Social Sciences Research Centre
Institute for European Integration Research

ÖAW
Austrian Academy
of Sciences

Institute for European Integration Research

Working Paper Series

The Evolution of the Common Fisheries Policy: Governance of a Common-Pool Resource in the Context of European Integration

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Working Paper No. 07/2010
November 2010

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Vorwort der Institutsleitung

Dieser Text stellt die gekürzte Fassung einer erfolgreichen Diplomarbeit an der Universität Wien dar, die von der Direktorin des EIF betreut wurde. Die Fischereipolitik der EU ist noch bei weitem nicht ausreichend studiert und Fragen der Entwicklung von EU-Politiken im Zeitverlauf liegen im Schwerpunktbereich der Arbeit des EIF. Wenngleich eine abschließende Beurteilung fraglos aufbauender Studien bedarf, empfiehlt sich daher meines Erachtens die Zurverfügungstellung der vorliegenden Arbeit für die wissenschaftliche und politische Öffentlichkeit, was in dieser Form eines EIF - Working Papers gewährleistet werden soll.

Gerda Falkner
(Direktorin des EIF)

Abstract

This paper seeks to analyse 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 development of the two pillars of the original policy, the structural policy and the common market organisation, which was complemented by a resource conservation regime and a common external policy regarding fisheries. 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 Commission proposals and to perennial stalemates, also due to the Luxembourg Compromise and especially in negotiations on distributive matters. Furthermore, since the adoption of the first CFP in 1970, overdue reforms have not been undertaken (particularly the introduction of individual transferable quotas as a market-based management tool and a definitive end to subsidising overcapacity). Partial reforms, especially concerning equal access, enshrined the status quo through repeatedly renewing derogations, thereby making them de facto permanent.

The CFP has evidently failed to prevent the Tragedy of the Commons as most major fish stocks in Community waters are far below their 1983 levels, the year the common conservation regime went into effect. This trend has been exacerbated not only due to the CFP's ambiguous objectives that stem from its common heritage with the Common Agricultural Policy (CAP) but also through a tendency of the policy to be oriented toward the social/community paradigm of fisheries management.

Zusammenfassung

In diesem Working Paper wird die Entwicklung der Gemeinsamen Fischereipolitik der EU (GFP) als ein gemeinschaftliches Werkzeug für das Management eines Allmendegutes im Kontext der europäischen Integration analysiert. Der theoretische Rahmen nützt Theorien der europäischen Integration (Neofunktionalismus und liberaler Intergouvernementalismus), Paradigmen des Fischereimanagementes und das Konzept der Allmendegüter.

Prozesse von ‚Spillover" haben die Integration der Fischereipolitik befördert und dazu beigetragen, dass die beiden Pfeiler der ursprünglichen GFP (die Strukturpolitik und die gemeinsame Marktorganisation) durch eine Bestandsbewirtschaftungspolitik und durch exklusive Gemeinschaftskompetenz für Beziehungen zu Drittstaaten im Bereich der Fischerei ergänzt wurden. Außerdem spielte der Europäische Gerichtshof durch die Bestätigung des Vorranges des Gemeinschaftsrechtes (in diesem Bereich und auch darüber hinaus) eine bedeutende Rolle.

Gleichzeitig haben allerdings nationale Interessen etlicher Mitgliedsstaaten die Entfaltung der gemeinschaftlichen Fischereipolitik behindert sowie zur Verwässerung von Kommissionsvorschlägen und zu mehrjährigen Pattsituationen geführt. Dies geschah nicht zuletzt auf Grundlage des ‚Luxemburger Kompromisses' und vor allem bei Verhandlungen über distributive Fragen. Seit dem In-Kraft-Treten der ersten GFP im Jahre 1970 wurden daher wichtige Reformen aufgeschoben (besonders die Einführung marktnaher Managementinstrumente wie ITQs sowie ein Ende der Subventionierung von Überkapazitäten). Zugleich verankerten manche verabschiedeten Reformschritte nur den Status Quo oder verlängerten befristete Ausnahmen bis diese de facto permanent wurden (insbesondere im Bezug auf 'equal access').

