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**“THE EU COMMON FISHERIES POLICY: GOVERNANCE OF A
COMMON GOOD IN THE CONTEXT OF EUROPEAN INTEGRATION”**

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1. INTRODUCTION

DEMOCRACIES ALMOST NEVER GO TO WAR WITH EACH OTHER. NOTHING, IT SEEMS, CAN BRING THEM TO BLOWS – EXCEPT, PERHAPS, FISH. FIRST CAME THE ‘COD WARS’ OF 20 YEARS AGO AND MORE BETWEEN BRITAIN AND ICELAND. THEN, EARLIER THIS YEAR, BRITTANY’S HISTORIC PARLIAMENT WAS BURNED DOWN AFTER VIOLENT PROTESTS AGAINST CHEAP IMPORTS AND SPAIN WAS THREATENING TO VETO THE AGREEMENT BY WHICH NORWAY WILL BE ABLE TO JOIN THE EUROPEAN UNION: NOW, SPANISH FISHERMEN MASS THEIR VESSELS AGAINST ENGLISH AND FRENCH INTERLOPERS. THERE IS TALK OF AXE-WIELDING SEAMEN AND SABOTAGED NETS (...) MEANWHILE, NORWAY SEIZES A COD-SEEKING ICELANDIC TRAWLER WHICH HAS ALLEGEDLY FIRED SOME SHOTS AT NORWEGIAN COAST GUARDS. WHAT IS IT ABOUT FISH THAT MAKES DEMOCRACIES SEND GUNBOATS? THE ANSWER IS THAT THE DEMAND FOR FISH FAR OUTSTRIPS SUPPLY. THE SHOALS ROUND EUROPE ARE SHRINKING INEXORABLY. GOVERNMENT ATTEMPTS TO SOLVE THE PROBLEM NATIONALLY FAIL BECAUSE FISH DEFY BOUNDARIES, WHILE THE INTERNATIONAL BODY THAT MIGHT HAVE A SOLUTION (THE EUROPEAN COMMISSION, WHICH WANTS TO REDUCE CATCHES) CANNOT IMPLEMENT IT: NATIONAL GOVERNMENTS VETO THIS FOR FEAR OF FISHERMEN’S POLITICAL CLOUT.

(THE ECONOMIST OF 13 AUGUST 1994)

In 2007, the 50th anniversary of the signing of the Rome Treaties was celebrated. In the area of fisheries, however, there did not seem to be much to celebrate. Ever since the Community laid the foundations for a Common Fisheries Policy (CFP) in 1957, the amount of cod in the North Sea, an important region in which the policy attempts to manage the Community’s fisheries, has decreased by over 83%. (ICES, 2008: 68f) Most other commercially exploited fish stocks share the faith of the cod.

It is therefore not surprising that the CFP rarely makes any positive headlines. Widely regarded as an example for policy failure, first and foremost by the Commission itself, it is blamed for being the main cause for both the depletion of fish stocks in Community waters and the slow decline of traditional coastal communities.

This paper looks at the CFP from a different angle than most other works that have been written about the policy. The author agrees with Conceição-Heldt (2004: 29) that previous research has often been too normative or descriptive. Most notably, the majority of existing literature on the subject is neither an exhaustive evaluation of the policy or one of its elements, nor should it be seen as a purely historical work. It is rather a general analysis of the policy on a meta-level that focuses on its evolution in the context of European integration and on the nature of the resource it seeks to manage.

Only very few works have connected the CFP to the overall European integration

process. (Particularly Leigh 1983; Symes & Crean 1995 and Arason 2003) However, that the CFP is an excellent case study for European integration, is something that Michael Leigh (1983: 4f) already certified:

The CFP, though relatively marginal to the Community's economic life, demonstrates many of the possibilities for and limits on Community action and so has implications that go beyond the sector directly concerned.

Also, to look beyond the topics of policy failure or policy prescriptions makes it possible to understate statements such as the one made by the former head of the Conservation Unit Mike Holden, who claimed that the conservation policy of the CFP "*must be adjudged a brilliant political success but a conservation policy in name only.*" (Holden, 1996: 125)

Special attention should be given to the nature of the resource. As a so-called common-pool resource, a type of common goods, fish considerably differ from the vast majority of goods and services in its economic characteristics. But broad studies on the *commons* only started after Elinor Ostrom's groundbreaking work was published in the early 1990s, decades after Garrett Hardin's famous article in *Science*, and decades after the adoption of the first Common Fisheries Policy. For that reason, this paper also focuses on whether and how the special characteristics of fish as a common-pool resource play a role in the evolution of the policy, especially the conservation policy.

Therefore, this paper aims, in the light of the above, to address the following question:

HOW DID THE EU COMMON FISHERIES POLICY AS A COMMUNITY TOOL FOR THE MANAGEMENT OF A COMMON-POOL RESOURCE EVOLVE IN THE CONTEXT OF EUROPEAN INTEGRATION?

To answer this question, a theoretical framework consisting of three concepts focussing on each of the three different levels of analysis of public policy outlined by Howlett and Ramesh (2003: 20ff) is being used:

- a) European Integration theories, focussing on the largest level of social structures;
- b) Charles' framework of fisheries management, focussing on the aggregate collection of individual actors; and
- c) The concept of Common Goods, explaining behaviour and motivations of individual actors.

Therefore, instead of focussing only on specific parts of the policy, the evolution of the policy is being looked at through these specific angles. It also encompasses the classical stages of the policy cycle, from agenda setting to evaluation, as for instance described by H ritier (1987).

In order to concisely answer the research question, the scope of this paper is limited. For instance, it also does not cover developments in the Baltic Sea or the Mediterranean since the policy there is still in its infancy since it focussed on the North Atlantic and North Sea for the longest time as over two thirds of EU catches are taken there. Also, it does not focus on the role of non-governmental actors in the policy-making process, especially since lobbying in the sector on the European level has been very limited.

The paper is structured in a way that first, the three theoretical angles used for the analysis, namely the grand theories of European integration, the framework of fisheries management and common-pool resources, will be introduced. The empirical part falls into four chronological chapters, which analyze the four main phases of development of the policy. The subsequent conclusion connects the different empirical parts with each other and with the theoretical foundation and answers the research question. Finally, a short outlook on the future of the policy is given.

Before starting with the theoretical part, a short introduction to the fisheries sector in Europe seems appropriate.

The European Union is now the third largest fisheries "nation" in the world. (European

Communities, 2008; European Communities, 2007) As of 2005, it ranks behind China and Peru in terms of catches by weight, with 5 632 045 tonnes or 6.01 per cent of the worldwide total volume. 910 650 tonnes or 16.17 per cent are caught by Denmark alone. More than half of the EU catch, in terms of volume, is made by four Member States alone: Spain, Denmark, France and the United Kingdom. However, Denmark, as the EU's largest fishing nation comes only third in Europe at large, after Norway and Iceland. The total catch volume of these two Nordic states amounts to 4 053 667 tons or 71.98 per cent of total EU catches.

	Catches (1000 t)	Trade balance (million €)	Employment (total)	Employment (% of pop.)	Consumption (kg/year/capita)	EFF-allocation (%)
EU-27	5 632	-13 679	415 851	0,083	21.4	100
ES	768	- 2 807	87 310	0,19	44.7	26.29
DK	911	795	14 060	0,26	23.1	3.16
FR	595	- 2 719	64 712	0,10	33.6	5.02
UK	669	- 1 569	33 534	0,06	20.0	3.2
IS	1 661	1 374	6 100	1,91	91.4	-
NO	2 393	3 726	20 094	0,42	47.7	-

Figure 1: Fisheries Statistics for Europe's six largest fishing nations (in terms of catch volume) comparing catches, trade balance, employment, consumption and EFF-allocation¹. Sources: European Communities (2008) and European Communities (2007)

Approximately 415 851 people were employed in the EU fisheries sector in 2003, mainly in Spain and France with 87 310 and 64 712 people respectively. Methods of collecting and compiling employment data for the sector, however, vary throughout the Member States so great care needs to be taken when using these numbers. They do, however, demonstrate that the number of people employed in the fisheries sector compared to the general population is rather insignificant. It is above average in Denmark and Spain, the two largest EU fishing nations, and of some significance in the two largest European fishing nations, Iceland and Norway. (European Communities, 2008)

Human consumption in the EU averages 21.4 kg of fisheries products per capita and year, with Portugal leading the list with 56.9 kg, followed by Spain, Latvia, France, Finland, Malta and Sweden. Portugal also ranks third worldwide in consumption of fisheries products after Iceland with 91.4 kg and Japan with 65.7kg.

During the 2000-2006 period, most Community aid through the Common Fisheries

¹ Data on catches for 2005, on employment and consumption for 2003, on trade balance for 2006 and on EFF-allocation as of 2008.

Policy was used for processing and marketing, followed by scrapping of vessels and the construction and modernisation of existing vessels. Spain alone received 44.4 per cent of the total amount of 4 billion Euro, followed by Italy with 10.2 per cent and France with 6.9 per cent. Under the new European Fisheries Fund, Spain is still set to receive the largest share with 26.3 per cent of the 4.6 billion Euro pot for the 2007-2013 programming period, followed by Poland (17.1%), Italy (9.9%), Portugal (5.7%), Romania (5.4%) and France (5.0%). (European Communities, 2008)

Of concern is the European Union's negative trade balance in fisheries products with a trade deficit of almost 14 billion Euro in 2006. Spain, France and Italy alone produce a deficit of roughly 3 billion each. (European Communities, 2007)

Fisheries are counted as part of the primary sector of the economy. Despite the fact that its contribution to employment and GNP, which is below one per cent in all EU Member States, fisheries is nonetheless a politically sensitive subject due to a concentration in rural coastal regions and the image of fisheries as ancient, traditional activity that is persistent to change. The field of fisheries policy per se is functionally limited but spills over into many matters bordering on high policy.

2. THEORETICAL BACKGROUND

The theoretical background encompasses first, the two grand theories of European integration, neo-functionalism and liberal intergovernmentalism for a structural account; second, Charles' framework for fisheries management for collective implications and finally, the characteristics of common-pool resources explaining behaviour of individual actors.

1. THE GRAND THEORIES OF EUROPEAN INTEGRATION

Of the two main theories of European Integration, neo-functionalism will be introduced first since historically, it was also the first one to evolve.

1. NEO-FUNCTIONALISM

POLITICAL INTEGRATION IS THE PROCESS WHEREBY POLITICAL ACTORS IN SEVERAL DISTINCT NATIONAL SETTINGS ARE PERSUADED TO SHIFT THEIR LOYALTIES, EXPECTATIONS AND POLITICAL ACTIVITIES TOWARD A NEW CENTRE, WHOSE INSTITUTIONS POSSESS OR DEMAND JURISDICTION OVER THE PRE-EXISTING NATIONAL STATES. THE END RESULT OF A PROCESS OF POLITICAL INTEGRATION IS A NEW POLITICAL COMMUNITY, SUPERIMPOSED OVER THE PRE-EXISTING ONES.

(HAAS, 1968: 16)

Neo-functionalism is based on the work of Ernst Haas, who used this definition of political integration as a process in his theories. This process emerges from a network of actors who pursue their interests within a political environment. It is fostered by three key coalition-forming mechanisms that potentially produce a growth-inducing outcome: spillover, actor socialization and feedback. (Lindberg & Scheingold, 1970: 116ff)

Spillover is defined by Lindberg (1963: 10) as a "*situation in which a given action, related to a specific goal, creates a situation in which the original goal can be assured only by taking further actions, which in turn create a further condition and a need for more action and so forth.*" Haas (1968: xxxiii) argued about his study on European integration that "*the chief finding is that group pressure will spill over into the federal sphere and thereby add to the integrative impulse.*" His key argument was that through

the economic integration within single sectors, in this case the coal and steel sectors of the ECSC, significant economic benefits for the economic actors involved would be created. However, to maximize these economic benefits, further integration in related sectors of the economy must be pursued.

Schmitter (1969: 162) defines spillover based on an institutional understanding of integration and characterizes the two commonly used dimensions of spillover:

Spillover refers (...) to the process whereby members of an integration scheme – agreed on some collective goals (...) but unequally satisfied with their attainment of these goals – attempt to resolve their dissatisfaction either by resorting to collaboration in another related sector (expanding the scope of mutual commitment) or by intensifying their commitment to the original sector (increasing the level of mutual commitment) or both.

The number of social groups or policy sectors that are potentially involved and the importance of the respective policy sectors for the achievement of certain goals constitute the scope of commitment, which is increased by functional spillover. It is important to understand that economic actors are not primarily interested in enlarging the scope of a supranational system; they rather see integration as means to their ends. Lindberg and Scheingold (1970: 117) describe it best when they argue:

In functional spillover, actors are brought in because they find that tasks are functionally related to one another. That is, because of the nature of the task involved, actors discover that they cannot do A without also doing B or perhaps C (...)

It is therefore impossible to limit integration to single areas. Integration, rather, bears an inherent dynamic and it “*was this functional dynamic or linkage mechanism that the concept of spillover*” (Lindberg & Scheingold, 1970: 118) describes.

The most prevalent example made by Haas was the interpretation of the founding of the EEC as a spillover from the ECSC. Success and the acceptance of the ECSC are based on “*the convergence of demands within and among the nations concerned, not by a pattern of identical demands.*” (Haas, 1968: 286) He describes the integration process on a supranational level as “*the expansive logic of sector integration*” (Haas 1968: 283ff) and argues that from the coal and steel sectors, expectations among interest groups in other areas emerged that would lead to further economic integration mainly

through trade liberalization but subsequently also to political parties and governments and other areas.

The autonomy of functional contexts “*the autonomy of functional contexts can be overcome by means of log-rolling and side-payments. (...) Log-rolling refers to bargaining exchanges within a given decision area, while side-payments involve their extension to other (often functionally unrelated) areas.*” (Lindberg & Scheingold, 1970: 118f; see also: Schmitter, 1969: 163)

The extent of commitment to mutual decision-making both in terms of continuity and in terms of techniques constitutes the level of commitment, which is increased through political spillover. Continuity refers e.g. to the obligation to meet frequently and evaluation mechanisms and technique refers to the supranationality of decision-modes. (Schmitter, 1969: 163f; see also: Falkner, 1998: 9)

Political spillover is closely related to actor socialization, which describes the transformation of actors through constant involvement in supranational policy-making, as they shift their loyalties from national polity to supranational governance. The actors are brought closer together through joint problem solving and develop new perspectives for and identifications with the supranational system, regardless if they value these perspectives for distinct rewards or for the system itself. (Lindberg & Scheingold, 1970: 119) Loyalty in that sense is more concretely defined by Haas (1968: 5) as a necessary attribute for a political community that is a “*condition in which specific groups and individuals show more loyalty to their central political institutions than to any other political authority (...)*”

So, loyalty from the level of member states is therefore shifted to loyalty to supranational organizations like the ECSC, EEC etc. An important consequence of elite socialization is that in policy-making processes, ideological reasoning fades into the background and more technocratic aspects would dominate international negotiations. However, it is especially this argument that in the light of rising French nationalism during the De Gaulle period contributed strongly to the decline of neo-functionalism in the 1960s. (Rosamond, 2005: 67)

Jensen (2007: 91ff) makes the distinction between socialization of the political elite and the formation of supranational interest groups. He pointed out that spillover and the forming of a political elite causes interest groups to “*match this development through a process of reorganization, to form their own supranational organizations.*”

Falkner (1998: 9) extends the logic of Schmitter (1969) and argues that including his externalisation hypothesis would constitute geographical spillover as a third dimension of spillover that increases the *area* covered by commitment. Schmitter’s externalization hypothesis basically says that governance on the supranational level will create the need to adopt common policies vis-à-vis third parties – or, using Schmitter’s words: “*Members will be forced to hammer out a collective external position.*” (Schmitter, 1969: 165) Enlargement of the Community and side effects of Community policies on non-members (notably EEA, EFTA and other countries) constitute the dimensions of geographical spillover. (Falkner, 1998: 9f; Schmitter, 1969: 165)

It was only a few years after Haas first published 'The Uniting of Europe' that neo-functional thinking was heavily challenged. Rosamond (2005: 247ff) identified three aspects that questioned the neo-functional dynamic: First it was empirical challenges that shook the foundations of neo-functionalism. In the mid-1960s, a new nationalism evolved in France under Charles De Gaulle and European institutions were boycotted under his rule. Political integration in Western Europe took a more cautious approach and slowed down considerably. Explanations were provided by Hoffmann, who argued that in areas of so-called high politics, functional integration was far less likely than in areas of so-called low politics like the economic sphere (Rosamond, 2005: 249); and Hansen, who argued that neo-functionalism neglected “*the role of external structural imperatives in shaping member-state preferences in the direction of positive sum integration bargains.*” (Rosamond 2005: 248) Haas acknowledged these arguments in the preface to the second edition of *The Uniting of Europe*, published in 1968.

Second, neo-functional scholars engaged in self-critique as a result of the empirical challenges of the original neo-functional reasoning. It was even stated that the integration process had been reversed; a fact that is reflected by an extension of neo-functional theory by theories of disintegration. (See Lindberg and Scheingold, 1970)

Jensen (2007: 93ff) summarizes that the main set of objections were aimed at:

- 1) The theses advanced by neo-functionalists;
- 2) The theories formulated by Haas himself - Haas stated in the 1970s that dynamics like spillover did not manage to reflect the reality of European integration and that European institutions should be analyzed against the background of international interdependencies, and
- 3) The focus of neo-functionalism on the political elite and on interest groups rather than on the general public (partly acknowledged by Lindberg and Scheingold's (1970: 119) classification of feedback as a key factor).

With the considerably intensified progress of European integration since the late 1980s, neo-functionalism has seen a revival. Schmitter (2005: 264) identifies two factors that triggered a more rapid advancement of European integration: First, a “*vague, subjective feeling that Europe as a whole was destined to decline in competitiveness*” and second, “*an objective demonstration by the Social Democratic government of Francois Mitterand that measures taken independently by national policy-makers were incapable of attaining desired macro-economic outcomes and could even lead to perverse outcomes in terms of growth and monetary stability.*”

On a level of theoretical advancements, Jensen (2007: 96f) specifically mentions contributions made by Stone Sweet and Sandholz (1998), who made the case for a transaction-based view of European integration that bears strong similarities with neo-functionalism. Burley and Mattli (1993), who amongst others, pointed out that European integration has seen considerable progress through the jurisprudence of the ECJ that resembles integration as explained by neo-functionalists:

The founding member states of the Community had no intention of giving the court supremacy over national legal systems. However, the European Court was able to develop its doctrine over the course of the 1960s and 1970s. (...) The Court has also been able to advance political integration by using technical and apolitical arguments in the legal area... (Jensen, 2007: 96f)

In a special issue of the Journal of European Public Policy, renowned scholars revisited the legacy of Ernst Haas. There, Rosamond (2005: 237ff) argues that neo-functionalism should be reinstated within the theories of comparative regionalism. Farell and Héritier (2005: 272ff) seek to do exactly that by viewing regional integration as endogenous institutional change, using a negotiation-centred approach.

2. LIBERAL INTERGOVERNMENTALISM

NEO-FUNCTIONALISTS ARGUE THAT THE PURSUIT OF ECONOMIC INTEREST IS THE FUNDAMENTAL FORCE UNDERLYING INTEGRATION, BUT THEY OFFERED ONLY A VAGUE UNDERSTANDING OF PRECISELY WHOSE THOSE INTERESTS ARE, HOW CONFLICTS AMONG THEM ARE RESOLVED, BY WHAT MEANS THEY ARE TRANSLATED INTO POLICY, AND WHEN THEY REQUIRE POLITICAL INTEGRATION. THIS IN TURN REFLECTED THE LACK OF A GENERALISABLE MICRO-FOUNDATIONAL BASIS NECESSARY TO SUPPORT PRECONDITIONS ABOUT VARIATION IN SUPPORT FOR INTEGRATION ACROSS ISSUES, COUNTRIES AND TIME (...)

(Moravcsik, 1993: 479)

The second grand theory of European integration is liberal intergovernmentalism. Andrew Moravcsik developed the approach in the early 1990s. Like the work of previous intergovernmentalists, e.g. Stanley Hoffmann, he made the case for intergovernmentalism as a theory of European integration and largely rejected the ideas of neo-functionalism.

While Moravcsik claimed that his approach was not an “*evaluation of – let alone a wholesale rejection of – neo-functionalism or any other classical theory*” (Moravcsik 1993: 513), he clearly pointed out the shortcomings of neo-functionalism. On an empirical level, he argued, European integration has been characterized by ups and downs instead of steady evolvment and uniformly stronger centralized institutions had not been created. On a theoretical level, neo-functionalism remained ambiguous, as it is dependent on embedding it into a multi-causal framework to explain European integration, making concrete theory testing and development impossible. Also, according to Moravcsik, neo-functionalism is not actor-oriented, as it relies on the analysis on endogenous dynamics without taking external limitations into account.

Liberal intergovernmentalism is based on elements of realism and liberalism (Rosamond, 2000: 136) and focuses on the interaction between the national and

supranational level. European integration is, according to liberal intergovernmentalists, the outcome of national preference formation creating international demand for integration and interstate bargaining delivering the supply of European integration. (Cini, 2007: 110f)

In the tradition of liberal international relations theories, the relationship between government and society is a principal-agent one. Groups in society, their respective interests and influences on domestic policy enunciate preferences and governments aggregate them. Since it is a primary interest of governments to remain in office, they are required to gain the support of these domestic groups by acting on their favourable preferences. A set of national interests is formed and it is this set that national governments bring to the bargaining table of supranational negotiations. The underlying factor for the demand for integration is therefore pressure from domestic societal actors as represented in political institutions. (Moravcsik, 1993: 484f)

Supranational bargaining takes place because countries, based on the principle of comparative advantage, draw benefits out of economic interdependence and free flow of goods and services amongst them. International policy externalities are being created when policies of a government affect societal actors in other countries by producing costs and benefits for them. When these externalities play a role in reaching domestic policy goals, interdependencies and policy externalities are created. The main motivation for national governments to engage in supranational negotiations is then for negotiations to enable them to reach domestic policy goals. Often this is not the case when positive externalities occur, but rather with negative economic policy externalities. Protectionist measures like customs shall be mentioned here as the most important example as they directly influence policy goals of other countries. (Moravcsik, 1993: 486)

Market liberalization and policy harmonization can be identified as the two main purposes for policy-coordination in the European Union. Respectively, Moravcsik identifies three categories based on policy objectives: Liberalization of the exchange of private goods and services, provision of socio-economic collective goods and provision of non-economic collective goods. In each three of these cases, *“the magnitude, distribution and certainty of net expected costs and benefits to private groups (...)*

predict policy preferences of governments, as well as their range of relative autonomy vis-à-vis those domestic groups that oppose cooperation.” (Moravcsik, 1993: 488) In this way, national preferences reflecting the demand for European integration are formed.

EU decisions are viewed as a bargaining game over terms of co-operation. When negotiating a policy on a supranational level, governments collectively select a common policy. The selection has distributional consequences and governments are rarely completely indifferent between the available options. Negotiations are therefore a reconciliation of conflicting interests. Each government is bargaining for outcomes – to understand this process it is necessary to understand the factors that account for the relative power. The underlying factors on the supply side of European integration are rather political than societal like on the demand side and are influenced by bargaining power and the intensity of national preferences. This view is largely based on intergovernmentalist theories of interstate relations. (Cini, 2007: 111)

For the prediction of outcomes, Moravcsik (1993: 500ff) places three assumptions: First, that cooperation between states in the EU is voluntary; second, that information deficits hardly exist; third, that transaction costs of bargaining are relatively low. Under these assumptions, conflicting viewpoints are resolved Pareto-optimally. Given these assumptions, interstate bargaining power according to Moravcsik (1993: 502ff) is visible in three aspects:

- 1) Unilateral alternatives and threats of non-agreement

In order to accept a negotiated agreement, governments make sure that it is more beneficial than the best viable alternative to it. *“The simple, but credible threat of non-agreement – to reject cooperation in favour of a superior alternative – provides national governments with their most fundamental form of bargaining power.”* Usually, this requires finding compromises with those governments who act in the least complaisant way and leads to agreements being decided upon on a lowest common denominator basis.

2) Alternative coalitions and the threat of exclusion

This approach is used when the alternatives to an agreement do not only comprise unilateral policies but multilateral options that are defined by the exclusion of certain member states. “*The existence of opportunities to form attractive alternative coalitions (or deepen existing ones), while excluding other parties, strengthens the bargaining power of potential coalition members vis-à-vis those threatened with exclusion.*” There is a tendency that large states acquire more profits since their participation in an agreement is more likely to be necessary than smaller member states. This approach can be seen as powerful since countries, which are worse off than the status quo by accepting an agreement might be even worse off if they are excluded from a multilateral agreement between other member states. Then, negative policy externalities are being created. Positive externalities, however, are possible in the same way. According to Moravcsik, this also helps to explain the geographical enlargement of the EU since countries that see negative policy externalities seem more likely to join the Union than countries that see positive policy externalities.

3) Compromise, side payments and linkage at the margin

Liberal Intergovernmentalists, like Neo-Functionalists, see the linkage of policy-making areas as defined by political spillover, as essential in the bargaining process. Whereas in neo-functionalism this resembles a core concept (see above), Liberal Intergovernmentalists point out that logrolling and side payments are a strategy that is best pursued on the margin. Also, linkages are seen as a “*politically costly, second-best strategy for integration.*” Integration is viewed as a zero-sum game, although it is somewhat accepted that occasionally positive-sum outcomes can occur. (Cini, 2007: 111) Moravcsik (1993: 504ff) sees the limitation of linkage strategies mainly with domestic distributional consequences and makes a number of assumptions:

- a) The less intense preferences of domestic actors are, the more likely linkages occur. Thus, issues seen as minor are more likely to be sacrificed.

- b) In the final stage of bargaining, linkages are most likely to occur. They balance gains and losses amongst issues where most parties experience moderate gains.
- c) The more closely related issues are, the more likely linkages occur. Linkages between disparate sectors only occur when compromises on a single issue or linkages between related issues failed.
- d) Linkages for sectors where large losses on domestic groups are being decided upon are likely to occur if they are accompanied by domestic side-payments to those groups.

Liberal Intergovernmentalism is a two-step model: Interstate bargaining follows national preference formation. Later, institutional choice was added as what can be seen as third step. Therein, the motivations for governments to delegate or pool decisions in international institutions are analyzed. (Laursen, 1995: 13) Indeed, Moravcsik (1998: 3f) argued that European institutions are set up to make interstate bargaining more efficient:

To secure the substantive bargains they had made (...) governments delegated and pooled sovereignty in international institutions for the express purpose of committing one another to cooperate.

