vostochuy [19]. FESCO penetration of the trans-Pacific cross trades has been regarded as a significant threat by the liner conferences operating there, which have charged price gouging. This whole issue, therefore, ties into the question of the UNCTAD Code of Conduct for Liner Conferences and particularly the cargo sharing provisions of that Code. This is a global/national shipping problem and, therefore, action, if any is to be taken, would not be appropriate at the regional level. One should note, however, that once again a variety of accumulated shipping laws, policies and practices considerably constrain the scope of US policy response to this problem since US lines may not participate in closed conferences and shippers' councils may not be formed [20].

THE CONDITIONS AND CONFLICTS OF MULTIPLE USE OF OCEAN SPACE [21]

This is a very difficult policy problem in which the methodological dimension looms large. We shall focus here only on two aspects, i.e., trends in the North Pacific and the patterns of coastal state responses. The subject matter will be offshore oil development versus fishing conflicts and conflicts generated by marine pollution. In general, this is a national/subnational rather than regional problem in the North Pacific.

Offshore Oil Development versus Fishing

The trends can be briefly summarized as follows:

1. Canada. No development in the Pacific. Tests were unsuccessful between 1967-1969. There is a Federally imposed moratorium from 1972.
2. Democratic People's Republic of Korea. No information available. Development from 1977.
3. Japan. Small potential. Development since 1956. Very intense conflict between oil and fisheries constituencies. Policy response emphasizing compensation for fisheries losses by oil companies.
4. People's Republic of China. Very large potential. Development since 1973. No reports of conflicts available.
5. Republic of Korea. Some potential. Development since 1969. Conflicts with China concerning the East China Sea continental shelf. Conflicts with Japan over fisheries in the same area, but declining as a result of the 1965 agreement. However, fisheries is a separate issue and is dealt with separately. There is no mechanism for merging the potential fish/oil conflict issues between the PRC, the ROK and Japan. Furthermore, while the fish/oil

constituencies' relationships are adversarial in Japan, they are not in the PRC and the ROK. In any event, the conflict issue is definitely secondary to the boundary delimitation issue, i.e., jurisdiction, surrounding the joint development zone.

6. USSR. Very great potential. Development since 1971 but limited; consequently conflicts are minor. There appear to be no mechanisms for dealing with potential conflicts and no recorded policy actions.
7. US. Very large potential. Development since early 1960's. Considerable conflict in evidence from late 1960's which has triggered an elaborate policy response with respect to government regulation of the conditions of lease sales. In addition, a large-scale information-gathering program was launched concerning the potential environmental impacts of oil and gas development in the Eastern Bering Sea and Gulf of Alaska. Policy responses have also included mitigation of adverse environmental impacts and compensation.

Marine Pollution

Here again the impacts are primarily local:

1. Contamination of fish by synthetic organic compounds. In Japan the policy responses have been government regulation prohibiting the sale of fish for human consumption from the area and compensation of fishermen by industry. In the US and Canada the policy response has been government regulation of levels of concentration permissible for human consumption, but without compensation. The same is true for contamination by heavy metals.
2. Contamination by hydrocarbons. The policy responses emphasize government regulation of safety and prevention and clean-up standards with partial compensation from industry. The issue of oil pollution from ships is an acute one, although not in the North Pacific, but this is primarily a global policy issue. Again, emphasis is on government and/or industry regulation with partial compensation for large spills.
3. Ocean dumping. The policy response has been government regulation concerning dump sites, what may be dumped, etc. This again is a policy issue with a global dimension as defined by the London Dumping Convention of 1972.
4. Nutrient pollution. This is a local problem in Japan with respect to the Seto Inland Sea. Here the emphasis has been on government regulation for recovery. In the US and Canada the emphasis has been on government regulation of sewage sludge and industrial processing wastes discharge into coastal waters.

While in each case the particular policy response may not have been inappropriate, some disturbing trends are evident. These can be summarized as follows:

1. Governments have not yet officially realized and acted upon the need to develop the capability to deal broadly with this emerging marine policy problem. As multiple use of neritic zones intensifies, conflicts will increase. There will have to be judgments made about trade-offs and inter-use accomodations. This is very difficult to do and some of the most developed maritime countries in the world have not gotten very far in developing this capability.
2. There is only fragmented data collection on multiple use trends and conflicts. It is, therefore, difficult to discern general trends.
3. No significant institutional innovations have yet emerged to deal with the problem and there appear to be few appropriate mechanisms.
4. There appears to be a very narrow repertoire of policy responses in this category with far too heavy reliance on governmental regulation. In addition, there is some recourse to compensation, but there is as yet no effective broadly conceived treatment of the inter-use accommodation problem.

CONCLUSION

Let us return to the specific questions which we posed at the beginning of this paper:

1. To what extent is state policy the result of primarily national assumptions and objectives?
2. To what extent is state policy reflective of primarily regional needs and conditions?
3. Are there observable differences in objectives, strategies and effects flowing from the primacy of national versus regional premises?
4. To what extent does the condition of extended coastal state jurisdiction facilitate the emergence of integrated (or coordinated) marine policy?

Our findings are that only one set of issues of the five considered are based primarily on national and subnational assumptions and objectives. This concerns multiple use conditions and conflicts. All the other issues have either a dominant regional component, as in fisheries, or at least a mixed regional/global/national component, as in marine scientific research and marine transportation. However, it should be noted that for Japan the fisheries problem was global, even though the regional North Pacific component was critical. In the case of marine transportation, the global component was critical, with the national component being next in importance. The regional component was incidental.

There appears to be a tendency toward more deliberate, systematic and comprehensive policy whenever the international component, either regional or global, is significant. Perhaps this is because international arrangements must be negotiated

and successful negotiations presuppose clear objectives and attention to accompanying strategies. At the national level, we more often find the chaos that results from the pulling and hauling of strongly contending domestic constituencies without clear and effective national direction. This leaves the impression that marine policy is based, at least at the national level, primarily on dynamic ad hocery. It is very difficult indeed to find clear attempts to calculate benefits and costs and define priorities. As policy, therefore, national marine policy is still in a primitive condition.

Moreover, there is no evidence whatsoever that either extended coastal state jurisdiction or the vector of technological advance bringing in its train intensified multiple use of the neritic zone has facilitated either the emergence, or the recognition, of the need for integrated marine policy at the national level in the North Pacific Region. By and large:

1. National policy is the aggregation of haphazard responses to external demands and is primarily reactive.
2. The national decision process is highly fragmented and suffers from a large number of internal, competing jurisdictions with no clear sense of national or regional priorities. Not surprisingly, this fragmentation is refracted regionally as well.
3. There are only weak or, in most cases, no links between decisions and policies that affect different patterns of ocean use.
4. Little formal attention is paid to formulating objectives and identifying and evaluating alternative strategies for pursuing policy objectives.
5. There is no official perception of the need to calculate net benefit, given expanded national jurisdiction over a wide range of resources and activities in the areas of the ocean recently coming under national control [22].

When one considers that these shortcomings are evident among some of the most advanced maritime countries of the world, the problems facing developing countries are magnified. It seems to us that the attempt to rectify these shortcomings is one of the main tasks facing the global marine affairs community in the next decade.

NOTES

1. See Edward Miles et al., The Management of Marine Regions: The North Pacific, Berkeley, Los Angeles and London, The University of California Press, 1982, pp. 3-4.
2. Arild Underdal, "Integrated Marine Policy: What? Why? How?" Marine Policy, July 1980, pp. 149-169.
3. Edward Miles et al., op. cit., note 1, p. 125.

4. Akira Hasegawa, The Effect of Extended National Jurisdiction on the Management and Development of Fisheries in the North Pacific, Paper no.2, "The Impact of Overseas' 200-mile Zones on Japan's Fisheries," The North Pacific Project, May 1980, Table 1, p. 20.
5. This summary is based on: Ibid.; Shoichi Tanaka, "Japanese Fisheries and Fishery Resources in the Northwest Pacific," Ocean Development and International Law, Vol. 6, 1979, pp. 163-235; Syoiti Tanaka, "Japan's Fisheries and International Relations Surrounding Them Under the Regime of 200-mile Exclusive Fisheries Zones," in Edward Miles and Scott Allen (eds.), The Law of the Sea and Ocean Development Issues in the Pacific Basin, Honolulu, Law of the Sea Institute, 1983, pp. 55-82.
6. Edward Miles et al., op. cit., note 1, Table 6.10 and 6.11, p.189.
7. See K. Honda, "Fishery Joint Ventures in Developing Countries," Journal of the Fisheries Research Board of Canada, Vol. 30, no.12, Part 2 of 2 Parts, December 1973, Table 1, p. 2330; and Norio Fujinami, "Japanese Experience in Access Conditions of 200-mile Regime," FAO Expert Consultation on Conditions for Access to the Fish Resources of the Exclusive Economic Zone, Rome, 11-15 April, 1983, Table 3, p. 9.
8. Ibid., Table 1, p.1.
9. A detailed assessment of the surveillance/enforcement operation in the North Pacific can be found in Oran Young, "Enforcing Public Regulations: The Fishery Conservation and Management Act of 1976," Natural Resources and the State, Berkeley, University of California Press, 1981, pp. 85-180.
10. The details of this issue can be found in Miles et al., op. cit., note 1, pp. 202-213.
11. Robert L. Stokes, "Prospects for Foreign Fishing Vessels in U.S. Fisheries Development," Marine Policy, January 1980, p. 35.
12. Ibid.
13. See also Robert L. Stokes and Brian Offord, "Alaska Groundfish: A financial feasibility by analysis," Ocean Development and International Law Journal, Vol. 9, 1981, no. 1-2, pp. 61-76; and Robert L. Stokes, "U.S. Policy toward Foreign Fisheries: An economic review of the Alaska Groundfish Case", in: Miles and Allen (eds.), op. cit., note 5, pp. 83-102.
14. Two excellent studies on this question have already appeared. See Timothy M. Hennessey, "The impact of fishery regulation in the United States exclusive economic zone," paper presented at the Sixth Annual Hendricks Symposium, April 30 - May 1, 1981, Lincoln, Nebraska, 56 pp.; and Oran Young, "The political economy of fish: The fishery conservation and management act of 1976," Ocean Development and International Law Journal, Vol 10, 1982, no. 5 3/4, pp. 199-274.

15. Hennessey, op. cit., note 14, p. 24.
16. Miles et al., op. cit., note 1, p. 295.
17. U.S. Senate, Committee on Commerce, National Ocean Policy Study, Soviet Oceans Development, 94th Congress, 2nd Session, October 1976, pp. 331-332.
18. Ibid., pp. 336-337.
19. Miles et al., op. cit., note 1, pp. 338-339.
20. See Michael Cohen, Closed Conferences and Shippers' Councils in U.S. Ocean Shipping: An Analysis of Proposed Policy Changes, M.M.A. Thesis, Institute of Marine Studies, University of Washington, June, 1982 (unpublished).
21. This section is based on Miles et al., op. cit., note 1, Chapter 14.
22. Ibid., p. 494.

NATIONAL AND INTERNATIONAL PREMISES IN OCEAN MANAGEMENT: THE CASE OF NORWAY

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NORWAY AND THE SEA

In most respects Norway is a small country. In population it ranks about 90th among the world's nations; and in Europe, apart from certain Lilliputian states, only Iceland, Malta and Albania have a smaller population. As to national territory, Norway ranks about 60th on a global scale; in Europe she ranks 4th [1]. Population density is low; in Europe only Iceland's is lower.

However, if the ocean areas under Norwegian jurisdiction are taken into account, Norway is no longer such a small country. The length of the mainland coastline is 2650 km; if fjords and bays are included, it is eight times that figure, amounting to more than 21,000 kilometers. Due to this long coastline, and measuring the increase in national jurisdiction over ocean areas, Norway is one of the nations in the world which has benefitted most from the law of the sea developments in the last years. According to a survey conducted in 1979 [2], only eleven nations have a larger economic zone. Looking at the relation between land territory and the extension of the economic zone, the relative gain of Norway is even more clear -- only three out of these eleven nations with a larger economic zone have attained a larger relative increase in national jurisdiction [3]. Apart from certain small islands, only a handful of the nations of the world have, statistically speaking, more ocean space available per person, approximately one-half square km.

These figures indicate the significance of the sea to Norway. The large majority of the population lives within a few miles from the coastline. Norwegian land territory consists to a large extent of mountains and less than 3 percent of the soil is cultivated for agricultural purposes. In short, Norway is a nation dependent on the sea. Still, the percentage of the population employed directly in the three main sea-related industries, i.e. fishing, shipping and offshore petroleum activities, is no more than approximately 5 percent [4]. Their contribution to the GNP is, however, quite considerable, but the respective shares of these three industries have changed dramatically over the years. In 1965 the shipping and fishing industries contributed approximately 10 percent and 2 percent, respectively; there was yet no oil and gas industry. In 1980 the total economic activities of these industries added up to roughly one-fifth of the GNP. Petroleum production accounted for three-fourths of this share, while the contribution of the other two industries was reduced by more than 50 percent. Due to its open economy, Norway is entirely dependent upon its

export industries and by the end of the 1970's fishing, shipping and offshore petroleum made a combined contribution of slightly more than 40 percent of national exports [5]. Today export of petroleum products is by far the most important, but from these figures one cannot deduce the respective significance of these three industries to the Norwegian society. It suffices to point to the fact that while only a few thousand people are working on the Norwegian continental shelf, in the northern parts of Norway the fishing industry provides 15 percent of all jobs [6].

The economic linkage between Norway and the sea may be most obvious, but especially in the northern waters there is also a strong linkage between Norwegian security and the sea. Norway, being militarily weak and strategically interesting, has been most concerned with reducing tension and maintaining stability in an area with increasing commercial and military activities. Finally, and quite important for the everyday way of life, the sea is important as a recreational area. Because of the Gulf Stream, the waters along the coast of Norway offer good recreational opportunities, such as swimming, fishing and boating.

NORWAY AND UNCLOS III

Considering that the sea is important to its economy, its security and its way of life, it is not surprising that the law of the sea negotiations have been given high priority by the Norwegian authorities. Apart from the fact that it had strong vested interests to take care of, Norway, being a small country, also tends to favour law, order and predictability through universally accepted rules and regulations. However, Norway has coastal as well as maritime interests. During the 1950's the maritime interests, represented by the large commercial fleet, tended to be in the forefront. Consequently, the Norwegian Government was quite reluctant towards the demands for extended coastal jurisdiction at the UNCLOS I and II negotiations, but the discovery of petroleum in commercial quantities around 1970 gradually changed the Government's interests and priorities, making it tilt somewhat in favour of coastal interests. Considering its still significant maritime interests, Norway had every reason to attempt to reconcile the conflict between coastal and maritime states and interests at UNCLOS III. In a government white paper issued prior to the negotiations, the importance of this Conference to Norwegian interests was underlined [7]; in addition to the factors previously mentioned, the paper also emphasized the Norwegian interest in protecting the marine environment. The government declared that a reasonable compromise between coastal and maritime interests would be a "package deal" combining extensive coastal state sovereignty with traditional freedoms of the high seas with respect to the use of the oceans for the purpose of transport and communication.

The Norwegian authorities put in much effort in order to get a Convention that was instrumental to Norwegian interests.

One indication is that from 1973-1979 a separate Cabinet position for law of the sea issues was established. The importance attributed to the Conference is also reflected in the size and composition of the Norwegian delegations, at its height, at the 4th session in 1976, there were 28 members in the delegation. In addition to the Law of the Sea Secretariat, six Ministries and five sector organizations were represented [8]. In the government's long-term program covering the period from 1978 to 1981, it was stated that creating a new international ocean law was a foreign policy matter of the utmost importance.