Die GFP hat es offensichtlich nicht geschafft, die klassische ‚Tragik der Allmende' zu verhindern: Die wichtigsten Fischbestände in Gewässern der EU sind heute weit unter dem Niveau des Jahres 1983, als die gemeinsame Bestandsbewirtschaftungspolitik in Kraft trat. Dazu trugen auch die uneindeutigen Zielsetzungen der GFP, die als Politik ihren Ursprung in der Agrarpolitik hat (GAP), sowie die Ausrichtung der GFP eher auf das 'social/community' Paradigma der Fischereiwirtschaft als auf Wirtschaftlichkeit oder Schutz der Fischbestände bei.

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1. INTRODUCTION AND CONCEPTUAL FRAMEWORK

> 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 fiftieth 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 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 of 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 on the policy. The author agrees with Conceição-Heldt (2004: 29) that previous research has often been too normative or descriptive. Most notably, this paper 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 an 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 authors have connected the CFP to the overall European integration process, notably Leigh (1983), Symes and Crean (1995) and Arason (2003). However, that the CFP is

an excellent case for the study of 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 understand 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 devoted to the nature of the resource. As a common-pool resource, a type of common goods, fish differ considerably from the vast majority of goods and services in its economic characteristics. Yet, 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.

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 the European integration process?

To answer the research question concisely, the scope of this paper is limited. For instance, it does not cover developments in the Baltic Sea or the Mediterranean since the policy for these areas is still in its infancy, as it has focussed on the North Atlantic and North Sea for the longest time because they account for over two-thirds of EU catches. 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 until the last decade or so.

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 employed:

a) On the largest level of social/political structures: The 'grand theories' of European integration

Neo-functionalism is one of the two grand theories of European integration. It is based on the work of Ernst Haas, who sees political integration in the following light:

> 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)

An essential concept of neo-functionalism is spillover, which Schmitter (1969: 162) defines based on an institutional understanding of integration and characterises 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.

Liberal intergovernmentalism, the second grand theory, was developed in the early 1990s by Andrew Moravcsik. He largely rejected the ideas of neo-functionalism:

> 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 interests they are, how conflicts among them are resolved, by what means they are translated into policy, and when they require political integration. (Moravcsik, 1993: 479)

Liberal intergovernmentalism is based on elements of realism and liberalism (Rosamond, 2000: 136) and focuses on the interaction between the national and supranational levels. 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, with their respective interests and influences on domestic policy, enunciate preferences and governments aggregate them. 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)

b) On the level of policy objectives: Framework of fisheries management

Fisheries policy discussions have to be understood as interactions between aggregate individual actors with different sets of preferences. Charles (1992) argued that due to the limited possibility of increasing sustainable benefits through increased production because of the nature of the resource, decisions concerning efficiency and allocation are the only available fishing policy tools; both of an inherently very philosophical nature. The three fundamental objectives of the Common Fisheries Policy 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 in the following way:

The *conversation paradigm* is grounded in the belief that fisheries management is primarily used to take care of the fish. Fishers act in their interest and conservation policy is necessary to ensure long-term sustainability of the business. It emphasises the importance of biological studies aimed at ensuring the sustainable capacity of fish stocks, for instance at the Maximum Sustainable Yield (MSY).

The *rationalisation paradigm* focuses on wealth generation and a maximisation of fishery rents, for instance at the Maximum Economic Yield (MEY). With the advance of neo-liberalism it has gained support amongst biologists and fisheries managers who claim that rationalisation could serve both conservationist goals as well as the industry striving for increased economic efficiency.

The *social/community paradigm* focuses on fishing communities, distributional equality and general social and cultural fisheries benefits. It emphasises the fishers as members of coastal communities rather than individualistic firms or parts of a fleet.

c) Explaining behaviour and motivations of individual actors: The concept of Common Goods

Fish is a common-pool resource, and such a resource, per definition, is characterised by rivalry and non-excludability. The classification of goods and services in terms of rivalry and excludability is made by Musgrave (1959). Non-excludability means that no individual can be excluded from the consumption of such a good. Rivalry describes a characteristic of 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, on the contrary, 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.