One of the main arguments of liberal intergovernmentalism is that supranational institutions actually strengthen the power of national governments. They do so in two ways: First, by increasing the efficiency of interstate bargaining through providing a framework of negotiation forums, decision-making procedures etc., and second, by those institutions strengthening domestic agenda-setting power. By increasing the legitimacy of common policies, the Community structures a two-level game, where the autonomy and initiative of the domestic political elite is strengthened. (Moravcsik, 1993: 507)

Like neo-functionalism, liberal intergovernmentalism has also been subject to criticism. Cini (2007: 112f) sums up three major points: First, that Moravcsik had been too selective when attempting to demonstrate the validity of liberal intergovernmentalism by only applying it to cases where it would inevitably prove correct, i.e. cases where

decisions were taken unanimously and economic integration was the main focus. Hence, liberal intergovernmentalism is often seen as being suitable for explaining e.g. major Treaty changes but less suitable for explaining day-to-day politics on the community level. Second, and probably most important, is that liberal intergovernmentalism “*understates the constraints faced by key policy-makers*” (Cini, 2007: 113) through both focussing on the more formal aspects of decision-making on the European level and neglecting and through understating the role that the ECJ and the Commission as supranational actors play within the process of European integration. Nugent (1999: 510f) argues:

Moravcsik’s portrayal of the Commission as exercising a role of little more than a facilitator in respect of significant decision-making has attracted particular criticism, with numerous empirically-based studies claiming to show that the Commission does exercise an independent and influential decision-making role, be it as (...) an animateur, a policy entrepreneur or a motor force.

Finally, Moravcsik’s view of the state is seen as too narrow, as his conception of determining government preferences are based mainly on economic interests and the two-level game liberal intergovernmentalism suggests would not fit the Community’s multi-level polity.

2. FRAMEWORK OF FISHERIES MANAGEMENT

WHEREAS SUSTAINABILITY IS MULTI-FACETED, EACH OF THE FISHERY PARADIGMS PRESENTED HERE IS UNI-DIMENSIONAL, TYPICALLY FOCUSED ON JUST ONE COMPONENT OF SUSTAINABILITY. WE CAN DRAW THE KEY CONCLUSION THAT AN OVEREMPHASIS IN POLICY FORMULATION ON ANY SINGLE PARADIGM WILL LIKELY LEAD TO AN UNSTAINABLE FISHERY.

(CHARLES, 1992: 393)

Fisheries policy discussions have to be understood as interactions between actors with different sets of preferences. Charles (1992) argued that due to the limited possibility of increasing sustainable benefits through increasing production because of the nature of the resource, efficiency and allocation decisions are the only available fisheries policy tools, which are by nature of a very philosophical nature. The three fundamental objectives of the CFP represent three extreme viewpoints of underlying systematic priorities in this philosophical debate since each paradigm has its policy prescriptions.

Arranged in a triangle, they can be defined as the conservation paradigm, the rationalization paradigm and the social/community paradigm.

The conversation paradigm is based in the belief that fisheries management is primarily used to take care of the fish. Fishermen act in their interest and conservation policy is necessary to ensure long-term sustainability of the business. The conversation paradigm emphasises biological studies aimed at ensuring the sustainable capacity of fish stocks. It therefore has a tradition among scientists and *some* decision-makers:

The historical prevalence of this paradigm (...) is due in large part to a rare consensus recognizing (in words if not always in deeds) the obvious dependence of fisheries and fishing industry livelihoods on the state of fish stocks. (Charles, 1992: 384)

Actors supporting the conversation paradigm usually use arguments complementing the Tragedy of the Commons described in the next chapter. They usually focus on the state of the stocks and their maximum sustainable yield (MSY). The MSY is characterized by a specific size in catch and stock population. The graph below shows the annual growth of a stock as a function of the stock's population size. At any point on the function, the catch possibilities for the subsequent year remain intact. The graph clearly indicates that a small population results in a smaller growth rate. A very large population, however, will have the same effect, since the stock is then close to carrying capacity. This is the result when no fish at all is being caught. The MSY is the point on the function with the highest growth rate and population size. There, the material flow is the highest possible without jeopardising next year's catch. (Hegland, 2004: 47)

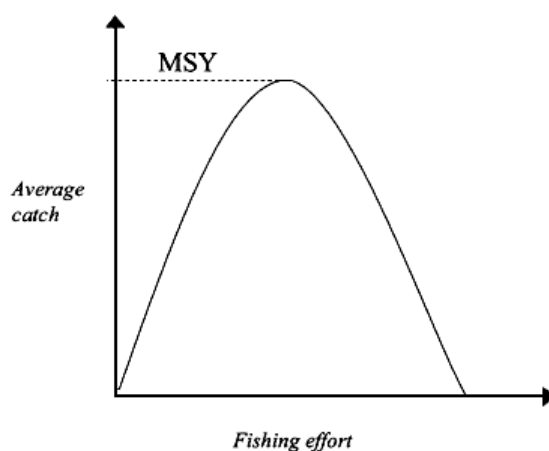


Figure 2: Maximum Sustainable Yield (MSY), Source: fao.org

The rationalization paradigm focuses on wealth generation and a maximization of fishery rents. With the advance of neo-liberalism it has gained support amongst biologists and fisheries managers who claim that rationalization could serve both conservationist goals as well as the industry striving for increased economic efficiency. (Charles, 1992: 385) However, they differ from advocates of the conservation paradigm by seeing conservation from an economical rather than biological perspective and therefore focus on fishing at the resource's maximum economic yield (MEY). In the simplified graph below depicting catch cost and value and fishing effort, it is visible that the surplus profit is the largest at MEY, the area where the difference between total revenue and total cost is the largest. The concept of MEY focuses on economic aspects rather than biological ones. (Hegland, 2004: 49)

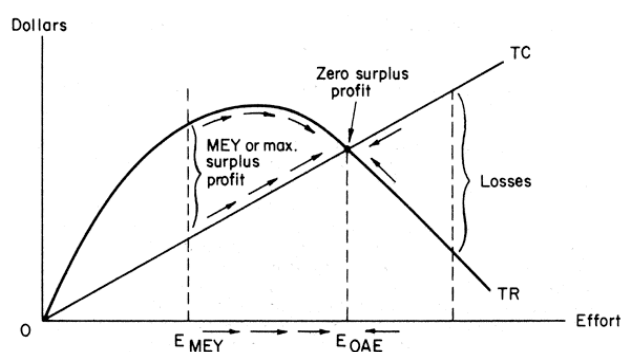


Figure 3: Maximum Economic Yield (MEY), source: fao.org

The social/community paradigm focuses on fishing communities, distributional equity and general social and cultural fisheries benefits. It emphasizes on the fishers as members of coastal communities rather than individualistic firms (like the rationalization paradigm) or parts of a fleet (like the conservation paradigm):

There is often a strong 'advocacy' element in this paradigm, seeking to protect the 'small' fishers who are seen as being buffeted by economic forces beyond their control (...) (Charles, 1992: 385)

For actors arguing along the lines of this paradigm, biological and economical considerations are of less importance than social considerations.

3. COMMON GOODS

RUIN IS THE DESTINATION TOWARD WHICH ALL MEN RUSH, EACH PURSUING HIS OWN BEST INTEREST IN A SOCIETY THAT BELIEVES IN THE FREEDOM OF THE COMMONS. FREEDOM IN A COMMONS BRINGS RUIN TO ALL (...) MARITIME NATIONS STILL RESPOND AUTOMATICALLY TO THE SHIBBOLETH OF THE "FREEDOM OF THE SEAS." PROFESSING TO BELIEVE IN THE "INEXHAUSTIBLE RESOURCES OF THE OCEANS," THEY BRING SPECIES AFTER SPECIES OF FISH AND WHALES CLOSER TO EXTINCTION.

(HARDIN, 1968: 1244)

After looking at the structural and sector level, the economics of the specific nature of the resource focus on behaviour of individual actors. Fish, per definition, is a common-pool resource. And such a resource, per definition, is characterized by rivalry and non-excludability. The classification of goods and services in terms of rivalry and excludability is made by Musgrave (1959), who debated the provision of public goods in his treatise on the theory of public finance.

Non-excludability means that no individual can be excluded from the consumption of such a good. Every individual can theoretically argue to the same degree as another that the total supply and the benefit of that supply would not change significantly whether he had made a contribution or not. Market failure is therefore a possible consequence if collective action is not involved in the governance of non-excludable goods. To illustrate this criterion with an important example: national defence is a service where individuals cannot be excluded from benefiting or losing from it.

The line between excludability and non-excludability cannot be drawn easily since in many situations, excludability is possible, but the cost of it is significant. In other cases, where excludability can be achieved at the cost of zero, the problem of weighing the gains from exclusion against the costs arises would again enforce preference revelation. Musgrave draws the conclusion that "*exclusion technology is thus a factor in deciding what costs should be internalized. At the margin, the cost of internalizing should be equated with the gain in consumer surplus which results therefrom.*" (Musgrave, 1969: 44)

Common-pool resources are also defined by the characteristics of rivalry. A priori, according to Musgrave (1969: 43), these types of goods are “*defined as goods, the benefits from which are such that A’s partaking therein does not interfere with the benefits derived by B*”. Non-rivalry in consumption means therefore that the same output can be enjoyed by consumer *A* and *B* at the same time. This is also called the existence of beneficial consumption externalities.

It shall be noted that the condition of non-rivalry does not imply that the same subjective benefit is derived from the supply. To explain this statement, a few specific examples shall be provided: *A* and *B* can both enjoy the services of police or national defence independent of each other. However, the proximity of *A* to a police station might differ from the proximity of *B* to a police station and therefore alter service quality. An interesting aspect of the criteria of non-rivalry is that the cost to be paid by *A* is less the more is paid by *B* and, most important, the more consumers participate. The implication is that with increasing demand, the price level actually decreases. Therefore, in case of a non-rivalous good, it is beneficial for each consumer to have more individuals demanding the same goods and services as him or her.

Goods, where the conditions of rivalry and non-excludability are given, are called private goods and can be allocated effectively by markets. For all other good types, collective action is required to maximize the efficient allocation of resources. Non-rival, excludable goods are often characterized by high fixed costs and low marginal costs which leads to inefficient competitions and monopolies. Non-rival, non-excludable goods are called public goods, where the free-rider problem is prevalent and positive externalities occur that lead to underproduction. Rivalous, non-excludable goods are defined as common-pool resources. Given the above logic, the results are negative externalities that lead to overconsumption.

Hardin (1968: 1243ff) was the first to conceptualize common-pool resources. It is the first of three influential models identified by Ostrom (1990: 2) that can be seen as a starting point of today's research on common goods. Hardin describes the implications of the characteristics of common-pool resources as explained above as the tragedy of the commons. It has become a synonym for the consequences of scarce environmental

resources being used by many individuals in common. Harding used the example of a rational herder, who derives a benefit directly from his own animals and only suffers delayed costs from the overuse of farmland through overgrazing. To maximize his or her gains, each herder faces utility with a positive and a negative component:

The positive component is a function of the increment of one animal. Since the herdsman receives all the proceeds from the sale of the additional animal, the positive utility is nearly +1. The negative component is a function of the additional overgrazing created by one more animal. Since, however, the effects of overgrazing are shared by all herdsman, the negative utility for any particular herdsman is only a fraction of -1. (Hardin, 1968: 1243)

The result is overconsumption of a common-pool resource leading to their extinction. In a larger, philosophical context Hardin (1968: 1244) concludes:

Each man is locked into a system that compels him to increase his herd without limit – in a world that is limited. Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons.

Hardin's solution is coercion that is mutually agreed upon. Dietz et al (2002: 11) point out that the implication of that has two major shortcomings: First, that it is suggested that effective rules cannot be created by internalized norms or obligations in users of a resource. Second, the conclusion that agreements have to be reached on the level of national governments, implying that private actors and local governments are unable to introduce governance that prevents the *Tragedy*: “*If ruin is to be avoided in a crowded world, people must be responsive to a coercive force outside their individual psyches, a 'Leviathan', to use Hobbes's term.*“ (Hardin, 1978: 314 in Ostrom, 1990: 9)

The second model mentioned by Ostrom (1990: 3) is Game Theory. Game Theory can be of relevance for policy analysis when modelling common-pool resource related situations. Even though this section can just give a brief introduction to this topic, policy questions for the organization of more general and more complex systems can be addressed.

Modelling Hardin's concept results in a classical prisoner's dilemma, demonstrating that assuming all individuals act rationally, collectively unfavourable outcomes are being reached. If, using Hardin's example, L is the maximum number of animals that can graze on a meadow then, in a two-person-game, the dominant strategy is defecting, thus

not limiting the number of animals, because if both players cooperate by limiting their number of animals to $L/2$, they both obtain 10 units profit but if one cooperates, he or she receives 11 units whereas the other one receives -1. If both defect, the profit equals zero. The equilibrium is Pareto-inferior. This outcome relies, however, on the two actors not being able to communicate and on the game being a one-shot game without repetition. Using the possibilities for communication, sanctioning or repetition can result in overcoming the dilemma; these cases shall be discussed later on in this section.

Falk et al (2002: 157ff) argued that in this standard common-pool resource game, the aggregate behaviour is basically characterized by the Selfish Nash equilibrium. Nash equilibrium in Game Theory is „*any pair of strategies with the property that each player maximizes his or her own payoff given what the other player does.*“ (Ostrom et al, 1994: 54)

Falk et al (2002: 157) define the respective proposition: „*If all players have purely selfish preferences, the unique Nash equilibrium is symmetric (...)*“. This represents Hardin's argument explained above. The situation is Pareto inferior since an outcome where both players would be better off is not chosen.

The Pareto criterion is a good example of group rationality. Invisible Hand doctrines say that there is in principal no conflict between individual and group rationality. The prisoner's dilemma is counterexample to such doctrines. It is exactly this counterexample that, depending on circumstances, can be found when analyzing all types of goods and services classified as common goods.

Falk et al (2002: 158) argue, that when there is the possibility for individuals to sanction each other and when there is communication allowed, the prospects for cooperative behaviour are strongly increased. This is due to the fact that a framework needs to be used that takes into account that the model of „*human behaviour extends the standard rational choice approach and incorporates preferences for reciprocity and equity.* (...) *The model shows that when the members of a group have a preference for reciprocity or equity, the common-pool resource problem is transformed into a coordination game with efficient and inefficient equilibria.*“ (Falk et al, 2002: 158)

Reciprocity and fairness are important determinants of human behaviour. Fairness is represented by inequity aversion, or best described as the desire of individuals for creating outcomes that are seen as equitable. Still, all fairness theories analyzed by Falk et al (2002) are rational choice theories because they assume that individuals act rationally. Given that efficient outcomes are more likely when communication and sanctions are possible, it implies that individuals act rationally because interdependent preferences produce better outcomes.

Assuming the existence of inequity-averse subjects, Falk et al (2002: 167ff) found that in a symmetric equilibrium with inequity-averse subjects, one selfish player is enough for the outcome to represent the Nash equilibrium. In the asymmetric case, it takes more than half of the people to be non-selfish and to have *“a rather high utility loss from advantageous inequality compared to their loss in utility that derives from disadvantageous inequality.”* Ostrom et al (1994) confirm that the appropriation levels in an empirically repeated common-pool resource game are indeed close to the Nash equilibrium, which therefore explains aggregate behaviour rather well.

In an example of sanctioning opportunities, where in an experimental setting after each round, individuals receive data on other individuals' appropriation decisions, they can decide to sanction other players. However, this is only possible at a certain cost: *“Because sanctioning is costly and utility depends only on their (the individuals') own material payoff, sanctioning is equivalent to throwing away money.”* (Falk, 2002: 170)

In the examples of frequent common-pool resource games, a one-shot game is assumed. Games would be only played exactly once. Reality, however, often reflects repeated games being played more than once, which creates additional complexities. One of these complexities is the proliferation of strategies. Since a strategy is basically a comprehensive plan of a common-pool resource game, each player does, when a game is played twice, not only have two strategies to choose from like in the case of the classic prisoner's dilemma game but actually 32. Player 1, for instance, has to decide what to play not only in the first round but also in the second round. His or her plan for the second round has to take four different contingent outcomes preceding the second shot into account. Options are developed for the case that the game is in disequilibrium after

the first round. Strategies for repeated games can be conditional or unconditional. In an unconditional game, the same strategy is played regardless of the outcome of previous rounds. Conditional strategies differ considerably. A known example for the prisoner's dilemma game is the tit-for-tat strategy.

The tit-for-tat strategy is an example for a trigger strategy, where a player plays one way in a one-shot game unless the other player plays something different. If the latter occurs, it triggers player 1 to play a different strategy in the next round. Trigger strategies play a crucial role in sustaining cooperation throughout repeated games. This is the content of the Folk Theorem. The Folk Theorem presents the basic argument for repetition in common-pool resource games being theoretically capable of overcoming a common-pool resource prisoner's dilemma:

Viewing the game as finitely repeated, the standard game theory prediction is that individuals will repeat the equilibrium of the one-shot game. Viewing the game as infinitely repeated, the standard game theory prediction is embodied in the Folk Theorem. This basic result shows that sufficiently patient appropriators may adopt strategies that do not improve joint outcomes. (Ostrom, 1994: 17)

Although simple game theoretical concepts enable us to address many of the policy questions associated with common-pool resources, other aspects have been found in empirical studies that these concepts fail to address: *“Among these are bounded rationality on the part of the players, payoffs not captured by the game model or complicated attitudes toward risk.”* (Ostrom, 1994: 73)

For common goods, the third conceptualization mentioned by Ostrom is the logic of collective action. This is a theory developed by Olson (1971) that connects economics with political science, challenging the view that if everybody in a group has the same interests, they will act collectively to achieve that; and that in a democratic environment, the biggest fear is a dictate of the majority. He points out that when trying to manage public goods collectively, i.e. goods characterized by non-excludability and non-rivalry, a free rider problem is created, which increasingly grows with the size of the group having the same interests. However, since this solely concerns public goods and not common-pool resources, this is just referred to here briefly for the sake of completeness.

3. THE ROAD TO THE FIRST COMMON FISHERIES POLICY: 1957-1970

WELL BEFORE THERE WAS ANY QUESTION OF APPLYING THE PRINCIPLE OF SUBSIDIARITY, COMMISSION MEMBERS AND OFFICIALS OFTEN BEHAVED AS POLICY ENTREPRENEURS IN SEARCH OF NEW POWERS. AS RAYMOND SIMONNET [FORMER OFFICIAL IN THE DG AGRICULTURE] POINTED OUT, 'OUR STATE OF MIND IN BRUSSELS WAS MAINLY TO GET STATES TO GIVE WAY IN THE DEVELOPMENT OF A NEW POLICY.'

(LEQUESNE, 2004: 19)

To understand the evolution of the Common Fisheries Policy (CFP), one must look at the situation of international fisheries management before the first CFP was adopted, especially in respect of the jurisdiction of coastal states over their fishing zones.

Until the end of World War II, open access to fishing grounds on the high seas with little or no regulation on fisheries management or conservation was the rule. Deriving from the *cannon-shot rule* developed by Cornelius van Bynkershoek in the 18th century, the zones of jurisdiction for coastal states used to be a narrow 3-miles band off the respective coastlines – approximately the distance a cannon could fire from the shore. (Walker, 1945: 210ff)

THE FIRST COMMON FISHERIES POLICY

- TWO PILLARS: STRUCTURAL POLICY AND COMMON MARKET ORGANIZATION
- EQUAL ACCESS PRINCIPLE
- *DE JURE* QMV, BUT *DE FACTO* UNANIMITY REQUIRED (*LUXEMBOURG COMPROMISE*)
- FR AND IT ONLY AGREED TO THE EQUAL ACCESS PRINCIPLE AFTER THE OTHER FOUR MEMBER STATES WERE READY TO AGREE ON EXCEPTIONS AND ON COMMUNITY FUNDING FOR THE SECTOR THROUGH THE EAGGF
- AGREEMENT ON TIME BEFORE ACCESSION NEGOTIATIONS WITH DK, NO, IRE AND UK PRESENTED THEM WITH AN *ACQUIS COMMUNAUTAIRE* THEY HAD TO ACCEPT

Figure 4: Summary of important facts on the first Common Fisheries Policy

The first steps away from open access were taken through international conventions, such as the European Fisheries Convention of 1964, under which signatory countries were able to restrict access to waters up to twelve nautical miles off their coastal base lines. Within a zone from six to twelve miles offshore, vessels of other signatories were allowed to access waters providing that they demonstrated the existence of historical fishing activity in areas in question. Besides the European Fisheries Convention, unilateral actions by Iceland and Norway to extend their fishing zones to 12 miles proved to be a catalyst for the further evolution of international fisheries management.

The first large-scale attempt to regulate fisheries on the high seas was made in 1949 when the first international convention, the International Convention for the North West Atlantic Fisheries (ICNAF) was signed. Signatories to the convention established a commission, which was able to give recommendations that could become binding upon all contracting nations accepting them. A scientific committee, open to a wide range of participants, served as an advisory organ to the commission. Farnell and Elles (1984: 5) see the ICNAF in the following way:

The most original feature of ICNAF was its Joint Enforcement Scheme, under which contracting parties accepted a system of mutual inspection of their fishing vessels at sea at the basis for taking judicial proceedings against any of their vessel that had broken the agreed rules. Thus the British government, for example, committed itself to taking to court a British trawler that might be found by a Portuguese inspector to have been using too small a mesh size off the coast of Newfoundland.

In 1958, eighty-six member states participated in the first United Nations Law of the Sea Convention (UNCLOS), which was the first international convention also addressing conservation of living resources of the high seas, the continental shelf, the territorial sea and the contiguous zones. In 1959 the North East Atlantic Fisheries Convention (NEAFC) was signed as the North East Atlantic counterpart to the INCAF. Although UNCLOS I is considered an important step in the development of international law of the sea, neither UNCLOS, ICNAF or NEAFC were very successful in the management of fish stocks. (ibd.)

On the level of the European Community, the basis for the Common Fisheries Policy was already established in the Treaty of Rome, regarding the area of agriculture. Article 38 (1) EEC on the Common Agricultural Policy states:

The common market shall extend to agriculture and trade in agricultural products. Agricultural products mean the products of the soil, of stock farming and of fisheries and products of first stage processing directly relating to these products.

This section is in fact the only time fisheries are referred to in the whole document. But as a part of agriculture, the same provisions that authorized the Common Agricultural Policy (CAP) in the Treaty, Articles 38 – 47 EEC, also authorized a Common Fisheries Policy. On first glance, it seems logical to include fisheries as part of agriculture, since fishing is also part of the primary economic sector. Moreover, agriculture and fisheries

both share a strong dependence on nature. Contrary to agricultural goods, however, fish is a common-pool resource. It is questionable if the drafters of the Treaty had taken this characteristic into account. The author of this paper has neither found a single source that explained why fisheries were included in the Treaty at all, nor why fisheries were included under the agricultural heading.

The main objectives of the CAP set out in Article 39 (1) EEC are quite specific:

- a) to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilization of the factors of production, in particular labour
- b) this to ensure a fair standard of living for the agricultural community (...)
- c) to stabilize markets
- d) to assure the availability of supplies
- e) to ensure that supplies reach consumers at reasonable prices

These objectives clearly appear to have been set with agriculture in mind. When applying them to the fisheries sector, considerable difficulties arise, due to the classified nature of fish as a common-pool resource. Churchill (1987: 24) elaborates on potential conflicts:

Take objective a), for example. Productivity in fisheries, in the sense of increasing the catch per vessel, can certainly be increased. This can be done in the short term by reducing the number of fishing vessels operating. It can also be done in the longer term by building up depleted fish stocks; but measures to build up stocks may result in a temporary decline in existing productivity. Which method of increasing productivity does Article 39 have in mind (...)? Put another way, does 'rational' (...) refer to biological rationality or economic rationality (...)? If the emphasis in objective a) is biological rationality, then the objective in b) – a fair standard of living for fishermen – may not be met. On the other hand, if the objective is economic rationality, it is likely that only certain fishermen will enjoy a fair standard of living.

Similar problems arise through the objective of promoting of technical progress, which has lead to overfishing and hence reduced productivity. Reconciling objectives d) and e) is similarly difficult given the natural fluctuation in fish stocks and proper resource conservation measures².

When looking at Article 39 EEC, one has to bear in mind that resource conservation at the time of the drafting of the EEC Treaty was not an issue. Neither had any of the fish

² For a more detailed discussion of Articles 38-47 and its implications for fisheries see Churchill (1987: 23ff).

stocks in the waters of the Six collapsed or even declined due to overfishing nor, as described above, was the area of jurisdiction of coastal Member States of considerable size. From this point of view it is understandable that resource management in the fisheries sector was not an important issue at the time. Generally, EEC member states “*appeared to be in little hurry*” (Farnell & Elles, 1984: 10) to implement a common policy on fisheries long after agreement on the CAP was reached in 1960. The Treaty, however, gave the Six some time since Article 40 (1) EEC on the development of the CAP stipulated 31 December 1969 as deadline.

Preceding the first CFP were widely differing ways for countries to regulate market access, market organization, subsidies and resource management throughout the sector in the Community, which had only been involved in fisheries through the creation of a customs union. The then new Common Customs Tariff (CCT) for fisheries was low compared to tariffs that some member states upheld to protect their domestic fisheries sector. As a result, fisheries became subject to supranational politicizing for the first time: Whereas Germany³ or the Netherlands already had a modern and well organized fishing sector and saw the opportunity to profit off trade liberalization, France saw its industries exposed to greater competition and felt pressured to modernize their fleets and on-shore infrastructure. Indeed, the consequences of the progressive establishment of the customs union and tariff reductions in GATT created a new demand for complex, new policies for the sector.

Prior to the application of the CCT, both price levels of and import tariffs for fisheries products in France had been the highest in the Community. Rapidly rising imports prompted the French government to demand a Common Market Organization for fisheries products on Community level. France’s main objective was similar to the CAP; they wished to channel funds to the French industry. (Wise, 1984: 88) In 1966, officials within the DG Agriculture, prompted by these developments, formulated the first proposal for a Common Fisheries Policy in a document titled *Bericht über die Lage der Fischereiwirtschaft in den Mitgliedsstaaten der EWG und Grundsätze für eine gemeinsame Politik*. (COM (66)250 final) This document, according to Lequesne (2004: 18) “*drafted principally owing to a French official at the fisheries administration*

temporarily assigned to the Commission, Raymond Simonnet”, called for common actions resulting from the principle of non-discrimination in the areas of structural, market, trade and social policy.

In the Council negotiations on the CFP, two main conflicts emerged, regarding the objectives of a Common Fisheries Policy and the principle of equal access. Indeed, the interests of the Six were very divergent. France’s primary objective, also supported by Italy, was, with the help of aid from the EEC to be able to modernize its salt cod and tuna fleets that could not withstand trade liberalization and technological advances. Additionally, the two countries demanded a structural policy that would use community funding to develop infrastructure, as well as a common market organization supporting price levels and securing income for producers. This would have required heavy interventions in the market, financed by the Community.