The functional differentiation in legal regimes that was the upshot of the UNCLOS III negotiations is in perfect harmony with Norwegian ocean interest, enabling it to attend to both its maritime and coastal interests. The compromise between coastal and maritime states and interests was worked out at an early stage during the negotiations, and the gradual decrease in the number of Norwegian delegates after 1976 indicates that when this compromise had been reached, the most important Norwegian ocean interests had also been taken care of [9].

However, the Law of the Sea Convention provides only a framework for ocean law and policy. Past, present and future developments cannot be adequately understood or explained by way of legal interpretations only, as national interests and distinctive characteristics of differing regions will be decisive in the implementation and shaping of law and policy in relation to the sea. The actual management of Norwegian ocean interests and areas is based on premises that only a certain extent can be derived from the Law of the Sea Convention. In the following I will focus on some of these national and international premises of Norwegian ocean policy, but only insofar as fisheries, oil and gas activities, and the protection of the marine environment are concerned.

INTERNATIONAL PREMISES

Interdependence

In the relationship between a national community and the outside world, new and intensified points of contacts occur, one implication being that the distinction between domestic and foreign policy tends to become somewhat blurred. Domestic policy becomes an integral part of foreign policy and vice versa; problems are "internationalized." It is often said that increased interdependence is a main feature of the development of the international society, but the current tendency towards a decrease in international trade and increased protectionism indicates that there is no unambigious trend towards increased interdependence. Also, the tendency to nationalize large parts of the oceans and ocean resources can be interpreted more accurately as a trend towards nationalization, rather than internationalization. Still, this nationalization does not necessarily imply an "exclusivisation" of the oceans. Rather, it may be argued that it is in the national interest of a coastal state to take into consideration the interests of other

states as decision making premises in the management of its ocean resources. This may reduce the possibility of conflicts and the use of counter-measures in spheres of interests controlled by other states. Mutual interdependence in several spheres of vested interests makes it difficult for one of the parties concerned to engage in pure "power-policy." For this reason, many nations, maybe the small ones in particular, define their national interest in an interplay between domestic and external factors.

Generally speaking, Norwegians have a self-image of being a "kind and considerate" nation. According to a former Minister of Foreign Affairs "there is a strong element of idealism and morality in Norwegian popular attitudes to the international environment. Our notions of just distribution, human dignity, solidarity and brotherhood are important pre-conditions for the making of Norwegian foreign policy" [10]. There is no reason to question this "moral imperative" in Norwegian foreign policy, but the main reason for considering the interests of other countries remains probably the fact that, as a small state, Norway depends heavily upon other nations.

Over the last decade Norwegian authorities have recognized the effect of the process of internationalization on the management of ocean resources. The former Minister of Foreign Affairs, Mr. Knut Frydenlund, stated in 1974 that as a result of an increasing domain of responsibility, Norwegian involvement in, and contact with, the international community was bound to increase:

> It suffices to mention the foreign policy implication following from Norwegian oil production ... as a result of a future extension of our fishery zone, but also the question of economic zones .... Simultaneously, an increasing number of sectors of our society become internationalized. The most important problems for the Minister of Fisheries today is of an international nature -- and the Minister for the Protection of the Environment is in a similar position" [11]. In connection with the establishment of the economic zone, the Government declared that if conservation measures are to be effective "they must be based upon a close cooperation with those neighbouring states having jurisdiction over areas adjacent to the Norwegian economic zone" [12]. The introduction of an economic zone did not imply that Norway no longer needed to cooperate with or consider the interests of the other nations in the region.

Perceptions

I will now present, in a very compressed form, some findings of a recently conducted survey on the question of whether or not Norwegian authorities considered the interests of the other nations in the region in the management of ocean resources [13]. To put it more precisely, whether Norwegian

decision makers and certain "foreign policy elites" perceive that Norway is taking the interests of other nations into account. Thus, the main focus of the survey was on perceptions and not on the actual content of the different policies. Such a survey may give us some information on how well the Norwegian authorities have succeeded in projecting an image of taking account of the interests of other countries in their policies and it may also give us a few hints of the potential for conflicts in this region and of the differences and similarities between the three issue-areas in question: fisheries, oil and gas, and protection of the marine environment. The other countries in question are Denmark, Great Britain, the Federal Republic of Germany, the Netherlands, Iceland, and Sweden [14].

The results from the survey show that four out of every five Norwegian respondents claim that considerations relating to the interests of these nations have been important, or very important, in the Norwegian policies of resource management and regulations. In their opinion Norway has generally taken adequate regard of these interests in its policies. The description "adequate regard" indicates that foreign interests have been considered, although this has not been unreasonably detrimental to Norwegian domestic interests. The material indicates, however, that the authorities are not certain whether all these nations share the Norwegian perceptions. The respondents especially point out that some European Community nations may disapprove of the reduced fishing quotas, but, according to their own assessment, the authorities have endeavoured to conduct a policy balancing the domestic needs and priorities with the interests of the nations in the region.

In order to justify the use of the term "balancing," foreign assessments must confirm these Norwegian perceptions of themselves. The respondents of the nations in the region take in general the view that Norway has taken their interests into account. The survey indicates, however, that there is a discrepancy between Norwegian and regional perceptions with regards to Norway's readiness to consult other countries prior to the implementation of measures. A large majority of the Norwegians answer questions on this point with an unqualified yes, but the perceptions of the foreign elites are somewhat more negative. Their attached explanatory observations, especially from some of the oil respondents, make the point that Norway is more likely to inform than to consult. It seems to be a quite commonly held opinion in certain countries that Norway first and foremost engages in consultation in cases where problems cannot be solved by Norway alone, e.g., in its relations with the Soviet Union in the North. In this view the petroleum policy is mainly the result of quite narrowly defined domestic interests and the needs of the allies are not sufficiently considered [15].

On the other hand, most respondents find that Norway pays due regard to their interests in its management of living resources, although there are certain exceptions. And as to the Norwegian policy for the protection of the marine environment,

it is unanimously seen as taking the interests of other nations into account.

The respondents were also asked whether in its ocean management policies Norway treats some nations in the region different from others. Both the Norwegians and the foreign elites agreed that this is the case. According to the respondents the Soviet Union, Iceland and Great Britain occupy an especially favourable position in Norwegian ocean management policy, albeit for quite different reasons: the Soviet Union because of general foreign policy considerations and in particular problems of security, Iceland because of its vicinity to Norway, and Great Britain on account of a strong interdependence and the need for practical cooperation arising from the fact that Great Britain has the longest sea boundary adjoining Norwegian waters.

As regards the North Sea region this difference in treatment seems generally accepted; Norwegian policy here is described as pragmatic, but cooperative. It is also appreciated to a certain degree that considerations of Norwegian security call for a somewhat different ocean management policy in the northern areas, but especially the petroleum policy and to a certain extent also the fisheries policy in this area are being criticized by quite a few respondents. They say that their interests are not sufficiently considered by the Norwegian authorities.

As indicated earlier, a large majority of the Norwegian respondents were of the opinion that the management of Norwegian fisheries creates the greatest problems for the other countries in the region. Foreign respondents confirm this assessment, although not as markedly as the Norwegian respondents. By and large the foreign policy elites find that the Norwegian off-shore policy creates no significant problems. This tendency is even more pronounced with regard to Norwegian policy for the protection of the marine environment. In other words: Norwegian management of living resources is ranked first on the scale of creating problems, but the respondents in the region find that Norwegian authorities are least apt to consider their interest in the management of petroleum resources, particularly so in the north.

Not surprisingly, the foreign policy elites in the region find that the establishment of the exclusive economic zone has led to less Norwegian deference towards their interests. They maintain that the strict conservation measures introduced in connection with the establishment of the economic zone basically reflected Norwegian internal needs. On their part, Norwegian respondents tend to underline that all nations in the region -- in the long run -- will benefit from these conservation measures.

Although there are differences in respect of issue-areas and nationality, Norway seems by and large to be perceived as a a reasonably cooperative country, which considers to a fair extent the interests of other countries in its ocean management policies. The most notable exceptions seem to be a lack of

consultation and a failure to consider the interests of certain nations, particularly in the petroleum policy and partly in the fisheries policy north of the 62 degree North latitude. If this nationalistic image of Norway north of this latitude takes firm root, while at the same time activities in these areas are expanded, the above assessment of Norway may gradually acquire a more negative dimension. In the long run this may create difficulties in obtaining support for Norwegian policies in this area. However, at present there is no reason to dramatize the development; and the somewhat more internationally oriented petroleum policy pursued by the new Government may mitigate the impression of a nationalistic policy in the northern waters [16].

Significance of International Premises

The Norwegian authorities find the interests of the other countries in the region important in the making of policies, and foreign policy elites in the affected nations are by and large satisfied with the way in which their interests are reflected in Norwegian policies. However, looking at the main features of the Norwegian fisheries policy, its oil and gas policy, and its policy for the protection of the marine environment, the national premises -- defined through domestic needs and priorities -- tend to prevail.

This is most clearly seen in the context of the petroleum policy. The main policy platform for petroleum activities has been to control the growth of this industry for the benefit of the Norwegian society. As regular commercial production was about to start in 1973, a report to parliament was prepared on the role of petroleum activities in Norwegian society [17]. Its main focus was on the question of how the development of petroleum activities could contribute to make Norway "a qualitatively better society." The precise meaning -- if there is any -- of that slogan, is not relevant here; the point is that domestic needs were in the forefront and they have tended to be so in subsequent years. The level of production was to be moderate, both for general reasons of conservation and in order that Norwegian society got sufficient time to adjust to a "petroleum economy." Norway was entirely dependent upon foreign technology and capital in order to develop its offshore resources, but at an early stage it was stated as an important policy objective to "Norwegianize" petroleum activities. This policy has been gradually implemented. Consideration of the interests of other nations has tended to be more pronounced in the North. However, this mostly referred to Norwegian security interests and to the relations with the two superpowers.

The international element has certainly been stronger in Norway's management of living resources and even more so in its policy for the protection of the marine environment. The reason seems obvious: in these issue-areas Norway depends more heavily upon other nations. While petroleum is a stationary and exclusive national resource, fish move about, making bilateral and multilateral arrangement and agreements necessary also after

the establishment of economic zones. Thus, interdependence is generally more pronounced, especially between certain nations. As a rule, in this situation Norway has been more inclined to consider the interests of other nations [18].

Norwegian management of living and mineral resources has generally a stronger effect on the interests of other nations than their policies have on Norway. While Norway is a net-exporter of petroleum and fish products, it probably is a net-importer of pollution. Other nations are only very rarely directly affected by pollution having its origin in Norway or on the Norwegian continental shelf; the problem of pollution in this region is concentrated in the southern parts of the North Sea. Considering these facts it is not surprising that the respondents were satisfied with Norwegian policy for the protection of the marine environment, but this may be due more to the fortunate circumstances of a small population and "a sea of plenty" than to a "considerate" and "internationalistic" environmental policy.

Although domestic needs seem to have been most decisive as premises in Norwegian ocean management policies, the respondents in the other nations of the region find that -- apart from certain problems in the north -- reasonable account has been taken of their interests. One reason is probably that Norway has followed "the rules of the game." Its actions and activities are based on international law and it tends to follow a rather incremental and cautious policy. Aggressive unilateral measures are very rare -- or non-existent -- in Norwegian ocean policy [19]. Generally, Norway's pragmatic, but quite predictable policy is being accepted and understood. This also must be seen in light of the fact that there are relatively few and persistent conflicts in this region -- at least insofar as Norway is concerned. When such conflicts arise, the perceptions may change dramatically over a relatively short period of time. It suffices to point to the still unsettled and delicate negotiations that can be expected between Norway and Denmark/EEC concerning the delimitation of the sea boundaries of Greenland. Although of limited economic significance, the friction between Norway and Denmark over fisheries in the far north has undoubtedly contributed to the quite negative attitude towards Norwegian fisheries policy among Danish respondents. In short, when such conflicts arise, the image of Norway as a "considerate" nation may soon disappear.

NATIONAL PREMISES

Those claiming that most ocean-related problems can be solved only at the international level might consider it a step in the wrong direction to stress the significance of rational management of ocean resources at the national level. However, assuming that Norway is not a unique case, one must examine and analyse policy making at the national level in order to understand the general problems of ocean management and the actual implementation of the rules of the law of the sea. This

seems even more valid after the introduction of the 200-mile economic zone: in the North Sea it is no longer only the sea-bed that is divided into national areas, but this is now also true for the water column. Thus, it seems that rational management of resources presupposes in most regions a well organized and planned management policy at the national level. In the following I will outline the extent to which Norwegian authorities have pursued an "integrated" or "holistic" ocean policy [20]. Little attention will be paid to the different components or sectors in Norwegian ocean management policies.

Ocean-Planning or "Laissez-Faire"?

Over the last decades Norwegian authorities have generally expressed a strong belief in the "blessings of planning" as a means of solving problems between competing sectors for the benefit of society at large. Strict rules and regulations and sector as well as more comprehensive planning have been core elements of the so-called (social-democratic) welfare states, especially in Scandinavia. As soon as new issue-areas appeared on the political agenda, demands were quickly articulated to the effect that new institutions and new laws were needed in order to cope with and to regulate upcoming activities. Even though the new conservative Government represents to some extent a breach with this tradition, its views amount to a relatively minor revision of the traditional planning policies, rather than to a market-oriented laissez-faire policy. Under no circumstances would it be easy to alter this tradition, considering the fact that the different economic sector interests are very well organized in Norway and demand protection and state interference when they see their interest being threatend by some other sector.

Thus, the climate for ocean planning -- or for a comprehensive ocean management policy -- should be ideal in Norway. On the other hand, as was mentioned in the introductory remarks, Norway has a small population and a "sea of plenty," which indicates that the various activities in Norwegian sea areas can be carried out side by side without significantly affecting each other. These demographic and geographic features suggest that there is less need for a comprehensive ocean management policy. As we will see, both characteristics have influenced the manner in which Norwegian ocean resources have been managed.

No Comprehensive Ocean Management Policy

Although high priority has been given to the different sectors -- or parts of Norwegian ocean policy -- little attention has been paid to the need for a comprehensive ocean management policy encompassing all ocean-related activities. The need for an "integrated" ocean policy -- implying that all ocean-related activities are linked together -- has only very rarely been raised in Norway. Consequently, Norway has no "super-agency" for the overall coordination of marine policies. The question of establishing a comprehensive marine affairs

institution was raised almost ten years ago in a report of a committee that examined inspection and policing of fisheries and offshore petroleum activities, but it was concluded that the cost of such an arrangement would outweigh possible benefits [21]. Over the last decade, few demands for such an institution have been put forward [22].

However, a "super agency" is neither a sufficient nor a necessary precondition for an integrated marine policy. Overall coordination and the weighing of the different premises may well be carried out within the existing administrative and political structure, but little seems to have been done in terms of comprehensive sea use planning by treating all sea-related activities as part of an integrated system. For the ocean areas nothing has been developed that is similar to the hierarchy of plans for the use of land space. This does not imply that Norwegian authorities are pursuing a laissez-faire policy. On the contrary, different government agencies have used considerable time in developing sector plans. This applies especially to offshore petroleum activities, but also to marine fisheries and over the last few years progress has been made also in developing policies for the protection of the marine environment. The point is that the Norwegian Government has adopted a policy of sector management and not a system of comprehensive sea use planning.

Generally, inter-use linkages and conflicts between users of the sea have been considered a minor problem, both by the authorities and by the public at large. Moreover, the conflicts that have attracted attention have been considered almost exclusively bi-sectoral and not multi-sectoral and this implies that less comprehensive arrangements were considered adequate. Another reason -- of a somewhat different nature -- is that the database necessary for establishing a comprehensive ocean management policy is still quite weak. Finally, the fact that Norway has a relatively small central administration facilitates inter-agency coordination.

Local Conflicts

What then, have been the actual conflicts and inter-use linkages between the different sea-related activities?