Hardin (1968: 1243ff) was the first to conceptualise the *Tragedy of the Commons*. It is the first of three influential models (the other two being Game Theory and the logic of collective action) identified by Ostrom (1990: 2) that can be seen as a starting point for today's research on common goods. Hardin 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 maximise 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 herdsmen, 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.

2. BACKGROUND: THE FISHERIES SECTOR IN EUROPE

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: 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 EEA Member States amounts to 4,053,667 tons or 71.98 per cent of total EU catches.

Figure 1: Fisheries Statistics for Europe's six largest fishing nations

	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	83	21.4	100
ES	768	- 2 807	87 310	19	44.7	26.29
DK	911	795	14 060	26	23.1	3.16
FR	595	- 2 719	64 712	10	33.6	5.02
UK	669	- 1 569	33 534	6	20.0	3.2
IS	1 661	1 374	6 100	191	91.4	-
NO	2 393	3 726	20 094	42	47.7	-

Fisheries Statistics for Europe's six largest fishing nations (in terms of catch volume) comparing catches, trade balance, employment, consumption and EFF-allocation[1]. 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 small. It is above average in Denmark and Spain, the two largest EU fishing nations, and above one-third of a per cent in the two largest European fishing nations, Iceland and Norway (European Communities, 2008).

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

Human consumption of fisheries products in the European Union averages 21.4 kg 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 Policy was used for processing and marketing, followed by the 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 EUR, followed by Italy with 10.2 per cent and France with 6.9 per cent. Under the European Fisheries Fund (EFF), Spain is still set to receive the largest share with 26.3 per cent of the 4.6 billion EUR pot for the 2007-2013 period (European Communities, 2008).

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

Fisheries are accounted for as part of the primary sector of the economy. Despite its almost negligible contribution to employment and GNP, fishing is nonetheless a politically sensitive subject due to a concentration of fishing activities in rural coastal regions and the image of fisheries as an ancient, traditional activity that is resistant to change. The field of fisheries policy *per se* is functionally limited, but spills over into many areas bordering on high policy.

3. THE ROAD TOWARDS THE FIRST COMMON FISHERIES POLICY

> 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, one must look at the situation of international fisheries management before the first CFP was adopted, especially concerning 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 eighteenth century, the zone of jurisdiction for coastal states used to be a narrow 3-mile band – approximately the distance a cannon could fire from the shore (Walker, 1945: 210ff).

The first steps away from open access were taken through international conventions, such as the European Fisheries Convention of 1964, according to which signatory countries were able to restrict access to waters up to twelve nautical miles off their costal base lines. Besides that, 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.

On the level of the European Community, the basis for the Common Fisheries Policy was established in the Treaty of Rome, in the section on agriculture. Article 38 (1) EEC 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 the only one in which fisheries are referred to in the whole document. As a part of agriculture, the same provisions that authorised the Common Agricultural Policy (CAP) in the Treaty, Articles 38-47 EEC, also authorised a common fisheries policy. At first glance, it seems logical to include fisheries as part of agriculture, since fishing is also part of the primary economic sector. Contrary to agricultural goods, however, fish is a common-pool resource. It is to be doubted that 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 with the CAP.

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 utilisation of the factors of production, in particular labour
b) This to ensure a fair standard of living for the agricultural community (…)
c) To stabilise markets
d) To assure the availability of supplies
e) To ensure that supplies reach consumers at reasonable prices

Trying to apply these objectives to the fisheries sector, considerable difficulties arise. Churchill (1987: 24) elaborates on the 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 occur through the objective of promoting 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 measures[2].

Generally, Member States *"appeared to be in little hurry"* (Farnell & Elles, 1984: 10) to implement a common policy on fisheries even after agreement on the CAP had been reached in 1960. The Treaty, however, gave the Six some time since Article 40 (1) EEC specified 31 December 1969 as deadline.

Preceding the first CFP were widely differing ways for countries to regulate market access, market organisation, subsidies and resource management. The Community had only been

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

involved in fisheries through the creation of a customs union. The then new Common Customs Tariff (CCT) for fisheries was low compared to the tariffs that some Member States had upheld to protect their domestic fisheries. As a result, fisheries became subject to supranational politicising for the first time.