Germany and the Netherlands, on the other hand, not only had a fisheries sector that coped well with trade liberalization, but also already modern distant water fleets and a politically liberal laissez-faire ethics that, together with a fairly narrow coast line, led to opposition to France's and Italy's demands. *“Germany, supported by Belgium and the Netherlands, preferred a structural policy limited to coordinating national measures, to ensure fair competition, rather than one whose main element was the provision of financial aid by the Community.”* (Leigh, 1983: 28) Germany feared that it would have to contribute the most to the policy but would profit the least off it: *“The German government was not at all in favour of a common organization of the markets that could possibly put a damper on its dynamic processing industry. As main contributor to the Community budget, nor did it want to support its competitors through a structural policy.”* (Lequesne, 2004: 19)

For years, progress was blocked in the Council through the practice of the Luxembourg Compromise, an informal agreement according to which the Commission would postpone a decision subject to qualified majority voting (QMV) when crucial national interests were perceived to be under threat. That means that although adoption of measures under Article 43 EEC on the CAP and Article 7 EEC on non-discrimination *de jure* only required a qualified majority, *de facto* it was unanimous agreement that was

³ Pre-1990 mentioning of Germany always refers to West Germany.

necessary. In the end, France and Italy renounced the systematic financing of all withdrawals of fish products through the European Agricultural Guidance and Guarantee Fund (EAGGF), which led the German and Dutch delegation to agree to a compromise which was not an outright victory for either side since Germany and the Netherlands agreed to structural aid (although in a smaller scope than what France had aimed for) whereas France and Italy accepted the equal access principle. (Wise, 1984: 89; Leigh, 1983: 32)

The agreement on the provisions of the first Common Fisheries Policy was reached on 30 June 1970, only hours before the negotiations with Denmark, Ireland, Norway and the United Kingdom about accession to the Community began. (Leigh, 1983: 37) It was the prospect of negotiations with these countries that put the Six under pressure to reach an agreement. A communiqué issued upon the conclusion of the 1969 Hague Summit made clear on which terms the negotiations with the prospective member states would be held:

Inasmuch as the candidate States accept the treaties and their political finality, the decisions taken since the entry into force of the treaties and the choices made in the field of development, the Heads of State and government have given their agreement to the opening of a negotiation between the Community, on the one hand, and the candidate states, on the other hand. (Kitzinger, 1973: 69)

Therefore, the candidate countries had to accept the *acquis communautaire* as of the start of the negotiations. In case of the Common Fisheries Policy, it meant that if no agreement had been reached before the opening of the negotiations with Denmark, Ireland, Norway and the UK. Those countries would have been provided with the opportunity to, ultimately, manipulate the *acquis communautaire* in their favour. Leigh (1983: 38f) argues that the Six wanted to prevent such a scenario:

A CFP that took into account the interests of the four candidates would have been less favourable to the original members of the Community. While the interests of the Four were not identical, they shared certain objectives arising from their possession of far richer coastal fishing grounds than the Six. Numerous coastal communities in the Four were primarily dependent on inshore fishing; their governments wished to negotiate for a CFP that reduced to a minimum the activities in these areas. While the Six also had coastal communities that sought protection for their fishing grounds, their major interest was to secure access rights to the rich fishing grounds off the coasts of Norway, the UK, Ireland, Greenland and the Faroe Islands.

The agreement, codified in Council Regulations (EEC) 2141/70 of 20 October 1970 *laying down a common structural policy for the fishing industry* and 2142/70 *on the common organization of the market in fishery products*, established the first two of the four pillars of today's EU Common Fisheries Policy⁴: the Structural Policy and a Common Market Organization.

The Common Structural Policy was established with regulation 2141/70. Its aim is, according to Article 1 of the regulation, to

(...) Promote harmonious and balanced development of this industry within the general economy and to encourage rational use of the biological resources of the sea and of inland waters.

Article 2(1), the equal access provision, is the most crucial but was also the most controversial one:

Rules applied by each Member State in respect of fishing in the maritime waters coming under its sovereignty or within its jurisdiction shall not lead to differences in treatment of other Member States. Member States shall ensure in particular equal conditions of access to and use of the fishing grounds situated in the waters referred to in the preceding subparagraph for all fishing vessels flying the flag of a Member State and registered in Community territory.

Article 2 (1) thereby provides that Member States' legislation governing fisheries in the waters within their jurisdictions have to be non-discriminatory. Furthermore, it states that access to these waters cannot be restricted on grounds of nationality. This article essentially translated the principle of non-discrimination among Member States as introduced by the Treaty of Rome into the fisheries sector. One controversial question regarding the equal access provision had been if it actually had a legal basis in the EEC Treaty. Regulation 2141/70 cited, additionally to articles 42 and 43 of the EEC Treaty on the adoption of a Common Agricultural Policy and the granting of aid, also Articles 7 and 235. Article 7 prohibits discrimination on grounds of nationality and Article 235 gives the Community authority to take action necessary to attain the objectives of the Treaty where such authority is not specifically provided by the Treaty⁵. All mentioned

⁴ using the classification by Conceição-Heldt (2004: 17f)

⁵ Rules authorized by Article 7 require a qualified majority to be adopted. Article 43 basically defines an initial stage for the CAP during which unanimity is required, but subsequent proposals would only require a qualified majority to be adopted. In practice, however, the Luxembourg Compromise was frequently invoked. Rules authorized by Article 235 require unanimous agreement. For most fisheries legislation, however, citing Article 235 as legal basis is superfluous.

provisions also require the consultation of the European Parliament⁶.

Churchill (1980: 4) goes as far as to say that it is “*difficult to say that a common structural policy for fisheries is wholly and directly authorized by the provisions of the EEC Treaty (...)*”, especially not by Articles 42 and 43 since the principle “*does not easily correspond with any of the objectives of the Common Fisheries Policy laid down in Article 39.*” (Churchill, 1987: 128) France, opposing the equal access provision in negotiations, argued that non-discrimination in the field of fisheries would be best guaranteed by Articles 52 to 66 of the EEC Treaty on the freedom of establishment. However, Leigh (1983: 27ff) believes the following:

The French knew that equal access would favour their interests. So once they had gained satisfaction (...) the French proved willing to abandon their legalistic defence of an approach based on the right of establishment and to rally to the Commission’s proposals. In retrospect it is also clear that the French aversion to equal access was mainly a negotiating ploy. (...) The decision to insert the equal access principle into the basic structural regulation was nonetheless a political one and not a legal obligation.

Exceptions from the equal access provision were embodied in Article 4 in form of a five-year derogation for specific fish for a zone up to three nautical miles from the coastal base line in areas where the population mainly lives off coastal fisheries.

With the Common Structural Policy, access to fishing grounds was no longer a national matter but from now on a supranational one. Formally, this also was the case for conservation matters, as stated in Article 5 of the regulation:

Where there is a risk of over-fishing of certain stocks in the maritime Waters referred to in Article 2, of one or other Member State, the Council, acting in accordance with the procedure provided for in Article 43 (2) of the Treaty on a proposal from the Commission may adopt the necessary conservation measures.

At this point it is very important to point out, however, that “*the full implications of regulation 2141/70, Article 5 went unnoticed in 1970 because the Community did not yet dispose of an extended fishery zone.*” (Leigh, 1983: 31) In fact, conservation

⁶ Until recently, the role of the European Parliament in fisheries matters was negligible. Still in the 1980s, Churchill (1987: 35f) pointed out that it “cannot effectively amend or prevent the adoption of draft legislation” because the “legislative process consisted of lengthy negotiations between Member States at Council meetings in an attempt to resolve conflicting interests and positions, with the Commission acting as an honest broker by providing a succession of revised proposals aimed at achieving acceptable compromise.” Furthermore, some of the Community legislation on fisheries provide for further implementing action to be taken by the Council for which decisions are taken by qualified majority, acting on a proposal from the Commission, and most importantly without the requirement to consult the European Parliament (contrary to Article 43 procedure). The ECJ approved of this practice through the judgement in the *Eridania* case (ECJ judgement Case 230/78 of 27 September 1979) as long as basic elements have been adopted in accordance with Article 43 procedure, i.e. with consulting the European Parliament. Nonetheless, the European Parliament has protested against this practice. (B1-0908/84 of 16 March 1984).

measures under Article 5 have never been introduced.

Apart from equal access and resource conservation, regulation 2141/70 provided for the coordination of national structural policies. It effectively implemented the financing rules of the CAP on the fisheries industry so that common action to achieve the aims as stipulated by Article 39(1) of the Treaty is eligible to be financed through the EAGGF. A Standing Committee for the Fishing Industry was established parallel to the Standing Committee on Agricultural Structures authorized by Council Regulation (EEC) 17/64.

The Common Market Organization was established with Council Regulation 2141/70 and was based on a system applying to agricultural products under the CAP. As such, Articles 42 and 43 EEC on the CAP solely authorized it. The main objectives included guaranteeing producers a certain income level and securing supply to consumers. Guide prices and withdrawal prices for major fish species were the means used to achieve these objectives. Withdrawal price is the price level of the market price below which producers' organizations withdraw production from the markets. Fresh fish would then not be sold for consumption but processed into side products like fishmeal or oil. The withdrawals would be financed partly through the EAGGF, partly through producers' organizations. For setting up producers' organizations, the regulation provided that half the cost would be paid by the Community and the other half by the respective member states. Marketing standards were set and trade with third countries regulated. Various other measures were adopted in the regulation, mainly serving the purpose of assisting countries feeling disadvantaged because of trade liberalization through the CCT and through the provisions of regulation 2141/70 with fleet modernization.

Regulations 2141/70 and 2142/70 were later repealed and adopted again as Council Regulations (EEC) 101/76 of 19 January 1976 *laying down a common structural policy for the fishing industry* and 100/76 *on the common organization of the market in fishery products* respectively to reference the 1973 Act of Accession.

From a neo-functionalist point of view, the 1970 CFP is an example par excellence of how integration advanced through spillover. Economic integration in one area, namely the common customs union as a mean to establish the free movement of goods, led to a

situation where strains upon the inefficient fisheries sectors in some Member States created the demand for a common policy in another field. The Commission, combining “*a sympathetic understanding of the problems confronting France’s fishermen with a desire to create a coherent European fisheries policy,*” (Wise, 1984: 90) acknowledged that the difficulties brought about by market liberalization had to be answered with market and structural policies which harmonized conditions of competition and made it easier for weaker parts of the fishing sectors in the respective member states to adapt to liberalized markets. As such, the Commission put forward a proposal for an “*interrelated CFP with provisions virtually touching all aspects of the fishing industry from the extraction of its basic natural resource to its consumption*” (Wise, 1984: 107) that went far beyond dealing with the liberalization of markets and answering France’s demands for community aid for its fisheries sector. The equal access principle, for instance, was not only proposed by the Community in order to implement the principle of non-discrimination and by that to advance integration in the Community but it also is “*the product of the idea that the liberalisation of access to fishing grounds is the quid pro quo for the liberalisation of trade in fisheries products and the opening up of national markets which has resulted from the establishment of the EEC.*” (Churchill, 1987: 132)

The negotiations were characterized by classic Community log-rolling, where the Commission, as prescribed by Lindberg and Scheingold (1970: 93), played an active role by proposing package deals and so made use of its power of influence. Lequesne (2004: 19) also shares this view.

During the negotiations, two coalitions emerged: France and Italy, who pushed for extensive Community financing of the common structural policy, a more protectionist external trade regime as well as exceptions to the equal access principle and Germany, the Netherlands, Luxembourg and Belgium, who took opposite positions on these issues. In the end, a “*classical Community compromise in which there was something which each government could ‘sell’ to domestic opinion as victory*” (Leigh, 1983: 26) was achieved. Conceição-Heldt (2004) somewhat supports this view and links the outcome of the negotiations to their nature of integrative rather than distributive bargaining: A favourable outcome for all member states was reached because the two divergent sets of interests were converged by package deals linking two aspects of the

policy, the structural policy and common market organization. This supply and demand based view, that supranational bargaining follows national preference formation is essential to the idea of liberal intergovernmentalism.

Applying the logic of liberal intergovernmentalism, the neo-functionalist view of the evolvement of the first CFP is somewhat challenged. Under liberal-intergovernmentalist reasoning, it is the demand for integration in the Member States that is societal rather than political that brings governments to the bargaining table on a supranational level. Exactly that was the case with the first Common Fisheries Policy: The prosperity of many coastal areas in France, where fishing is traditionally important, was under threat since its fishermen could not withstand the pressure from market liberalisation. Despite the fact that a deadline was given in Article 40 (1), and despite the fact that for agricultural goods, a common policy has been in effect for a number of years, the first proposal for a CFP was not made until after France demanded such a policy, which the country did solely with the interventionist and protectionist intention to secure Community funds for its fishing industry and to implement high tariff barriers for third countries.

Looking deeper into the aspect of policy demand, or rather the lack of, Farnell and Elles (1984: 10) analyze that „...*one reason for this indifference was the relatively minor role which fishing played in the economy of the original Six and its international character. Nearly 90 per cent of the fish produced by the original Six were taken outside what were then Community waters, mainly in what are now British or Norwegian waters.*“ (Farnell & Elles, 1984: 10) While this is certainly true, Germany and the Netherlands knew that any type of common regime in the sector involving financial support would not benefit them since both countries not only, as stated above, had a competitive fishing industry but also because they were net contributors to the Community budget. Recalling Moravcsik’s (1993: 488) argument that it is the “*magnitude, distribution and certainty of net expected costs and benefits to private groups*” that are crucial for the policy preferences that national governments set it is easy to understand both France’s push for a CFP and the reluctance of most other member states to go along with it.

Also, it is important to recall that the reason why the deadlock was finally overcome had

to do with the fear of potential negative policy externalities that might have occurred had the four applicant countries been given a chance to have a say in CFP negotiations. The fact that the agreement, which was reached literally in the last possible moment, on the same day that negotiations with the applicant countries started, was still somewhat hastened despite over four-year long negotiations, leaves serious doubt that the result for each Member State was more than a zero-sum outcome. Hence the only success for the Six was that a *fait accompli* was created that had to be accepted in the upcoming accession negotiations.

Finally, one must also recognize that the Commission to a large extent failed in its role as policy entrepreneur in its attempt to create a true European policy for the sector. While the first proposal of the Commission in 1968 certainly can be classified as a comprehensive Common Fisheries Policy, many aspects were not adopted because they were sacrificed in the negotiation process (e.g. a social policy) or they were not supported at all by any member state.

An example for the latter is the issue of resource conservation. Early proposals did foresee an Article 6 addressing the issue, requiring the Council to “*define the principles and means of common action to be pursued in the sphere of international relations for all the problems relating to the sea and particularly those concerning access to fishing grounds and those of the conservation of the biological resources of the sea.*” (JOCE C91/1 of 13 September 1968, translated and reproduced in Wise, 1984: 98) But none of the member states were ready to cease sovereignty on this issue. The Six argued that the Community had no power beyond the 12-mile limit, so resource conservation as defined by Article 6 would be legally impossible. The Commission, however, responded that it would be logical to act on Community level in international efforts to conserve fish stocks since the resource that the policy attempts to manage would largely come from waters beyond the 12-mile zone. Wise (1984: 106) regards this view taken by the Six as somewhat hypocritical since member states were ready to cease sovereignty on the access issue but not on the conservation issue and concludes: “*Again one can see how perceptions of national interest moulded legal interpretations of the Rome Treaty!*”

Whether the Six might have not supported such an Article 6 because they did not see any benefit for them or not, the limited area of jurisdiction over the seas in the late 1960s is certainly a viable explanation for why no demand for a common policy on the conservation of fish stocks occurred. When discussing policy demand one also has to keep in mind that the reasoning behind a conservation policy is the possibility of the depletion of fish stocks as explained by the Tragedy of the Commons due to the overexploitation of the resource. In the late 1960s, however, neither has there been such a case of overexploitation in the waters that the Six employed as fishing grounds, nor has there been substantial research on the Commons – Hardin’s Article has only been published in 1968! In fact, as Symes (1997a: 139) pointed out, *“initial moves to establish a common framework in the early 1970s coincided with a period when fisheries in the North Sea and adjacent waters were enjoying an unprecedented boom in stock abundance among several important food species.”*

While the lack of domestic demand for Community involvement in resource conservation has been demonstrated, the issue has probably also fallen under the radar because the Treaty did not pay any regard to the nature of the resource either. Instead, in its respective provision it emphasizes upon market management. It is therefore not incomprehensible why the initial stimulus for the CFP was a market issue and why markets were a major focus of the first CFP. In that light, Churchill (1987: 45) rightfully argues that *“with the benefit of hindsight, looking at the whole history of the evolution of the Common Fisheries Policy, the wisdom of the drafters of the EEC Treaty including fisheries with agriculture may be doubted.”*

All in all, however, the general importance of the two regulations establishing the 1970 Common Fisheries Policy is limited. Symes (1997a: 141) correctly claims that their significance *“lay not in their detailed provisions concerning structural development and market organization but in defining the basic principles of a common fisheries policy and thus establishing an *acquis communautaire* that all new member states subsequently must adopt.”*

4. EXTERNAL EVENTS REDEFINING THE SCALE AND SCOPE OF THE CFP: THE 1970S

In the following decade, three major events, each of which shall be discussed separately, shaped the evolution of the Common Fisheries Policy: First, Denmark, Ireland and the United Kingdom joined the Community while Norway declined membership following a negative referendum; second, Iceland unilaterally extended its fishing zones to 50 and later 200 nautical miles, thereby setting a trend in the North Atlantic; third, fish stocks in the North Atlantic started to deplete considerably.

The negotiations with Denmark, Ireland, Norway and the United Kingdom about accession to the Community started on 30 June 1970, the very day agreement on the first Common Fisheries Policy was reached. Given that this agreement took the applicant countries

by surprise and also considering the larger relative economic importance of fisheries in these countries, especially in Denmark⁷ and Norway, it is understandable that the CFP became a major issue in the negotiations with the candidate countries. The nature of their objections to regulations 2141/70 and 2142/70, however, differed to a certain extent, although all candidate countries saw the equal access rule as a threat to their domestic fisheries sector.

Opposition in Norway was the fiercest, and it is safe to say that concerns about the protection of coastal fisheries contributed to the negative outcome of the referendum in 1972.

⁷ Not including Greenland and the Faroe Islands. The Faroe Islands did not join the EEC because of the CFP and Greenland left the Community in 1982 because of the same issue after a referendum in 1982.

CFP DEVELOPMENTS IN THE 1970S

- ACCESSION OF DK, IRE, UK (1973): ACT OF ACCESSION TRANSFERS POWER OF RESOURCE CONSERVATION TO THE COMMUNITY (BY 1979 AT LATEST)
- HAGUE RESOLUTION (1976): COMMUNITY EXTENDS FISHING ZONES TO 200 MILES; COMMITMENT TO A COMPREHENSIVE CFP; THIRD PILLAR: EXCLUSIVE COMMUNITY COMPETENCE TO ENTER INTO AGREEMENTS WITH THIRD COUNTRIES
- THE ECJ CONTRIBUTED TO THE EVOLUTION OF THE POLICY THROUGH SEVERAL JUDGEMENTS, MOST NOTABLY IN THE *KRAMER* AND *IRISH FISHERIES* CASES

Figure 5: Summary of important facts on CFP developments in the 1970s

Ireland also saw its coastal fisheries threatened but also saw the opportunity to modernise its fleets and infrastructure via the EAGGF. But Ireland's demands were modest compared to those of Norway and the UK, as it merely demanded exemptions from the equal access rule with guarantees for inshore fisheries if those exemptions were not permanent.

In Denmark, however, after having secured derogations on the equal access rule for the Faroe Islands, Greenland and West Jutland, geographical conditions were the main reason why the equal access provision was not seen as a major threat.

In the United Kingdom, first concerns about the non-existence of a conservation policy arose. British inshore fishermen worried that the presence of foreign vessels, which used finer meshed nets, would diminish inshore fish stocks. Britain therefore wanted to keep the 12-mile zone although this was against the *acquis communautaire*. (Young, 1973: 99) Contrary to Norway, however, the UK government insisted that fisheries politics should not become a cause for delaying an overall agreement with the Community, especially because the UK saw access to Norwegian waters as an upside of the equal access provision. Ultimately, however, Norway's decision not to ratify the Accession Treaty deprived Britain of the benefit it expected from gaining access to Norwegian waters.

The compromise, which was agreed upon by Denmark, Ireland and the UK, was embodied in Articles 100-103 of the Accession Treaty. Article 100 contains a ten yearlong derogation of the equal access principle up to six miles off the coasts of the Community's member states and an extension to twelve miles in certain areas:

1. Notwithstanding the provisions of Article 2 of regulation (EEC) No. 2141/70 on the establishment of a common structural policy for the fishing industry, the member states of the Community are authorized, until 31 December 1982, to restrict fishing in waters under their sovereignty or jurisdiction, situated within a limit of six nautical miles, calculated from the base lines of the coastal member state, to vessels which fish traditionally in those waters and which operate from ports in that geographical coastal area (...)
2. The provisions laid down in the preceding paragraph and in Article 101 shall not prejudice the special fishing rights which each of the original member states and the new member states might have enjoyed on 31 January 1971 in regard to one or more other member states: The member states may exercise these rights for such time as derogations continue to apply in the areas concerned. (...)
3. If a member state extends its fishing limits in certain areas to twelve nautical miles, the existing fishing activities within twelve nautical miles must be so pursued that there is no retrograde change by comparison with the situation on 31 January 1971.

Article 101 lists the areas in which the six miles limit specified in Article 100 is extended to twelve miles. It mainly concerns areas with strong, traditional coastal fisheries. Article 102 gives the Community the clear mandate to enforce conservation measures:

From the sixth year after accession at the latest, the Council, acting on a proposal from the Commission, shall determine conditions for fishing with a view to ensuring protection of the fishing grounds and conservation of the biological resources of the sea.

Article 103, a review clause, was drafted under heavy pressure from the acceding member states and gave them the prospect of the derogations to the equal access provision to be extended after 1982:

Before 31 December 1982, the commission shall present a report to the council on the economic and social development of the coastal areas of the member states and the state of stocks. On the basis of that report, and of the objectives of the Common Fisheries Policy, the Council, acting on a proposal from the Commission, shall examine the provisions, which could follow the derogations in force until 31 December 1982.

Furthermore, regulation 2142/70 was amended to grant producer organizations, which had a monopolistic stand in a countries, sole recognition and to incorporate a new method of calculating the withdrawal price, taking the concerns of rural areas into account. These provisions, however, were concessions to Norway, which ultimately declined ratifying the Accession Treaty. (Wise, 1984: 131f)

Denmark, Ireland and the United Kingdom joined the European Communities on 1 January 1973. With that, the provisions of the Accession Treaty not only incorporated the commitment of the Community to develop the CFP into a more comprehensive policy but also seemed to institute the derogations regarding the equal access rule as a rather permanent than temporary measure. Also, the ground was paved for a common policy in the area of resource conservation, shifting the power from the Member States to the Community by 1 January 1979.

Before that date, however, an unanticipated event occurred that completely changed the scope of fisheries management in Europe: On 15 July 1973, Iceland declared the zone up to 200 nautical miles from its coast to be under Icelandic authority.

Following Norway's decision not to join the Community, British fishermen started to fish increasingly in the open seas around Iceland. Concerns about consequences for the Icelandic fishing industries due to resource depletion caused the Icelandic government to undertake this drastic measure. This also marked the start of the Third Cod War between Iceland and the UK. Norway followed suit and tried to work towards a universal creation of 200-mile fishing zones through UNCLOS. The EC, as a result, were unable to further develop the CFP. The war ended in 1976 with Iceland retaining its extended fishing zone after it threatened to close down the strategically important NATO-base in Keflavík. (Leigh, 1983: 65ff)

The Community, being under enormous pressure to act, responded with the *Council Resolution of 3 November 1976 on certain external aspects of the creation of a 200-mile fishing zone in the Community with effect from 1 January 1977*, generally referred to as the *Hague Resolution*. (COM(76) 500 final)⁸

The first major aspect of this resolution is the extension of fishing zones to 200 nautical miles off the North Sea and North Atlantic coasts and with that the establishment of a link between external policy decisions and the adoption of common rules for fishing within the new Exclusive Economic Zone⁹ of the Community. The goal was to create an environment that made it clear to third countries that fishing in Community waters required forming agreements with the Community as a whole. The majority of member states and the Commission argued that this environment could be created without having reached prior agreement about the principles of a comprehensive Common Fisheries Policy.

It was first and foremost Ireland that did not agree with that approach. Whereas all other member states agreed by early October 1976 that fishing rights of third countries should be governed on Community level by giving the Commission the power to negotiate agreements, Ireland sought for a wider exclusive coastal band than 12 miles. Ireland also demanded that when a Community-wide quota system is being introduced as

⁸ Interestingly the Hague resolution was only published more than four years later in the Official Journal and the annexes, discussed below, have remained unpublished, but are reproduced in several cases before the ECJ.

⁹ From this point on, the term Exclusive Economic Zone (EEZ) instead of fishing zone or waters under the jurisdiction of a state seems appropriate. It was defined in Part V of the third UNCLOS (1982), ratified in 1994, as an area extending 200 nm from the baseline, in which a coastal state has the sole right to exploitation of all natural resources.

conservation measure, it would have to take into account that the country's fisheries were still under development. Also, Ireland demanded financial assistance to set up control facilities for the new 200-mile-EEZ around the country. Given the geographical conditions, this would cover roughly a quarter of the whole EEZ of the Community. (Farnell & Ellis, 1984: 26f)

The UK shared Ireland's demands but it *"nevertheless wished to see the Community empowered to defend the interests of its deep sea fishing fleet as soon as possible. It was vital for the United Kingdom that fishing rights be secured off Iceland and Norway and that the withdrawal of non-Community fleets from what would become British waters be negotiated rapidly. In contrast, Ireland's fishing interests were much more parochial."* (Farnell & Elles, 1984: 27)

The agreement on the extension of the exclusive economic zone to 200 nautical miles was reached at the Hague summit at the end of October 1976:

With reference to its Declaration of 27 July 1976 on the creation of a 200-mile fishing zone in the Community, the Council considers that the present circumstances, and particularly the unilateral steps taken or about to be taken by certain third countries, warrant immediate action by the Community to protect its legitimate interests in the maritime regions most threatened by the consequences of these steps to extend fishing zones, and that the measures to be adopted to this end should be based on the guidelines which are emerging within the Third United Nations Conference on the Law of the Sea.

It agrees that, as from 1 January 1977, Member States shall, by means of concerted action, extend the limits of their fishing zones to 200 miles off their North Sea and North Atlantic coasts, without prejudice to similar action being taken for the other fishing zones within their jurisdiction such as the Mediterranean.

It also agrees that, as from the same date, the exploitation of fishery resources in these zones by fishing vessels of third countries shall be governed by agreements between the Community and the third countries concerned.

It agrees, furthermore, on the need to ensure, by means of any appropriate Community agreements, that Community fishermen obtain fishing rights in the waters of third countries and that the existing rights are retained.