Until the start of offshore petroleum activities on the Norwegian continental shelf in the mid 1960's, linkages seem to have been few and weak. The main inter-use linkage was probably that between sewage emission and waste dumping on the one hand and fisheries and recreation on the other. However, these conflicts were primarily local in their direct ramifications and they were usually treated as such; only in rare cases did they reach the national political agenda. The fact that until 1972 the Ministry of Fisheries had the authority to license sewage emissions may indicate that emissions were subordinated to the interests of the fishing industry. Ecological consciousness was, however, rather low in the 1960's and no organized groups or formal institutions existed to articulate environment interests. Consequently, recreational and environmental

interests were probably quite often subordinated to those of dumping and emissions. Nevertheless, conflicts were generally marginal and few were affected -- the main reason being no doubt the combination of a small population and large ocean areas. In short: inter-sector issues did not figure frequently and were not an important issue-area on the marine policy agenda in the 1960s.

Offshore Production: Triggering Effect on Ocean Planning

The situation changed after the discovery of oil and gas on the Norwegian continental shelf in 1970. In fact, from the very start of petroleum activities in 1962, the authorities anticipated that these activities might create new inter-use linkages and collide with old and established sea-related activities [23]. The notion that petroleum activities were to have far-reaching effects on other activities and for society at large is reflected in the large number of actors involved in the making of the petroleum policy.

In no other sector of marine activities has the involvement of "extraneous" actors been as strong as in the sector of offshore petroleum production. It is the only marine activity for which a permanent inter-ministerial coordinating committee has been appointed [24]. Most of the legislation on petroleum activities has been drafted in inter-ministerial committees and on occasion the rules and regulations were sent for review to more than 50 "extraneous" actors. Apart from the Ministry of Oil and Energy, the Ministry of Foreign Affairs, the Ministry of Finance and the Ministry of Fisheries have been strongly involved in the making of the petroleum policy.

Not only central agencies have been involved in offshore petroleum activities. Two regional "oil boards," appointed by the district parliaments (fylkesting) concerned and including representatives of the trade unions, the employers' federation, and the fishermen's organizations, have important functions regarding petroleum activities within their geographical areas. The organization of the decision-making process for petroleum policy probably reflects, at least in part, the extent to which this activity is perceived to interfere with others. Undoubtedly, the seemingly more consequence-oriented way of thinking that came in the wake of offshore activities contributed to the elevation on the political agenda of the question of pollution and of the policy for the protection of the marine environment.

Protection of The Marine Environment

Towards the end of the 1960's and the beginning of the 1970's there was a growing general concern in the industrialized societies in relation to environmental values. The 1967 discovery of oil reservoirs in the North Sea and the Torrey Canyon incident of the same year made the problem of the impact of oil acute. Compared to other sources of pollution, Norway has, in the last decade, given by far the most attention and the most resources to research the effects of hydrocarbons on the

marine environment. Although land-based pollution generally contributes most to the deterioration of the marine environment, this form of pollution has not received the same attention [25].

In fact, as late as 1975 only about one-fifth of all sewage emissions received any kind of treatment in Norway. One reason for the strong emphasis on the effects of oil pollution was simply the scarcity of information and knowledge [26]. In addition, petroleum activities as such received much political attention, the risk of a blow-out caught the imagination of the public at large, profit margins in the petroleum industry were considerable, and the industry and the authorities could afford the cost of research on the effects of oil pollution. Sewage emissions and industrial waste were another matter altogether, having mostly local ramifications and being less "spectacular." A final reason for the increased concern with the effects of hydrocarbons on the marine environment was the fact that the environmental interests coincided with the interests of a specific and organized client group, the fishermen.

It seems that at least until the early 1970's the collective interest in a clean environment was more often than not weakly articulated. It generally lost to specific economic interests. Although recently there are some cases suggesting that the combined fishing and environmental interests are losing again to economic interests [27], considerable progress has been made in the last decade in developing policies for the protection of the marine environment. There has been a reorganization and strengthening of the institutional capacity for environmental protection and pollution control. A Ministry of Environmental Protection was established in 1972, several more specialized agencies were merged into a central Pollution Control Agency, a comprehensive national research program on marine pollution has been initiated, and a new organizational framework for handling marine pollution emergencies has been established.

Although all these measures are indicative of the increasing weight attributed to the protection of the environment in general and of the oceans and coastal waters in particular, there have been certain problems with respect to their implementation. The creation of the organization for the handling of marine pollution emergencies can hardly be labelled a success. Due to economic and organizational difficulties, many coastal communities have had considerable problems in meeting the obligations in the implementation of their part of the program. In addition, there are technical problems so that the equipment to cope with large oil spills, and in particular with blow-outs, is inadequate. On the other hand, the detrimental effects of oil spills on the marine environment in general and on fishstocks in particular are today considered to be less serious than only a few years ago. In fact, the Chairman of the board for the "Program for Preparedness against Oil Pollution" recently stated that due to the combination of inefficient equipment and the fact that oil pollution does not negatively affect fishstocks, the 900 million Norwegian kroner spent on this program were a waste of money [28].

Another implementation problem concerns the national research program on marine pollution. So far, only fragments of this plan have materialized, although coordinated projects must be developed by the different research institutions. However, coordination of these projects has turned out to be quite difficult. Problems of procedure and responsibility, as well as different professional traditions and methods, are involved [29]. One underlying problem seems to be the conflict between those who wish to preserve and protect the marine environment for its own sake, represented by the Ministry of Marine Protection, and those who wish to do this for the sake of protecting the living resources.

To sum up, except in a few local situations, marine pollution has appeared to be a less serious problem for Norway than for most coastal states in the region. The development of offshore petroleum activities elevated the issue of marine pollution to a more prominent place on the political agenda. More recently, considerable progress has also been made to control and regulate land-based pollution. However, in essence the problem of land-based and sea-based pollution still exists, but the combination of a small population and large ocean areas reduces the strength of inter-use linkages and the levels of conflicts.

Oil versus Fish: Level of Conflicts

When petroleum activities started, the authorities anticipated that it might interfere with maritime transport and fishing. While offshore activities have created few problems for maritime transport, the most important inter-use conflict is at present that between fisheries and oil and gas activities. In the following I will give a brief outline of the strength and direction of the inter-use linkages between petroleum and fishing interests, albeit that only the effects of offshore activities on fisheries will be examined and not those of fisheries on offshore activities [30].

The market effects of petroleum activities on fisheries have not attracted much attention. Although there is little knowledge and much uncertainty, the interests of the fishermen do not seem to have been seriously affected. In addition, the market effects appear to be somewhat ambiguous, having both negative and positive implications for the fishermen. More attention has been given to the conflicts arising from the fact that the offshore industry and the fishermen depend to a certain extent upon the same areas for the carrying out of their respective activities. To simplify somewhat, petroleum activities have affected the fisheries in three ways: through reduction of space, pollution, and debris.

As already indicated, in recent years the negative effects of hydrocarbons on the marine environment have been downgraded. However, information on the long-term effects of oil pollution is scanty and there is no doubt that under unfavourable circumstances a large blow-out may cause considerable damage to the spawning grounds. Nevertheless, pollution from offshore

activities seems to have caused no major problems to the fishermen.

Calculations made by the Directorate of Fisheries in 1980 show that a mere 0.4 percent of the Norwegian continental shelf in the North Sea was occupied by permanent and mobile platforms and their safety zones. However, the activities of supply ships, the laying of pipelines, the increase in drilling activity in recent years, the fact that production areas demand considerable space, and the fact that some fishing gear requires a lot of room make the space conflict a somewhat larger problem than suggested by this figure. There is little direct damage from collisions, but "disturbances" in the form of reduced maneuverability may prove just as important as the direct loss of space. In sum, a large part of the fishing fleet in the North Sea has been affected by offshore activities, but damage in terms of reduced catches is probably moderate.

The problem of debris has by far caused the largest problems for fishermen, most notably for the trawlers in the North Sea. By the end of 1981 more than 3000 incidents of damage to fishing gear due to debris had been reported [31]. These losses may amount to 20-30 million Norwegian kroner. Losses resulting from fear of damage or from areas being unfit for fishing are probably higher. At the end of 1970 the Directorate of Fisheries estimated the loss to trawlers in the North Sea at approximately 40 million kroner annually. Although a number of factors make calculations of this kind uncertain and although there are indications that these figures are too high, there appears to be good reasons for concluding that debris has caused considerable problems for a considerable number of fishermen.

Oil versus Fish: Some General Problems of Ocean Management

In recent years fishermen have, through different arrangements, received compensation, thus at least recovering part of their losses; but there is, nevertheless, a real conflict between fisheries and offshore activities. This seems to be unavoidable as long as both activities depend to a large extent upon the same areas. However, the way in which the authorities have dealt with the relations between these two industries may have mitigated the conflict. I will now examine some of the problems encountered by the authorities, thus illustrating some of the more basic problems of ocean management and planning in cases where interests collide.

Lack of Information/Consultation

During the first half of the 1970's the Norwegian Fishermen's Association repeatedly complained about not getting enough information from the authorities on aspects of the offshore petroleum activities that might affect the interests of fishermen. In the same period there were considerable discrepancies between the views of the authorities and those of the fishermen's organization with regard to the consequences of offshore petroleum activities for the fishing industry. The

fishermen were expressing increasing uneasiness over the fact that petroleum activities took more and more space and in particular about the fact that these activities led to more and more debris on the sea-bed. The authorities in their turn perceived the danger of pollution as representing the most important threat to the interests of the fishermen. However, in 1977 a regular direct contact was established between the petroleum administration and the Norwegian Fishermen's Association. Through these and other channels the fisheries sector has succeeded fairly well in articulating its interests vis-a-vis the petroleum sector. These consultative arrangements seem to have served a useful purpose, both for the fishermen and the authorities. In 1979 the Ministry of Oil and Energy stated that these procedures represented an important means of reducing conflicts between the two industries [32], indicating that they should not be regarded as a channel for articulating only the interests of the fishermen.

The lack of firmly established consultative mechanisms between the two sectors during the first decade of petroleum activity on the Norwegian continental shelf may have contributed to an increase in the negative effects of petroleum activities on the fishing industry. More efficient channels of communication could have made the authorities aware of the negative effects of debris at an earlier time, thus reducing the costs for the two sectors involved and for society at large [33].

Institutional Capacity

The failure to discover some of the negative aspects of offshore activities may also be attributed to a lack of institutional capacity. The authorities had considerable expertise on oil pollution at their disposal through the Directorate of Fisheries and especially the Institute of Marine Research. In the 1970's a high priority was given to research on the effects of oil spills on living resources, and the premises of these institutions are undoubtedly an important reason for the priority given to this particular aspect of offshore petroleum activities. Similarly, the fact that the authorities perceived for a long time oil pollution as the most immediate threat to fisheries must be seen in this light.

No corresponding expertise or institutional capacity existed with regard to debris. With few exceptions, until 1976 the littering of the sea-bed was registered only by individual fishermen. The mechanisms for feedback of this information to the authorities seem to have been unsystematic and weak until the establishment of a state compensatory arrangement for damage to fishing gear. The "distance" between individual fishermen and the authorities was considerable and the fishermen probably lacked the professional authority on questions of debris that marine scientist had on pollution. If closer surveillance of the sea-bed had been established at an earlier point in time, the benefits of such action would have been much greater than its costs.

Politization

Another observation is that if a client group, or its "allies," are not able to create sufficient "political noise" on a certain problem and if there is no established institution to cope with that problem, chances are slim that the problem will be perceived by the authorities. This may be illustrated by comparing the political and administrative procedures prior to the start of drilling south of 62 degrees North latitude with those when drilling north of that latitude commenced. When drilling for petroleum in the North Sea started in 1966, only one short, factually-oriented government white paper was issued beforehand. The emphasis was on "narrow" technical and economic matters and no attempt was made at conducting consequence analyses. The intensity of political debate was very low. Integral planning was not attempted and neither the fishermen's organizations nor the Ministry of Fisheries were notified prior to the announcement inviting applications for concessions in the area south of 62 degrees North latitude.

Quite another matter were the administrative and political procedures in 1979 when the northern continental shelf was opened up for drilling. The planning process lasted for more than five years and three comprehensive government white papers were issued. A government appointed committee conducted detailed and comprehensive analyses of the consequences of these future activities for the main sectors of society. The Norwegian Fishermen's Association was not only consulted as to these activities, but for a while it almost seemed as if this organization and the authorities were engaged in negotiations [34].

Although this marked difference in the political and administrative procedures is attributable to a number of factors, there can be little doubt that an important reason is the difference between the two periods in the level of politization. The increase in attention for, and the acknowledgement of the conflict between fisheries and petroleum activities clearly contributed to this process.

However, the above is only part of the picture. In the aftermath of the 1972 referendum on joining the EEC there was a more intensive political debate over the so-called "centre-periphery" problem, while a higher ecological consciousness in general and the blow-out in the North Sea in particular drew attention to the vulnerability of the ecosystem of the Northern waters. These factors were all instrumental in supporting the interests of the fishermen. Skepticism towards drilling was widespread and the fishermen found important allies in the political parties and environmental organizations. The resulting high level of politization seems to have been an important reason for the thorough planning and the evaluation of different kinds of premises and interests prior to the start of drilling in a very limited area of the Northern waters in 1979. Such a more thorough planning process prior to the start of petroleum activities in the North Sea might have reduced some of the negative effects of offshore drilling and production that were found to exist later on.

Evaluation of Public Policy: Rules And Enforcement

This question is probably more in the nature of a general public policy issue, related not only to the problem of establishing an "integrated" policy. The authorities seem to have based their policies on the tacit assumption that when rules were made or decisions taken, these served their intended purpose. The rules and their enforcement were only changed when others had demonstrated that this was not the case. Again, the problem of debris may serve as an example. Littering of the sea-bed was forbidden by law, the oil companies reported that the bottom was clean, and so the authorities assumed that there was no problem until others proved otherwise. In general, the authorities seem to have relied heavily upon rules, giving less attention to enforcement and control.

On a number of occasions the authorities made statements to the effect that "Norway has more strict and detailed rules regulating petroleum activities than any other country in the world." Lack of compliance with all such rules may indicate that even if rules are necessary to regulate conflicts between competing sectors, they in themselves do not represent a sufficient guarantee that conflicts are avoided.

The Dilemma Of Ocean Planning

The linkage between petroleum and fishing activities also illustrates the problems of ocean planning in a more fundamental way. Even if the interests of the fisheries sector are articulated and integrated as a premise in the decision-making process, ocean planning poses certain problems.

The idea of "petroleum free zones" has been raised on some occasions, but such zones have not been established. To reserve some areas for certain activities before their resource potential is known, may lead to decisions that are economically arbitrary and possibly sub-optimal for society at large. And in order to obtain information on the resource potential, mapping and drilling must be permitted, exactly the activities that should be avoided under the notion of "petroleum free zones." This dilemma is strengthened by the fact that in most cases exploration also implies production -- there is little likelihood that oil companies will bear the cost of exploration when they are not permitted to start production if oil and gas are discovered in commercial quantities.

As the Norwegian continental shelf is more thoroughly explored and as the database is improved, there will be better chances for meaningful ocean planning. It will be easier to reserve certain areas for other activities if the petroleum industry has reasonable options for expanding its activities elsewhere on the continental shelf. This makes the dilemma of ocean planning somewhat less acute, but it does not solve the more fundamental problem.

At present the impression is that in most areas where the petroleum and the fishing interests collide, the premises of the fisheries sector are integrated in the decision making process in such a way that it seems reasonable to conclude that there

are good institutional conditions for the articulation of these premises. However, the fishing industry has a handicap built into its very structure. The fact that it is composed of many small entities which are often not well-equipped in terms of political resources makes it difficult to get information and viewpoints quickly and efficiently to their own organizations and the authorities.