Before 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 led the French government to demand a Common Market Organisation for fisheries products (Wise, 1984: 88). A first report on the situation of fisheries in the Community (COM (66)250 final) 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 diverged considerably:

France's primary objective, also supported by Italy, was, with the help of aid from the EEC to be able to modernise its salt cod and tuna fleets that could not withstand trade liberalisation 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 organisation 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 contended with the consequences of trade liberalisation, but also modern distant water fleets and politically relatively liberal laissez-faire ethics that, together with a fairly narrow coast line, led to opposition to France's and Italy's demands. Germany feared that it would have to contribute the most to the policy, but would profit the least from it (Lequesne, 2004: 19).

For years, progress was blocked in the Council through the practice of the Luxembourg Compromise. 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 that

was not an outright victory for either side: Germany and the Netherlands agreed to structural aid (although smaller in 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 on accession to the Community began. (Leigh, 1983: 37) It was the prospect of negotiations with these countries that had put the Six under pressure to agree. A communiqué issued upon the conclusion of the 1969 Hague Summit made it clear that 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 commuautaire* 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 organisation of the market in fishery products*, established the first two of the four pillars of today's EU Common Fisheries Policy.[3]

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."*

[3] The structural policy and the common market organisation, using the classification by Conceição-Heldt (2004: 17f)

Article 2 (1), the equal access provision, is the most crucial and controversial one, stipulating that Member States' legislation governing fisheries in the waters within their jurisdictions have to be non-discriminatory. Furthermore, it states that access to their respective 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 had a legal basis in the EEC Treaty. Regulation 2141/70 cited, in addition 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 Treaty[4]. Approving legislation based on all of the provisions mentioned requires the consultation of the European Parliament[5].

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

[4] Legislation authorised 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 authorised by Article 235 require unanimous agreement. For most fisheries legislation, however, citing Article 235 as legal basis is superfluous.

[5] 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)

> 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 the 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 structural policy, access to fishing grounds was no longer a national matter but from then on a supranational one. Formally, according to Article 5 this also was the case for conservation matters:

> 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 conversation 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) No conservation measures based on Article 5 were ever 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 so that common action to achieve the aims as stipulated in Article 39 of the Treaty is eligible for financing through the EAGGF. A Standing Committee for the Fishing Industry was established similar to the Standing Committee on Agricultural Structures authorised by Council Regulation (EEC) 17/64.

The Common Market Organisation was established through 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 authorised 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' organisations 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' organisations. For setting up producers' organisations, the regulation provided that half the cost would be paid by the Community and the other half by the respective Member States.

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 organisation 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 customs union, led to a situation where strains on the inefficient fishing 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 challenges created by market liberalisation had to be answered with market and structural policies harmonising conditions of competition and making it easier for weaker parts of the fishing sectors in respective Member States to adapt to liberalised markets while adhering to Community principles. Therefore, 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 both the liberalisation of markets and answering France's demands for community aid. 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 characterised by classic Community logrolling, 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. 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, indicating that a positive-sum outcome for all Member States was reached. 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 through package deals linking two aspects of the policy.

Applying the logic of liberal intergovernmentalism, the neo-functionalist view of the evolvement of the first CFP is somewhat challenged. According to 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 traditionally has been important, was under threat since fishers there could not withstand the pressure arising 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, a 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 imports from third countries.

Looking deeper into the aspect of policy demand, or rather the lack thereof, Farnell and Elles (1984: 10) believe 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."* 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 agree with it.

It is important to recall that the reason 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. Hence the only success for the Six was that a *fait accompli* had been created that had to be accepted in the upcoming accession negotiations.

Finally, one must also recognise that the Commission failed to a certain extent 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 envisioning a comprehensive Common Fisheries Policy, many aspects were sacrificed during the negotiations (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 the 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 any substantial research on the Commons – Hardin's Article was only published in 1968! 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."* 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.*"

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 organisation 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 SCALE AND SCOPE

In the following decade, three major events 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; and third, fish stocks in the North Atlantic started to deplete considerably.