To this end, irrespective of the common action to be taken in the appropriate international bodies, it instructs the Commission to start negotiations forthwith with the third countries concerned in accordance with the Council's directives. (...) (COM(76) 500 in: OJEC C105 of 7 May 1981)

Churchill (1980: 9ff) noted three interesting particularities about the Hague resolution: First, due to the legal character of Council resolutions not being legally binding, it

merely called for Member States to extend their fishing zones. Second, the agreement specifically mentioned that only the North Sea and North Atlantic coasts would be subject to it. Third, and fairly obvious, the fishing limit for all member states would be of uniform width.

The demands of Ireland and the UK were matched not in the resolution itself but in a number of Annexes. The most important one, Annex VI, states:

If no agreement is reached for 1977 within the international fisheries Commission and subsequently no autonomous Community measures could be adopted immediately, the Member States could then adopt, as an interim measure and in form which avoids discrimination appropriate measures to ensure the protection of resources situated in the fishing zones off their coasts. Before adopting such measures the Member State concerned shall seek the approval of the Commission, which must be consulted at all stages of the procedures.

This Annex granted Member States the right to resort to national conservation measures if no common measures were introduced. Whereas it was apparent that the Commission, as the guardian of Community interests, was to approve any national measure, it ultimately remained the task of the Member State and later the ECJ to decide what would happen if a measure that was proposed was not adopted by the Commission. Any national measures undertaken until then, were, according to Churchill (1980: 16), subject to the following conditions: First, they had to be non-discriminatory as required by Article 7 EEC on non-discrimination and Article 2 (1) of Regulation 2141/70. Secondly, according to Article 2 and 3 of Regulation 2141/70, the Commission and other Member States had to be informed of such measures. Thirdly, according to Article 100 (1), fishing within the exclusive coastal band must not be less restrictive than at the time of the 1973 Accession. Finally, the objectives and the functioning of the CFP cannot be jeopardized by such measures. Annex VI ultimately became the instrument for the Community to implement conservation policies until 1983. (Leigh, 1983: 76)

Annex VII acknowledged the lack of agreement on the principles of a Common Fisheries Policy and also expressed the will of the Council to take special needs of regions heavily dependent on fisheries into account when a comprehensive Common Fisheries Policy would be implemented. This became later known as the *Hague Preferences*. The validity of Annex VII, and implicitly the validity of all annexes to the

Hague resolution were later questioned, mainly because of the fact that they remained unpublished. (Conceição-Heldt, 2004: 102; ECJ judgement C-4/96 of 19 February 1998)¹⁰

The Hague Resolution allowed the Community to take the necessary steps to follow the trend of an extended EEZ. It also took steps to shift the power to enter agreements with third countries from the level of member states to a supranational level, a comprehensive CFP still seemed impossible, mainly, but not only due to major disagreements on conservation issues, as discussed below. The extended EEZ and the depletion of fish stocks in this zone, however, put the Community under enormous pressure to reach agreement on this issue rather sooner than later since essentially, the CFP has still not been perceived in terms of extended fishing zones. Farnell and Elles (1984: 34) describe the dilemma fisheries politics in the Community was in by the end of 1976 in the following way:

The commitment to a common policy towards the outside world [as reflected by the Hague resolution] was not matched by any commitment to the common management of fishery resources (...). The difficulties of the next few years were to centre around the fact that the link between these two sides of the Community's fisheries policy remained incomplete, leaving the Commission, on the one hand, to press for the link to be turned into reality, and certain member states, on the other hand, to resist being forced by logic alone into an internal settlement which they did not like.

This dilemma was especially severe since several fish stocks in the North Sea and North Atlantic started to deplete considerably. For example, EEC catches of cod and herring, two of the most important species in the North Atlantic, fell by 33 per cent and 44 per cent respectively. This of course also affected trade in fisheries with third countries: In the first year of the enlarged Community, around 700 000 tons of fish products were imported but the number rose to around 1 100 000 in 1980. (ICES, 1978: 23; Farnell & Ellis, 1984: 161)

The extension of the EEZ now made this a Community problem since the fishing fleet that has traditionally roamed the North West Atlantic has been confined to the Community's own waters that themselves have been subject to intensive fishing for

¹⁰ The question of validity has in fact not been answered by the ECJ. In the judgment to case 4/96, the ECJ avoided a clear answer by declaring that the validity of the adoption was in fact not relevant for the questions raised by the case.

years. Resource depletion, however, already started in the early 1970s before the extension of the EEZs and in fact the trend to extend the EEZs has been started because of concerns about resource depletion in Iceland and Norway. But the EEZ-extension and the provisions of the Hague resolution and the 1973 Act of Accession Community action in this area were inevitable.

The Commission, in the light of the actions of Iceland and Norway, and in the light of another upcoming UNCLOS conference anticipated the extension of EEZs. Already envisioned were basic principles of a common conservation policy in a communication to the Council nine months before the Hague summit:

Given the present state of scientific knowledge and international practice, the fixing of an annual catch rate (ACR) seems the most effective means of guaranteeing optimum yield from a stock.

In addition, the maintenance of a stock in optimum yields conditions implies a particular age breakdown of the fish composing that stock. The fixing of an ACR must therefore be accompanied by measures of a technical nature (mesh of nets, fishing seasons...) designed to prevent the taking of fish belonging to age categories requiring priority protection and to safeguard the natural process of reproduction. (COM(76) 59)

Annual catches would be fixed each year by the Council, acting on a proposal by the Commission, who would base its proposals on scientific advice from a newly set-up Scientific and Technical Committee for Fishing. A Community reserve of 5% designed to meet exceptional situations and a fixed quantity corresponding to catches in coastal waters would be subtracted from the annual catches. The rest would be allocated as quotas between the Member States by the Council, acting on a proposal from the Commission. (ibd.)

Although the Commission emphasised its intention to have a comprehensive internal CFP including resource conservation in effect by the beginning of 1977 by issuing more concrete proposals throughout 1976, it became clear at the Hague summit that rapid agreement was not a priority of any of the Member States. There was rather the *“willingness on all sides to consider the problems associated with the creation of such a policy and to arrive, in the longer term, at a solution in which the vital interests of the few would be recognised by the many.”* (Farnell and Ellis, 1984: 71) A comprehensive Common Fisheries Policy was eventually adopted almost seven years later, as will be

discussed in the section below.

Interim conservation measures have been taken by the Community as early as 1977 and annual catch rates, further referred to as total allowable catch (TAC), have been proposed by the commission for every year between 1978 and 1982 but have only once, in 1980, been adopted. The lack of a conservation policy, together with the provisions and deadlines set in the Act of Accession and the Hague resolution, created an unprecedented legislative chaos in the area of fisheries conservation.

This situation, however, augmented the importance of the ECJ. In the decade between the accession of the three new Member States in 1973, and the adoption of a comprehensive Common Fisheries Policy in 1983, the European Court of Justice, being “*in the unenviable position of working on a subject matter where there were few definitive legal texts and even fewer precedents in case law on which to base its final judgement,*” (Farnell and Ellis, 1984: 137) clarified the principal aspects of Community competence relating to fisheries. The first major case was the *Kramer* case. (ECJ judgement Joined Cases C-3, 4 and 6/76 of 14 July 1976) Proceedings had been instituted in Dutch courts against fishermen who were accused of contravening laws set in accordance with a NEAFC recommendation to limit certain catches. The real question to be answered was whether NEAFC should have been concluded by the Community alone on the basis of exclusive competence in the field of conservation on the international level. Extending its view set out in the *ERTA* case (ECJ judgement Case C-22/70 of 31 March 1971), whereby under the Common Commercial Policy the Community also had the *ipso jure* competence to enter into international agreements for the field in question, the Court now accepted that the Community had the power to enter into international agreements even though no common policy has been adopted in the field. In the judgement, the Court specified that such power does not only derive from Article 210 of the Treaty specifying that the Community has legal personality “*but may equally flow implicitly from other provisions of the Treaty, from the Act of Accession and from measures adopted, within the framework of those provisions, by Community institutions.*” (ECJ judgement Joined Cases C-3, 4, and 6/76 of 14 July 1976)

Implicitly is a crucial wording here as the Commission initially argued that Article 113 EEC on the Common Commercial Policy expressed that the Community had the

competence to negotiate international agreements on quotas and fishing limitations as these matters have an economic aspect which would bring them within the sphere of the Common Commercial Policy. But the ECJ rejected this argument implicitly by saying that the Community's treaty-making powers in relation to fisheries were based on implied powers. (Churchill, 1987: 169)

More concretely, the Court has also nullified the strongest objection to a Community conservation policy in the 1970 CFP negotiations, namely the question of jurisdiction regarding conservation measures on the high seas:

It should be made clear that, although Article 5 of Regulation No. 2141/70 is applicable only to a geographically limited fishing area, it none the less follows Article 102 of the Act of Accession, from Article 1 of the said Regulation and from the very nature of things that the rule-making authority of the Community *ratione materiae* also extends – in so far as the Member States have similar authority under public international law – to fishing on the high seas. The only way to ensure the conservation of the biological resources of the sea both effectively and equitably is through a system of rules binding on all the states concerned (...) It follows from the very duties and powers which Community law has established and assigned to the institutions of the Community on the internal level that the Community has authority to enter into international commitments for the conservation of the resources of the sea.

The ECJ reminded Member States that although they had concurrent competence at the time in question to assume commitments within international frameworks such as NEAFC regarding conservation measures, this competence would become an exclusive Community competence once the Council adopted common measures and at latest by the beginning of 1979, as laid out in Article 102 of the 1973 Act of Accession. (ECJ judgement Joined Cases C-3, 4, and 6/76 of 14 July 1976) Also, as a specific application of Article 5 of Regulation 2141/70 (Churchill, 1987: 100), the Court clarified that any national actions must not jeopardise the objectives of the Common Fisheries Policy.

Another important case was *Commission vs. Ireland* (ECJ judgement Case C-61/77 of 16 February 1978), where the Commission brought an action under Article 169 EEC for a declaration that Ireland has failed to fulfil its obligations under the Treaty. Confirming the Council's view expressed in Annex VI of the Hague Resolution, the ECJ, through the basic tenets established in the *Kramer* case, reiterated the fact that Member States were entitled to adopt unilateral conservation measures providing that they were non-discriminatory and compatible with Regulation 101/76 since the Council had failed to

adopt rules regarding resource conservation.

This view was subsequently confirmed in the cases *French Republic vs. United Kingdom* (ECJ judgement Case C-141/78, 4 October 1979) and *Anklagemyndigheten vs. J. Noble Kerr*. (ECJ judgement Case C-287/81 of 20 November 1982) In the *Van Dam* case (ECJ judgement Joined Cases C-185/78 to 204/78 of 3 July 1979) and the case *Commission vs. United Kingdom* (ECJ judgement Cases C-32/79 of 10 July 1980, C-804/79 of 5 May 1981 and C-100/84 of 28 March 1985), the Court even stated that in 1977 and 1978, the period after the adoption of the Hague resolution but before the passing of the deadline stipulated in Article 102 of the Act of Accession, Member States not only had the right to adopt conservation measures but in certain circumstances also had the duty to do so.¹¹ This is one of the rare cases where the European Court of Justice actually prescribes regulation through its rulings.

¹¹ “From the point of view of law the duty of Member States having jurisdiction in this fishing zone may be deduced from the legal provisions when read together. Thus both Article 102 of the Act of Accession and Council Regulation (EEC) No. 101/76 (...) in the same way as Annex VI to the Hague resolution and the Council declaration of 31 January 1978, are based on the twofold assumption that measures must be adopted in the maritime waters for which the Community is responsible so as to meet established conservation needs and that if those measures cannot be introduced in good time on a Community basis the Member States not only have the right but are also under a duty to act in the interests of the Community. Although the two Council resolutions mentioned above emphasize above all the requirement that national conservation measures should not go beyond what is strictly necessary, at the same time they imply (...) recognition of the need for and the lawfulness of conservation measures justified from the biological point of view and designed so as to be not only to the particular advantage of the Member State concerned but in the collective interests of the Community.” (ECJ Case 32/79, 10 July 1980)

5. THE STRUGGLE FOR A COMPREHENSIVE POLICY

THE SUM OF MEMBER STATES' DEMANDS ADDED UP TO MORE THAN THE TOTAL AMOUNT OF FISH AVAILABLE. IN THE BAD OLD DAYS WHEN THIS SITUATION AROSE IN THE FISHERY COMMISSIONS IT LED TO THE INFLATING OF TACs, FOLLOWED BY OVERFISHING. IN THE COMMUNITY, THE EXCESS OF DEMAND OVER SUPPLY LED TO A PROLONGED DEBATE ABOUT THE CRITERIA FOR DISTRIBUTING QUOTAS AMONG MEMBER STATES AND ABOUT THE SHARING OUT OF SPECIFIC STOCKS.

(LEIGH, 1983: 90)

It is safe to argue that the Community has not met the three major developments in the 1970s with sufficient response. Neo-functionalism as a concept had been in a crisis at that time and the state of fisheries governance on the European level must have proven its critics right. Although the Commission was trying to push integration in the sector further and with the 1973 Act of Accession and the Hague resolution finally accomplished what it had not in 1970, namely bringing the competence for resource conservation formally onto the Community level, the resistance of Member States on this and other issues of fisheries management resulted in national demands being voiced as strong as never before and in leaving the CFP as a half-finished project.

THE FIRST COMPREHENSIVE CFP (1983)

- THIRD PILLAR: COMMON CONSERVATION POLICY
- CONSERVATION POLICY DESIGNED AS SYSTEM OF TOTAL ALLOWABLE CATCH (TAC) AND QUOTAS THAT ARE DISTRIBUTED BETWEEN MEMBER STATES ACCORDING TO THE PRINCIPLE OF RELATIVE STABILITY
- NEGOTIATIONS LASTED FROM 1976 UNTIL 1983. AS THE LUXEMBOURG COMPROMISE WAS STILL UPHELD, UNANIMITY WAS REQUIRED. MOST MEMBER STATES WERE VETO PLAYERS AT DIFFERENT TIMES
- IRE, UK FAVOURED A MORE RESTRICTIVE EQUAL ACCESS PRINCIPLE; FR (AND OTHERS) FAVOURED UNRESTRICTED APPLICATION. THE COMPROMISE REAFFIRMED THE STATUS QUO.

Figure 6: Summary of important facts on the first comprehensive CFP

Especially the countries acceding in 1973, although having had to accept the equal access principle as part of the *acquis*, retained hopes for major changes in the structural policy. This was especially seen in the run-up to the Hague summit, when Ireland without extensive exceptions from the equal access provisions for the country there would be no agreement on the other provisions of the Hague Resolution. And for Britain, the context was a more general one:

In the recurrent tension between the UK and its partners during the transitional period and beyond, these commitments [in the Act of Accession] became powerful symbols, a test of British good faith. Inflexibility (...) became charged with a significance quite out of proportion to the economic interests at stake. While the British tended to regard fisheries as a piece of unfinished business left over from the Accession negotiations, about which the rest of the Community would have to show some 'realism', most other states assumed the negotiations on matters of principle were already over, and were indignant that they should be reopened. (Farnell and Ellis, 1984: 192)

Neither the views of the Commission nor internal or external pressures on the Community as a whole seemed to impress the Member States. It is unsurprising that the Vice-President of the Commission called the fisheries issue "*the most difficult and complex this Commission has had to deal with.*" (The Guardian, 25 September 1976) The importance of domestic interests was so prevalent that even within the Commission, early proposals for a comprehensive Common Fisheries Policy prior to the Hague Summit were adopted after debates in which national concerns dominated. "*Given the obligation of the Commission to consider overall Community interests, it was embarrassing for the Commission's vote on these proposals to be split along national lines.*" (Leigh, 1983: 72) When the Commission as the Guardian of the Treaties demonstrated domestic and not supranational allegiance, the assumptions of neo-functionalism need to be seen at least as problematic.

Considering this background, it is unsurprising that for many Member States, the Hague resolution served the purpose of getting their national interests acknowledged through its annexes so they would need to be taken in consideration in the upcoming revision of the policy.

The equal access provision is only the first example: The derogations and exceptions from equal access, in 1970 a concession made by Germany and the Netherlands to meet France's demands, were now extended, the exact provisions are found in Annex I to the resolution. While the CFP was based on this principle, it now appeared "*to be flying in the face of the international trend towards the 'territorialisation' of coastal seas, a trend to which new Member States such as the United Kingdom and Ireland had become converts.*" (Farnell and Ellis, 1984: 192) Originally intended to implement the principle of non-discrimination as stipulated in Article 7 EEC in the Community Sea, it began to erode more and more. As Member States saw it as increasingly conditional,

exceptions and derogations became de-facto permanent as to the point where the question if it is a suitable measure for guaranteeing non-discrimination arose (see below).

The second example is resource conservation: Annex VII of the resolution, the Hague preferences, is a concession to primarily Ireland and the UK, giving preferential treatment regarding quota allocation to regions where local populations are especially dependent on fisheries and related industries.

As such, the situation of fisheries management in the Community by the end of the 1970s can be explained by applying intergovernmentalist logic, especially when discussing resource conservation. The fact that at the time of the Hague summit no agreement on a comprehensive CFP was reached, shows that there is nothing inevitable about European integration. Competing claims to scarce resources led Member States to choose non-agreement instead of cooperation. This argument is especially strong when considering that the Community after 1976 had unprecedented power in the area of resource conservation since it was “*potentially the world’s most effective fisheries conservation organization.*” (Leigh, 1983: 76) Contrary to previous international fisheries commissions it actually “possessed the authority to adopt regulations which were directly applicable in the member states and enforced through the courts” (ibd.)

The choice of national governments to make this power of the Community a highly conditional one needs to be further explored from a combined biological, economic and social perspective. Partly due to the state of fish stocks at that time but also in principle, a proper conservation policy automatically meant a reduction in catches which, given technical advancements and general overcapacities, required sacrifices that national governments were unwilling or even unable to make, especially in times of an economic downturn. Furthermore, the fishing industry was in many countries concentrated in peripheral regions “*in which even the role of the national authorities may be questioned by the local population,*” (Farnell and Ellis, 1984: 191) let alone the role of a supranational authority.

Furthermore, it became more and more obvious that fisheries conservation is more complicated, especially politically, than managing the CAP, where producers are able to

adjust their production at will. Added to the political complexity of the subject was the technical complexity. In fact, the language of the debate “*far exceeds other areas of Community responsibility.*” (Ibd.) Also, because of the “*inexact nature of marine biology as a science, the Commission’s claims that there was a ‘conservation crisis’ – and its proposal for doing something about it – could be brought into question.*” (Ibd.)

Supranational bargaining follows national preference formation. Following this liberal intergovernmentalist axiom, it is no surprise that agreement was not reached. Under such a regime, all parties on the level of the Member States stood to lose in the short term – with the notable exception of the fish. Under these conditions, the Commission’s desire implement a proper resource conservation policy rather rapidly has to be regarded as rather delusionary.

To solve the dilemma explained above and to establish the link between the different aspects of the CFP, the Commission first introduced a proposal for a comprehensive Common Fisheries Policy in September 1976. From this point on, all proposals as well as the 1983 CFP, and its subsequent reviews followed three fundamental objectives:

First, in the medium and long term, to optimize exploitation of the living resources in Community waters (...). Secondly, to maintain as far as possible the level of employment and income in coastal regions that are economically disadvantaged or largely dependent on fishing activities. Thirdly, to intensify in the immediate future efforts aimed at adapting Community fishing fleets to catch potential. (Churchill, 1980: 19)

The Common Fisheries Policy that went into effect in 1983 includes provisions for the following topics: Access, technical conservation and control measures, structural policy, the common market organization and relations with third countries and thereby establishing a conservation and management policy as the last pillar of the CFP which introduced a TACs (total allowable catches) and national quota system. (Leigh 1983: 80, Conceição-Heldt 2004: 21)

The details of technical conservation measures as well as the structural policy and the common market organization in the 1983 CFP will now be discussed briefly here, first because of their technical complexities, and second, because negotiations on these matters had been “*eclipsed by the debate over access and quotas.*” (Leigh, 1983: 110)

Regulation 171/83 details technical conservation measures. An interesting provision of this regulation is Article 18, delegating power to the Committee for Fisheries Resources established through Article 13 of Regulation 170/83 when “*the conversation of fish stocks calls for immediate action*”. If the Committee does not favour such action, it can still be taken, provided that the Council does not take a different decision by a qualified majority vote within a month. This procedure extends the Commission’s powers while equipping Member States with safeguards. Furthermore, Article 18 (2) allows member states to adopt non-discriminatory national measures of conservation in a very specific case, “*where the conversation of certain species or fishing grounds is seriously threatened and where any delay would result in damage which would be difficult to repair.*”

The structural policy was codified in regulation 2908/83 and the main point was the implementation of the Multiannual Guidance Programmes (MAGPs) that set objectives for developments in terms of fishing capacity, e.g. fleet reduction objectives. Holden (1996: 56) emphasizes that the structural policy has never been the reason for much dissent because “*almost since the inception of the structural and market policy they have caused few problems, essentially because they provide financial support to the fishing industries of all Member States, which facilitates agreements.*” Furthermore, the package of structural measures contained a new system of subsidies for removing vessels from national fleets and a new system for the provision of grants for the construction and modernisation of vessels.

The most interesting part about the Common Market Organization in the 1983 CFP is that the Community adopted a system which was “*more flexible, and, hence, more responsive to the needs of producers,*” (Leigh, 1983: 114) and with that it was “*tempering its originally liberal approach to the market in fishery products in order to give security to Community producers.*” (Farnell & Elles, 1984: 133)

At this point it is important to point out that just because the CFP has been a comprehensive fisheries policy since 1983, it does not necessarily mean that it is also a coherent policy. It rather comprises four separate policies referring to markets,

structures, external affairs and conservation. A lack of clear objectives is therefore unsurprising. Cunningham (1980: 235) links this difficulty to the question of the policy's objectives and arrives at another conclusion:

Until a concise set of objectives is established, it will be more or less impossible to devise management schemes. The reason why the EEC is having such trouble doing so is perhaps that it does not really know what it wishes to achieve.

This view also makes the question of the CFP in the context of the European integration process even more interesting. For the 1983 CFP, the main neofunctionalist claim that integration proceeds incrementally as the consequences of previous commitments on a supranational level spill over into other fields and into a widened scope and higher level of collective actions can neither be entirely dismissed nor fully accepted.

On the one hand, the creation of a Community sea in the 1970s caused by and together with completely unforeseen events made the Community realize that it can no longer manage its fisheries without expanding the scope of the policy and the area within which it was valid. The creation of the last two pillars can therefore be seen as examples *par excellence* for functional and especially geographical spillover. On the other hand, Member States did not let themselves be carried by the tide of earlier decisions. Instead of accepting the political implications of earlier commitments, they gave way to politicising the most minor of issues, if not in respect to fisheries then in the general economic context. The Commission became the victim of “*creeping nationalisation, unable to exercise its power of initiative and up-staged by a new quasi-institution, the European Council.*” (Leigh, 1983: 205)

Symes and Crean (1995: 399f) emphasise on the following distinction:

...Between the Commission as the Community's civil service formulating a largely technocratic, apolitical, European view, and the Council of Ministers which provides the political arena within which vigorously contested negotiations are fought out, with each member state's fisheries minister expected to represent and defend national fishing interests...

Therefore, success or failure for a member state is not grounded in taking the adequate decisions in order to tackle fundamental management problems but in how much of the national interest was either preserved or conceded. This conclusion not only supports intergovernmentalist reasoning but also demonstrates how Member States act as parties

whose aim is to maximise their own short-term profit, therefore contributing to the Tragedy of the Commons. The Commission, on the contrary, focuses on preventing the Tragedy through collective action.

Still, one might wonder why it was possible that a TAC and quota system was adopted at all. The argument of geographical spillover caused by the unexpected trend to extend fishing zones to 200 nautical miles and leading to the creation of a vast Community EEZ has already been brought forward. But to a larger extent, Member States ultimately acted cooperatively because in a TAC system, they could, through concerted effort, gain from increasing the overall resource made available to them together – i.e. an inflation of TACs. At the same time, they would act competitively on the distributive level when it comes to quotas. (Conceição-Heldt, 2004: 69) It is this behaviour that contributed significantly to the CFP's failure to prevent the depletion of the common-pool resource, which will be explored in more detail later in this paper. In order to prevent such behaviour to successfully tackle the challenges posed by the Tragedy of the Commons through a TAC system, a shift in allegiances from the national to the supranational level would have been necessary. Instead, the distributive nature of the issue ultimately fostered nationalist rather than *communautaire* attitudes.

The liberal intergovernmentalist notion focussing on national agenda setting therefore once more serves as a viable explanation of the evolution of the 1983 CFP to the same extent as it can be linked to its failure and to the emerging argument that a Community dominated by domestic interests is not able to prevent the Tragedy of the Commons. In the same way, the view can be supported that through a neo-functionalist approach to European integration, it is theoretically possible to introduce measures through collective action that are able to tackle the Tragedy. And also in the same way, it must be concluded that neo-functionalism does not serve as a viable theory explaining the evolution of the 1983 CFP. Apart from what has already been mentioned, the strongest argument for that is certainly the fact that the Commission did not fully utilize its possibilities. Although the Commission, with the support of the ECJ, set up an ad hoc conservation system through national measures after no agreement on a conservation policy was reached at the Hague summit, both academics and stake holding actors claim that the Commission has not managed to act accordingly to its role

as Guardian of the Treaties. Danish Deep Sea fisheries Association chairman Poul Topping commented that the 1983 CFP, just like the Common Agricultural Policy, is a "*fundamental contradiction to the aims of the EEC, because it has less to do with free trade and market regulation than with social welfare.*" (Financial Times of 28 January 1983)

The question of why agreement was ultimately reached is very often crucial to the understanding of the evolution of a policy. Unlike the first CFP, it is not possible to isolate a single factor responsible for the Council finally reaching agreement in January 1983. It is easier, however, to identify the forces preventing agreement. Conceição-Heldt (2002: 69ff) identifies Denmark, Ireland and the UK as veto players at different times¹². Their interests were dominated by their time horizon, which was influenced by electoral considerations. Also, in all four countries both the "*domestic salience and the level of politicization*" (Conceição-Heldt, 2006: 77) were high since the fisheries sector in these countries is on the regional level economically and socially very important. Similarly, the influence of interest groups there is considerable. Non-agreement in an intergovernmentalist fashion was seen as the most viable alternative and the Commission and the other Member States, by means of threats, counteroffers and side-payments, answered it. At this point, it is important to remember that although a qualified majority would have sufficed to adopt regulations on fisheries governance, the practice of the Luxembourg Compromise with regard to fisheries issues had been upheld well into 1983.