Finally, the actual weight that is being attributed to the interests of the fisheries sector is not only determined by way of the comprehensiveness of premises. If, however, these interests are articulated and internalized in the decision-making process with regard to petroleum policy, it is a political question to decide how much weight should be attributed to the different premises.

CONCLUDING REMARKS

In Norway little has been done in terms of comprehensive sea-use planning by treating all marine activities as parts of an integrated system. The main reason for this seems obvious: so far, there has been no need for such planning. Apart from the bi-sectoral conflict between offshore activities and the fishing industry, inter-use linkages have tended to be rather weak and diffuse within the Norwegian economic zone. Consequently, the costs of setting up a "super agency" for the overall coordination of marine activities -- or of otherwise trying to set up comprehensive sea-use planning systems -- so far seem to outweigh the benefits of such arrangements.

The fact that the management of ocean resources within the Norwegian economic zone has posed relatively few problems probably cannot be attributed only to clairvoyant policy-making on the part of the authorities. To put it somewhat bluntly, "fortunate circumstances" are in all probability equally important. Regardless of the policies pursued by the authorities, inter-use linkages and the level of conflicts are limited by the twin facts of Norway's small population and its "sea of plenty." The way in which the authorities handled the relationship between the petroleum and the fishing industry illustrates that when conflicts arise the management of ocean resources poses administrative as well as political problems.

Although domestic needs and priorities have played quite a decisive part in Norway's management of resources, the interests of other nations have also been taken into account. The other nations in the region find by and large that their interests have been considered, but the picture is not without ambiguities. A certain discrepancy seems to exist between the perceptions of Norwegian decision-makers and those of decision-makers in some other nations of the region. This relates especially to Norway's offshore activities in the north. Although differences of interest probably explain part of this discrepancy, it may indicate a need to strengthen and improve the consultation procedures in this region.

NOTES

This paper is primarily based upon the preliminary findings of a research project on Norwegian ocean management carried out at the Fridtjof Nansen Institute. The project will be finished by June 1984.

1. If Spitzbergen is not included, Norway ranks 5th.
2. Renate Platzoeder, "Maritime Anspruche 1979. UN-Seerechtzkonferenz und deutsche Meeresinteressen," Protokoll des Meeressymposium Kiel 1980, pp.82-87.
3. These are Great Britain, New Zealand and Japan, based on the survey by Platzoeder, op. cit., note 2, and UN Statistical Yearbook, 1979/80.
4. There are, of course, a number of ways to calculate these figures, each giving quite different results. One example is illustrative: in 1975 16,800 Norwegians had fisheries as their only occupation, 8,300 as main occupation, and 10,000 as secondary occupation.
5. In 1978 the share of fisheries in the export was approximately 5 percent, shipping slightly more than 20 percent, and oil and gas 17 percent, NOS Historisk Statistikk, 1978, p.171.
6. Brit Floistad, "Hovedlinjene i utformingen av norsk sjogrensepolitikk etter 1945. Interesseavveininger; nasjonale og internasjonale," The Fridtjof Nansen Institute, R:022, 1982.
7. St. meld., no. 40, (1973-74).
8. For a complete presentation of the composition and size of the Norwegian delegation to UNCLOS III in the period 1975-80, see Willy Ostreng, "Utlandet i norsk havforvaltning. En studie av utenlandske interessers representasjon i norsk havforvaltning," The Fridtjof Nansen Institute, R:028, 1982.
9. The size of the delegation decreased from 28 in the last session in 1976 to 19 in 1977. In 1980 the delegation had 8 members.
10. UD-informasjon, no. 25, 1979, p.35.
11. UD-informasjon, no. 53, 1974.
12. Steld. no. 75: Langtidsprogrammet 1978-81, p.91.
13. Reference to this survey is made in Ostreng, op. cit., note 8; chapter four deals with perceptions.
14. Originally, the Soviet Union was included in the sample, but it proved impossible to obtain any answer. With regard to the methodological requirements of perception studies, see Ostreng, op. cit., note 8, pp. 5-6 and pp. 62-64.
15. For a thorough study on the perceptions of Norwegian oil and energy policy, see Bard Bredrup Knudsen, "Elite images and perceptual predispositions: A study of some national and international images in Western Europe," The Fridtjof Nansen Institute, Eu:HOII.
16. The Under-Secretary of the Ministry of Foreign Affairs stated in 1982 that more foreign participation in the

offshore activities in the north might be necessary in the future; UD-informasjon, no. 30, 1982, p.12.

17. St. meld., no. 25, (1973-74).
18. There is at least one exception to this rule, Iceland. Norway undoubtedly treats Iceland more favourably than is necessary from the viewpoint of mutual interdependence.
19. This is clearly demonstrated by the very incremental and cautious increase in Norwegian fisheries jurisdiction in this century. For a fuller discussion, see Floistad, op. cit., note 6.
20. For an elaboration of the concept of "integrated" policy, see Arild Underdal, "Integrated marine policy: What? Why? How?" Marine Policy, July 1980.
21. NOU, 1975, 50.
22. The idea of establishing a Ministry of Coastal Affairs was proposed by a former Under-Secretary of the Ministry of Fisheries in 1981, but the idea did not get much support.
23. Paragraph 2 of the "Intermediate act of exploration and exploitation of the resources of the continental shelf" stated as a precondition for permission that explorations do not interfere with or disturb Norwegian fisheries; Midlertidig lov av 31 mai 1963 om utnyttelse og utforskning av undersjoiske naturforekomster.
24. The committee seems to be a forum for information exchange, rather than a policy-making body.
25. Although pollution from offshore activities is small compared to land-based pollution and pollution from ships on a global scale, there are bound to be large regional variations. The considerable offshore activities in the North Sea make this area more vulnerable to this particular source of pollution.
26. For an informative overview of the history of oil pollution research, see Grim Berge and Karsten Palmork, "Accomplishments and future plans in oil pollution research," Institute of Marine Research, Bergen.
27. I am referring to the much debated emissions of industrial waste from the mining company Titania. The fact that the Ministry of Environmental Protection allowed these emissions caused a member of the Danish Folketing to state that Norway's reputation in environmental matters was in danger; Aftenposten, April 16, 1982.
28. Vart Land, May 27, 1983.
29. The authorities perceive the problem of, and the need for, coordination, but progress seems to have been very slow.
30. In terms of actual "interference" fisheries seem to have caused only marginal problems for offshore activities. This is not to say that the fishing industry has not inflicted any extra costs on the petroleum industry. The presentation of the relation between the oil and fishing industry is based on Steinar Andresen and Arild Underdal, Norsk oljepolitikk og fiskerinaeringens interesser, Aschehoug, 1983.

31. The peak of reported damages was reached in 1979; since then the number of damages seems to have declined.
32. St. meld., no. 57, p.78.
33. The costs involved have not only affected fisheries, costs of clearing the areas around the drilling and production platforms amounted to more than 100 million Norwegian kroner.
34. For an elaboration of this point, see Steinar Andresen, "Fiskeri- organisasjonene og oljevirksomheten: Problemoppfatning, deltagelse og innflytelse," Fridtjof Nansen Institute, R:011, 1981.

SUPRANATIONAL OCEAN MANAGEMENT: THE CASE OF THE EC

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This paper seeks to juxtapose two concepts: that of a supranational authority in the European Community (EC) and that of ocean management. A cynic may remark that it is hard to decide which of these has least substance. A communautaire optimist may consider that changes which have taken place in the maritime areas over the last six years or so provide an opportunity not only for much needed ocean management, but also for a strong display of supranational authority by the EC. It would be unfortunate if such enthusiasm were to land the EC in the role of a latter-day Canute standing on the twin pillars of the Luxembourg Court and the Common Fisheries Policy amidst an incoming tide of national regulations, transnational activity, and involvement by other international organizations. It is, therefore, proper to examine the concepts of supranationality and ocean management in the Community context; to look at the existing policy making and implementing for "EC waters"; to see whether there are moves towards "ocean management" in the EC and what are the barriers; and, finally, to ask whether "supranational ocean management" is desirable in the Community.

THE CONCEPTS

The idea of a supranational authority found early intellectual expression during the First World War. In 1916 the British Fabian Society writer Leonard Woolf outlined how "international government" had become increasingly accepted through diplomatic meetings, international organisations and commodity agreements. He considered that cooperation was not enough in order to end war, control of national powers was needed. In an essay called "The Supranational Authority that will Prevent War," he claimed that "if war is to be prevented, states must submit to some international control and government in their political and administrative relations" [1]. The "Supranational Authority" included the establishment of an International High Court, an International Council of states' representatives, and an international secretariat. Whilst some of Woolf's suggestions found their way into the Covenant of the League of Nations, the countries represented at the Versailles Peace Conference in 1919 made sure that the element of a supranational authority, i.e. one with powers superior to those of nation states, was excluded from the Covenant.

From 1919 until the post-Second World War period, a number of plans were advanced for the political re-organization of Europe, many of which involved the delegation of authority by states to a supranational body, often as a stage towards the creation of a truly federal United States of Europe with only

one sovereign government. It was not always easy to differentiate between the stage of a Europe of sovereign states with a supranational body above them and the aim of a united Europe with a sovereign federal government above a number of non-sovereign regional states.

While such federalist notions were being promoted in the Briand Plan of 1929, in the writings of Winston Churchill, and in the Wartime Resistance Manifestoes, another strand of thinking about international cooperation was developing. Woolf's book International Government had pointed out the extent of nineteenth century governmental and non-governmental technical and economic cooperation across frontiers [2]. During the First World War the Allied Governments found it prudent to coordinate a number of tasks and established functional agencies under the Supreme War Council to this end. The Allied Maritime Transport Executive, for example, was given powers to organize tonnage, ship purchasing, and the carrying of imports in a way that functioned most satisfactorily, rather than to suit national sensitivities [3].

A functional approach to world problem was continued in some of the work of the League of Nations and in the International Labour Organization, amongst other institutions, but almost invariably the member states of such organisations prevented them from taking the action most suited to world-wide or even region-wide problems. National sensitivities had to be taken into account. However, a functionalist theory emerged in this period, propounded by a colleague of Woolf, David Mitrany. His vision of the world was one:

> ...in which the functions of everyday social life -- transport, health care, communications, agriculture, industrial development, scientific development and so on -- are no longer assiduously carried on within the confines of each sovereign state but are undertaken across frontiers on a regional, continental or universal basis. These activities would be overseen by international organisations which would be more like boards of management [4].

The specialized agencies of the United Nations family seemed to fit in with this hope, but their value as functional bodies was very quickly undermined by the intrusion of political conflict, in particular the Cold War.

A new functionalist approach emerged in Western Europe with the Schuman Plan in May, 1950. The French Government found that the United States and Britain were not willing to keep defeated Germany subjected and it trembled at the thought of a revitalized, yet uncontrolled, German nation. It had to break away from Beaverbrook's dictum that Germany was "either at your feet or at your throat" and it settled on the idea of some form of mutual control. It took advantage of the need to re-organise the crucial coal and steel industries in Western Europe to propose the establishment of a "High Authority" to administer

these industries. This idea, the brainchild of Jean Monnet, a former member of the Allied Transport Maritime Executive, brought in a supranational authority to control certain limited functional areas. The Plan was accepted by six continental European states: France, West Germany, Italy, Belgium; the Netherlands, and Luxembourg, but was rejected by the United Kingdom Government, which disliked the idea of any authority over which it could not exercise control regulating the British coal and steel industries. The European Coal and Steel Community went ahead and in 1957 the six Governments decided that the Community should cover an expanded range of economic activities and atomic energy. The creation of the European Economic Community and Euratom, the atomic energy equivalent, saw a weakening in the element of supranationality in the High Authority's successor, the Commission, which was given only limited decision-making powers. Other Community institutions have contained the germ of supranationality: the Court of Justice employing Community rather than national law; a European Parliament elected by direct elections; and interest groups representing farmers, fishermen, trade unions and businessmen on a Community, rather than a national basis.

Since the creation of the three Communities, the supranational aspect has been further downgraded, especially with respect to the Commission. In particular, the 1966 "Luxembourg Compromise" not only trimmed the wings of the Commission, but it also established the tradition of unanimity in the decision-making of the Council of Ministers. The unifying of the three Communities in 1967 and the extension of membership in 1973 to include Britain, Denmark and Ireland made supranational decisions more distant. Although the Council of Ministers does now take majority decisions, this is rarely done in the face of opposition by a member state. Whilst Community law takes precedence over national law, this does not mean that the former cannot be impeded by national governmental action. The body responsible for overseeing the implementation of Community decisions, the Commission, has no Community policemen available and has to be politic in its blend of threats and persuasion when attempting to ensure Community policy is carried out.

This development away from supranationality in the Community has been reflected in the literature. The earlier writings referred to political integration; to "spillover" of activities from one functional area to another; and to the creation of a new supranational authority which would attract the loyalties, expectations and activities of the political actors. All this has given way to analyses of "what went wrong," the obsolescence of integration, the growth of political turbulence, and to foresaking "institutional tidiness" [5].

In practice the European Community seems to have only one policy that could be described as supranational, the Common Agricultural Policy (CAP). Even here the lack of coordinated policies in industrial, transport and economic policies has led to the disintegration of many aspects of the CAP which is kept

together by a series of make-shift ameliorations, such as the "green" currencies and the monetary compensatory amounts (m.c.a.'s). In many other areas, not least in international trade matters, the EC has advanced along the road of coordination and cooperation, but has failed to persuade the member states to delegate widespread, let alone open-ended, powers to a supranational authority.

From this account it should be clear that it is difficult to imagine the European Community taking a supranational approach at least in the near future, to some new activity such as "ocean management." This is not to say that such an approach will never be taken or that it is not desirable. It does mean that Community involvement in maritime questions should be more closely examined to establish the present state of play and future prospects.

First the concept of ocean management needs further elucidation. Since the extension of state activity and control into former areas of high sea, serious consideration has been given to the way in which governments should arrange the institutions, policies and activities covering their part of the oceans. Even before the extension of fishery limits or economic zones that took place in Europe in the 1976-78 period, attention had been focussed on the need for governments to avoid a casual or haphazard approach to maritime policy.

In 1975 the editors of a Fabian pamphlet published in London entitled their collection "Sea Use Planning" and claimed their purpose to be insertion of this phrase into British political vocabulary [6]. One contributor asserted that:

> Ocean management is a new concept in the study of marine sources and use of the sea.... more recently, ocean management has been considered to include the management of the coastal zone and of the land/sea interface.

However, it was admitted that this notion was restricted to scientists and researchers [7]. The pamphlet ended with a recommendation for a Secretary of State for Maritime Affairs within the United Kingdom "with specific responsibility for the general conduct of offshore government and for the development and practice of sea use planning" [8].

Professor E.D. Brown has defined sea-use planning as:

> the provision of institutions and procedures capable of ensuring the rational, coordinated exploitation of the sea in the interest of the community at large and in the light of adequate information, and the resolution of conflicts between competing interests in accordance with agreed criteria [9].

The term "planning" refers to a more static process concerned with organizing by prescribing prior criteria for conflict resolution in advance, whilst "management" is a more

dynamic process which aims at obtaining a negotiated order in a changing situation, using conflict constructively and stimulating social and economic change [10]. In the context of the North Sea, Mason has defined management as:

> the organisation of effort to achieve a particular distribution of goods and services, costs and benefits over a certain period of time among a set of groups and individuals [11].

Two Dutch researchers, again writing about the North Sea, consider that:

> Sea-use planning should explore future and present developments and translate them into managerial methods to deal with the situation that occurs at a given moment.

Management in this context is seen as:

> part of a wider planning process in which action is taken to change circumstances in a way we want [12].