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 had been reached. Given that this agreement took the applicant countries by surprise and considering the larger relative economic importance of fisheries in these countries, especially in Denmark[6] and Norway, it is understandable that the CFP became a major issue during 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.

In Norway, concerns about the protection of coastal fisheries contributed to the negative outcome of the referendum on accession in 1972. Ireland sought exemptions from the equal access rule with guarantees for inshore fisheries if those exemptions were not permanent. In the United Kingdom, first concerns about the non-existence of a conservation policy arose. British inshore fishers worried that the presence of foreign vessels using finer meshed nets would deplete inshore fish stocks. Britain therefore wanted to keep the 12-mile zone although this was against the *acquis communautaire* (Young, 1973: 99).

The compromise Denmark, Ireland and the UK agreed on 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. 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

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

coastal fisheries. Article 102 gives the Community the clear mandate to enforce conversation 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 countries 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.

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.

After Norway's decision not to join the Community, British fishers started to fish increasingly more in the open seas around Iceland. Concerns about consequences for the Icelandic fishing sector caused the Icelandic government to take 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 the creation of universal 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 threatening 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.*

The response of the Community to the challenges posed is referred to as the *Hague Resolution* (COM(76) 500 final, in: OJEC C105 of 7 May 1981).[7] The agreement on an Exclusive Economic Zone[8] of 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 was reached at the Hague summit at the end of October 1976. Churchill (1980: 9ff) notes 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 majority of Member States and the Commission argued that all this could be realised without having agreed on the principles of a comprehensive Common Fisheries Policy.

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 grants 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 national measures, it ultimately remained the task of the respective Member State and later the ECJ to decide what would happen if a measure proposed was not approved 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

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

[8] 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 costal state has the sole right to exploitation of all natural resources.

Article 2 (1) of Regulation 2141/70. Second, according to Article 2 and 3 of Regulation 2141/70, the Commission and other Member States had to be informed of such measures. Third, according to Article 100 (1) of the Accession Treaty, fishing within the exclusive coastal band must not be less restrictive than at the time of accession. Furthermore, the objectives and the functioning of the CFP must not be jeopardised by such measures. Annex VI ultimately became the instrument for the Community to implement conversation measures until 1983 (Leigh, 1983: 76).

Annex VII acknowledged the lack of agreement on the principles of a Common Fisheries Policy and expressed the will of the Council to take the 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 legality of Annex VII, and implicitly the legality of all annexes to the Hague resolution, was later questioned, mainly because of the fact that they remained unpublished (Conceição-Heldt, 2004: 102; ECJ judgement C-4/96 of 19 February 1998).[9]

The extended EEZ and the depletion of fish stocks in this zone, however, put the Community under enormous pressure to agree 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

[9] The question of legality 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.

respectively. This of course also affected trade in fisheries with third countries: In the first year of the enlarged Community, roughly 700,000 tons of fish products were imported but the number rose to around 1,100,000 in 1980 (ICES, 1978: 23; Farnell & Elles, 1984: 161).

The Commission, considering the actions of Iceland and Norway as well as another upcoming UNCLOS conference, anticipated the extension of the 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).

Interim conservation measures were taken by the Community as early as 1977 and annual catch rates, further referred to as total allowable catch (TAC), had been proposed by the Commission for every year between 1978 and 1982 but were only once, in 1980, 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 augmented the importance of the European Court of Justice (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 Elles, 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 fishers 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 based on its 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. 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 (ECJ judgement Joined Cases C-3, 4, and 6/76 of 14 July 1976).

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 had 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.[10] This is one of the rare cases where the European Court of Justice prescribes regulation through its rulings.

[10] "From the point of view of law the duty of Member States having jurisdiction in this fishing zone may be deducted 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 emphasise 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. Neither the views of the Commission nor internal or external pressure 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.

Continuing derogations and exceptions from equal access seemed *"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 Elles, 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 increasingly up to the point where the question whether it was a viable mean to guarantee non-discrimination arose.