But if one must pinpoint a decisive factor as to why the Council overcame an almost seven-year long stalemate, two factors can be identified: First, the expiration of the provisions of the 1973 Act of Accession by the end of 1982 would have led to even bigger legalistic uncertainties. The European Court of Justice, in the period between the Hague Summit and the adoption of the 1983 CFP, was probably the only institution that successfully advanced European integration through overruling national measures. It is likely that Member States were not keen on seeing more of that. Second, once again the approach of another Community enlargement, this time concerning Spain and Portugal, played a role. "*The prospect of open access by the Spanish fleet to all French waters*

was sufficiently chilling to make the idea of exclusive coastal waters decidedly attractive to the French authorities." (Lequesne, 2004: 124) The Community was faced with what Lequesne (2004: 20) described as a "*doubling of numbers*", since with the accession of Spain and Portugal the total fleet tonnage of the Community would increase by 65 per cent and the production of fish and shellfish by 45 per cent.

Some authors, however, differ in their opinions whether enlargement was a decisive factor for the Council to reach agreement. Farnell and Ellis (1984: 201) draw parallels to the 1970 CFP and say that Member States "*had appreciated the dangers of enlarging the Community to Twelve without a solid basis on which to conduct their fishery relations. In doing so, they have re-defined the principle of 'equal conditions of access' and have recognised the needs of coastal communities as a fundamental guideline for future policy.*" A similar view is taken by Conceição-Heldt. (2004: 83) Wise (1984: 247), on the other hand, claims that the prospect of Spain and Portugal joining the Community was only a "*more minor element encouraging movement towards reform of the policy in 1983.*"

But to fully understand the problematic stalemate between 1976 and 1983, one also has to look at the reason for it, which, as previously mentioned, is found on two fronts: the equal access debate and the resource conservation debate. These areas will be explored further in the two following subchapters.

1. RENEGOTIATING "EQUAL" ACCESS

In terms of access, the Community was facing a situation where, if nothing was done, the derogations laid out in the Treaty of Accession of UK, Denmark and Ireland would expire by the end of 1982, with the consequence that fishing would be permitted up to the baselines and only be restricted by Community conservation measures. Similar to negotiations on the first CFP, two blocks formed: Ireland and the United Kingdom on the one hand were still unsatisfied with the provisions of the Act of Accession and still disappointed that they had failed with their attempt to secure limitations of a permanent nature at the Hague summit. Pressured by their domestic industries, Ireland initially

¹² It is safe to argue that France must be added to this list as well.

demanded an exclusive coastal band of 50 nm and the UK pushed for a flexible exclusive variable band that would range between 12 and 50 nm off the baselines around the coasts. In 1977, the British minister for agriculture and fisheries, John Silkin, termed this demand *dominant preference*. The other member states sought to keep their historic rights in the waters around Ireland and the UK and rejected the idea of exceptions from the equal access provision even after 1982.

The Commission acted as an intermediary between the two blocks and also specifically between the UK and France who became the most insistent advocates of their respective demands. Ireland abandoned its claim for an exclusive 50-mile zone and accepted a compromise suggested by the Commission, who included the codification of historic rights within a band of twelve miles governed by fishing plans. Beyond that, strict licensing and inspection systems giving preference to local vessels should reinforce fishing plans. While this did not mean explicit exclusivity in the way that Ireland and the UK demanded, this solution could be seen as a workaround in order to ensure compatibility with the Treaty and to reach a consensus with other Member States.

By January 1978, the United Kingdom found itself politically isolated on this issue. Negotiations only progressed when the Conservative government in the UK came to power in 1979 and John Silkin was out of office. The tone of the negotiations shifted from a debate on principles to a debate on detailed provisions, especially on which historic rights were to be kept and on the possibility of a twelve-mile exclusive zone.

The UK rephrased their demands to an adequate zone of exclusive access and preferential arrangements beyond, meaning that historical rights of other member states within the 12-mile band should be reduced to a minimum and a box around Shetland and the Orkney Islands for ships exceeding a certain length that are not based in these islands should be established.

In May 1980, the Council of Foreign Ministers made a declaration on the CFP calling for decisions to be taken so that a CFP could be in effect on 1 January 1981. Article 3 resembled a commitment to equal access while at the same time calling for the possibility of exceptions:

Furthermore, Article 103 of the Act of Accession shall be applied in conformity with the objectives and provisions of the Treaty establishing the European Economic Community, with the Act of Accession, inter alia Articles 100 to 102, and with the Council Resolution of 3 November 1976, and in particular Annex VII thereto. (OJEC C158/2 of 27 June 1980)

At the end of 1980, just as it seemed that the four year long deadlock in the issue finally came to an end, France surprisingly rejected any compromise, thereby demanding the full implementation of the equal access provision. Leigh (1983: 85) gives the following explanation for this unexpected turn: *“Most observers concurred in attributing the collapse to French electoral considerations. The Presidential election was only four months away and the government felt vulnerable to criticisms of weakness from the Left.”*

The deadlock therefore continued as the Commission became less active on the issue, partly because other aspects like conversation measures or agreements with third countries were negotiated at that time and partly because of the unexpected death of the Commission Vice-President Finn Olav Gundelach, who had been very active putting forward earlier proposals on the access issue.

After the French Presidential elections, negotiations were moved to a bilateral level: Talks, initiated and assisted by the Commission, were held between Britain and France. In 1982, the standpoints of both countries appeared more flexible. Britain would not insist on the elimination of historic rights of other member states within the six to twelve-mile band and would settle for a reduction and redefinition of these rights. In turn, France would not insist on an uncompromising application of the equal access provision:

Both the United Kingdom and France had at last recognized that they would be better off holding on to what they already had in terms of fishing rights than risking chaos by pressing for more. In return for this new realism, each side was willing to concede to the other the minimal security, which it needed for particular groups of fishermen. (...) The French government may have been reluctant to abandon its defence of the equal access principle, but it was now taking a wider view of the question of fishing rights, and weighing up the implications of Spain's accession to the Community. (...) In respect of Spain, France was in the same position as the United Kingdom in respect of France, the possessor of coastal waters in which others could claim extensive traditional fishing rights. (Farnell and Elles, 1984: 123)

Talks between the UK and France also progressed because Denmark would take over the Council Presidency in July 1982 and the Community was eager to reach an agreement on a CFP before that date, especially considered that, as seen below, Denmark and the Community could not agree on a quota regulation. Farnell and Elles (1984: 124) go as far as to say that “*the deadline set for the Council in the Treaty of Accession had in effect been brought forward by six months.*” Danish opposition regarding quota proposals was the reason that this virtual deadline passed without an agreement neither on the access issue nor on a Common Fisheries Policy. Also, the country linked agreement on the equal access issue to satisfaction of its quota demands.

The UK and France, however, reached a compromise before that date that encompassed a further derogation of the provisions of Article 100 of the Act of Accession until the end of 1992 and a generalization of the limit stipulated in this provision up to twelve nautical miles. The zone between six and twelve miles could be open to other Member States’ vessels under certain conditions. The UK was also successful in its demand of a special zone around the Orkney Islands and Shetland. Denmark complained that it would not obtain licenses for vessels longer than 26 meters to fish for edible demersal in the Shetland box, which seemed especially discriminating as other member states traditionally fishing in this area obtained such licenses. (Leigh, 1983: 87) As a result, the Commission proposed that the eastern extent of the box would be reduced in one degree of longitude.

After the deadline set in the Treaty of Accession passed, Denmark claimed that the principle of equal access now applied unconditionally and it would not be possible to override it by national measures even if the Commission approved them. Danish MEP Kent Kirk, also a fishing vessel owner, deliberately fished in the British 12-mile band after the UK adopted a fishing ban in that zone to bring the access issue to the European Court. (ECJ judgement Case 63/83 of 10 July 1984)¹³

¹³ The Court confirmed in the judgement to this case that after 1 January 1983, such a measure was indeed illegal and furthermore emphasised that penal provisions may not have retroactive effect as enshrined in Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Therefore, the Court dismissed the UK’s arguments, stating that the provisions of Regulation 170/83 of 25 January 1983 retaining the derogations defined in the Act of Accession could not “*validate ex post facto national measures of a penal nature which at the time of their implementation were incompatible with Community law.*” (ECJ Case 63/83, 10 July 1984)

The relevance of the Kirk case for the evolution of the CFP is somewhat limited. In the closing phase of negotiations, the access issue went more into the background. Agreement on a comprehensive Common Fisheries Policy was reached on Council Regulation 170/83 establishing a Community system for the conservation and management of fishery resources regulated the access issue in Articles 6 and 7. Article 6 stated the following:

1. As from 1 January 1983 and until 31 December 1992, Member States shall be authorized to retain the arrangements defined in Article 100 of the 1972 Act of Accession and to generalize up to 12 nautical miles for all waters under their sovereignty or jurisdiction the limit of six miles laid down in that Article.
2. In addition to the activities pursued under existing neighbourhood relations between Member States, the fishing activities under the arrangements established in paragraph 1 of this Article shall be pursued in accordance with the arrangements contained in Annex I, fixing for each Member State the Geographical zones within the coastal bands of other Member States where these activities are pursued and the species concerned.

Paragraph 1 thereby extends the derogation of the exceptions from the equal access provision stipulated in the Act of Accession for another ten years. Paragraph 2 laid down a detailed regulation for vessels from certain Member States in certain areas within the 12-mile band that have access to fish certain species – this is the redefinition of the historical rights.

Article 7 established the Shetland box, for which a licensing system was applied for vessels larger than 26 meters around Shetland and the Orkneys. Danish demands for licenses remained unfulfilled; however, the eastern border of the Shetland box was set one degree in longitude westwards of the originally proposed limit. Nevertheless, not counting the historic rights that were in principle already established earlier, the United Kingdom with the Shetland box managed to gain the only exception from the equal access principles in the 1983 CFP. Finally, Article 8 calls for the access issue to be reviewed before the end of 1991 so that after ten years, the Council can decide on adjustments. Ten years later, based on a report on the economic and social situation of the coastal regions the Council should make a general decision on the derogations from the equal access principle and on provisions that could follow these arrangements.

It had not been the initial plan of the Commission to enshrine the status quo to that extent. The Commission's first report laying down the characteristics of a

comprehensive CFP (COM(76) 59 final) for instance sought to retain the principle of equal access. However, as a consequence of the EEZ-extension to 200 miles, the Commission suggested that in waters between “*the 6 and 12 mile limits, other than those referred to in Article 101 of the Act of Accession, to vessels which fish traditionally in those waters and which operate from ports in that geographical coastal area*” (ibd.) in order to protect inshore fishing and to gradually eliminate historic rights. While this proposal represents an extension of an existing exception from the equal access principle, it did not infringe upon the principle of non-discrimination on national grounds.

As already discussed above, Britain and Ireland showed significant resistance to this idea. Ireland gave up its opposition on the issue after the judgement of the ECJ in the *Irish Fisheries* case (ECJ judgement Case 61/77 of 16 February 1978), which terminated the country’s unilateral action and was ultimately satisfied with the proposed fishing plans. Britain perceived its national interests threatened on various occasions in a much stronger way. The country accepted the equal access principle in the accession negotiations calculating that it would gain overall from access to Norwegian waters – this prospect vanished after Norway turned down Community membership. A defeat in the Third Cod War and by far the biggest losses in third-country waters after the EEZ-extension to 200 miles contributed to the position of the UK, which was basically an outright rejection of the Commission’s proposals and a push for more national fishing zones.

The insistence on the issue was enforced by national political considerations: Although only 0.1 per cent of Brits were fishermen, the Labour government elected in 1974 put a special emphasis on fisheries, since nine of its seats in the House of Commons were won in regions heavily dependent on fisheries with a margin of less than six per cent. Also, the Labour party speculated that a firm stance on the fisheries issue could lead them to gain at least five extra seats in such regions. (Wise, 1984: 201)

The continental Member States, led by France, defended the equal access principle and also the preservation of the historic rights. France’s insistence on the latter had mainly been grounded in the fact that the country was the main beneficiary of these rights,

especially off the British coasts. France's position was supported by not only Community principles, but also pure logic and economic facts: According to a study by British United Trawlers (1976: 14), the catch in the 12-mile zone was potentially higher than all catches by the UK in all waters. Wise (1984: 166) asked rightfully: "*Why should continental fishermen be evicted from their traditional fishing grounds to make space for British distant-water vessels expelled from theirs around Iceland and elsewhere?*" Given the economic and legal context of EEC membership this was unacceptable.

Electoral considerations in France, too, prevented any possible compromise. Fisheries became an issue in the presidential election after François Mitterand accused his opponent, Valéry Giscard d'Estaing, of not defending French fisheries against Britain. (Leigh, 1983: 93)

While Britain did not prevail with its demands for larger national fishing zones and ultimately was satisfied with the Shetland box and a reduction in historical rights, it would be wrong to say that the Commission succeeded in defending Community principles. National jurisdiction over the territorial seas within the 12-mile limit was reasserted for the next 20 years. The provisions in regulation 170/83 were "*more than a temporary suspension of the basic principle of equal access. This was the first series of checks and balances that were to confirm the CFP as a conservative instrument designated to protect the status quo rather than a radical new design for international fisheries management.*" (Symes, 1997a: 142)

Symes and Crean (1995: 405) argue, that the Commission, although explicitly a vocal supporter of the equal access principle, has implicitly maintained a position closer to rights of establishment, especially in maintaining the tenet of relative stability. As such, the principle of relative stability led to a situation where the 1983 CFP became a framework that enshrined the status quo. The principle became a new *modus operandi*. As a consequence, each Member State could expect its fishing industry to keep a position relative that of other Member States.

2. *THE RESOURCE CONSERVATION DEBATE*

To reach agreement on a conservation and management policy was in no way easier than on the revised structural policy. The starting point for negotiations was the Hague resolution. Even before the Hague summit, it was clear that a conservation policy should be based on a system of Total Allowable Catches (TACs) for Community waters and an internal distribution of the TACs that would take the Hague preferences as well as losses of Member States after the establishment of the 200nm EEZ into account. (Jensen, 1999: 23)

Discussing whether a TAC system is the most viable fisheries management principle for the Community exceeds the scope of this paper. At no point, however, an alternative system was seriously under consideration.

The Commission decided to base its resource management approach on TACs that are established for the principal stocks of the Community. The numbers are based on scientific data obtained from the International Council for the Exploration of the Sea (ICES) and the Scientific and Technical Committee of the Commission. The Commission thereby followed the practice of NEAFC, whose attempts for resource conservation in the past have been unsuccessful. In the beginning, the Commission stuck closely to the ICES recommendation, which Farnell and Elles (1984: 155) described as an “*inflexible conservationist approach.*” Only in 1981, the Commission moved away from the ICES numbers, correcting them upwards.

The TACs, however, had to be broken down into national quotas in order to avoid a run on fish stocks on a first-come-first-serve basis that otherwise was likely to occur. Other technical measures and restrictions were to compliment the TAC and quota system. (Leigh, 1983: 89)

It is important to remember that fish stocks are rarely located exclusively within the Community’s EEZ. Whenever they migrate between the Community’s fisheries zone and the waters of third countries, TACs are set through negotiations with the countries concerned or within international fisheries commissions. For the calculation of the TACs, the Commission opposed using a formula in order to be able to react more

flexible to situations. Also, the Commission laid down three rather conflicting criteria according to which quotas were to be allocated:

First, respect for historic performance in order to avoid unnecessary changes or ruptures in the existing fishing pattern; secondly, they must be consistent with the requirements of regions particularly dependent on fisheries; thirdly, they must help to solve the problems caused by recent changes in the fishing pattern of Member State's fishing fleets. (Churchill, 1980: 21)

Although the Commission had made proposal for TACs for every year between 1978 and 1982, they have been adopted only once, in 1980. Since 1979, the proposals for TACs were based on advice from the Scientific and Technical Committee for Fisheries, which itself based its advice on ICES recommendations.

The fact that it took the Community almost seven years to reach an agreement can be partly explained by the fact that the distribution of quotas is a highly political question as it deals with the distribution of resources between the Community's Member States. Fundamental changes were therefore made early in the negotiations. Initially, the Commission intended to base quotas upon a weighted average of the catches in previous years, taking the Hague preferences into account. However, it soon accepted the argument that several Member States like the UK and Germany suffered from severe losses due to the extension of the EEZ to 200 miles because waters they used to fish in were now under the jurisdiction of third countries, particularly Iceland, Norway, Canada and the USSR. (OJEC C278 of 18 November 1977)

Another criterion was brought into the negotiations by the United Kingdom. The UK argued that contribution to resources should be taken into account when distributing quotas. Since 60 per cent of the Community's catch was taken in the EEZ of the UK, it should also receive a comparable share of the quotas. However, this idea was rejected because national contribution to resources would not be compatible with basic Community principles as well as the equal access principle. Also, some fish stocks migrate throughout their life. Fish often start their life in waters of one member state and get caught after maturity in the waters of another member state. (Leigh, 1983: 90)

The UK subsequently reduced its demands from 60 per cent to 45 per cent and in 1978

accepted to negotiate on the basis of the 31 per cent proposed by the Commission but refused at the same time to give up its demands on the ‘dominant preference’ in the 12 to 50 mile band on the access issue. After the Conservatives regained power in the UK and Prime Minister Margret Thatcher managed to negotiate an interim solution on the amount of her country’s contributions to the Community’s budget, the eight other member states pressured the UK to reach an agreement on the CFP by the end of 1980. (Leigh, 1983: 93)

Towards the end of the negotiations, it was Danish and not British demands that proved to be an obstacle to agreement. Denmark started to reject the idea of quotas in general and argued that since *“quotas arbitrarily restricted the activity of fishermen who might be more efficient than others for whom quotas were being reserved, they were fundamentally anti-economic. The Community should (...) confine its management role to fixing total allowable catches for the most sensitive stocks (...) leaving fishermen from different member states to compete freely within the overall catch limit.”* (Farnell and Elles, 1984: 116)

A Commission proposal in June 1982 found broad acceptance amongst the other member states, which can be seen as considerable breakthrough since the Commission also implied that this distribution valid for 1982 could also serve as precedence to quota distribution in subsequent years. Denmark took over the presidency of the Council on 1 July 1982 and rejected the proposal as a basis for further negotiation. Instead of the 23.4 per cent stipulated there, the country demanded 30 per cent of TACs. Two factors contributed to this: First of all, economics. The importance of fisheries in terms of national income for Denmark was more than 5 times higher than for the average other Member State. Due to a lack of regulations in the preceding years, the proposed quotas were exceeded between 300 and 1000 per cent for certain stocks. At the same time, the CFP had provided funds for the Danish fisheries sector and now Denmark saw an adequate supply necessary to utilize the improved industrial infrastructure.

The economic issue was intertwined with the second factor, the Market Relations Committee in the Danish parliament. The *usance* in Denmark is that a minister’s acceptance of a proposal concerning market issues is pending on the approval of this

Committee, in which the opposition led by the Social Democrats had a majority at that time. Several concessions left the Committee unmoved and were only seen as a sign that further concessions made by the Community were possible. (Leigh, 1983: 96f)

The Community explored the option of approving the CFP package by a qualified majority vote. Denmark, as a result, invoked the Luxembourg compromise, a move that was supported out of principle by France, Greece and the United Kingdom. In the end, the Commission called upon its member states to implement its proposals on a national level. After the end of the Danish presidency it became clear that the Social Democrats would not be able to retain opposition to a settlement much longer. The task shifted to finding “*a formula which, without altering the proposals agreed by the nine member states, would enable the Social Democrats to withdraw their opposition.*” (Leigh, 1983: 98) The Community was only ready for limited concessions regarding mackerel stocks, structural aids and agreements with Sweden and Norway. The Danish Market Relations Committee finally gave up its resistance and the Council approved TACs and quota proposals on 25 January 1983 as an integral part of the CFP package.

The legal basis for conservation measures was incorporated in Articles 1-5 of Regulation 170/83, before the provision on access, underlining the importance of the matter. Article 1 acknowledges that, stipulating:

In order to ensure the protection of fishing grounds, the conservation of the biological resources of the sea and their balanced exploitation on a lasting basis and in appropriate economic and social conditions, a Community system for the conservation and management of fishery resources is hereby established.

Although the Commission moved away from the ICES recommendations in its later proposals, Article 2 calls for conservation measures to be “*formulated in the light of the available scientific advice.*” Furthermore, a Scientific and Technical Committee for Fisheries was established that, according to Article 12, “*shall be consulted at regular intervals and shall draw up an annual report on the situation with regard to fishery resources, on the ways and means of conserving fishing grounds and stocks and on the scientific and technical facilities available within the Community.*”

The second paragraph of Article 2 is concerned with technical conservation measures and lists allowed groups of conservation measures applicable to single species or groups of species:

- a) The establishment of zones where fishing is prohibited or restricted to certain periods, types of vessel, fishing gear or certain end-uses
- b) The setting of standards as regards fishing gear
- c) The setting of a minimum fish size or weight per species
- d) The restriction of fishing effort, in particular by limits or catches

Article 3 introduces the system of total allowable catches (TACs). Interestingly, TACs do not have to be set for all species but rather only for species or groups of species where “*it becomes necessary to limit the catch*”.

Article 4 introduces the distribution of the TACs between member states, guided by the principle known as *relative stability*:

1. The volume of the catches available to the Community referred to in Article 3 shall be distributed between the Member States in a manner which assures each Member State relative stability of fishing activities for each of the stocks considered.
2. On the basis of the contents of the report referred to in Article 8, the Council, acting in accordance with the procedure laid down in Article 43 of the Treaty, shall enact provisions effecting the adjustments that it may prove necessary to make to the distribution of the resources among Member States in consequence of the application of paragraph 1.

Article 5 allows for quotas to be exchanged between member states. Article 11 requires measures to be adopted by the council acting by qualified majority on a proposal from the Commission. Finally, Article 13 establishes a management Committee for Fishery Resources that consists of representatives of the Member States and is chaired by a representative of the Commission.

But the TAC system was off to a bad start. Gaston Thorn, then president of the Commission, declared the fishing war over (Financial Times, 26 January 1983: 1) too soon, as new conflicts were already visible on the eve of the decision. Danish officials in a precautionary statement said that if the EEC was unable to guarantee extra quotas in third-country waters, extra fish should be provided as a special measure specifically in waters west of Scotland. The British fisheries minister immediately rejected this idea. Further disagreement between Denmark and the UK arose about the 2,000 extra tons of cod promised to Denmark in the compromise: While the UK claimed that this quota is only guaranteed for three years, Denmark insisted that this guarantee is valid for an indefinite period. (Ibd.)

Also, negotiations on the distribution of herring catches blocked agreement on 1983 quotas for all types of fish after the six-year long ban on herring fisheries was lifted. "*Danish ambitions*" (Financial Times, 4 October 1983: 3) were seen as the main cause of the emerged deadlock but in practice, all member states but the UK rejected at least one of the countless compromise proposals, fearing to alienate their domestic fishing industries. (Ibd)

Continuing Danish opposition and the fact that 1983 also marked the year of the Stuttgart Declaration marked the departure of the Community from the Luxembourg Compromise in the area of fisheries. When Denmark invoked the Luxembourg Compromise in June 1983 to oppose one of the Council decisions related to the herring issue, the other Member States did not give in to Danish demands and adopted the decision by a majority vote.

Nonetheless, the viability of the CFP was questioned only a few months after it was introduced as Ireland's Fisheries Minister Paddy O'Toole commented: "*We probably expected too much of the Common Fisheries Policy in the euphoria of getting agreement in January.*" (The Globe and Mail, 6 October 1983: 2) By mid-October, the Community had to face the possibility that an agreement on TACs for 1983 might not be reached. A Commission spokesperson warned that "*total anarchy*" in Community fishing grounds in 1984 would be the consequence since "*there would be a legal void in the common fisheries policy. No TACs or quotas will apply automatically.*" (Financial Times, 21 October 1983: 10) However, an agreement was finally reached by mid-December 1983, seven months after the ban on herring was lifted and only two weeks before the year for which the quotas were applicable ended. After 1983 the situation improved as agreement on TACs and quotas was reached either at the end of the preceding year for which they were set or at the beginning of the year.

To look at the actual effectiveness of the quota system, one has to keep in mind that the sheer distribution of resources is in the centre of the issue. The Commission's initial proposals did not take any national interests into account. Additionally, politically sensitive questions were avoided, for instance no recommendation was given on the reference period to be used to calculate the key for quota proportions. Initially, the

Commission took a conservationist approach and for its TAC proposals stuck to the scientific advice issued by ICES. But starting with the run-up to the Hague summit, the role of the Commission somewhat changed and it became an intermediary in the negotiations. Demands of Member States varied and other than in the equal access debate, the resource conservation debate was not one of Community principles but one dominated by the Member States' economic considerations, which is also the reason why an inflating of TACs could not be prevented although the debate about distributional criteria dominated the negotiations.

COUNTRY	1973-1978 AVERAGE	1982 QUOTAS	DIFFERENCE
Belgium	1.9%	2.1%	+0.2%
Denmark	23.6%	24.6%	+1.0%
France	13.8%	13.1%	-0.7%
Germany	16.4%	13.0%	-3.4%
Ireland	1.5%	4.3%	+2.8%
Netherlands	7.0%	7.2%	+0.2%
United Kingdom	36.0%	35.8%	-0.2%

Figure 3: Applicable countries' relative share of total TACs for seven demersal species (cod, haddock, saithe, whiting, redfish, plaice, mackerel) for 1982 compared to the 1973-1978 reference period. Source: Wise (1984: 238).

The above table shows that, interestingly enough, the relative quota shares for 1982 agreed upon in January 1983 don't differ much from the average catches in the years of 1973 to 1978, which the Commission used as a reference period in the proposal that first contained numbers on TACs and Quotas. (COM(78) 5 final) Notably, Ireland's relative share almost tripled because of the Hague preferences and Germany's share was reduced due to very limited losses in third country waters. But despite the depletion of stocks in the North Sea and North Atlantic, total TACs for these reference species were only reduced by 8.6 per cent, which indicates that upholding the principle of relative stability was prioritized over the biologically necessary reduction of total TACs, setting a precedence for inflating the total TACs.

The reason why the Commission focussed on a TAC and quota system in the first place can be explained by utility maximizing considerations – the centralized approach allowed the Commission to be the sole institution to define and enforce measures. All information required for the operation was to be processed in Brussels. Therefore, an

asymmetry was created in a sense that the Commission had more information available than the Member States. Much of the negotiations on the 1983 conservation policy as well as subsequent quota and TAC negotiations support Tullock's view (1981: 190) that when an agenda-setter's (i.e. the Commission's) knowledge of players' (i.e. Member States') preferences is complete and all Member States vote in line with their domestic preferences, the Commission is the only strategist. Hence, the Commission "acted not only as a mediator between parties, but also as a manipulator following its preferences when trying to move the parties towards an agreement." (Conceição-Heldt, 2004: 82)

This raises the question if the system introduced with the 1983 CFP was at all viable for the conservation of fish stocks. This question can be answered by comparing the catches and agreed TACs to the scientifically recommended TACs and by looking at the evolution of the Spawning Sustainable Biomass (SSB) of fish stocks. Similarly to Karagiannakos (1996), four demersal stocks in the North Sea, NEAFC Region IV will be used for this analysis since "*their analytical TACs are among the best scientifically estimated in EU waters*" and because these stocks are "*economically significant for a number of fleets in several Member States and represent more than three quarters of the catch of demersal species covered by TACs taken in EU waters during the 1981-91 period.*" (Karagiannakos, 1996: 237) To complement this analysis, demersal stocks for NEAFC Region VIa, comprising waters West of Scotland belonging to the EEZ of the UK but also to a limited extent to Ireland and the Faroe Islands.