All these ideas seem to have in common the notion of the oceans or a geographical part of the oceans as the subject of one economic and political system. Such a system has certain political resources attached to it to transform inputs into that system into outputs -- what Almond and Powell call its conversion function. Support of and demands on the system, inputs, are articulated and aggregated. The system itself has resources to maintain and adapt itself to certain norms, the ability to recruit support, and to socialise. A functioning political system can produce outputs in the form of authoritative decisions that can be implemented by rule-making, rule-application, and rule-adjudication [13]. Sea-use planning would thus probably include the input focus, articulation of demands and their aggregation, and the rule-making aspect. The wider concept of ocean management would also involve the application of decisions and their adjudication, as well as the maintenance and adaptation of the political resources of the system. It thus requires institutional structures which can bring together all the articulated human demands made on a particular piece of sea and which can then make and enforce decisions concerning those activities.

It is clear that the present institutions governing "EC waters" fall short of such ocean management. The next stage in this paper is to examine the extent to which the EC at the moment regulates activities in its seas.

THE EXISTING SITUATION IN EC WATERS

The first United Nations Conference on the Law of the Sea (UNCLOS I) in 1958 provided the basis of coastal states'

sovereign rights to explore and exploit their continental shelf and, following from this, the North Sea states from 1965 to 1971 apportioned the shelf there for that purpose. From 1977 the European Community states extended their fisheries limits out to 200 miles, or to the median line, and Norway declared a 200-mile exclusive economic zone (EEZ). It now seems that as a result of UNCLOS III more such EEZ's will be claimed and generally accepted. These developments, and others, give states a wider range of rights and duties in ocean areas which were previously high seas and relatively unregulated [14].

The term "EC waters" will be used here to cover the collective potential EEZ's of the present ten members of the Community. It does not indicate any EC control or ownership, let alone soveignty over these waters. This maritime territory covers the Greek Aegean and the Italian and French waters in the Mediterranean, the Atlantic-facing seas of France and the United Kingdom, the whole of the North Sea except for the Norwegian zone, Danish and West German Baltic waters, and the waters around Ireland and Greenland.

What sort of activities are there to be managed in these waters? One study identified the uses of, in this case, the North Sea as being divided into the extraction of resources (living and mineral), the addition of alien substances, and the sea and coastline as a supporting medium for marine transport and navigation, marine installations, coastal development and ocean support facilities [15]. This helps in the understanding of any body of water, such as the North Sea, as being homogenous, indeed part of an ecological system. In policy terms the activities can be divided into the familiar categories of "high policy" (those areas touching on the security of the state) and "low policy" (areas with less political sensitivity, which are normally seen as the technical, functional policies). Here ocean activities would stretch along the high-low continuum from maritime defense to energy extraction, shipping, pollution control through to fisheries.

Having noted the geographic extent of EC waters and the variety of functional activities possible on and under them, it is perhaps obvious to state that the interests of Community members in these activities are diverse.

The United Kingdom is a traditional maritime island country with widespread activities in waters outside the EC zone. It is the Community's second largest shipping and fishing nation and has a particular interest in maritime traffic in the English Channel. It has the most extensive offshore oil and gas resources of the ten Community countries and the largest navy which, perforce, still has an "out of area" role. Britain's concern in any EC maritime management is extensive (in both area and subjects); intensive (it touches important nerves in the British body politic); and not just limited to EC waters.

Land-locked Luxembourg, the other extreme, cannot be said to have any direct involvement in most ocean management questions. In between, there are maritime countries such as France with interests similar to, though sometimes conflicting

with, those of Britain; countries with intensive activity in one functional area (Greece and shipping); states with widely mixed interests such as West Germany and the Netherlands; those "disadvantaged" by their coastline (e.g., Belgium); those with a regional concern such as Italy in the Mediterranean; and a state such as Denmark with complex geographical factors in Greenland waters as well as in the Baltic exits.

The problems of creating a coordinated ocean management policy even within one country should not be underestimated. The drive towards an integrated policy can be adversely affected by the functional division of ministries and by different treatment given to particular, geographically distinct, parts of the state. It can also suffer from a tension between government agencies concerned with formulating maritime policies and those which are obliged to enforce such policies. When faced with rapidly changing external events, the result can be an attitude:

> which has tended towards an incremental approach to policy-making and towards a "patchwork" of policies rather than an ocean policy mosaic [16].

On top of this must be placed the problems inherent in the decision-making and implementing processes of the Community. These will not be rehearsed here. Suffice it to say that the process of making decisions is more complicated at the Community level than at the national level, whilst the resources available for decision implementation are themselves mostly national by nature.

What sort of mark is the Community making in the various functional policy areas mentioned above?

Defense

Starting in the "highest" policy area, that of defence in maritime areas, a problem immediately arises. Defense is recognised as the core policy of the nation-state, essential to secure its chances of survival. From the beginning the European Communities have dealt with economic and social policies and their founding treaties excluded reference to security questions, except as a reason for valid exception from Community treatment [17]. However, the Community members have developed a system of European Political Cooperation which has latterly involved a Community-level input from the Commission. Furthermore, there has since been a move from the European Parliament to consider European Security Cooperation within a Community context, though much of what the parliament has been discussing is not in the area of military activity, but more in the diplomatic field. Maritime defense policy of all Community members except Ireland is undertaken within the context of their membership of NATO, though part of the provision used for area defense is also utilized for other policing and surveillance duties [18]. In summary: the European Community has no competence in the area of maritime defense, neither has it tried to involve itself there except in the most peripheral way in the

Haagerup Report and in certain duties with Community relevance that may be undertaken or assisted by the defense forces.

Oil and Gas

Perhaps the next most sensitive area for member states' sense of security is that of the exploration and exploitation of oil and gas in their maritime areas. The 1958 Convention on the Continental Shelf allowed coastal states "sovereign rights to explore and exploit" their continental shelf [19]. This is not the same as sovereignty and there was some question as to whether the Treaty of Rome, signed a year before the Continental Shelf Convention, covered the shelf areas. This problem became more pressing at the beginning of the 1970's as two prospective new Community members, Norway and the United Kingdom, started opening up their offshore petroleum resources. An intervention by the Commission's Director-General for Energy, M. Fernand Spaak, to the effect that North Sea oil and gas were Community resources caused a stir in the Norwegian EC referendum campaign, contributing to that country's rejection of membership [20]. A Commission memorandum of 1970 has laid down the applicability of the Treaty of Rome to the continental shelf in the following terms:

> the continental shelf may be considered the same as the territories of the signatory states (i.e. to the Treaty of Rome) over which these states exercise sovereign rights...
>
> ...the individual exercise of sovereign powers by a member state for the purpose of, or resulting in, the introduction of public regulations, must be subject to the Treaty of Rome to the extent that it bears directly upon the exercise of the economic activities covered by the Treaty, and applies to the territorial boundaries that the state itself imposes in a sovereign manner [21].

Whilst the notion that the continental shelf is "the same as the territories" is doubtful, the general notion of applying the Treaty of Rome to the continental shelf is described by one writer as "well founded in principle" [22]. The result of the Commission's ruling is as follows:

> If member States issue regulations of the type concerning the continental shelf ... the Treaty rules thus apply to the regulations issued by the member states in that area [23].

This is taken to mean that the free movement of goods, oil and gas in this case, should be respected, as should the right of establishment and the freedom to provide services. The relevant rules applied to North Sea (and now other maritime areas') oil and gas activity should not discriminate against EC

members, firms and citizens on grounds of nationality, the basis of the EC's common market. In practice this hope has been undermined in the UK sector by the monopoly position of the British Gas Corporation and the requirement for oil to be delivered "onshore," though earlier British licensing requirements have been given a Community dimension [24].

In effect, the maritime energy resources of the Community members have been extracted, distributed and controlled as those members have seen fit with very little interference from Community institutions. Indeed, members have "attached greater importance to national interests than to the Community's oil policy" [25] and perhaps after the inauspicious start made by Mr. Spaak, the Community has been reluctant to tread in areas that not only effect the bank balances of members, but also their "energy security." The concept of "management" in this area for all Community waters is one that it is hard to imagine, especially given the variety of activity. Dutch gas output is in decline, whilst British oil production is hitting its peak. Until recently the attitude of British Governments to the exploration and exploitation of the UK part of the North Sea has been fairly interventionist, whereas the Danish Government has handed its North Sea resources over to a private monopoly, lock, stock and, (dare one say?) barrel [26].

Shipping

Another policy area sensitive for member states is that of shipping. The sensitivity arises again not just from economic factors, but also from the need of the maritime countries to feel that they can control security of supply in times of trouble. Also, the merchant marine is seen as a possible extension to the strength of national navies, as was seen in the case of the Falklands conflict.

Shipping receives only a passing reference in the Treaty of Rome. Article 84 of Title IV, which covers transport, indicates that:

> The provision of the Title shall apply to Transport by rail, road and inland waterway.
>
> The council may, acting unanimously, decide whether, to what extent and by what procedure appropriate provisions may be laid down for sea and air transport.

Thus, shipping remained in a Community dry-dock until 1973. At the start of that year two important shipping nations, the United Kingdom and Denmark, had joined the European Community. Furthermore, in April 1973 the EC's Court of Justice had delivered a judgement on the "French seamen's case", endorsing the Commission's view that the general rules of the Treaty of Rome applied to shipping. Finally, the UN Conference on Trade and Development (UNCTAD) adopted a Code of Conduct for Liner Conferences in April, 1973 with three EC states in favor, two against, two abstaining, and two not participating. After the

"French seamen's case," the Commission, previously absent from the UNCTAD Liner talks, stepped in to establish a common Community view. It achieved this in May, 1979, allowing ratification of the Code subject to some fairly serious reservations, for example the exclusion of EC and OECD trade from the Code [27].

Since January, 1981 Greece has been a member of the EC and has bolstered the position of the "Community Fleet" so that it is now the largest in the world, representing about 28 percent of gross registered tonnage soon after Greek membership. This development has restrained and spurred the notion of a Common Community Sea Transport policy. Greek strength is in the bulk carrier trade which is far more difficult to manage than the already institutionalized shrinking percentage of world tonnage in the 1960's and 1970's, whereas the share of Greece increased substantially. Clearly, the interest of Greece is in a policy to help carriers, whereas other EC members have to heart the concern of those whose trade is carried. However, the bargaining power potential in being the world's largest shipping power must bring a gleam to Community eyes.

On the whole, progress in sea transport policy in the EC since Greek membership has been modest. The year 1982 saw the collection of information on carriers in the cargo liner traffic between the EC and East Africa, Central America and the Far East being extended until 1984 [28]. This action has been instigated by growing Soviet-bloc activity on these routes. In December, 1981 the Council of Ministers decided that members should take effective action as port states to ensure that international standards for shipping safety and pollution prevention are being correctly observed by vessels [29]. It is perhaps a sign of Greek presence that the Community has not called on its members to take such action as flag-states.

Pollution

Marine pollution is a policy area often closely associated with maritime oil exploration and with sea transport. It is an area where the Community has been active not only in relation to these two sources of pollution, (oil and shipping) but also in relation to pollution from other sources. Dealing with marine pollution at Community level has, however, shown the dual weakness of the EC as a focus of management for such a policy: on the one hand, emphasis has been placed on the Community fitting into wider regional or global agreements; on the other hand, there is the need to fit the varying needs of the ten members into one Community framework.

In the first area, that of wider agreements, the Community has tried to encourage its members to implement agreements such as the Oslo Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft (1972) and the 1973 Convention for the Prevention of Pollution from Ships (MARPOL). Furthermore, the Community itself has become a party to the 1974 Paris Convention for the Prevention of Marine Pollution from Land-based Sources, the 1976 Barcelona Convention for the

Protection of the Mediterranean Sea against Pollution, and has requested such a status for the 1974 Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area [30].

The Community has also tried to encourage the harmonization of national rules implementing these conventions; for example, a uniform system of licensing has been called for in response to the 1972 Oslo Convention.

The second approach, that of creating a marine environment policy from the various attitudes of the member states, has only made slow progress. The Community has produced three Action Programmes on the environment (1973, 1977, 1982); the Ministers of the Environment meet at Council level twice a year; and the Commission's Consumer and Environmental Protection Directorate is a source of ideas and legislation for such policy. Yet there have been few major successes despite the ringing admonition of the First Action Programme that:

> Major aspects of environmental policies in individual countries must no longer be planned and implemented in isolation. On the basis of a common long-term concept, national programmes in these fields should be co-ordinated and national policies should be harmonised within the Community [31].

When the Commission attempted to translate this into action, it found that the diversity of member states' interests was a severe stumbling block. Plans to reduce "pollution caused by certain dangerous substances discharged into the aquatic environment of the community" ran into opposition from the United Kingdom, whose representatives opposed Community emission standards controlling the quantities of pollutants allowed into the aquatic environment. The British felt that their geographical position, an island state with fast-flowing rivers, made such tight controls unnecessary for them. A compromise allowing states to choose between emission standards or quality standards, the UK preference, only served to paper over the cracks between the United Kingdom and the continental members of the Community. One writer has commented on Community action in the realm of marine pollution:

> The Council, as constituted at present, can only aspire towards a "Europe of the lowest common denominator" [32].

In this case, the level is not at all high.

Fisheries

Fisheries is one area where the Community has emerged from a period of inter-state conflict into an era of common policy. The genesis of a Common Fisheries Policy can be found in article 38, paragraph 1 of the Treaty of Rome which includes fisheries in the scope of the agricultural policy and in an agreement made

between the original six EEC members in 1970. As well as dealing with the structure of the fishing industry and the organisation of the marketing of the product, the Council decided upon the principle of equal conditions of access to, and use of, fishing grounds under the jurisdiction of member states for all Community fishing vessels. There was to be no discrimination amongst EC members on the basis of nationality when it came to fishing in their waters up to 12 miles off their coast. When Britain, Denmark and Ireland joined the Community in 1973, the Act of Accession allowed major exceptions to this rule for a period of ten years (articles 100 and 101, Act of Accession) [33].

In October, 1976 the Community of the Nine decided that the member states, from January 1, 1977, would extend their fishing limits in the North Sea and North Atlantic out to 200 miles (or the median line) and that the Community would negotiate reciprocal fishing agreements with third countries. The United Kingdom opposed effort to divide up the Total Allowable Catch (TAC) within "Community waters," but a compromise resolution allowed catches to remain at the 1976 level and interim national measures to protect resources, as long as these regulations were non-discriminatory and framed with Commission approval.

This half-Community, half-national regime proved unsatisfactory. Negotiations for a new agreement met stiff British opposition; the United Kingdom boycotted the Berlin Agreement of January, 1978 when the other eight members accepted the principles of a Community internal fisheries policy. Attempts to reach agreements with third countries foundered on the failure of the EC members to divide their fisheries resources amongst themselves. Eventually, British resistance was followed by a rearguard Danish action in 1982 before a fully-fledged Common Fisheries Policy (CFP) was adopted by the Council on January 25, 1983. This completed the mosaic started in May, 1980 with the registration of CFP expenses with the farm fund (EAGGF); the adoption of common regulations for stock preservation in October, 1980; the creation of a Common Fisheries Market Organization in September, 1981 (improved in June, 1982); and the system for conservation and management of fishery resources in July, 1982.

Since January, 1983 the EC has been able to decide on Total Allowable Catches and the associated conservation measures for particular species; on agreements with third parties; on the division of TAC's between members' fleets; on regulations concerning methods, timing and areas of catch; on the inspection of fishing gear and supervision; on the Market Organisations and the pricing system; and on restructuring of the fishing industry. The Commission now has a Scientific and Technical Committee under its auspices to advise it on fisheries questions; a Management Committee for Fishery Resources; and a corps of some twenty inspectors to help verify fishing gear inspection [34].