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 during The Hague summit no agreement on a comprehensive CFP was reached shows that there is nothing inevitable about European integration. Competing

claims to scare 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 organisation"* (Leigh, 1983: 76). Contrary to previous international fisheries commissions it "*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 usually means a reduction in catch, which, given technical advancements and general overcapacity, required sacrifices that national governments were unwilling or even unable to make. 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 Elles, 1984: 191) let alone the role of a supranational authority.

Furthermore, it became increasingly obvious that fisheries conservation is more complicated, especially politically, than managing the CAP, where producers are able to adjust production at will. Added to the political complexity of the subject was 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 intergovernmentalist axiom, it is no surprise that agreement was not reached. 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 intent to 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 optimise 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 organisation and relations with third countries; and thereby establishing a conversation and management policy as the fourth pillar of the CFP which introduced a TAC (total allowable catch) and national quota system (Leigh 1983: 80, Conceição-Heldt 2004: 21).

The details of the technical conservation measures as well as the structural policy and the common market organisation in the 1983 CFP will only 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 Multi-annual Guidance Programmes (MAGPs) that set objectives for

developments in terms of fishing capacity, e.g. fleet reduction objectives. Holden (1996: 56) emphasises 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 organisation in the 1983 CFP is that the Community adopted a system that 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 continues 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.

Still, one might wonder why it was possible that a TAC and quota system was adopted at all. Apart from the argument of geographical spillover, 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. 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 governed 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. Similarly, it must be concluded that neo-functionalism does not serve as a viable theory explaining the evolvement 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 utilise 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 chairperson Poul Tørring commented that the 1983 CFP, just like the CAP, 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 times[11]. 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 politicisation"* (Conceição-Heldt, 2006: 77) were high since the fisheries sector in these countries is on the regional level economically and socially very important.

If one must pinpoint a decisive factor 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. Furthermore, 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 Elles (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."*

[11] It is safe to argue that France must be added to this list as well.

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, a) the equal access debate, and b), the set of problems surrounding resource conservation.

a) Renegotiating "Equal" Access

In terms of access, the Community was facing a situation where, if nothing would have been done, the derogations laid out in the Treaty of Accession of UK, Denmark and Ireland would have expired by the end of 1982, with the consequence that fishing would have been permitted up to the baselines, only 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 demanded an exclusive coastal band of 50 nm and the UK pushed for a 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 specifically between the UK and France who became the most insistent advocators of their respective demands. Ireland abandoned its claim for an exclusive 50-mile zone and accepted a compromise suggested by the Commission, including 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 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 the possibility of a twelve-mile exclusive zone.

At the end of 1980, France surprisingly rejected every compromise, 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 in putting forward earlier proposals.

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. 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 considering that Denmark and the Community could not agree on quotas. 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 generalisation 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).

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).[12]

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 (1) thereby extends the derogation of the exceptions from the equal access provision stipulated in the Act of Accession for another ten years. Article 6 (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 (i.e. the redefinition of historical rights).

Article 7 established the Shetland box, for which a licensing system applied for vessels larger than 26 meters around the Shetland and Orkney Islands. 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

[12] 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).

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.

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 actions. 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 assuming 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 reinforced by national political considerations: Although only 0.1 per cent of Brits were fishers, 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, Labour 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 the preservation of the historic rights. 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?*"

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) also 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.

b) <u>The Resource Conservation Debate</u>

To reach agreement on a conservation and management policy was in no way easier than on the revised structural policy. Even before the Hague summit, it was clear that a conservation policy should be based on a system of Total Allowable Catch (TAC) for Community waters and an internal distribution of the TACs that would take the Hague preferences as well as losses of Member States' catches in third country waters after the establishment of the 200 nm 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 conversation 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 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).

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 utilise 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 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. 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.

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

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 the distribution of herring quotas after a six-year long ban, the other Member States did not give in to Danish demands and adopted the decision by a majority vote.

To look at the actual effectiveness of the quota system, one has to keep in mind that distribution of resources is in central to 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 quota shares. Initially, the Commission took a conservationist approach and stuck to the scientific advice issued by ICES for its TAC proposals. 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.