NEAFC IV	SET OVER RECOMM. TAC	CATCHES OVER SET TAC	DELTA SSB 1983-1992
Cod	12.37%	-6.18%	-52.59%
Haddock	-3.16%	41.9%	-63.07%
Saithe	5.97%	-17.47%	-52.63%
Whiting	24.38%	-1.56%	-31.02%

NEAFC VIA	SET OVER RECOMM. TAC	CATCHES OVER SET TAC	DELTA SSB 1983-1992
Cod	9.05%	-21.64%	-54.55%
Haddock	60.54%	56.63%	-83.22%
Saithe	14.86%	-3.93%	-80.70%
Whiting	47.33%	-28.31%	-65.41%

Figure 4: Declining fish stocks between 1983 and 1992. Source: ICES (1990) and ICES (1992)

The SSB of all reference species, except for whiting, had reached a historical low in both of the reference areas in the early 1990s. The SSB of whiting is slightly below the mean of a 1972 to 1991 reference period. (ICES, 1992)

These statistics clearly show that during the time period in which the 1983 CFP was in effect, the spawning stock biomass of demersal species in these important areas depleted dramatically. Also, the TACs set for this decade generally exceeded the biological recommendations. *“Within the political process, the advice is often simply ignored or its alleged ambiguity is used as a pretext for compromise.”* (Symes, 1997: 146) The latter argument points out important shortcomings of a purely biological approach to TACs and quotas. Although the advice issued by marine biologists aims at tackling the problems posed by the Tragedy of the Commons, it too is subject of some criticism for very high levels of uncertainty, rather limited scope and its relative isolation from the fishing industry. (Daw and Gray, 2005: 193)

All in all, the TAC system does not seem to contribute significantly in reaching its objective. Karagiannakos (1996: 247) concluded that catches follow more the biological condition of stocks than recommended or agreed TACs. The numbers above also show that fish stocks have depleted in the reference period although the set TACs did not or not exorbitantly exceed the recommended TACs and at the same time, catches remained behind the set TACs, as the saithe stocks show.

Apart from political considerations, there are four other factors that contribute to the low effectiveness of the TAC system, many of which were tackled after the first review in 1992:

First, Member States have failed to comply with quota regulations. However well designed conservation measures may look on paper, they are obviously of little value unless effectively enforced. Quotas were heavily overfished in the first two years of the functioning of the CFP, which is why the Commission began proceedings under Article 169 against all of the seven Member States that received a share of the TAC. These proceedings were soon discontinued, however, and instead a letter was sent to all Member States demanding the observance of quotas. (Churchill, 1987: 120) Proper

enforcement was still lacking: The Commission reported in June 1986 that all Member States to which the TAC system applies showed serious deficiencies in both application and observance of the Regulation. (COM(86) 301) The enforcement Regulation was later improved and consolidated as Council Regulation 2241/87 but enforcement was still only very limited and exclusively concerned conservation regulations. Also, the first responsibility for monitoring fishing lay with the Member States. Sanctioning possibilities were limited and a tightening of regulations was not considered before the 1992 revision. Holden (1996: 159) claims that the Community was well aware of the fact that Regulation 2057/82 was intentionally flawed:

The reason for which the Council was able to agree was because the regulation gave no effective powers to the Commission. The political objective was to establish a system of control and enforcement without conceding any competence to the Commission. That this means that the system would be largely, if not totally ineffective, was almost certainly the objective of most states.

Second, the interdependency between fish stocks and the long-time development of fish stocks do not find any acknowledgement in the TAC system. Until 1992, the Community has not foreseen the possibility of multi-species and multi-annual TACs (MSTACs and MATACs respectively). Symes (1997: 143) connects the problem of single-species TACs to the principle of relative stability: Since TACs and quotas are set for individual species and separate ICES areas, the effect of relative stability is inevitably distorted since species have tended to decline at different rates responding to rather variable changes in stock abundance.

Third, other conservation measures necessary and foreseen were only reduced very reluctantly as the Council on various occasions did not accept necessary amendments to Regulation 171/83 proposed by the commission. (Churchill, 1987: 121)

Fourth, the first two MAGPs did not succeed in a major reduction of fleet capacity. Whereas the first MAGP, in effect from 1983 to 1986, aimed at freezing capacities at 1983 levels, the second MAGP, in effect from 1987-1991, envisaged a reduction of 2% in terms of engine power and 3% in terms of tonnage. However, even these modest goals were not met as fleet capacity actually increased. There was no proper Community-wide fleet register at that time and the structural policy was inherently

contradicting since both the reduction of capacity and the building and modernisation of vessels had been subsidised. The structural policy therefore did not eliminate the economic incentives generating overcapacity, as its objective “*was not that of the conservationist view. The general objective was to secure fishermen a stable income.*” (Jensen, 1999: 27)

The apparent failure of the CFP to conserve fish stocks also raises the question if the objectives of the policy resemble a proper commitment to the issue. In principle, the 1983 CFP and followed three fundamental objectives:

First, in the medium and long term, to optimize exploitation of the living resources in Community waters (...) Secondly, to maintain as far as possible the level of employment and income in coastal regions that are economically disadvantaged or largely dependent on fishing activities. Thirdly, to intensify in the immediate future efforts aimed at adapting Community fishing fleets to catch potential. (Churchill, 1980: 19)

These objectives address all three paradigms of fisheries management using the framework by Charles (1992): the conservation paradigm, the rationalization paradigm and the social/community paradigm. Therefore, the adoption of the 1983 Common Fisheries Policy marked the point from which on the Community’s fisheries management can be regarded as encompassing all areas of fisheries management.

In the preamble to Regulation 170/83, the Council finds that “*in view of the over-fishing of stocks of the main species, it is essential that the Community, in the interests of both fishermen and consumers, ensure by an appropriate policy for the protection of fishing grounds that stocks are conserved and reconstituted.*” Article 1, however, does not use the same purely conservationist focus, saying that rules and measures shall be adopted for the fishing industry “*to promote harmonious and balanced development of this industry within the general economy and to encourage rational use of the biological resources of the sea and of inland waters.*”

This apart, the introduction of a resource conservation system did not change the overall objectives laid down in regulations 2140/70 and 101/76 respectively. The CFP seeks to promote “*harmonious and balanced development of the industry within the general*

economy and to encourage rational use of the biological resources of the sea and of inland waters.” Specific measures taken must “*promote the rational development of the fishing industry within the framework of economic growth and social progress and (...) ensure an equitable standard of living for the population which depends on fishing for its livelihood*” by contributing to “*increased productivity through restructuring of fishing fleets*” and adaptation of production and marketing conditions to market requirements.” (Council Regulation (EEC) 101/76 art 9) Early CFP legislation was modelled closely after the CAP. That this is problematic when looking at the nature of fish as common-pool resource has already been demonstrated earlier. The problematic became only apparent, however, with the adoption of the 1983 Common Fisheries Policy since the general goals of the policy still remain rather vague. Therefore, in 1983 the CFP became a framework that rather implicitly, and not explicitly, sought to balance social issues against biological considerations. While the objectives are more clear in those policy areas of the CFP that concern only one of the paradigms of fisheries management – such as the framework for a TAC system is a purely biological one and the market organization is a purely social one – there are issues like the reduction of overcapacity or quotas where biological and social and economic considerations seem difficult to reconcile. It is at that point left to the reader to interpret whether this difficulty stems to a larger part from the pure nature of the matter or from the previous history of the CFP. While it was already mentioned above that Churchill (1987) supports the former view, Symes (1995: 31) advocates the latter by pointing out the implicit and incremental development of the goals of the CFP.

6. THE ACCESSION OF THE IBERIAN PENINSULA AND THE 1992 REVIEW

Regardless of the question whether Spain's and Portugal's intention to join the EU contributed to reaching an agreement on the CFP, the *doubling of numbers* quoted above was reason enough for Member States to be wary of a full accession of the Iberian countries to the Policy.

But it was more than the sheer size of their fleets that caused the ten Member States to react reluctantly, since Spain's fleet needed modernisation on an enormous scale. Furthermore, both countries had bilateral agreements with third countries that had to be transferred to the Community. (Lequesne, 2004: 347)

As a result, member states were unwilling to grant Spain and Portugal full access to Community waters and initially proposed transition periods between eight and 15 years. (Financial Times of 15 March 1985) The proposal was favoured by the biggest fishing nations of the Community, Denmark, France, Ireland, Germany and the UK, but the Italian presidency managed to negotiate a compromise between those hardliners, Spain and Portugal and the rest

of the Community. Although Spain and Portugal were allowed to join the CFP, the Act of Accession provided a framework of restrictions for the two new member states. Article 166 stipulated:

The regime defined in Articles 156 to 164, including the adjustments, which the Council will be able to adopt pursuant to Article 162, shall remain in force until the date of expiry of the period laid down in Article 8(3) of Regulation (EEC) No. 170/83.

The cornerstones of this regime are severe limitations for the number of vessels in Community waters and total exclusion Spanish vessels from the so-called Irish Box, a zone in the Irish Sea much like the Shetland Box, and much of the North Sea. Since the expiry date of Regulation 170/83 was the end of 2002, these limitations would apply for 17 years and represent "*a transitional system unequalled in the history of EC*

THE 1992 CFP REVIEW

- STATUS QUO REGARDING THE PRINCIPLE OF EQUAL ACCESS ONCE MORE REAFFIRMED
- MULTI-ANNUAL MANAGEMENT OBJECTIVES, A COMPREHENSIVE CONTROL AND ENFORCEMENT SYSTEM AND A FIRST STEP TOWARDS A COMMUNITY LICENSING SYSTEM WERE AMONGST THE MOST IMPORTANT MEASURES INTRODUCED
- DECISION MADE BY A QUALIFIED MAJORITY WITH SPAIN VOTING AGAINST THE PACKAGE AS THE COUNTRY PROTESTED AGAINST ITS TERMS OF ACCESSION TO THE CFP AND THE PRINCIPLE OF RELATIVE STABILITY

Figure 9: Summary of important facts on the 1992 CFP review

enlargement.” (Lequesne, 2004: 21) Additionally, Article 162 of the 1985 Act of Accession called for an evaluation of the transitional system by 1992 with subsequent adjustments to the transition regime possible to be in effect by 1996.

The framework described above had serious repercussions in the following years. Spanish fishermen frequently registered their vessels in the UK with the consequence that fish caught by these vessels now fell under the British quotas. This practice is known as quota hopping. The Thatcher government sought to put an end to this practice by passing the 1988 Merchant Shipping Act, under which the previous vessel registration system was abandoned and replaced by a system where a vessel could only be registered if it fulfilled certain criteria proving the vessel had a “*genuine and substantial connection*” (1988 Merchant Shipping Act, Part II, 14, 3 (b)) with the UK, thereby making it practically impossible for fishermen outside of the UK to register their vessels in the country. Since the new system would completely replace the previous one dating from 1894, vessels already registered had to re-register under the new system.

When Factortame Ltd., a UK fishing company managed by Spanish nationals, was not able to register their vessels under the new system, the company saw that the 1988 Merchant Shipping Act conflicted with Community law. Proceedings brought against the British Secretary of State for Transport by Factortame and other companies were referred to the ECJ for a preliminary ruling under Article 177 EEC. The result was a series of five cases before the ECJ, of which the first two, *Factortame I* (ECJ judgement Case C-213/89 of 19 June 1990) and *Factortame II* (ECJ judgement Case C-221/89 of 25 July 1991) are seen as landmark decisions in both UK and EU law, confirming that in areas of Community competence, EU law is superior to national law. For the Common Fisheries Policy, *Factortame II* is of specific importance since the ECJ found that the nationality requirements in the 1988 Merchant Shipping act are a breach of the Treaty of Rome, particularly Article 52 EEC on the Freedom of Establishment but also Article 221 EEC. The tenor of the ruling was that although member states can stipulate certain conditions for the registration of vessels, such conditions have to be compatible with Community law. (ECJ judgement Case C-221/89 of 25 July 1991)

The *Factortame* cases are not the only repercussions of the limitations imposed on Spain and Portugal in the 1985 Act of Accession. The two member states, in a series of cases before the ECJ (Judgements joined cases C-63/90 and C-67/90, C-70/90, C-71/90, C-73/90 of 13 October 1992), challenged the Council's interpretation of the principle of relative by applying under Article 173 (1) EEC for the annulment of provisions regarding quotas in Greenlandic, Faroese and Swedish waters. The reasoning of Spain and Portugal is best described by the example of the distribution of Community fishing rights in Greenlandic waters: Before the introduction of the 200nm EEZ, Spain and Portugal had significant catches in Greenlandic waters. When Greenland left the Community in 1985, the Community kept part of the fishing rights in Greenlandic waters in exchange for financial support. The respective agreement guaranteed Greenland a level of minimum catch within its fishing zone with the implication that financial support would not be reduced even if the Community's fishing rights were due to a lower availability of resources. Portugal and Spain argued that their catches in Greenlandic waters before 1977 should be considered by the principle of relative stability and a dismissal of the catch distribution for 1990 under the CFP was demanded. The argument was that first, accession of new member states is a necessary condition for reinterpreting the relative stability of catch distributions in third country waters and second; that due to the fact that quotas were largely increased in the respective waters in 1999, the principle would not be violated by including Spain and Portugal in the distribution especially because the Community has not utilized its quotas there. (Jensen, 1999: 30) The ECJ dismissed all cases, arguing that Spain and Portugal had accepted the *acquis communautaire*:

Article 2 of the Act of Accession of Spain and Portugal provides that, from the date of accession, the provisions of the original Treaties and the acts adopted by the institutions of the Communities before accession are to be binding on the new Member States and are to apply in those States under the conditions laid down in those Treaties and in the Act of Accession itself. In those circumstances, pursuant to Article 2 of the Act of Accession, the existing Community rules must be applied, in particular the principle of relative stability as laid down by Regulation No 170/83 and interpreted by the Court. (ECJ judgement Joined Cases C-63/90 and C-67/90 of 13 October 1992)

Furthermore, the principle of relative stability was reaffirmed:

The requirement of relative stability in the allocation among the Member States of the catches available to the Community, in the event of limitation of fishing activities under Article 4(1) of Regulation No. 170/83, must be understood as meaning that in that

distribution each Member State is to retain a fixed percentage. (...) The principle of relative stability of fishing activities cannot be interpreted as placing the Council under an obligation to effect a fresh distribution whenever an increase of a particular stock is established, where that stock was already covered by the initial allocation. (Ibd.)

The transitional regime under the 1985 Act of Accession was also affirmed by a planned review mandated by Article 162 of the Act conducted in 1992. The review also proposed a framework to integrate Spain and Portugal into the new mechanisms introduced by the 1992 revision of the CFP. (COM(92) 2340 final)

Spain's dissatisfaction with the transitional regime continued and in 1994, Spain linked the issue to the accession of Austria, Finland, Norway and Sweden to the Community. For Norway, the fisheries sector is both economically and structurally of considerably higher importance than for the Twelve and hence the country demanded a series of concessions and exceptions for joining the CFP. Additionally, the countries in the negotiations with Norway were "*pushing the EU to subject Norway to the same transitional regime*" and together with Ireland insisted on "*obtaining extra fishing quotas in Norwegian waters.*" (Agence Europe 7.3.1994) Eventually, the Commission amended the proposal for new arrangements with Spain and Portugal from 1996 onwards as foreseen in Article 162 of the 1985 Act of Accession to achieve closer integration into the Common Fisheries Policy at this date instead of waiting until 2003.

Changes came also with the Maastricht Treaty, although they were of a more theoretical nature. Article 3 reinforced the principles of the Common Fisheries Policy. It also marked the first occasion where fisheries were mentioned somewhat separately from agriculture in a Community treaty. Nonetheless, the provisions authorising the CFP in the TEC remain the same until today.

Article 3 (1) e) of the Maastricht Treaty authorizes a common fisheries policy as an activity of the Community for the purposes outlined in Article 2 of the Treaty. These goals are to:

...Promote, throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, (...) a high degree of competitiveness and convergence of economic performance and a high level of protection and improvement of the quality of the environment, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States.

As with the provisions in the Treaty of Rome, these goals seem to address more the common market of private goods (using the classification of Musgrave, 1959) and do not take the specific nature of fish into account. Article 2 of the Maastricht Treaty seems to emphasize on social peace first and foremost. The conflict in objectives already described had now been reproduced in a second article in the Treaty.

Also, since the Maastricht Treaty fisheries subsidies are not financed anymore through the EAGGF but through a separate fund, the Financial Instrument for Fisheries Guidance (FIFG); now one of the four Structural Funds of the EU.

In the same year the Maastricht Treaty went into effect, a review of the Common Fisheries Policy was conducted. A 1991 report from the Commission on the CFP it was acknowledged that the mechanisms introduced in 1983 to prevent overfishing were inadequate. These mechanisms are characterised by a lack of enforcement possibilities, the failure to take interdependencies between fish stocks into account, a lack of political will, the complete lack of a social policy and lack of coherence between different measures. While not making any concrete policy proposals, the Commission suggested that the principle of relative stability, the derogation from the equal access principle within the 12-mile limit and the Shetland box should be maintained. (SEC(91) 2288 final)

What is especially interesting about the latter is that these three points are the only arrangements to be adjusted in 1992 according to Regulation 170/83. However, these arrangements were further prolonged until the major review of the CFP scheduled for 2002.

The Commission used the opportunity of a scheduled interim review, however, to tackle some of the problems expressed by its 1991 report on the policy. (SEC(91) 2288 final) First of all, a closer integration of the hitherto to a large extent independent strands of the policy, accompanied by a more refined set of objectives was attempted. The previous basic regulation (Council Regulation (EEC) 170/83) was repealed and replaced by Regulation 3760/92. Only Spain voted against the regulation at the Council meeting

in December 1992 because it did not succeed with making the system of relative stability more flexible so the country would be able to use certain quotas not utilized by other Member States.

The objectives of the CFP, as defined by Article 2 of the Regulation, were now as follows:

As concerns exploitation activities the general objectives of the Common Fisheries Policy shall be to protect and conserve available and accessible living marine aquatic resources, and to provide for rational and responsible exploitation on a sustainable basis, in appropriate economic and social conditions for the sector, taking account of its implications for the marine eco-system, and in particular taking account of the needs of both producers and consumers.

Overall, these objectives do not resemble a departure from the course of the policy since the late 1960s.

Second, the Regulation introduced a number of new management instruments. Article 8 (3) allowed the Council in accordance with the procedure laid down in Article 43 EEC to establish management objectives on a multiannual and multi-species basis, thereby introducing MATACs and MSTACs. However, until the expiration of the Regulation in 2002, the Council has never made use of this possibility, and has not responded to a discussion paper published by the commission on how to further proceed in this matter. (Hegland, 2004: 31) Also under Article 8, the Regulation introduced the possibility to limit fishing effort, i.e. the product of capacity and activity, through limiting the days-at-sea to regulate the exploitation rate. Article 5 stipulated that a Community-wide licensing system should be introduced by the beginning of 1995 at latest. From then on, all Community fishing vessels were required to have a fishing license attached to the vessel.

Article 12 prescribed the introduction of a control and enforcement system applicable to the entire sector. So far, Regulation 2241/87 applied exclusively to issues regarding conservation. It was replaced by Regulation 2847/93 which extended control and enforcement mechanisms to all areas of the sector, i.e. also to the market organization and the structural policy. Detailed procedures were laid down for inspecting and monitoring fishing vessels, gear and catches; monitoring through EU Inspectors and taking measures in case of non-compliance.

Motivated by the Gulland report that recommended a 40% reduction in fishing effort for all marine stocks, the third MAGP had more ambitious goals than its predecessors. It ran from 1992 until 1996 and aimed at a 20% reduction in tonnage and 15% reduction in engine power compared to 1991 levels. 55% of necessary cuts had to be achieved through fleet downsizing. Furthermore, sanctioning possibilities and reporting systems were introduced to ensure that the third MAGP would finally be a success.

The 1992 interim review of the CFP was not the last step in the evolution of the CFP before the 2002 reform. In the following years, a number of developments were noticeable, none of which significantly changed the policy. They shall, however, be mentioned briefly here in order to set the context for the 2002 reform.

First, the European Parliament, whose role prior to the 1992 reform was negligible, became a factor in the policy-making process. Under Article 37 TEC on the CAP it is only necessary to consult the parliament and even that obligation has been circumvented in the past as described above. But the EP looked for other ways to intervene, such as through the annual budgetary process or through debates on the structural funds. Since 1994, the EP had a full committee on fisheries and has been since then the “*sole EU institution, which uses its reports and hearings to bring an alternative expertise to bear on the proposals of the DG FISH.*” (Lequesne, 2005: 363) The Fisheries Committee gradually acquired expertise and independently issued opinions and reports. Much of the activity in the Committee, at least in the beginning, can be attributed to the first Committee president, Miguel Arias Cañete from Spain and the Spanish Committee members who used it as a forum to make their case on Spain’s full integration into the CFP heard. (Steel, 1998: 40)

The EP was also the only institution ever that called for a clear separation of fisheries and agriculture. In its Resolution on the functioning of the Treaty on the European union (OJEU C151 of 19 June 1995) it stated the following:

Powers in the field of fisheries need to be dealt with independently of those in the field of agriculture. The Common Fisheries Policy should be re-examined in accordance with the founding principles underlying the institution of the common policy, i.e. conservation and relative stability.

Second, in the late 1990s the TAC regime had undergone some developments. Most importantly rules for flexibility in the year-to-year management of quotas (Council Regulation (EC) 847/96) were introduced. Also, new TACs were adopted both for up to that date unregulated species and areas. The policy of reducing paper fish¹⁴ was reinforced.

Third, with the Stuttgart Declaration and the Single European Act ending the time of the Luxembourg Compromise and with the enlargement of the Community, unanimity was no longer a *de facto* requirement and so a qualified majority now took decisions on the CFP in the Council more and more frequently. The most important case in the 1990s was the banning of drift nets in the North Atlantic and the Mediterranean¹⁵ that was opposed by Ireland and France. (Lequesne, 2005: 363)

Third, in the wake of the *Factortame* judgements and the prospect of a full accession to the CFP by Portugal and Spain, parts of the British fishing industry with political support by single MPs and MEPs launched the Save Britain's Fish campaign. (Symes and Crean, 1995: 408) This initiative eventually became a permanent coalition, to this date the only significant movement in a Member State advocating a withdrawal of a country from the CFP.

Fourth, the Council through the adoption of the FIG Implementation Regulation (Regulation 2792/99) for the first time adopted a structural measure on the condition that public funding must not contribute to an increase in fishing capacity. If MAGP targets have not been met, Member States would have to withdraw capacity. (SEC(2001) 418)

Fifth, the conversation of resources in the Mediterranean and the Baltic became an issue in the second half of the 1990s. For the Mediterranean, discussions have been more extensive than for the Baltic region because technical conservation measures have overall been very complicated and not successful. (SEC(2001) 418) The integration of

¹⁴ Paper fish describe fish that only exist "on paper", i.e. TACs and quotas significantly in excess of actual fishing possibilities. These are mostly precautionary TACs.

¹⁵ See Regulation 2413/98. This marked also the first time that a specific fishing technique has been banned under the CFP framework.

the Mediterranean into the CFP was only more concretely considered during the 2002 reform.

Last but not least, through the introduction of new management systems and a Community-wide licensing system, the technical aspects of the CFP and enforcement schemes became a major focus. Regulation 2847/93 was amended several times. Added were, for instance, measures aimed at inspecting and monitoring those activities that have been limited through fishing-effort.

The regulation also led to the implementation of a satellite-based surveillance of all vessels over 24m through a vessel monitoring system (VMS) and to a creation of a Community fleet register. In the late 1990s, the Regulation was further amended to include effort zones and transparency measures. The fishing effort regime was also further improved. (SEC(2001) 418) The control regime was strengthened as well through the improvement of monitoring after landing, the monitoring of third country fishing vessels in Community waters and stronger cooperation between the Member States and with the Commission. Although harmonization of penalties could not be achieved, Regulation 2740/99 specified a list of the types of behaviour that seriously infringe the rules of the Common Fisheries Policy. (Ibd.)

The changes in the policy during the 1990s may have been of relevance for the future of the CFP but due to their evolutionary nature, the depletion of fish stocks continued. The ICES did not quantify their proposals for TACs for all years during the 1990s, which is why no coherent statistics can be shown here. But to follow up on the development of the four demersal species in NEAFC zone IV and VIa, for 2002 the ICES only considered Saithe to be within safe biological limits. Cod depleted severely: In NEAFC zone VIa, its SSB was 41.05% lower than in 1992, 81.86% lower than in 1983 and 85.63% lower than in 1966, the year that the negotiations for the first Common Fisheries Policy started. For NEAFC zone IV, the numbers are similar: Here, using the reference years above, cod stocks have depleted by 45.43%, 75.74% and 83.71% respectively. (ICES, 2002)

The CFP was thoroughly evaluated by the Commission prior to the 2001 reform in a process that, unprecedented, sought a broad dialogue with a multitude of stakeholders.

Three reports were released together with the Commission's first-ever Green Paper on the future of the CFP.

That the state of the stocks is alarming at best was confirmed by the *Report on the State of the Resources and their Expected Development* (SEC(2001) 420 final), which relied heavily on data from the ICES. In the *Report on the Implementation of the Community System for Fisheries and Aquaculture over the Period 1993-2000* (SEC(2001) 418), the Commission summarized the developments also outlined above and argued:

The Community framework for fisheries (...) has not always managed to provide answers to the various challenges that emerged during the last ten years. Stock conservation, for example, has been a weak point. The basic management tools were available but there was insufficient political will to make use of them.

As the 1983 CFP, reviewed in 1992, approached its expiration, the Commission also used this report to reflect on the TAC system, defending its principles but also acknowledging its failure, which it attributes to poor technical measures and enforcement on the one hand and the worsening consequences of the annual pattern of the TAC negotiations on the other. Furthermore, the Commission states that the data collection necessary for the implementation of the CFP had been inadequate and that the relationship between scientists and fishermen is critical as the latter accuse the former of not taking their knowledge seriously into account. (ibd.)

The third report published by the Commission was the *Report on the Economic and Social Situation of Coastal Regions*. (SEC(2001) 419) It came to the conclusion, that from an economic and financial point of view, the Community fleet is characterised by high capital intensity, extremely high value added per job, poor financial profitability and insufficient utilisation of equipment. The Commission concluded that although a reduction in fishing effort is in principle sufficient to meet conservation goals, economic profitability must not be ignored which is why fleet reduction is essential. It furthermore noticed a worrying trend of Member States to increase their aid to modernise fleets and decrease their aid for fleet reduction.