UNCLOS III

The one forum where all these policies could have been brought together, integrated and harmonised by the European Community, has been at the UNCLOS III negotiations. The creation of a new set of principles, laws and agreements for the various areas of ocean management provided the best opportunity for the Community to demonstrate its ability to act as one entity and negotiate on behalf of its members. This has not happened. Once again, the varied interests of the membership have caused the Community element to be downgraded. Of course, the UNCLOS III negotiations have been so wide-ranging that they were bound to touch areas not covered by the EC, for example, military activity. However, it is noticeable that it is in these areas that the Community members have shown greatest unity, whilst disagreement has been rife in an area of commercial and economic policy: that of the International Sea-bed Authority.

The EC has been represented at UNCLOS III as an observer with a delegation made up of Commission officials and members of the Secretariat of the Council of Ministers. When the members wanted to put forward a Community viewpoint, this was done by the delegation representing the state holding the Presidency of the Council of the EC.

A negotiating mandate for UNCLOS III was adopted by the Council of Ministers on July 26, 1976. It covered such areas as the acceptance of the 200-mile economic zone, the extension of the continental zone beyond 200 miles, the creation of a Sea-bed Authority, and the establishment of a system for settling disputes. The process of coordination between Community members on these and other UNCLOS III matters has been described as "a very complex and wide-ranging phenomenon," as well as "a time-consuming and difficult task" [35]. It seems that the Community process was used, with the Commission initiating and participating, in the areas touching on fisheries and some environmental matters which were already subject to Community treatment. Otherwise, all the effort of coordination failed to overcome the innate dissimilarities between the EC states and, viewing the Community effort during the negotiations, "the importance of these geographical and economic differences emerges clearly" [36]. One important triumph for the Community has been the inclusion in the Convention of a clause allowing for Community participation on the basis that a number of obligations arising from the Convention come within the competence of the EC [37]. However, the effect of this is somewhat spoilt by the unwillingness of certain Community states to sign the Treaty.

Summary

There is a wide range of Community interest in the functional areas of ocean management. In fisheries policy the EC has become intimately involved with the management of stocks, as well as with the marketing side. Shipping has now been included in Community transport policy with coordination of

activity the key. In the area of marine pollution attempts at harmonization have not always succeeded, but Community institutions have encouraged, and in a few cases supplemented, national action. Offshore energy sources are now seen to be covered by the Treaty of Rome, though Community action has been severely limited and aimed mainly at the right of establishment. Defense questions are outside the competence of the Community with most member states cooperating with each other within NATO. As UNCLOS III covered all these issues, and many others, it is not surprising that Community activity there has been intense, though with disappointing results.

FACTORS OF CHANGE

What pressures might encourage or delay further Community moves towards "ocean management"?

Perhaps the greatest encouragement to an increased Community role will come from international events. In the policy areas already mentioned "external challenges or threats and the wish to increase bargaining power vis-a-vis third countries have been the decisive factors" [38]. In fisheries it was the fear of third countries being driven out of other North Atlantic and North Sea fishing grounds into traditional Community areas that encouraged the EC states to extend their own fishery limits and start negotiations with third parties. Cut-price competition from COMECON shipping has spurred action in sea transport policy, and fear of pollution from other countries' supertankers sped up Community decisions on marine pollution. It could well be that this trend will continue with the Community institutions pressing for more coordinating action in the area of shipping and pollution in response to external events.

On the other hand, outside intrusions can upset even modest attempts to "manage" an ocean or policy area. The change in petroleum prices since 1973 has more than anything determined the rate of extraction of North Sea oil and gas. Those Community states with such resources have been reluctant to have a strong Community dimension to this policy, thereby adding an extra variable to be managed.

Another form of external factors which may affect the development of ocean management is that of transnational forces [39]. Especially where these have been transnational companies and corporations, these forces have, on the whole, encouraged integration across frontiers, for example, in the various sectors of the North Sea. Such companies have become increasingly important in the fishing and shipping industries, showing disregard for national boundaries. The rise of an international economy in fishing and shipping and the end to national constraints will further increase the power of the transnationals. Will they then undermine or encourage Community attempts at ocean management? The history of the oil industry in the North Sea has demonstrated the integrating effect of transnational forces even in the face of varying national

policies, and this trend may be followed in creating "European", i.e., EC, fishing and shipping industries. However, this represents a different sort of management of economic resources, one determined by the balance sheet, than that normally envisaged for the Community. It may be that the transnationals will become one of the "external challenges or threats" which periodically provoke the Community into common activity in the maritime area.

What determines whether "outside forces," international or transnational, encourage Community action in ocean management or undermine it, is the perception of these forces from within the Community and the balance of political power over any one issue. The decision-making process in the EC has been dealt with elsewhere. Suffice it to say here that the methods and approaches used seem to vary with each policy area [40]. This in turn means a different emphasis for national governments' and parliaments' roles, for the influence of Community-wide interest groups, and for each of the EC's own institutions.

Whether external factors will be seen as cause for Community action depends, inter alia, upon a perception by groups within the EC of these forces and the need to respond. A widely differing appreciation as between groups, e.g., management and labour, producer and consumer, or between countries makes a common response more difficult. A common viewpoint by interest groups or by the dominant ones can stimulate political action. For such action to be taken within a Community framework will depend on the balance of political forces at the national and Community level and on the willingness of Community institutions to take the initiative. Whether such action contributes to "ocean management" by the Community depends on the nature of the Community institutions and their ability to act effectively as a political and economic system in relation to EC waters.

To take the example of fishing, it can be seen that in the early 1970's the fishing industries of the Community were beginning to respond to external events, mainly those triggered by Iceland's extension of fishing limits, by bringing pressure on their own governments. The call was for national action and in the case of Britain, Iceland and Denmark this led to the ten year exception to the EC's fishery policy found in articles 100 and 101 of the Act of Accession. Further international events forced governments to act jointly through the Community forum in extending their fishing limits on January 1, 1977 in order to prevent the takeover of grounds by third countries. But still there was little agreement among the various national fishermen's organisations, parliamentarians (national and Community) and governments on the subject of a new Community fisheries policy. What did exist was a legal and institutional framework for such a policy: the Treaty of Rome and subsequent Council decision; the existence of a Commissioner in charge of fisheries; and a Directorate-General seized with the creation of a common policy. Furthermore, the need to make agreements with third parties produced a cost for a number of fishermen in many

EC states in delaying a Common Fisheries Policy. In the end, Community resources: money (aid), promises (fish in third country waters), political pressure -- persuaded the important actors to obtain a solution through the EC, rather than just at a national level. The Community can now decide TAC's with the advice of a Scientific and Technical Committee and has criteria for the division of these TAC's between members. This policy would, if it works as intended, seem to fit into Professor Brown's definition of sea-use planning by providing institutions and procedures:

> capable of ensuring a rational, co-ordinated exploitation of the sea in the interest of the community at large and in the light of adequate information, and the resolution of conflicts between competing interests in accordance with agreed criteria [41].

But to what extent can the EC claim to exercise "management" even in the limited area of fisheries? At the moment the Community institutions clearly have the resources to have demands on the system articulated and aggregated in the Council, the Commission, the Parliament, and the Economic and Social Committee. These institutions have shown themselves capable of producing policies, rules and regulations, but as of yet they have left the burden of implementation to national governments. The question of adjudication of disputes, e.g., over divisions of the TAC's, could become a matter for national decisions at annual Council meetings rather than for resolution "in accordance with agreed criteria." The Commission attempted to provide the Community with some implementation capability, but in the end the Council decided that national measures would dominate for the time being and only allowed an embryonic Community inspection corps [42].

Thus, in the area of fisheries, the functional maritime activity where there is greatest Community involvement, the EC's posture is more one of sea-use planning, rather than management of resources. The Community just does not have the framework to integrate this and other policies. Different Commissioners and Directorates-General deal with shipping, marine pollution, energy, fisheries, and research. Different ministers meet in Council for each of these subjects and they all receive varying inputs from a range of interest groups. There may be pressures in each of the areas to push that particular policy further down the Community road, but the institutional and political demands for the integration of these policies into one system of ocean management is not there.

Indeed, such pressures for ocean management scarcely exist at the national level. For such a level of management to be created in all Community waters would need the transfer of responsibility for the major areas of policy mentioned above to a supranational Community authority. Such an authority would face several problems. It would first have to bring the various

policy areas up to the level of sea-use planning seemingly reached by the Common Fisheries Policy. It would then have to acquire the resources to manage these separate policy areas in the way now attempted by national governments of the EC. The next step would be the integration of these policies to produce total management of all functional areas in Community waters. This implies the existence of the means to implement policy on a Community-wide basis. National agencies could be utilized as with many other Community policies, but the proximity of the "national" zones in, for example, the North Sea would demand an integrated means of implementation of pollution regulations, fisheries quotas, shipping lanes, etc.

The demands of an integrated policy are for comprehensiveness, aggregation in the processing of inputs, and consistency. The problems of integrating marine policy and the need for such integration has been outlined by Underdal [43]. In particular he points to the link between sea-based and land-based activity:

> Thus, even though strong arguments can be found for coordinating policies dealing with ocean use, "marine policy" is not necessarily a more useful policy area concept than are other concepts, such as "transportation policy" (covering sea, land and air) or "energy policy" (including offshore as well as land-based energy sources) [44].

A supranational Community with the wherewithal to achieve more integrated policies may decide that the integration of functional policy areas -- transport, energy -- is more desirable than integrating area policies -- ocean management.

SUMMARY

The European Community has become increasingly involved in the making of policies covering its ocean areas. With the creation of a Common Fisheries Policy it has come closer to sea-use planning in that division of policy-making. Its involvement in other areas is varied, with least presence in the "high policy" questions, especially maritime defence. External factors have been important in increasing Community intervention in offshore policy, though intrusive events do not always produce a unified Community response. Much depends on the political process within the Community and the institutions available for common action.

At the moment the EC's institutions are not fully supranational even in those areas covered by the Community Treaties. Though the European Court provides adjudication on such matters, implementation rests on national agencies with the Commission in a supervisory role. Where Community competence exists, policy-making is still a process of interaction between the Community and national levels. A policy management role by the Community in these areas is far off. Even when the EC

institutions attain such capabilities there is no guarantee that they will prefer ocean management to the management of functional areas integrating land and sea in the way suggested by Mitrany [45].

Finally, there is no guarantee that a supranational authority which decides on ocean management will necessarily be successful. In particular, the tension between institutions making policies and those having to implement that policy is a serious one which is presently being faced by national governments in the EC [46].

CONCLUSION

The hope that the European Community can provide a source of ocean management seems to be in vain.

However, "policy integration is not seen as necessarily requiring monolithic institutional structures." Something can be achieved short of supranational integration of policies. Already the Community has made steps in adopting a "Mediterranean Policy" which has included elements of economic development, pollution control, fisheries enhancement, and has taken into account the land/sea connection [47].

A further advance would be for the Directorates involved in policies affecting the EC's maritime areas to report on the impact of their policies on other maritime policies. Perhaps a good starting point would be for each to undertake studies of the environmental impact of such policies.

A further step could be taken in the question of enforcing fisheries regulations. The small EC inspectorate may be the basis for encouraging a more harmonized approach than the present patchwork of national authorities offers at the moment, with a range of police officers, fishery protection vessels, naval officers, gendarmerie, and air forces being involved [48].

At the political level there is one urgent question to be resolved: that of Community participation in the UNCLOS III Convention. Until the reluctant governments decide to sign this Convention, there will be little hope for a common voice at the international level on matters that affect the security and well-being of the Community as a whole. Such a move will not only edge the EC towards greater cooperation on such matters, but it will also strike a blow in favor of a more stable international regime for the world's oceans and sea-bed and against the excess demands of some transnational corporations as mirrored in the policy of the Reagan Administration.

NOTES

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4. Ibid., p. 85.
5. Ibid., p. 95. See also Stanley Hoffmann, "Reflections on the Nation-State in Western Europe Today", Journal of Common Market Studies, December 1982, pp. 21-37.
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7. Fricke, op. cit., note 6, p. 18.
8. Ibid., p. 36.
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14. Mason, op. cit., note 11, pp. 12-18.
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16. C. Archer, "Danish Ocean Management: A Study in Promiscuous Policy Making", paper presented to 23rd Annual Convention of the International Studies Association, Cincinnati, 1982, p. 12.
17. For example, provisions in the articles 223 and 224 of the Treaty of Rome.
18. See D. Greenwood, "Security and Policing", in: Mason, op. cit., note 11, pp. 224-258 on the use of defence provision. The question of European Security is dealt with in: "Report drawn up on behalf of the Political Affairs Committee on European Political Cooperation and European Security", European Parliament Working Documents 1982-1983, Document 1-946/82, European Communities, December 3, 1982 (Haagerup Report).
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21. International Legal Materials, 1971, p. 205.
22. J.C.Woodliffe, "North Sea oil and gas -- The European Community connection", Common Market Law Review, vol. 12, 1975, p. 12.
23. See note 21.
24. Woodliffe, op. cit., note 22, pp. 12-20.
25. Andrew Evans, "The Development of a Community Policy in Oil", Common Market Law Review, vol. 17, 1980, p. 393.

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37. Buhl, op. cit., note 30, pp. 563-567; Treves, op. cit., note 35, pp. 105-108.
38. Laursen, op. cit., note 36, p. 44.
39. See R.O. Keohane and J.S. Nye, Power and Interdependence, Boston, Little, Brown and Co., 1977, pp. 33-35.
40. See, for example, H. Wallace, W. Wallace and C. Webb, Policy-making in the European Communities, London, Wiley, 1977.
41. See note 9.
42. Official Journal 1982, L 220, June 29, 1982, pp. 1-4.
43. Arild Underdal, "Integrated marine policy - What? Why? How?", Marine Policy, July 1980, pp. 159-169.
44. Ibid., p. 164.
45. See note 4.
46. Archer, op. cit., note 16, pp. 22-23.
47. Official Journal 1983, L 67, March 12, 1983.
48. Official Journal 1983, C 62, March 7, 1983, supplementary answer to written question 1041/82.

COMMENTARY

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Each of the papers on which I am to comment, those of Mr. Underdal and Dr. Archer, presents in its own way a challenge to ocean management policy. A further challenge is to the commentator -- the fact that the two papers are very different.

Mr. Underdal's paper deals with ideal types and the setting of ideal criteria for ocean management. It is from this perspective that policy integration should be understood. Furthermore, his approach is implicitly based on bargaining theory. Dr. Archer's paper, on the other hand, deals with policy integration within the European Community (EC) in response to the challenge of the EEZ. Dr. Archer analyzes ocean management/policy integration in the context of functionalism and existing integration theory used in the analysis of the EC. So the two papers are radically different, not only in terms of their respective levels of analysis, but also in their theoretical underpinnings and their points of reference.

Nevertheless, I shall attempt a risky enterprise, an essay into the proposition that the papers, if seen together, complement and supplement each other. They do this in three ways.

Firstly, the question of "why" ocean management policy is desirable. The categories utilized by Mr. Underdal, to wit: comprehensiveness, aggregation, and consistency, do not in themselves appear to contain a justification for ocean management policy. Rather, they are criteria which must be fulfilled if ocean management is to "qualify" as integrated. Thus, the underpinnings as to "why" policy integration is desirable or necessary are at best implicit.

Dr. Archer's paper, on the other hand, rests on the intellectual justifications of the functional/neo-functional EC experiment. As this experiment has existed for 25 years, the question of "why" is no problem. Nevertheless, the implicit functional basis of the Archer paper provides no criteria to which an European ocean, that is, EEZ, management policy should conform in order to be successful.

In this manner the two papers can be considered to complement one another. Dr. Archer's paper discusses, if only implicitly, the "reason why," while Mr. Underdal's paper discusses criteria, but provides no rationale as to "why."