Figure 2: Applicable countries' relative share of total TACs for seven demersal species

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%

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 prioritised over the biologically necessary reduction of TACs, setting precedence for inflating TACs.

The reason why the Commission focussed on a TAC and quota system in the first place can be explained by utility maximising considerations – the centralised 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 Spanwing 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.

Figure 3: Declining fish stocks between 1983 and 1992.

NEAFC IV	**SET OVER RECOMM. TAC**	**CATCHES OVER SET TAC**	**ΔSSB 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**	**ΔSSB 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%

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).

Generally, the TAC system does not seem to contribute significantly to reaching its objective. Karagiannakos (1996: 247) concluded that catches follow the biological condition of stocks more 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 review in 1992:

First, Member States have failed to comply with quota regulations. Second, the interdependency between fish stocks and the long-time development of fish stocks do not find any acknowledgement in the TAC system. Third, other conservation measures necessary and foreseen were only introduced reluctantly as the Council on various occasions did not accept necessary amendments to Regulation 171/83 proposed by the Commission. Finally, the first two MAGPs did not succeed in a major reduction of fleet capacity.

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 optimise 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 rationalisation 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.

6. THE ACCESSION OF THE IBERIAN PENINSULA

Regardless whether Spain's and Portugal's intention to join the Community contributed to reaching an agreement on the CFP, the *doubling of numbers* 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 required modernisation on an enormous scale. Furthermore, both countries' bilateral agreements with third countries 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 fifteen 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 countries, 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, including severe limitations for the number of vessels in Community waters and total exclusion of Spanish vessels from the Irish 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 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 by 1996.

The framework described above had serious repercussions in the following years. Spanish fishers 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 whereby a vessel could only be registered if it fulfilled certain criteria proving it had a *"genuine and substantial connection"* (1988 Merchant Shipping Act, Part II,

14, 3 (b)) with the UK, thereby making it practically impossible for fishers outside the UK to register their vessels in the country. Since the new system completely replaced 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 insisted 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 stability 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 what became 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. 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 was demanded.

The argument was, first, that accession of new Member States requires 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 1989, the principle would not be violated by including Spain and Portugal in the distribution especially because the Community did not utilised 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.).

Fff The transitional regime under the 1985 Act of Accession was also affirmed through 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

March 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.

In the same year that the Maastricht Treaty went into effect, a review of the Common Fisheries Policy had been conducted. A 1991 report from the Commission on the CFP it was acknowledged that the mechanisms introduced in 1983 to prevent overfishing were inadequate. They were 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. These arrangements were reinstated for another ten years. However, the Commission used the opportunity of a scheduled interim review, to tackle some of the problems expressed by its 1991 report on the policy (SEC(91) 2288 final).

First, a closer integration of the hitherto largely 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. 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 multi-annual and multi-species basis, thereby introducing MATACs and MSTACs. However, until the expiration of the regulation in 2002, the Council never made use of this possibility, and had 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.

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; they shall, however, be only briefly mentioned here in order to set the context for the 2002 reform.

First, the European Parliament, whose role before the 1992 reform was negligible, became a factor in the policy-making process. Under Article 37 TEC on the CAP it was only necessary to consult Parliament and even that obligation had been circumvented frequently. The EP looked for other ways to intervene, e.g. through the annual budgetary process or through debates on the structural funds. Since 1994, the EP had a full committee on fisheries and has since been 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 (EPP) from Spain and the Spanish Committee members who used it as a forum to make their case for Spain's full integration into the CFP heard (Steel, 1998: 40).

The EP has also been the only institution calling 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 fish[13] 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 frequently. The most important case in the 1990s was the banning of drift nets in the North Atlantic and the Mediterranean[14] that was opposed by Ireland and France (Lequesne, 2005: 363).

Fourth, 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. David Cameron advocated the same when he took over as Leader of the Opposition but changed his mind in November 2006.

Fifth, the Council through the adoption of the FIFG 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).

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[13] 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.

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

Sixth, 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 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.

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 summarised 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 have been inadequate and that the relationship between scientists and fishers is critical as the latter accuse the former of not taking their knowledge seriously into account (Ibd.).