On the social dimension, the Commission noticed a decrease in employment in the sector in virtually every Member State. In half of the regions heavily dependent on fisheries, the dependence was reduced but in a third of them it increased. The

Commission emphasized that a diversification of the economies of these regions is essential.

Although the CFP did not undergo any drastic changes before the 2002 reform, there were some modest advancements in its deepening. The Commission succeeded in establishing a Community vessel register, improving the control regime, tying conditions for aid to compliance with MAGP goals and, at least in theory, introducing multi-annual management options. It is likely that most of that progress was only possible because the Commission left the *modus operandi* established in 1983 untouched. That does not, however, indicate a revival of neo-functionalism because national interests did dominate the negotiations on these measures. But all in all, political integration in the sector between the adoption of the 1983 CFP and the 2002 reform was very limited. During that time period, fisheries on a supranational level were relatively far away from being an area of high politics.

One noteworthy exception is the 1995 accession of Austria, Finland and Sweden that Spain successfully threatened to veto to fully join the CFP. The Community of Ten was rightfully worried about Spain's accession on the eve of the adoption of the 1983 Common Fisheries Policy. Within a decade of its accession, Spain managed to take the central stage. Both in relative and absolute measures, it received the most amount of aid. It continued to voice its opposition against the relative stability and the 12-mile limit. Also, in the EP, it initially dominated the Fisheries Committee after its creation.

The Fisheries Committee is interesting from another point as well as it is a symbol of the emancipation of the CFP. Initially a neglected part of agriculture in the Treaty of Rome, it has become more distinct and also more technical, especially with the 1992 interim review. The drafters of the Maastricht Treaty realized that and did not mention fisheries together with agriculture like their "forefathers". Similarly, the FIFG was created. This emancipation was, however, more a result of the growing complexity and technicality of the policy. But a full emancipation from the CAP that would also facilitate a revision of the fundamental objectives of the CFP would mean a change in the Treaty, i.e. removing fisheries from Article 37 TEC (ex-Art. 38 EEC) and create a new section for it. Apart from the aforementioned resolution of the EP on the

functioning on the TEU, however, there has been no mentioning of such an intention.

Under the light of everything that has been said so far, it is unsurprising that the Commission came to the conclusion that with the ripening of the policy came a ripening of the problems:

The problems that the CFP is facing are in many respects similar to what they were in 1992 but since they were not properly addressed they are more acute now such as stocks being outside safe biological limits and fleet overcapacity.

This conclusion meant nothing less that if the Commission intended to address the Common Fisheries Policy's shortcomings, it would have to re-open the Pandora's Box that it had sealed in 1970 and 1983 and thereby discuss the foundations of the TAC and quota system as well as the principle of public aid.

7. THE 2002 REFORM

I AM NOT INCLINED TO ACCEPT THE DESTRUCTION OF 40% OF FRANCE'S FISHING VESSELS.

(FRENCH FISHERIES MINISTER JEAN GLAVANY; EUROPEAN INFORMATION SERVICE, 28 APRIL 2001)

The Commission embarked on the ship toward the 2002 reform before the start of the new millennium. During the years of 1998 and 1999, it carried out a broad consultation with a variety of stakeholders through questionnaires and regional meetings. (COM(2000) 14 final) The Commission identified 18 issues that emerged in the process, which were then tackled by the reforms or at least subject to discussion. Due to the scope of this paper, a selection and consolidation of these issues is necessary. The 2002 reform will hence be analyzed by looking at three specific topics:

- The continuation of the derogations on equal access in Regulation 170/83 set to expire by the end of 2002;
- fleet policy and public aid for the fishing sector;
- and the system of Total Allowable Catch (TAC) and quotas (including the principle of relative stability and the Hague Preferences).

THE 2002 CFP REFORM

- STATUS QUO REGARDING THE PRINCIPLE OF EQUAL ACCESS ONCE MORE REAFFIRMED
- *THE AMIS DE LA PÊCHE* (FR, GR, IRE, IT, PT, ES) SUPPORTED A STRONGER SOCIO-ECONOMIC PERSPECTIVE OF THE CFP AND SUCCESSFULLY WEAKENED THE COMMISSION'S PLAN TO ELIMINATE SUBSIDIES AND REDUCE CAPACITY (STRONGLY SUPPORTED BY DE, SE; ALSO UK, NL, BE AND OTHERS)
- A NEW FLEET POLICY PARTLY PHASING OUT PUBLIC AID FOR FLEET MODERNIZATION; A LONG-TERM APPROACH, THE STRENGTHENING OF THE UNIFORMITY OF CONTROL AND SANCTIONS AND THE INTRODUCTION OF REGIONAL ADVISORY COUNCILS (RACs) WERE AMONGST THE MOST IMPORTANT POINTS OF THE 2002 REFORM
- ADOPTION OF THE PACKAGE WITH A QUALIFIED MAJORITY, AS GERMANY AND SWEDEN, WHOSE PREFERENCES DIVERGED FROM THE *AMIS DE LA PÊCHE* THE MOST, COULD NOT AGREE TO THE COMPROMISE

Figure 10: Summary of important facts on the 2002 CFP reform

The first issue to be discussed is the equal access principle. Contrary to 1970 and 1983, this was not a major source of dissent during the reform process. However, different opinions were visible already in 1997, when the European Parliament took the role of a

first mover and adopted, out of its own initiative, its *Resolution on the Common Fisheries Policy after the year 2002*. (European Parliament, A4-0298/1997) In the explanatory statement, MEP Carmen Fraga Estévez (EPP-ED, Spain) argued that any new regime “*should not take the form of a fresh derogation but of a means by which the basic principles of the Treaty are to be implemented.*” The adopted resolution, however, called for the provisions in effect to be extended. The EP changed its mind 15 months later and called for an extension of national zones to 24 miles. (Hegland, 2004: 75 and EP, A4-0018/1999)

In its consultation with stakeholders, the Commission found that there were “*virtually no demands for the establishment of a free access regime ‘up to the beaches’*” and only “*some demands for the strengthening of the current regime in favour of the coastal fishermen,*” (COM(2000) 14 final) i.e. an extension of the exception to 24 miles. Obviously, fishermen from the countries that acceded after 1983 complained about discriminatory restrictions on access to the North Sea. The Shetland box was also criticised, even from within the UK, for being the result of politics and not science. (Ibd.)

The EP adopted a resolution on the consultation report and once more changed its mind: It now called on the Commission to reflect on the derogation of the 6/12-mile zone and “*to ensure that, in the event of controversy, the status quo is maintained.*” (European Parliament, A5-0332/2000)

In line with the majority of Member States and stakeholders, the Commission, in its Green Paper published in March 2001 (COM(2001) 135 final: 24), advocated for the access regime to the 6 to 12 mile limit and to the Shetland Box to be rolled over. This position is not surprising from a strategic point of view since there were more controversial issues and unarguably more pressing issues that the DG Fish focussed its energy on but it is surprising when considering the Commission’s role and when looking at the argumentation presented:

The basic objectives of the 6-to-12-mile coastal zone regime were to protect fisheries resources by reserving access to small-scale coastal fisheries activities which in general put less pressure on stocks in these zones (...) and to protect the traditional fishing

activities of coastal communities, thus helping to maintain their economic and social fabric. (...) Modification of the 6-to-12-mile regime would disrupt the long-standing balance of the policy. (COM(2001) 135 final)

Given the evolution of the CFP as presented above, it is clear that the Commission's argument that the objectives of this regime were of a conservationist nature does not hold up. The principle of equal access is a founding principle of the policy and has been applied since 1970. Exceptions and derogations have existed since 1970 and 1973 respectively, long before the conservation regime went into effect.

The Commission's line of argument on why to keep the Shetland Box and North Sea restrictions is more ambiguous but basically derives from a conservationist point of view, which, in this case, is coherent.

In June 2001, most of the fisheries ministers in the Council agreed with the Commission's proposal with the notable exception of Spain. Portugal called for an extension of the 6 to 12 mile limit to 50 miles for very outlying regions such as the Azores and denounced restrictive access to the North Sea. (Agence Europe, 19 June 2001)

The Commission did not take the preferences of the countries on the Iberian Peninsula into account and, in its first proposal, suggested that the restriction of the equal access principle should be made permanent, also leaving the historical rights intact. Furthermore, the Shetland Box and all other access rules in place not concerning the 12-mile band were to be retained but reviewed in 2003, when the Commission was to assess "*the justification for these rules in terms of conservation and sustainable exploitation objectives.*" (COM(2002) 185 final) Only after Ireland, supported by the UK, protested against the Commission's proposal to scrap the Irish Box, the Commission accommodated both the British Isles and Spain by proposing to extend the derogations for another ten years instead of making them permanent. This idea was accepted.

Article 17 of the adopted new basic regulation (Council Regulation (EC) 2731/2002) contains the general rules on access to waters and resources using a very similar

wording as Regulation 170/83. The new arrangements were valid until 31 December 2012. Before that date, the Council has to decide on provisions following the arrangements. The provisions regarding the Shetland Box were adopted unmodified from the Commission's first proposal and can be found in Article 18 of the basic regulation. (Council Regulation (EC) 2731/2000)

The second area to be analyzed, subsidies and fleet policy, became the core issue of the negotiations on the 2002 reform of the policy as the Commission, even after realising in the consultations with stakeholders that *"in many Member States there was support for structural measures and aid for the renewal of fleet, (...)"* (COM(2000) 14 final) indicated support for substantial changes in its Green Paper. It represented a line of thought linking conservation failure to overcapacity. Concretely, it suggested that aid policy often undermined the objectives of any measure to reduce capacity and furthermore, subsidies for vessel construction and modernisation have not been accompanied by a sufficient reduction in capacity. The Commission points to two independent reports claiming that *"the necessary reductions of fishing mortality for the prudent management of stocks should be about 40% and in many cases much higher."* (COM(2001) 135 final: 11) It stressed the negative economic effects of overcapacity on the profitability of the fishing fleet, concluding that a drastic reduction of the overall level of capital employed is necessary and proposed stricter fleet reduction programs. Additionally, *"Member States will probably need to revise their priorities for structural aid to the fishing fleet, by, for example, reducing the share of aid for modernisation or construction of fishing vessels and increasing that of aid for decommissioning or laying-up"* and it *"may be necessary for the Community to consider whether and under what conditions investment aid for the fishing fleet will be phased out, in order to eliminate its counter-productive effects on fishing capacity (...)"* (COM(2001) 135 final)

The Green Paper of the Commission resulted in somewhat hostile reactions from Member States after discussions in the Fisheries Council on 25 April 2001. While Germany, Denmark and the UK supported the content document, France, Spain, Portugal, Italy, Greece, the Netherlands and Belgium felt that the socio-economic perspective was not considered enough. More detailed criticism came from the Netherlands, who argued that the EU should properly administer its TAC and quota

system instead of restructuring the fishing fleet. The UK and Denmark subsequently pushed for the abolition of aid for the construction and modernisation of vessels. The EP criticised the Green Paper claiming that it did not take into account the social dimension of fishing and that while the very critical analysis is correct, the proposed changes are only of a minor nature. In the plenary, however, sufficient support to call for the MAGPs to be scrapped was not found. (Agence Europe, 18 January 2002)

In expectation of first proposals by the Commission in March 2002, France, Greece, Ireland, Italy, Portugal and Spain formed an informal group titled Amis de la Pêche (AdlP) that adopted their own conclusions on the future of the Common Fisheries Policy. Their aim was to put the social and economic aspects of the CFP into the foreground of the reform. While their proposals also focussed on the TAC system, fisheries in the Mediterranean and other issues, fleet policy and state aid was the area where the interests of this group diverged most from the ideas of the Commission. They argued that under certain circumstances, an increase of power and tonnage of vessels that were to be modernised should be allowed and advocated a Community-wide mechanism for fleet withdrawal that should be voluntary but based on attractive aid financed fully by the EU. Although they opposed financial support through the FIGG for a total increase in fishing effort, they advocated the continuation of aid for renewal and modernisation of fleets. (Agence Europe, 11 February 2002)

The adoption of first proposals for the revised CFP was delayed several times. The delays are shrouded in mystery but it is widespread argued that some possibly illegal behind the scenes intervention from Commissioners from southern Member States opposed to the cancellation of state aid caused the delay. Furthermore, on 24 April 2002, Seffen Smidt, the Director-General of the DG Fish and head behind the Green Paper and reform proposals, was dismissed. (Hegland, 2004: 89)

The Commission finally adopted its first set of proposals on 28 May 2002, which contained an end of aid to the building of new vessels starting by the end of 2002. Also, aid for modernisation should only be permitted when it does not lead to the creation of new capacity. Instead, subsidies should be used increasingly for the scrapping of vessels. (COM(2002) 187 final) As expected, the AdlP voiced opposition to the

proposal. The Danish Presidency failed with its strategy to reach agreement before the December meeting and so the annual TAC negotiations were being dragged into the process. The European Parliament supported the view of the AdIP.

At the end of a five-day long marathon meeting in December 2002, agreement was reached. Public aid was to be phased out, but not immediately. Rather, during a two-year long transition period, subsidies would still be permitted for small and medium-sized vessels and a strict entry-exit regime had to be followed. Finland joined the AdIP group on the subsidies issue just before the decisive Council meeting in December. In order to get a qualified majority for a compromise, a new element was introduced: Member States carrying out fleet renewal using public subsidies would have to reduce their total fleet by three per cent until the end of 2004. This persuaded the UK and the Netherlands to agree to the proposal, leaving only Sweden and Germany voting against the package. This was the first time a major revision of the Common Fisheries Policy had been adopted by a qualified majority and not unanimously. The revised structural policy was codified in Regulation (EC) 2369/2002.

After the equal access principle and the subsidies issue, the third subject that will be analyzed in more detail is the conservation policy. From the beginning of the TAC and quota system in the late 1970s, criticism arose because these measures were not seen as viable conservation tools due to the lack of proper enforcement and insufficient scientific advice. And also since that time there has been no consensus on a thorough review of the conservation system. The consultation of stakeholders by the Commission only confirmed that picture. No clear consensus on a replacement for the prevailing regime was found. As what is colloquially referred to the privatisation of fisheries started to be an ongoing trend, some fishermen from the Netherlands and Spain were in favour of a EU-wide system of Individual Transferable Quotas (ITQ). This would mean that an individual or entity would be granted the right of a percentage of the TAC that can be sold or leased. While a majority of the participants did not support an ITQ system at that time, they supported the system of relative stability as a necessary evil but argued that allocation keys might have to be reviewed to reflect actual fishing patterns. (COM(2000) 14 final)

It is therefore not surprising that the Commission's suggestion for the TAC and quota system in its Green Paper were not very revolutionary: The Commission recognized the shortcomings of the annual setting of TACs from a conservationist point of view and suggested a multi-annual, multi-species and ecosystem-oriented management regime. Furthermore, the precautionary principle should be taken into account when laying down multi-annual management plans. From the Commission's point of view, the multi-annual approach should help to avoid abrupt changes in TAC volumes and the postponement of sensitive decisions. It also stressed the importance of multi-species and ecosystem-oriented fisheries management. (COM(2001) 135 final)

Regarding the principle of relative stability, the Commission left the subject untouched but vaguely indicated possible changes in the future: "*When the structural problems of the fisheries sector have been addressed (...), it may be possible to reconsider the need to maintain the relative stability principle and the possibility of allowing market forces to operate in fisheries as in the rest of the EU economy.*" (COM(2001) 135 final)

The Council's reaction to the Commission's ideas was, with nuances, generally positive. (European Information Service, 28 April 2001) This changed, however, after the Commission adopted its first proposal for the basic regulation. (COM(2002) 185 final) This proposal removed all references to TACs and quotas but re-introduced them using different terminology. TACs were to be set by multi-annual management plans that should include a number of targets against which stock recovery or maintenance should be assessed, in particular population size, long-term yields, fishing mortality rate and the stability of catches. For stocks for which such a multi-annual management plan was adopted, the Council was to decide on catch limits for the first year but these limits could subsequently be decided by the Commission in assistance with its Committee for Fisheries and Aquaculture, meaning a drastic shift of power from the Council to the Commission. Also, the Commission proposed to give itself the power to decide on emergency measures for a duration of up to one year "*in the event of a serious threat to the conservation of living aquatic resources, or to the ecosystem resulting from fisheries activities (...) at the substantiated request of a member state or on its own initiative.*" (COM(2002) 185 final) Quotas were since 1992 referred to as fishing opportunities and the Commission essentially proposed to keep the current system. (COM(2002) 185)

Opposition to the Commission's plans came mainly from the AdIP countries as they felt that the proposed system neglected a socio-economic dimension. While they support the Commission's push for multi-annual management, they insisted that all conservation measures should be decided by the Council of Ministers. Their criticism of the Commission's extended powers was somewhat shared by most Member States, except, interestingly enough, the United Kingdom. Similarly, the AdIP also felt that multi-annual management plans should only exist for stocks outside safe biological limits whereas for other stocks, multiannual TACs should be adopted. The AdIP's view on the Hague Preferences was ambiguous since one of its members, Ireland, insisted to keep them contrary to the other Member States in the coalition. (Agence Europe, 31 July 2002)

Only at a later point the position of some countries became more clear as France, Spain and Portugal insisted that the Hague Preferences were not an integral part of relative stability and that they were opposed to their "*systematic and excessive implementation when we are confronted (...) with drastic reductions in TAC on some species.*" (Agence Europe, 16 October 2002)

Ultimately, not much of the Commission's ambitious plans could be found in the new basic regulation adopted on 20 December 2002. (Council Regulation (EC) No 2371/2002) The AdIP succeeded with their push for different provisions for stocks not endangered. Article 5 of the regulation introduced recovery plans with the objective to "*ensure the recovery of stocks to within safe biological limits*" which the Council should adopt "*as a priority*" for overexploited stocks. Instead of recommendations being based on scientific opinion, as suggested in the Commission's first proposal, it was not merely to be taken into account. Furthermore, economic factors were now to be considered well as the Council should decide targets and timeframes considering besides the conservation status and biological characteristics of the stocks also the characteristics of fisheries in which stocks are caught as well as the economic impact on fisheries concerned.

Article 6 introduced management plans for stocks at or within safe biological limits. Apart from the fact that there is no obligation to adopt them as with recovery plans, they only differ from them through not including limitations on fishing effort.

Article 20 emphasized that decisions on TACs and quotas were still a responsibility of the Council and maintained the Hague principles:

The Council, acting by a qualified majority on a proposal from the Commission, shall decide on catch and/or fishing effort limits and on the allocation of fishing opportunities among Member States as well as the conditions associated with those limits. Fishing opportunities shall be distributed among Member States in such a way as to assure each Member State relative stability of fishing activities for each stock or fishery.

Ultimately this means that although multi-annual plans eliminated the annual TAC-setting (log-rolling included) in its previous form, power remained with the Member States.

As mentioned above, the three issues just presented were not the only ones dealt with during the 2002 reform process. Most importantly, an emergency measure for scrapping fishing vessels, the scrapping fund, has been established through Regulation 2370/2002 to help Member States with additional reductions in fishing effort under the new recovery plans. In terms of control and enforcement, the Commission itself was enabled to carry out inspections without being accompanied by inspectors of the respective Member State. It is furthermore also empowered to deduct quotas as a penalty from Member States that exceed their fishing opportunities. Cooperation between Member States was reinforced and the use of the satellite-based surveillance system (VMS) extended to smaller vessels. Environmental concerns were also integrated and agreements with third countries revised.

The 2002 reform has been the first full review of the comprehensive Common Fisheries Policy adopted in 1983. But it can be argued that the Commission saw the 2002 reform only as the first step of a complete overhaul of the CFP. By leaving many of the politically highly sensitive issues, like the principle of relative stability and the 6 to 12 mile limit untouched, more energy could be diverted to the reduction of overcapacity through a revised structural policy. Hegland (2004: 75) suspects that this was indeed the Commission's strategy. In a way, it was probably the choice between the lesser of two evils: Subsidising overcapacity was ultimately seen as more harmful than keeping the exceptions from the equal access principle and the quota system for another decade.

That does not mean, however, that the Commission operated only on one front to improve the conservation policy. It recognised the fact that the annual ritual through which TACs were set was counterproductive to any conservation goals and correctly identified, if only implicitly through its proposals, that in order for the conservation policy to be successful, the power to set TACs should not be in the hand of the Member States. If its initial proposals would have been adopted, Member States would lose the power to set TACs to a large extent, although they would still define the broad direction of multi-annual management plans through setting concrete limits for the first year. This proposed mechanism was probably the first viable attempt to tackle the depletion of fish stocks on a European level. By transferring more power to the Commission, the degree to which national interests could dominate conservation policy decisions would have been greatly reduced.

Member States have, however, acted in the exact way described by the Tragedy of the Commons by putting their short-term interests first. Especially the AdIP but also most other countries were opposed to the new responsibilities of the Commission. Only from the United Kingdom came moderate support for the Commission's plans: Although the UK is usually weary of ceasing sovereignty to the EU level, the fact that it has been the most outspoken advocate of a stricter conservation regime since its accession to the Community and the fact that it has suffered the most from implicit consequences of the policy such as quota hopping meant that it would actually have benefited from the stronger role the Commission intended to assume in conservation and also enforcement policy.

Seldom can neo-functionalism and liberal intergovernmentalism be so well contrasted: If the initial proposals of the Commission had been adopted, political spillover would have led to a transfer of further powers to the Commission. But Member States, irrespective on their stance on subsidies, united against these suggestions, afraid that they would all loose out if they couldn't decide over this distributional matter themselves.

Similarly, national interests also prevailed in the negotiations on the structural policy. Contrary to previous negotiations, however, the link between the structural and conservation policy was established. The Commission emphasized that the CFP's

failure to reduce overcapacity is partly responsible for overfishing and the depletion of fish stocks, a fact that also has been proven most notably by Boude, Boncoeur and Bailly (2001) but also earlier authors focussing on economic principles. Frost and Andersen (2006: 742) sum it up best: *“Public aid promotes over-supply of capital by artificially reducing the costs and risks of investment. Each subsidised fishing vessel reduces the productivity and profitability of every other vessel in the fishery concerned.”* The Commission was supported mainly by Germany and Sweden, both countries with strong green parties in or supporting the government at that time that are net contributors to the EU budget and also supported the WWF’s campaign for a strict conservation policy. Austria and Luxembourg as landlocked countries were also in favour of scrapping public aid. Support came also, in nuances, from the UK, Denmark, Belgium and the Netherlands.

Holding a comfortable blocking minority were the AdIP countries, also supported by Finland on the subsidies issue. For them, it was not only about keeping public aid but rather about focussing on socio-economic aspects in general. They wanted the CFP to take into account the economic, social and territorial dimension of fisheries as well as finding greater acceptance of CFP rules amongst fishermen. (European Information Service, 6 February 2002) By openly criticising the Commission’s approach as too conservationist, they deliberately ignored the link between overcapacity and stock depletion and were seen as coalition for fishermen and not fish.

Their insistence on the continuation of subsidies can be easily understood by looking at the amounts they were granted for the 2000-2006 period: 46% of aid for fleet modernisation and renewal was granted to Spain meaning that almost half of the funds under these measures went to a single Member State. Also, the AdIP countries and Finland spend significantly more money on modernisation and renewals than other Member States with the exception of Denmark. (European Information Service, 27 November 2002)

Although subsidies were not immediately scrapped, all countries except for Germany and Sweden supported a compromise through which they were to be phased out. On the first glance it might seem like a modest victory for both sides. But behind the AdIP’s agreement to the compromise was the intention to put the issue on the table again for the

period after 2006 as they saw public aid as a permanent feature of the policy. (Hegland, 2004: 87)

As in the 1983 negotiations, when Commissioners at a certain point voted against adopting the Commission's proposals, domestic interests also became an issue within the Commission. The dismissal of Stefen Smidt, Director-General of the DG Fish and the delay of the Commission's proposal resulted in several speculations. Accusations of illegal instructions of Commissioners were widespread, especially after the fisheries minister from Spain said on national television that the AdIP instructed their Commissioners to obstruct the reform, which not only was said to cause the delay but would also be a violation of the Treaty. Commissioner Franz Fischler, being questioned by the EP, rejected any allegations that he had been influenced or put under pressure about the content and the postponement of the proposals for the new CFP. That Smidt was removed on the request of Spain could not be proved but "*there was circumstantial evidence enough to make the whole affair look suspicious.*" (Hegland, 2004: 89 and Agence Europe, 24 May 2002) Also, part of the reason why the Commission was ready to make certain concessions to the AdIP countries might have been a lack of interest by Commissioner Fischler himself, who is said to be much more interested in agriculture than in fisheries. Last but not least it is questionable why the Commission did not use the threat of withdrawing proposals if it was unsatisfied with negotiations in the Council. The legal vacuum that would have been created then could have put the Commission in a better bargaining position from a conservationist point of view.

Once more, the objectives of the CFP were rewritten. The weaknesses of the CFP as a policy that is based on the provisions for the CAP in the Treaties, however, remains, although the objectives were phrased with a larger emphasis on environmental and conservation concerns. Article 2 (1) stipulates:

The Common Fisheries Policy shall ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions. For this purpose, the Community shall apply the precautionary approach in taking measures designed to protect and conserve living aquatic resources, to provide for their sustainable exploitation and to minimise the impact of fishing activities on marine eco-systems. It shall aim at a progressive implementation of an eco-system-based approach to fisheries management. It shall aim to contribute to efficient fishing activities within an economically viable and competitive fisheries and aquaculture industry, providing a fair

standard of living for those who depend on fishing activities and taking into account the interests of consumers.

Concrete improvements have been made to reflect the importance of resource conservation, namely the commitment to sustainable exploitation, defined by Article 3 (c) of the basic regulation as “*the exploitation of a stock in such a way that the future exploitation of the stock will not be prejudiced and that it does not have a negative impact on the marine eco-systems*” as well as the precautionary approach.¹⁶

The Commission realized, however, that only a Treaty change could lead to a complete revision of the objectives of the CFP and indicated in April 2000 that this is a real possibility as part of an overall reform. (European Information Service, 8 April 2000) However, this idea has not been pursued further.

Interesting was also the role of the European Parliament in the 2002 reform process. It had been much more vocal than during previous negotiations which is reflected by a number of amendments. What had been noticeable was a bias in favour of the socio-economic approach the AdIP were taking, mainly due to the hold of Spain on the EP's fisheries committee. According to Hegland (2004: 90) this actually obstructed parliament from playing a significant role since its opinion was not seen as representing a cross-section of the Community. Ultimately, Parliament in the decisive phase of the negotiations was practically ignored.