Secondly, both papers deal with state interaction. Here, Mr. Underdal utilizes implicitly a bargaining approach to such interaction and he has developed a series of precise concepts, some of which I shall comment on at a later point. Dr. Archer's paper is more general in its orientation, a review as to how the EC has failed to capitalize on the opportunities presented by the evolving law of the sea. Nevertheless, one may ask whether

the EC policy-making process is not better characterized by a bargaining approach as contained in the Underdal paper. Certainly, in the fisheries area there has been no lack of log-rolling, side-payments and other phenomena characteristic of political-economic bargaining behavior. This strongly suggests that the functional/neo-functional integration approach could benefit from an incorporation of the bargaining/theoretical approach.

Thirdly, and most importantly, both papers point out how difficult it is to integrate ocean management policy. Here, I would like to discuss the two papers in more detail.

Lack of time prevents extensive discussion of Mr. Underdal's concepts. I have, therefore, decided to dwell on those focusing on the reassignment of decision rights. In his discussion of reassignment Mr. Underdal distinguishes between three types of states: "owner" states, "operator" states, and "consumer" states. He then discusses the establishment of EEZs as a re-allocation of decision rights among these states. Mr. Underdal demonstrates that most states qualify for more than just one category. Thus, owner states also have operating interests in their own EEZs, consumer states have operating interests, etc. Accordingly, we talk of owner/operator states, consumers/operators and the like.

Mr. Underdal's approach concentrates on states and refers only secondarily to their nationals, be they multinational corporations, national companies, interest organizations, or individuals. If these actors are included to a greater degree, it then becomes clear that the concept owner/operator state is of most importance. Put differently, the creation of EEZs gives the "nationals," the operators, in the "owner" states an opportunity to acquire their objectives in the massive reassignment of property rights which is involved. The reassignment of decision rights has, therefore, important consequences for operators in "owner/operator" states.

To this must be added another point, the reassignment of decision rights is coterminous of a reassignment of property rights. It is these, or rather the framework within which property rights are further defined, which are the object of intensive lobbying. Furthermore, the nature of the reassignment of property rights has unintended consequences. I will mention two examples.

The 1958 Geneva Convention's regime on offshore pipelines has led oil- and particularly gas-companies to accept the higher capital and operation costs of offshore pipelines so as to avoid the transit fees of onshore pipelines crossing national territory. This commentator knows of at least one instance in which this was used as a threat to procure better terms for on-land transit of a gas pipeline. I doubt that this was the intention of the drafters of the Geneva Convention.

Similarily, in the Common Fisheries Policy (CFP) the Danes, trapped now within their historic fishing rights for herring, are following a logical strategy based on the CFP premises. Contrast this emphasis on historical rights within the EC with

Professor Miles' marvelous description of how the Japanese responsed to the establishment of EEZs in the North Pacific, a response which has resulted in 184 joint ventures. Both reponses are logical within a property rights framework. This contrast suggests the following points:

1. The formulation of an integrated ocean management policy is a reiterative process. To use Underdal's framework, the fact that a policy does not conform to "aggregation," maximum net benefit to all parties, at year 0 should not prevent a constant revision of policy over time so that it conforms to "aggregation" in year 7. In other words, policy objectives could and should be constantly revised over time to improve their economic and integrative nature.
2. The contrast between the Japanese and the Danish response underlines the need for comparative studies of ocean management policies. It is suggested that such comparative studies would aid in the formulation of better, more efficient and more appropriate policies.

Dr. Archer's paper raises other questions, more concerned with the overall question of the rights and responsibilities of the coastal states and how these conflict with EC policies. This involves issues far beyond the impact of the EEZs themselves. The following points might be appropriate for further discussion:

1. As to his conclusion that integrated ocean management in the EC context has been a failure, what might be the specific criteria by which success and failure can be judged?
2. Given a lack of general progress to date, how does Dr. Archer view future events in the EC context?

Thank you.

COMMENTARY

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The two papers I am to comment on give a thorough presentation of the aspects of and the premises for ocean management. Their point of departure is the increasing variety in ocean usage with regard to both activities and actors and the need for a more integrated and cooperative ocean management policy that this implies. An important aspect in recent law of the sea developments is the establishment of exclusive economic zones and both papers discuss the significance of these zones for integrated ocean management.

From both papers the conclusion can be drawn that ocean management policy is executed on different levels, from pure national initiatives through bi-national and regional cooperation to global rules and regulations. Both papers also underline that an integrated ocean management policy encompasses both national and international premises.

In my comments I will concentrate on these two elements. First, I will focus on the relationship between these policy levels and different activities of ocean usage. Then, I will try to relate this discussion to the relationship between national and international premises in ocean management policy, focusing on fisheries management in the waters outside Norway, that is, the North Sea, the Norwegian Sea and the Barents Sea.

An integrated national ocean management policy implies that one party tries to integrate a number of ocean-related activities, while regional ocean management means that a certain number of coastal states, primarily (but not necessarily) within the same region, try to solve one or sometimes more ocean management problems in common.

On the global level the most ambitious effort has been the new Law of the Sea Convention, open to all nations and encompassing all activities. However, with respect to fisheries and marine pollution the Convention leaves it to the states concerned to work out more detailed regional rules and regulations. The main reason for this is that this task could not be accomplished at the global level, another reason being that some ocean management questions can better be solved at a regional level in view of, as it is said in the Convention, "characteristic regional features."

To say that ocean management policy is established at different levels does not, of course, imply that an ocean activity is managed on either a national, a regional or a global level. An integrated national ocean management policy is an important, if not always a necessary, condition for ocean management at the regional level and regional rules and regulations in their turn must fit within the framework of global rules and regulations.

It is of interest here to note that both papers indicate that with respect to certain ocean-related activities one management level is more relevant and important than another.

In his paper Professor Miles states that fisheries and marine scientific research represent primarily regional problems, while marine transportation is national and global, rather than regional. Mr. Andresen refers to a survey showing that the Norwegian authorities are more inclined to consider the interests of other nations in the region in the fisheries policy and the policy for the protection of the marine environment than in the petroleum policy, which tends to be more nationalistic. But then the survey also indicates that fisheries create the greatest problems for the other countries in the region.

Both papers suggest that special features of the different activities determine the most important management level and that fisheries seem to have characteristics that make the regional level particularly relevant. The relevancy of the regional level arises to a considerable extent from the fact that many stocks of fish migrate between national zones and that states exploiting the same stock must therefore cooperate in order to secure a just distribution. The extension of national zones increased the need for such cooperation and also for mutual fishing regulations and quota arrangements. Perhaps the most crucial need for consultation and cooperation rests on the increasing scarcity of fisheries resources. So even if an important argument for extended national zones was to secure a more adequate and sensible exploitation of the resources, it seems evident that the states concerned must cooperate to achieve this objective.

Turning now to the second element in my comments, that is, the relationship between national and international premises in ocean management policy, it is for the reason just indicated to naturally focus on fisheries management at a regional level. In doing so I will concentrate on the region I know best, the waters around Norway. However, I would like to insert here that I fully agree with Professor Miles, when in his latest book he states that regional characteristics make it difficult to draw general conclusions. But I also share his hope that the different regions still have certain aspects in common and thus can learn from each other's management efforts.

One feature that the two regions discussed here clearly have in common is that they contain very rich fishing grounds and that fishing is important to many countries in the region. Another common feature is that the extension of coastal jurisdiction had different consequences for different countries or, to borrow from Professor Miles' paper, has been "heartily supported by some and equally dreaded by others."

This implies that in both regions extended coastal jurisdiction has not led to a reduction in the need for regional fisheries management, but rather to new, and perhaps more extensive, forms of management.

To acknowledge the need for regional fisheries management is one thing, to make it work is something else. Here, the

policies of the different states in the region will be a decisive factor, particularly their weighing of national and international premises.

A characteristic feature of Norwegian fisheries management is that the weighing of national and international premises has a long tradition and also that international premises have always played a rather important role. The main reason for this is that Norwegian fisheries management often affects the fishing interests of other countries and that Norway's relationship with these countries on other matters often requires that their interests become a premise in its national policy.

This was clearly demonstrated when in 1961 Norway extended its fishing limits to 12 miles. Norway's dependency on the export markets, not in the least for fishery products, of some of the countries that opposed the extension, resulted in a re-definition of the original national fishing limits policy.

Aspects of, and weight given to, international premises will, however, apply differently towards different countries. In his paper Mr. Andresen states, for example, that Norway has generally been more inclined to consider the interest of the nations on which it relies more heavily itself. And the survey mentioned earlier clearly conveys that some countries in the region are more satisfied with Norwegian ocean management policy than others.

Looking at the waters surrounding Norway, it seems, for example, evident that security-related considerations are more relevant in the northern parts. The official Norwegian policy is to preserve the stability in this area and not to jeopardize the present situation. Thus, fisheries management in this area will always have to adjust to this objective.

In the waters further south, in relation to the countries bordering the North Sea, international premises are strongly represented in the relationship with the Common Market. The need for export markets, but also the general foreign policy objective of maintaining a good relationship with the Common Market, are important aspects in fisheries management in these waters.

A fairly recent example of the weight given to international premises in fisheries management is the agreement between Norway and Iceland concerning the fishing zone around Jan Mayen. The Norwegian authorities have stated that decisive in this agreement are considerations relating to Iceland's special dependency on fisheries and the wish to maintain a good relationship with this neighboring country. However, the agreement was strongly critized by Norwegian fishermen who felt that far more weight had been put on foreign policy considerations than on Norwegian fishing interests.

This leads me to what perhaps represents the most serious obstacle to regional fisheries management, the relationship between the fisheries sector and the authorities in charge of policy-making. It is fairly obvious that the fisheries sector and the authorities will have different views on whether to stress the interests of the fisheries sector or more general

foreign policy interests. While the authorities will stress the importance of consultation and cooperation with other nations, the fisheries sector will stress its specific interests.

There is a tendency within the fisheries sector to feel that too much importance has been attributed to international premises. This may reduce its confidence in the authorities and the result of this may be that some fishermen or fishing fleets do not respect agreements between states on quota regulations and distribution. As expressed by a Norwegian official, they may try to compensate on the fishing grounds for what they have lost at the negotiating table.

This tendency may be strengthened by an increasing competition for the resources due to the fact that presently in many countries the fishing industry has over-capacity in relation to the available resources. Therefore, the greatest challenge in regional fisheries management seems to be to achieve an adequate and just exploitation of the fisheries resources, respected by the fishing fleets of all nations.

WILLY OSTRENG: I now open the floor for discussion.

DONALD WATT: I speak as the chairman of an organization in Britain which has been trying for ten years to persuade the British Government not just to integrate its policies, but actually to coordinate them. So I listened to Professor Miles with a depth of fellowship, which I have tried to express to him personally. But there are problems in integrating marine policy.

The first is that an integrated marine policy raises immediately the question of what do you integrate and where do you integrate? The scientists reply that there are marine ecosystems which have to be managed as a whole, if they are not to be destroyed. Some of them have renewable resources, some non-renewable, but if they are not managed as a whole, then both renewable and non-renewable resources may be destroyed and we are left with nothing. But these marine ecosystems do not correspond with our political ecosystems. The political ecosystems, whether we call them states or groups of states, are in most cases land-based. Even an individual state like Britain borders on two or three separate marine ecosystems: the North Sea; the Northeast Atlantic, an outstanding example of bad management; and the Southwest Approaches. So, as one saw at the Law of the Sea Conference, most of the major groupings of states broke up as soon as they were confronted with the problems of the sea because they had nothing in common.

Functionalism, unfortunately, only accentuates the problem of producing an integrated marine policy, because every function you define tends to be dominated by land-based practitioners: political systems are land-based. Whether one is talking about transport, food, safety, or energy, government machinery is dominated in each case by the land-based parts of this function. The sea side of it becomes merely a small functional part within a much larger area where the problems are all seen from the point of view of the land. In the British case, fisheries is treated as part of food and it is handled by one of 37 divisions in a Ministry of Agriculture and Fisheries, which is itself only responsible for England and Wales, Scotland and Northern Ireland having their own separate departments. When one looks at the EEC -- all you international lawyers who complain about the problems you had in reaching agreement at the Law of the Sea Conference -- you do not know how easy you had it. In the EEC there are four separate functional organizations. The Brussels Commission has separate departments of Transport, Environment, Fishing, and Energy. These have developed into feudal baronies; they are incapable of communicating with one another and they are each responsive to their own constituencies.

If I may say so without being too tactless to the people who have looked after us so well, if the Norwegian electorate had followed the lead of the Norwegian Government, that is,

voted in favor of EEC membership, maybe we would be in a slightly stronger position. With the people of Norway living so close to the sea, they do seem to have a little more awareness of the sea than West Germany, which was described to me as "a peasant woman sitting on the Alps with her backside towards the sea" or even my own country where we talk about the three-miles zone, not in relation to the territorial sea of the old law of the sea, but in terms of three miles inland. If you get further inland, you have people for whom the sea is something they dip their feet in on a bank holiday or which they fly over en route to their summer holidays in Majorca. The sea really means very little to them in any other sense at all. I could go on, but I will not because I have done so before.

These are the problems which arise when one talks about an integrated policy.

The last thing I would say is that I am not as pessimistic as Professor Miles because so many underdeveloped countries are just starting. They should look at the developed countries with their encrustations of law and organization, which go back into the remote past of history. In the British case there are laws on coastal management which date back to the year 1300 or thereabouts. People have forgotten why they are there, but it is too difficult to repeal them. Therefore, it is our example that we urge them <u>not</u> to copy and if people from developing countries come to courses like the one I try to run at the London School of Economics on how to manage 200-mile zones, they can perhaps learn from our failures. Areas such as the Caribbean or Southeast Asia are marine-based politically and they do not share the problems that we have as land-based entities. So perhaps they may succeed where we are still desperately trying to convince our governments that failure is not a normal thing, that ships and fisheries and offshore oil and all the other activities are linked together, and that this really is important even if there is no electorate to bring them to book for their mistakes.

CLIVE ARCHER: This is a response to what Professor Watt has said and also to the question of Mr. Davis about the European Community's role in ocean management. My sympathies are with Professor Watt: I too am rather pessimistic on the Community. As to the pressures towards more ocean management by the European Economic Community, there are the national pressures of interest groups which would prefer to keep decision-making in an area where they can control it: the national forum. Then there are the preference for the strengthening of the European Community institutions. The institutional capability of the Community itself is still pretty weak, especially in making Community decisions in the area of ocean management. There are also many alternatives to the European Community. For example, there is NATO in the area of defense. In the area of marine pollution there are many alternative international institutions within which Community countries may differ and conflict. On the point made by

Professor Watt that there are alternative functional divisions to the existing land-based ones, the UNCLOS III process implies functional areas which are limited geographically to the world's seas, whereas the European Community started on dry land and its functional divisions make sense on dry land. They do not make sense for the North Sea. I would just conclude this intervention by saying that I am going to go back to Aberdeen to start the North Sea People's Liberation Front. I suggest that all people working on or under the North Sea should get together and decolonize it and that they should establish their own sovereign state -- a wet state in this case -- and set up their own government for the greater benefit of the North Sea. I further suggest Jacques Cousteau for the first president and Professor Donald Watt as the first foreign minister.

GORDON MUNRO: I would like to make a comment on Professor Miles' paper, but first I want to return a compliment. Professor Miles assured Giulio Pontecorvo and myself that he agreed with us, so I want to tell him that I agree with him. My comment relates to one aspect of his policy discussion, namely his observations on US fisheries policy in Alaska, something which I would have talked about yesterday if I had had the opportunity.