The reasons why agreement was reached in 2002 differ somewhat from those in 1970 and 1983. Hegland (2004: 88) identifies four of them:

- 1) Failure to get agreement on the basic regulation before the end of the year would widely be considered a crisis for the entire constitutional framework of the CFP;
- 2) The term of the Danish Presidency was seen as a window of opportunity compared to the two next presidencies, Greece and Italy, which were both part of the AdIP group;
- 3) The CAP was up for reform in 2003 and it is likely that the Commission(er) did not want to work on two major reforms at the same time; and
- 4) A main concern of the Commission was the issue of aid, which needed to be settled as soon as possible.

All four reasons were quite significant looking at the history of the CFP. Hegland further believes that the Commission was under larger pressure to successfully end negotiations than the AdIP countries, which is a view than can only be partly shared.

¹⁶ Defined by article 3 (i): “... *the absence of adequate scientific information should not be used as a reason for postponing or failing to take management measures to conserve target species, associated or dependent species and non-target species and their environment.*”

While it is purely speculative, it could be argued that the Commission could have used the expiration of the equal access provision to on the one hand drive a wedge between the AdIP countries since Spain, contrary to its partners in the coalition, was opposed to it and on the other hand used it as a leverage to get support for some of its ideas in the Green Paper that were ultimately not accepted by the Council.

Last but not least it is important to briefly look at the repercussions of the reform and the events in the evolution of the policy after 2002. While many programs have been adopted that were mandated by the legislation adopted in 2002, four developments were somewhat defining for the further evolution of the policy and the scheduled 2012 reform:

- 1) The Irish Box was maintained but reduced to a quarter of its size and a new list of vessels authorized to fish in it was adopted, taking the 1998-2002 period as reference. Spain, still unhappy with the existence of the Irish Box, brought the issue in front of the ECJ, which rejected the country's arguments. (ECJ judgement Case C-442/04 of 15 May 2008) Also, the Shetland Box was maintained until further evaluation was carried out. (Agence Europe, 14 October 2003; Agence Europe, 14 September 2005)
- 2) As predicted by the AdIP countries already in 2002, the issue of public aid was again on the table. The Commission proposed that a European Fisheries Fund (EFF) should replace the FIFG after its expiration by the end of 2006 and focus on four priorities: Adjusting the EU fishing fleet; support for fish-farming, processing and marketing; support for collective actions of limited duration and support for the sustainable development of coastal areas facing socio-economic problems as the result of the developments in the sector. (European Information Service, 25 June 2005) Many of the former AdIP countries, now joined by Malta and Cyprus after the enlargement of the European Union in 2004¹⁷, criticised the Commission's intention to end public aid for modernising fishing fleets except for safety improvements. (Agence Europe, 21 September 2004) The arguments and positions were very much the same as during the debate in 2002. Ultimately,

¹⁷ The 2004 enlargement, however, has been of rather marginal importance than the previous ones. None of the Member States joining in 2004 have a considerable deep-sea fishing fleet and most fishing took place in the Baltic Sea. (see also Lequesne, 2005: 356)

the EFF puts more emphasis on sustainability, resource conservation and environmental protection than the FIFG did. But while subsidies for the constructions of new vessels were phased out, they remained for the modernisation of vessels under similar conditions agreed upon at the 2002 reform. (Council Regulation (EC) 1198/2006, globalsubsidies.org of 20 March 2009) Once more, the evolution of the CFP was characterised by the continuation of the status quo.

- 3) The de-facto independence of fisheries policy-making from agriculture increased after the 2002 reform. First, as a result of the EU enlargement in 2004, a separate commissioner for Fisheries and Maritime Affairs was installed. Also, the Directorate General in charge of fisheries and maritime affairs was restructured in 2008. The new DG MARE now constitutes of three regionally divided directorates in charge of managing the CFP as well as the EU Integrated Marine Policy in the respective areas, as well as a horizontal directorate facilitating policy development and coordination, a directorate for external affairs and a directorate in charge of legal issues, resources, communications and relations with stakeholders.
- 4) The proposed Treaty on the Functioning of the European Union (TFEU) does not change the objectives of the CFP, but renames Title II of the TEC from Agriculture to Agriculture and Fisheries. Furthermore, Article 2 confirms that conservation of marine biological resources under the CFP would be an exclusive competence of the Union whereas agriculture and fisheries in general would be an area of shared competence between the Union and the Member States. But more importantly, according to Article 294 TFEU, fisheries would become an area of co-decision, thereby giving the European Parliament effective powers in shaping the CFP. The negative outcome of the referendum on the Lisbon Treaty in Ireland on 12 June 2008, however, has so far prevented these provisions to go into force.

8. THE 2013 REFORM: THE CFP'S LAST CHANCE?

The Commission, on 22 April 2009, published a Green Paper on the Common Fisheries Policy, marking the start for the next reform, likely to be in effect by 2013. The Commission identified five main structural failures of the CFP: the problem of overcapacity, imprecise policy objectives unable to provide guiding for decision-making, a decision-making system focussing on short-term perspectives, insufficient responsibility for the fishing industry and a lack of political will to enforce compliance rules. (COM(2009) 163 final)

These shortcomings are not new, indeed, they have for most parts existed since the Treaty of Rome or at least since fish stocks started depleting in the 1970s. The Commission seems once more to want to use the event of the derogation of the provisions on the 6 to 12 mile limit to also push through a broader reform of the policy. Apart from dealing with the structural failings above, it also attempts to include measures to further improve management and to improve the policy framework. A consultation has been launched that will last throughout 2009.

The solutions, however, are already on the table. A definite end of public aid for the industry is almost inevitable, but it might come at the price of more extensive programs to make coastal areas able to deal with changes that accompany it, first and foremost enabling fishermen who lost their jobs to reassess their situation, be able to receive further education and find new employment. Symes and Phillipson (2009) posed the question as to what became of social objectives in the Common Fisheries Policy and rightfully noted that the matter of self-esteem and self-help is very important when it comes to achieving social sustainability. And when it is from a point of profitability and resource conservation not possible to sustain level of employment in some fisheries communities, such programs would be of enormous importance. The Commission therefore must be able to secure funds for dealing with the short-term social and economic consequences of its proposals in order to be able to get the approval of the former AdIP countries in the Council. And it must also be ready to spend more money on vessel scrapping programs.

That the solutions are on the table is also something demonstrated by Cardinale and Svedäng (2008), who showed that fisheries science is not to blame for the waste of formerly large marine resources but instead produced numerous suggestions how to improve the state of stocks. Managers and politicians do have the necessary scientific information to avoid the collapse of fish stocks.

Although the reduction of overcapacity is and should be the top priority since it is necessary to adjust the fleet size to the catch it is allowed to fish, the findings of this paper clearly indicate that the depletion of fish stocks is also the result of a decision-making system that facilitates resource depletion. Overcapacity just exacerbates this problem and removes part of the political incentives to inflate TACs over biological recommendations, but an elimination of overcapacity does not necessarily mean that overfishing would be history. The Community could also encourage Member States to use new approaches to finance a reduction in overcapacity that at the same time reduces incentives causing it. Jensen (2002), for instance, suggested that taxation, for instance in form of a tax on fishing vessel's insurance value.

The Commission's initial proposals for the multi-annual management plan were probably the first systematically viable attempt to tackle the problems posed by the tragedy through strengthening its powers in the area of conservation. Similar reasoning, of course, also applies to the area of control and enforcement.

Of course, it could also be of advantage to increase the involvement of stakeholders and the general public in the policy-making process. A survey conducted in France, Italy, Denmark, the Netherlands and Belgium showed that 75% of the population never heard of the Common Fisheries Policy. (Agence Europe, 28 May 2008)

As already explained throughout the paper, the problem of ambiguous objectives cannot be solved unless fisheries are completely separated from agriculture in the Treaty. Unfortunately, the window of opportunity provided by the drafting of the Lisbon Treaty was not utilized for that purpose.

The reform of the CFP could also be a springboard for Norway and especially Iceland to join the EU. The CFP's failure combined with the high importance of the sector in both countries has made them wary of such a move. But the new Icelandic Prime Minister, Jóhanna Sigurðardóttir, has announced to introduce a bill to the Icelandic parliament mandating the government to start accession negotiations with the EU. Enlargement Commissioner Rehn indicated that Iceland might join as early as 2011 (The Guardian 30 January 2009), together with Croatia, since it already adopted a large part of the *acquis* through membership in Schengen and the EEA. If that is the case, the country will definitely play a significant role in the upcoming CFP reform process. While fisheries are still seen as the crux of the matter in potential negotiations, the fact that relative contribution of fisheries to the Icelandic GNP has been decreasing continuously and that the widespread claim that fisheries interest groups have been the main reason for Iceland's reluctance to join the EU (Pórhallsson, 2004) are an indicator that a compromise on the Common Fisheries Policy between Iceland and the EU is possible.

Lastly, the Community could learn from Iceland since it is one of the few countries that already introduced a system of Individual Transferable Quotas (ITQs). ITQs, as a privatization of the resource, have been proven to prevent collapses of fish stocks and to recover declining ones. (The Economist, 18 September 2008) The introduction of more market-based systems for fisheries management in the Community is generally long overdue.

If the next reform of the Common Fisheries Policy will bring the sector closer to the Commission's vision of sustainable fish stocks and a financially independent fisheries sector (COM(2009) 163 final) remains to be seen. The author shares the diagnosis made by the Commission in 1991:

The Commission is convinced that the success of this policy depends entirely on the expression of a genuine political will so that (...) the fisheries sector will behave in a way consistent with the achievement of the European ideal. (COM(91) 2288)

9. CONCLUSION

THE UNDERLYING PRINCIPLES OF THE CFP – HORIZONTALITY, NON-DISCRIMINATION AND RELATIVE STABILITY – HAVE MORE TO DO WITH REINFORCING THE CONCEPT OF EUROPEAN UNITY AND CO-OPERATION THAN WITH EFFECTIVE MANAGEMENT OF A SERIOUSLY DEPLETED, HIGHLY SENSITIVE AND UNSTABLE RESOURCE. THE CFP (...) SEEKS, THEREFORE, TO REINFORCE ECONOMIC AND POLITICAL STABILITY WITHIN THE COMMUNITY – A PRECEPT, WHICH TRANSLATES UNEASILY INTO A POLICY FRAMEWORK AND REGULATORY SYSTEM. AS A RESULT, THE ENSUING SYSTEM IS SINGULARLY ILL SUITED TO THE PARTICULAR CONDITIONS OF EUROPE'S FISHERIES. (...) CERTAIN ASPECTS OF ORGANISATION OF FISHERIES POLICY IN THE EC ACTUALLY FOSTER THE DEVELOPMENT OF NATIONALIST RATHER THAN COMMUNAUTAIRE ATTITUDES WITHIN THE INDUSTRY. THIS IS TO BE HELD TRUE BOTH OF THE METHOD FOR NEGOTIATING NATIONAL INTERESTS IN BRUSSELS AND OF THE PERSISTENCE OF NATIONAL MANAGEMENT SYSTEMS FOR THE IMPLEMENTATION AND MONITORING OF THE CFP. (SYMES AND CREAN, 1995: 409)

After the evolution of the policy has been presented, everything that has been said so far is connected in order to give a concise answer to the initially posed research question: How did the EU Common Fisheries Policy as a Community tool for the management of a common-pool resource evolve in the context of European integration?

The evolution of the Common Fisheries Policy (CFP) was analyzed using three different theories that corresponded to the different units of analysis according to Howlett and Ramesh (2003: 20ff): Neo-Functionalism and Liberal Intergovernmentalism as European Integration theories on the largest level of social structures; the three paradigms of fisheries management (conservation, economic and social/community) according to Charles' framework of fisheries management focussing on the aggregate collection of individual actors; and the concept of Common Goods explaining behaviour and motivations of individual actors.

On the structural level, the main verdict is that the Common Fisheries Policy is a conservative policy in a sense that through its reforms, the status quo was reaffirmed. The most apparent example is the conservation policy: the system of Total Allowable Catch (TAC) and quotas distributed between Member States according to the principle of relative stability, introduced in 1983, have from the beginning failed to serve as proper conservation tools because the trend of depleting fish stocks in the waters they apply to has not been reversed. Despite that fact, they have remained relatively

unchanged. The Commission also decided to forego the opportunity to reform the system as part of the 2002 reform in order to maintain political stability.

The rules regarding the 6 to 12 mile limit suffer from a similar fate, where arrangements that were initially designed to be of temporary duration have become *de facto* permanent. Symes (1997a: 141f) shares this view, giving the following analysis on the extension of the provisions on the 6 to 12 mile limit in 1992:

This was the first of a series of checks and balances that were to confirm the CFP as a conservative instrument designed to protect the status quo rather than a radical new design for international fisheries management.

But one of the major problems of today's CFP had been created before a conservation regime even existed: Community subsidies for the sector, especially for the construction and modernisation of vessels, have existed since 1970 as a result of the compromise that was necessary for France to agree to the equal access principle¹⁸.

This conservative approach is a strong indicator that the liberal intergovernmentalist view of European integration is viable to explain the evolution of the CFP, especially the first and the fourth pillar of the CFP, the structural policy and the conservation policy. From the very beginning, benefits certain member states anticipated for their domestic industries were important reasons why aspects of the CFP were put onto the policy-making agenda. Similarly, preferences formed on the domestic level dominated most negotiations on the policy. This is especially true for negotiations on distributive matters, such as TACs, quotas or public aid and to a lesser extent for negotiations on matters linked to those issues, such as enforcement and control, which can have indirect distributive elements.

Liberal intergovernmentalism also presents its case when looking at aspects of neo-functionalism that cannot be found in the CFP. One example is the absence of political spillover in the 2002 reform, when even the Member States that agreed with the Commission's proposals at large rejected the transfer of additional power to the Commission.

Second, the formation of public actors on the supranational level: Except for the EU-wide lobbying group *Europêche* that was formed in the 1970s, organization of

¹⁸ One should however refrain from the simplification to depict France as scapegoat to explain the failure of the CFP as reality is, as usual, complex than that.

fishermen at the European level has been relatively weak. This is also due to the heterogeneity and fragmentation of the sector in the Member States. (Lequesne, 2005: 360f)

When looking at integrative aspects of the policy, however, then the tables are turned. The most important example is the third pillar of the CFP, the transfer of power to enter agreements from the national to the supranational level through the Hague Resolution, which is a spillover from the Community adoption of the 200-mile Exclusive Economic Zone (EEZ). This is only one of the examples discussed in this paper of why neo-functionalism cannot be dismissed as an explanation for the evolution of the policy.

One also needs to look closer at the other pillars of the CFP. Taking the conservation policy as an example, liberal intergovernmentalism clearly serves as the better explanatory theory at the level of policy-making. But on the level of agenda setting, things are less clear. While none of the Member States was enthusiastic about a common conservation regime, they realized at the same time that for the vast size of the enlarged Community Sea, the situation back then posed not only immense legal difficulties but also problems regarding manageability.

Enlargement of the Community also played an important role in the evolution of the CFP. Agreement on the 1970 CFP was partly reached because the Six wanted to present the four candidate countries Denmark, Norway, Ireland and the UK with an *acquis communautaire* that they had to accept so they would not be able to be part of the negotiations on the initial policy. Also in 1983, there is some evidence that the looming accession of Spain and Portugal pressured the Community into reaching agreement on a common conservation policy. The most important accession, however, was the one of Spain and Portugal, who only fully joined the CFP after a 20 yearlong transition period. Both countries used the dissatisfaction with this arrangement and their opposition to the principle of relative stability to oppose the 1992 review and to threaten to veto the accession of Austria, Finland, Norway and Sweden. With an inefficient fisheries sector that relies heavily on financial support from the Community, Spain has also become the largest recipient of funds through the European Fisheries Fund.

CFP	NO. OF MEMBER STATES	IMPORTANT COALITIONS	MAJORITY REQUIREMENT	VOTED AGAINST
1970	6	FR, IT only agreed to the equal access principle after DE, NL, BE, LUX were ready to agree on exceptions and on Community funding for the sector.	<i>de jure</i> : QMV <i>de facto</i> : unanimity (Luxembourg Compromise)	-
1983	10	IRE, UK favoured a more restrictive equal access principle; FR (and others) favoured unrestricted application. The compromise reaffirmed the status quo.	<i>de jure</i> : QMV <i>de facto</i> : unanimity (Luxembourg Compromise)	-
1992	12	-	QMV	ES
2002	15	<i>Amis de la Pêche</i> (FR, GR, IRE, IT, PT, ES) supported a stronger socio-economic perspective of the CFP and successfully weakened the Commission's plan to eliminate subsidies and reduce capacity (strongly supported by DE, SE; also UK, NL, BE and others)	QMV	DE, SE

Figure 11: Overview of important coalitions and voting for the four major CFP packages

Spain was also one of the driving forces behind the *Amis de la Pêche* (AdIP, translated: Friends of Fisheries), the group of countries that successfully lobbied against the Commission's radical plans to eliminate subsidies and decrease overcapacity.

As it can be seen from the table above, coalitions have played a notable role throughout the history of the CFP. Strong domestic preferences combined with the practice of the Luxembourg compromise, which, until 1983, made it necessary for the Council to reach agreement unanimously, led to stalemates and endless negotiations. Qualified majority voting and an enlarged Community therefore were probably the main reasons why the negotiations on the 1992 review and the 2002 reform, each lasting under a year, were considerably shorter than the ones on the first CFP between 1966 and 1970 and the first comprehensive CFP between 1976 and 1983.

One must not overlook the contribution that the European Court of Justice (ECJ) has made towards advancing the Common Fisheries Policy. In the late 1970s, the legal provisions on fisheries governance in the Community were confusing at best and little precedence existed. Nonetheless, the Court had consistently ruled to clarify Community competences through a rather strict application of Community principles. In the *Kramer*

case (ECJ judgement Joined Cases C-3, 4 and 6/76 of 14 July 1976), the ECJ confirmed the Community's exclusive treaty-making power in the area of fisheries at latest from 1979 on. Also, the invalidation of discriminatory national measures through the rulings in both the *Irish Fisheries* (ECJ judgement Case C-61/77 of 16 February 1978) and *Factortame II* (ECJ judgement Case C-221/89 of 25 July 1991) cases was crucial for the political debate at the time, as further debate on these measures or a different ECJ decision most likely would have led to further protracting progress in the evolution of the CFP.

Some ECJ cases related to fisheries also proved to be important to the European integration process in general. Through the Kramer case, the ECJ extended its view on implied treaty-making power it had laid out in the ERTA case. The judgement to the *Factortame I* case (ECJ judgement Case C-213/89 of 19 June 1990) confirmed the primacy of Community law over national law and the judgement to *Factortame II* clarified the definition of the freedom of establishment.

ECJ jurisprudence in the field of fisheries therefore not only strengthened the Community's competencies and regulatory capacity not only regarding the CFP but also when it comes to Community principles – a fact which caters to the neo-functionalist argument that the ECJ is a very important institution advancing European integration as the ECJ's case law can generate a dynamic, which, together with relevant treaty provisions and secondary legislation gradually leads to a deepening of integration in a sector and not uncommonly to spillovers.

If one wants to pass judgement on the explanatory viability of the two grand theories of European integration, the lesson learned by the example of the CFP is that neither one can be dismissed.

After looking at the structural level, the policy will now be analyzed using the paradigms of fisheries management. Three groups can be identified in the evolution of the Common Fisheries Policy, each of which corresponds to one of the paradigms of fisheries management described by Charles (1992). The first group, whose policy preferences lie closest to the rationalization paradigm, has traditionally encompassed Germany and the Netherlands. These countries have been critical of subsidies for the fisheries sector since the late 1960s, when Germany and the Netherlands only agreed

channelling funds from the European Agricultural Guidance and Guarantee Fund (EAGGF) to the sector because that was necessary to find a compromise with France and Italy. As the Community expanded, several other countries can also be counted as members of this group. This could be seen in 2002, when Sweden, the United Kingdom and others also spoke out against subsidies.

This group's preferences can be described as close to the Commission's in many aspects, something that has been also been visible during the negotiations on the 2002 reform. However, one cannot assume that this group is not acting driven by national interests or even see this as a symbol of a neo-functionalist way of European integration. Most notably, this group has refused the transfer of additional powers to the Commission in 2002. Also, these countries have always had a comparatively more efficient fleet.

The Commission, in its role as the Guardian of the Treaties, generally supports the reasoning of rationalisation through its effort to create a common market for fisheries products and its fight against protectionism and for the European ideal. But with the advent of a common conservation policy, however, the depletion of resources moved to the centre of the Commission's attention. In 2002, it was clearly visible that rationalization was merely a tool to reach conservation goals rather than a goal in itself. When stocks are heavily overfished, resource conservation is a top priority for actors striving for rationalization as well as conservationists.

Clearly different preferences can be found when looking at the third group, which always devoted most attention to the socio-economic aspects of the CFP. Interests of fishermen and social coherence always come first for actors in this group, who are *friends of fishermen* rather than *friends of fish*. France initially led it, when it fought together with Italy for Community funds from the EAGGF in the late 1960s and against the equal access regime. Later, France found in Spain an even more vocal heir to the throne. Their characteristics and interests were most visible when France, Greece, Ireland, Italy, Portugal and Spain formed the AdIP coalition, a partnership that managed to significantly defend its interests in the 2002 reform of the policy. This also shows that the dominance of this group has practically been unbroken. The few ambitious reform attempts in the early proposals for the 2002 reform have been largely averted and the

issue of aid, on different levels and in different forms, has not been properly resolved for over 40 years.

It is important to point out that no actor fits one hundred per cent into a single group, as this would be a simplification of reality. But the framework still gives a good overview to understand the dynamics and positions throughout the evolution of the CFP.

When asking if the CFP has been a suitable policy to tackle the Tragedy of the Commons then, after everything that has been discussed in this paper, the answer must be a clear no. In fact, it is an example par excellence for how the lack of coercion leads to the depletion of a resource. Hardin (1968) argued, that coercion that is mutually agreed upon is capable of preventing this situation, and at the first glance, one might consider the CFP as a common policy to fit the definition. But looking closer at the evolution of the CFP, one finds a history not of mutual coercion but of compromises whose content has been the least common denominator that Member States, defending their interests, were willing to agree on. They thereby acted the same way as the individual herder in Hardin's parable.

When one attempts to connect the three levels of analyses, then the abductive conclusion arises that there is a connection between the liberal-intergovernmentalist logic of integration and the dominance of the social/community paradigm and the prevalence of the Tragedy of the Commons. But it is rather dangerous to jump to such a conclusion. Even if the rationalization paradigm had been the dominating one throughout the evolution of the CFP, this would not have necessarily meant that integration would have proceeded in a neo-functionalist way or that the Tragedy of the Commons could be prevented.

Still, the main conclusion remains that the evolution of the Common Fisheries Policy has mainly been driven by Member States' domestic interests and not by European ideals. With the policy's ambiguous objectives stemming from its common ancestry with the Common Agricultural Policy and with its strong short-term focus on the socio-economic perspective it has failed to accomplish its most crucial task – to make sure that there are enough fish.

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ABSTRACT (ENGLISH)

This paper seeks to analyze the evolution of the EU Common Fisheries Policy (CFP) as a Community tool for the management of a common-pool resource in the context of European Integration. The theoretical framework, comprising different levels of analysis, employs European integration theories (Neo-Functionalism and Liberal Intergovernmentalism), paradigms of fisheries management (conservation, economic and social/community) and the concept of common goods.

Spillover contributed to the two pillars of the original policy, the structural policy and the common market organization, being complemented by a resource conservation regime and a common external policy. Also, the European Court of Justice has played a significant role in confirming the supremacy of Community law in this field. At the same time, domestic interests in several Member States led to the extenuation of the Commission's proposals and to perennial stalemates, especially in negotiations on distributive matters. Furthermore, since the adoption of the first CFP in 1970, overdue reforms were not undertaken and others enshrined the status quo through repeatedly renewing derogations and thereby making them de facto permanent. Looking at the CFP, neither neo-functionalism nor liberal intergovernmentalism can hence be fully accepted or rejected.

Pertaining to the concept of common goods, the CFP has evidently failed to prevent the Tragedy of the Commons as most major fish stocks in Community waters are far below the level of 1983 when the common conservation regime went into effect. This trend has been exacerbated by the tendency of the policy to be designed along the lines of the social/community paradigm and by its ambiguous objectives stemming from its shared heritage with the Common Agricultural Policy.

Whereas important steps have been undertaken in past reviews, the next reform scheduled to be in effect in 2013 must tackle the issue of overcapacity. The integration of Iceland, Europe's second largest fishing nation, into the CFP could pose a further challenge for the policy.

ABSTRACT (DEUTSCH)

Diese Arbeit analysiert die Entwicklung der Gemeinsamen Fischereipolitik (GFP) der EU als Instrument für das Management eines Allmendegutes im Kontext der Europäischen Integration. Der theoretische Rahmen besteht aus verschiedenen Analyseebenen und bedient sich der Europäischen Integrationstheorien (Neofunktionalismus und Liberaler Intergouvernementalismus), der Paradigmen der Fischereiwirtschaft (ökologisch, wirtschaftlich und sozial) und dem Konzept der Allmendegüter.

Spillover hat wesentlich dazu beigetragen, dass die beiden Pfeiler der ursprünglichen GFP, die Strukturpolitik und die Gemeinsame Marktorganisation, durch eine Bestandsbewirtschaftungspolitik und exklusive Kompetenz bezüglich internationaler Beziehungen ergänzt wurden. Darüber hinaus hat der Europäische Gerichtshof eine signifikante Rolle darin gespielt, die Vormachtstellung des Europarechts in diesem Feld zu bestätigen. Gleichzeitig haben aber nationale Interessen in einigen Mitgliedsstaaten zur Verwässerung der Vorschläge der Kommission und zu mehrjährigen Pattsituationen in Verhandlungen geführt. Darüber hinaus wurden seit dem In-Kraft-Treten der ersten GFP im Jahre 1970 wichtige Reformen aufgeschoben. Daher kann man, wenn man die Entwicklung der GFP betrachtet, zum Schluss kommen, dass weder Neo-Funktionalismus noch Liberaler Intergouvernementalismus bestätigt werden können.

Bezüglich des Konzeptes der Allmendegüter ist festzustellen, dass die GFP es nicht geschafft hat, eine Tragik der Allmende zu verhindern, da die wichtigsten Fischbestände der EU weit unter dem Level von 1983, dem Jahr, als die Bestandsbewirtschaftungspolitik in Kraft trat, sind. Dieser Trend wurde verstärkt durch die Tendenz der GFP eher das soziale Paradigma der Fischereiwirtschaft zu bedienen; sowie durch ihre uneindeutigen Zielsetzungen, welche den gleichen Ursprung wie die der Gemeinsamen Agrarpolitik (GAP) haben.

Obwohl in der Vergangenheit bereits wichtige Fortschritte erzielt wurden, so muss die für 2013 geplante Reform die Reduktion der Überkapazität bewältigen. Die Integration Islands, Europas zweitgrößter Fischereination, in die GFP stellt eine weitere Herausforderung da.