I want to say first of all that I agree very strongly with his comment that simply ejecting the foreigners does not really provide a very sound basis for coastal state management of fisheries, because the first thing the coastal state has to ask itself is whether or not it can really exploit those additional resources on an economically feasible basis. This came up yesterday in my discussion of the infant industry argument. In the case of the US, the great Alaskan groundfisheries provide the classic example of the application of the infant industry argument, an argument which in that case has gone sour. The major problem which has arisen there is that it now has become very clear that US processing of the groundfish resource simply is not on for the indefinite future. Consequently, an ongoing distant water nation presence is really required for some period of time. However, given the access conditions that are being imposed, I would suggest that there will be a sharp contraction of distant-water nation activity within that zone over the next decade. As a result, we are likely to end up with the problem that my colleague and co-author, Giulio Pontecorvo, brought up yesterday, namely the problem of a real serious underutilization of major fishery resources.

I have one final comment so as to add to the general state of gloom. Professor Miles implied or suggested in his paper that a good part of the difficulty in American policy-making was the complexity of the administrative regime: regional councils, the Federal Government, etc. All have a role to play in that regime. The bad news is that in Canada we have a much much simple system and it is not at all clear to me that our policy is any better.

EDWARD MILES: In response I would like to say that I agree that from the point of view of American processing capabilities the development of the Alaska ground fish resource is not on; the economics are just not there. I think we have to point out that certain other development possibilities of US harvesting capability are not on either. They are not on because of obstacles resulting from unrelated legislation within the US system, in particular the effects of the Jones and Nicholson Acts, which restrict fisheries joint ventures to a very narrow form. This sort of uncoordinated performance is quite common in the US in relation to fisheries and the result is that US policy stances on other aspects frustrate its objectives for fisheries development. This also occurred in the case of the king crab fisheries. It was very clear that some form of limited entry would have to be installed and that the fleet was very heavily overcapitalized. At the same time that this perception was becoming widespread, the Federal Government was doing all it could under the vessel construction program to finance the building of yet more crabber trawlers. If you then add the US tax laws which make it profitable for certain vessel owners to build vessels and tie them up to the docks, so making more money by not having to pay fuel costs and by not fishing one day, then you end up with a rather absurd situation.

With respect to the general point raised by Professor Watt earlier I would like to say I do not really hope for the ideal policy, nor do I want the ladies and gentlemen with official responsibilities to assume I am asking them to produce that policy. But I am asking you to do a little better than we have done in the past, which has not been good. Now that the jurisdictional fight is largely over, now that coastal state governments have gained additional control over an area equal to the land mass of the planet, what are you going to do with it? What do you want? What should you want? How do you propose to get there? And what are you willing to pay to get there? I would like to see a little more self-consciousness about that dimension of the planning process and I would like to tell you that we have an immense job to do, a job that is as big as the negotiations that have just been concluded. So far the evidence proves that without the stimulus of the requirement for formal negotiations, coastal states, left to themselves and left to their own devices, are not likely to do very well.

ALASTAIR COUPER: I would like to comment on one aspect of Dr. Archer's paper. I have not had the pleasure of reading his paper yet, so perhaps this is a little unfair, as he may have dealt with my point in the paper. It relates to EEC shipping policy. From the summary he gave I got the impression that Dr. Archer feels that in this area no real progress has been made in terms of supranational advances. If he is talking about the commercial aspects of EEC shipping, this is probably quite right. The ship owners in the Community pretty well agree to compete, rather than to have any sort of coordinated system in the commercial field. This competition is very much in line with the Treaty of Rome.

However, if we are talking about the use of the sea by ships, then quite appreciable advances have been made in terms of supranationalism. These advances are in line with the 1982 Convention. We have systems under development in vessel traffic management and these apply in the English Channel and in the southern North Sea. There are the lane separation systems which have gone a long way towards the reduction of marine accidents in Northwest Europe, which was in the distribution of marine accidents by far the worst area. In these developments the EEC bodies have started to play a fair part. There is now a body called COST301, a research project initiated by the Community but including Norway, in which the various countries are cooperating in improving vessel traffic management systems, looking at the cost-benefits of lanes, how these affect fishing and hydrocarbon activities, and so on. As a result, countries have given up a certain amount of control over their ships in the Northwest European areas. There is also much more extensive use of port state jurisdiction; and under the Paris Memorandum information on hazardous ships, unseaworthy ships, or unseaworthy management of ships is being passed between the countries.

A fair amount of credit for this work goes to the Ministries in the EEC countries and to IMO, which has laid down very useful policy guidelines and regulations. It should be noted that IMO is one organization which is made up of professionals. It has not been politicized to the same extent as some other international bodies. Therefore, the shipowners and the commercial community have a great deal of confidence in it. I think there is a great deal to be learned from this in terms of what the Sea-bed Authority ought to look like.

CLIVE ARCHER: I did mention the question of shipping in my paper, but I just did not have time to really deal with it in the presentation. I am very grateful for Professor Couper's remarks on this because of his acknowledged expertise in the area. He is right in saying that in the more practical of the functional areas it is a lot easier to get agreement when, for example, you know that you are going to save lives, even though one could say that vessel traffic management has been a long time in coming and many lives have already been lost.

Professor Couper's remarks do underline a couple of the issues touched on by Professor Watt. For many years the countries of the European Community, not to mention the Community itself, have been dealing with land-based problems. It is only recently that sea-based problems have started to intrude on thinking. Another point is, as Professor Couper mentioned, that there are alternative institutions. Once again we see the problem of trying to deal with ocean management questions with what could be regarded as limited function, certainly limited membership, institutions such as the European Community. That in some issues the IMO has been at the forefront underlines the point that it is not always the European Community which is most effective on an issue.

Professor Couper also mentioned that the COST310 project includes Norway, which is a non-Community country. This shows that natural ecosystems do not coincide with the political systems. Here, the countries involved have had the sense not to limit themselves to just the European Community.

Finally, I would reiterate that there has been an effort by the Community countries to create a Mediterranean policy. Here again, we come up against precisely the same problems: land-based policies have priority and, as the Mediterranean is not just made up of European Community countries, alternative institutions already exist.

ARILD UNDERDAL: I would like to make one brief comment on the intervention by Professor Watt. Although I find myself in sympathy with his main point, I should like to point out that what transmits ramifications to policy decisions is not only the interdependent relationships constituting an ecosystem, but equally those making up a system of human activities. This means that if human welfare, in some complex operationalization, is the guideline of public policy, there is no compelling reason to consider a common physical characteristic like salt water as being inherently more useful as a policy concept than other, say, functional concepts. Thus, in my opinion there is not necessarily a stronger case to be made for the concept of marine policy than for the concept of transportation policy encompassing sea, land, and air transport.

LEE ANDERSON: I would like to address some of the issues introduced by Professor Miles and while I may add a little to the gloom and doom, I hope to make some positive points as well.

It is important to note that when the US introduced the FCMA, one of the purported benefits was that we were not only taking the fisheries out of the hands of the foreigners, but that, at least partially, we were putting them into the hands of the industry. Although it sounds good to let fishermen rule their own lives, there are some definite problems and, as Professor Miles pointed out, the US system almost cannot work. No one person or group of persons can cause the system to produce good management, but almost any group at any point in the decision-making process can prevent it from doing so if their particular private interests are ill served. Other countries can learn from this. They should realize that while industry participation is important in developing good management, the management system should be such that government officials are insulated from undue pressure from any interest group. There should be easily accessible channels of communication in both directions, but there also needs to be independent authority to act.

To end in a cheerful vein: note that many countries are developing plans for stocks that were previously not exploited by domestic fishermen. There will be less industry pressure in these cases, because no vested interests will be affected by management. An excellent example of this is New Zealand when

they opened up their orange ruffie fishery. Because no one was exploiting these stocks before, the Government was able to institute a rational program right from the start. Hopefully, others can follow this example and develop proper management from the outset because it becomes much more difficult to do so the longer it is put off.

GEIR ULFSTEIN: I would like to emphasize the link between national and international fisheries management. In order to get effective international management, the states concerned must share both the costs and the benefits of the regulations, which implies that they must give and take. However, with strong interest groups in a country and with strong nationalistic sentiments, it is difficult to have something to give to other countries and, therefore, it is also difficult to take from them. The result is that you will have less restrictive fisheries regulations. Accordingly, imperfect national government will lead to imperfect international management. This is still one of the major difficulties in the ocean regime.

WILLY OSTRENG: We now come to the end of this session. I would like to thank the speakers and the commentators for their most elucidating presentations. I also thank the audience and I hope that we have a somewhat better understanding of the problems of ocean management.

LUNCHEON SPEECH

BERNARD OXMAN: Our luncheon speaker today is a giant in the world of multilateral diplomacy and the codification and progressive development of international law. He represented Mexico at both the U.N. Seabed Committee and at the Third U.N. Conference on the Law of the Sea, where he had a crucial influence in shaping the consensus that emerged on many issues, particularly with respect to the exclusive economic zone. He recently served as Foreign Minister of Mexico, and is currently Mexico's Ambassador to France. It is a great honor to introduce Ambassador Jorge Castaneda.

THE LAW OF THE SEA CONVENTION AND THE FUTURE OF MULTILATERAL DIPLOMACY

by
Jorge Castaneda
Mexican Ambassador to France

The Third United Nations Conference on the Law of the Sea was the largest in history as to the number of participants and certainly one of the longest. It could also be said that it is the most important and successful attempt of the international community at establishing a universal legal order.

To understand its significance and impact it is worth recalling the historical context in which it took place. The Conference on the Law of the Sea is one of several attempts, no doubt the most successful, to accelerate the rhythm with which the international community has tried to establish a normative order to regulate a major subject area. Consciously and deliberately, the international community decided to create that order through a political and swift process of decision-making instead of the traditional process of evolutionary and relatively slow creation and adaptation of legal norms. Even if no uniform practice had developed over the years, it sufficed that a solution to a given problem be the object of a genuine consensus for it to find its way to the Convention and, hence, to international law. The international community departed from the traditional juridical codification process to one of almost instantaneous development of international law. Many of the principal institutions and rules embodied in the Convention, some new and even revolutionary, were adopted purely on the basis of agreement, with practically no reference to previous custom or to any time factor.

What the Conference asked itself was whether a certain solution was or was not desirable and useful, or necessary, for the international community and only that. Not whether that solution was anchored in experience or a practice had developed in time. The decisive factor was the judgement of states as expressed in the Conference.

This approach is new and entirely different from what had occurred for centuries in practically all fields of international law. The post-war era has been a constructive and favorable period for codification, in a wider sense, of international law. Several normative conventions have been adopted in some of the classical chapters: diplomatic law, treaties, etc. But in fields where technological advances have been great, as outer space or the exploitation of the seas, or where modern conditions have deteriorated old and established situations, as in ecology, or where there is urgent need to solve a rapidly aggravating problem such as overpopulation, famine, desertification, lack of water, etc., the international community has searched for a solution through a universal conference that would lay at least the basis of a permanent

solution through the enunciation of general principles. This method has not been a success in all cases. Several of the conferences did not culminate in a convention. But all cases have been indicative of a trend which, I think, tends to become well established and which shows the way of the future.

The new phenomenon of creation of international law by universal conferences is due mainly to the greater awareness the international community has of the urgency to solve certain problems, exception made of those who benefit from the status quo. The conviction exists in general that we lack time to initiate a slow evolutive process that would lead to the gradual and mature formulation of new international law.

But aside from the feeling of urgency, there is another factor to which I would give equal or greater importance: the distrust and even the hostility with which the new countries, around a hundred, born to independence since the Second World War, view the body of legal rules created without their participation and surely without taking into account their interests. That is why, for these new countries, the preferred method for the creation of international law is the universal conference in which all states, old or new, big or small, participate in a plane of equality. Custom -- that is, the practice mainly of great powers, particularly in the law of the sea -- is not considered any more the dominant factor in the creation of law; it has almost become a factotum.

What universal conferences seek is the solution that better suits all groups of states. That is the reason for the rule of consensus. Thus, the universal agreement is not based on a prolonged practice, but rather on a quasi-instantaneous decision taken by an international conference, fundamentally through the rule of consensus.

This new way of creation of international law by conference departs from the practice of the 19th and beginning of the 20th century, when relatively few conferences were held and those were exclusively true codification conferences, that is: conferences to obtain the more formal consecration of a practice.

The conference system has developed during the post-war period. The Law of the Sea Conference represents perhaps, to this day, the culmination of this trend and the best example of its success. In an extremely complex and difficult field with innumerable contradictory vested interests, the Conference achieved more radical transformations of the body of rules than those achieved in centuries of practice and gradual development. No wonder it is said that the process of international law creation will never be the same after the Law of the Sea Conference and the Convention.

The radical historical acceleration of the law-creating process will be, I think, the main impact of the Law of the Sea Conference. It also had other consequences of great importance, on two of which a word should be said. Both have to do with the Convention and its negotiation. One deals with substantive matters and the other with procedure.

The first is the enormous implication that the international sea-bed regime established in the Convention will have in our present day conception of the international community and its future evolution and in the weaving of the fabric of international relations. This, of course, requires that the sea-bed regime becomes operational -- that is, becomes a reality. If it does, the international regime will open the doors for a totally new and promising vista of the international society, much beyond the economic advantage of extracting some minerals from the sea-bed, which, at least for developing countries, will have only a small advantage if any.

The consecration of the international regime adopted in the Convention would mean that, for the first time in history, the international community would jointly exploit the property of all. This represents a new dimension in international cooperation that has no precedent and that will require a new conception and organization of international solidarity. Up to now, states have been able to coordinate their individual and sovereign action with the purpose of structuring an international public service, such as civil aviation, mail, or the telegraphs. They cooperate, sometimes in an appreciable degree, for scientific research or other similar purposes, but up to now they have not been able to collectively administer a communitary enterprise, except perhaps, partially, telecommunications by satellite. But humanity has never yet exploited its common resources collectively.

This new enterprise foreseen in the Convention may have enormous potentiality and open new roads to international cooperation. For the first time, an organization is created to administer common resources and not merely to coordinate the action of national administrations for a common purpose. This organization belongs to all states, will act in the name of all, and for the benefit of all.

In the political field, it will mean that mankind and even the community of nations will cease to be mere entelechies in a political and juridical sense. Tne United Nations is no more than an inter-state organization, composed of sovereign states with different and frequently opposing interests, that tries to limit the individual action of each one with a view to preserve peace. But humanity as such is not represented in the political or juridical plane. What we call the international community has not meant much more than the sum of individual states, with only a suspicion of communitary purposes. No entity exists that represents and defends those communitary purposes. Mankind does not have its own legal personality, nor organs entrusted to watch over its interests.

The regime of the Convention, which, we hope, will become reality, will mean that at least for the limited purpose of exploiting and managing equitably the resources of the sea-bed, property will be attributed for the first time to mankind as a whole. Mankind will have its own patrimony, different from the patrimony of its components. The organization entrusted with the exploitation of those resources will represent the whole of

humanity for the defense of its interests. It will mean, therefore, a new form of international legal personality for mankind, partially, if you wish, but in the end there will be an entity recognized juridically with ends and property identified as its own. It will create organs that act in its name and watch over its interests. This new and revolutionary concept has enormous significance and is pregnant with future possibilities.

In reality the revolutionary principle of the common heritage of mankind will help peoples to transcend the frontiers that artificially separate them and to understand that their interests frequently lie beyond them.

Finally, I think that the Conference and the Convention will exert great influence on the method of future negotiations. There is no time to describe here the method of work of the Conference. Everyone who has been in contact with the Conference is familiar with that method. I think that you also know, or should know, that the now famous Evensen method was decisive -- I repeat, decisive -- in the sucess of the Conference. Without it I doubt that we would have attained consensus in all matters related to the general law of the sea -- that is, in all matters except the sea-bed regime.

But what has not been sufficiently emphasized is that after the initial and spectacular success of the Evensen Group in 1975, the method of work invented by him became, almost by the very nature of things and without any recognition or almost any realization, the method of work of the Conference itself through the successive presentation of informal negotiating texts by the Chairmen of the Main Committees and of the Conference.