In the *Report on the Economic and Social Situation of Coastal Regions* (SEC(2001) 419) the Commission 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. Although a

reduction in fishing effort would in principle be sufficient to meet conversation 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.

Although the CFP had not undergone any drastic changes before the 2002 reform, there were some modest advancements in its deepening. 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. Generally, however, political integration in the sector between the adoption of the 1983 CFP and the 2002 reform was very limited. During that time, fisheries were on a supranational level relatively far away from being an area of high politics.

Under the light of the above, 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 reopen the Pandora's Box that it had sealed in 1970 and 1983, and thereby questioning 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 towards 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 had emerged in the process, which were then tackled by the reform or were at least subject to debate. Due to the scope of this paper, a selection and consolidation of these issues is necessary. The 2002 reform will hence be analysed by looking at three specific topics: First, the continuation of the derogations on equal access in Regulation 170/83 set to expire by the end of 2002; second, fleet policy and public aid for the fishing sector; and finally, the system of Total Allowable Catch (TAC) and quotas (including the principle of relative stability and the Hague Preferences).

The first issue to be discussed is the equal access principle. Contrary to 1970 and 1983, it was not a source of major dissent during the reform process. 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, fishers 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.).

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 be reaffirmed. This position is not surprising from a strategic point of view since there were more controversial and unarguably more pressing issues that the DG Fish had to focus on; but it is surprising when considering the Commission's role and when looking at the arguments 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 discussed above, the Commission's argument that the objectives of this regime were of a conservationist nature clearly 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 did not take the preferences of the countries on the Iberian Peninsula into account and, in its first proposal, suggested that the exceptions from the equal access principle should be made permanent, also leaving 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, which ultimately had been realised.

The second area to be analysed, subsidies and fleet policy, became the core issue of the negotiations on the 2002 reform of the CFP 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 supported a line of thought linking conservation failure to overcapacity. Concretely, it suggested that aid policy often undermines the objectives of any measure to reduce capacity and furthermore, that subsidies for vessel construction and modernisation had 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. Furthermore:

> 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 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 of the document, France, Spain, Portugal, Italy, Greece, the Netherlands and Belgium felt that the socio-economic perspective had not been taken into account. 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. In the plenary, however, sufficient support to call for the MAGPs to be scrapped was not found (Agence Europe, 17 January 2002).

In expectation of first proposals by the Commission in March 2002, France, Greece, Ireland, Italy, Portugal and Spain formed an informal group named *Amis de la Pêche* (AdlP) that adopted their own conclusions on the future of the Common Fisheries Policy. Their aim was to put the socio-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 provided fully by the EU. Although they opposed financial support through the

FIFG for a total increase in fishing effort, they advocated the continuation of aid for the renewal and modernisation of fleets (Agence Europe, 11 February 2002).

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. 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 AdlP.

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 AdlP group on the subsidies issue just before the decisive Council meeting in December. To obtain 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 analysed in more detail is the conservation policy. From the launch 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 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 fishers from the Netherlands and Spain were in favour of an EU-wide system of Individual Transferable

Quotas (ITQs). This would mean that an individual or entity would be granted the right to 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).

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). TACs were to be set through 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 set by the Commission in consultation with it's Committee for Fisheries and Aquaculture, implying 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).

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 AdlP 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. Except 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 emphasised that decisions on TACs and quotas were still a responsibility of the Council and maintained the Hague principles. Ultimately, this means that although multi-annual plans eliminated the annual TAC-setting (logrolling included) in its previous form, power remained with the Member States.

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 by 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 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. 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 devoted 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 worked 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 AdlP 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, 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. However, 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 these distributional matters amongst themselves.

Similarly, national interests 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 emphasised 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 also net contributors to the EU budget and 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 AdlP countries, also supported by Finland on the subsidies issue. For them, it was not only about keeping public aid but also about focussing on socio-economic aspects in general. They wanted the CFP to take into account the social and territorial dimension of fishing as well as finding greater acceptance of CFP rules amongst fishers. (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 fishers and not fish. Their insistence on the continuation of subsidies can be easily understood by looking at the amount granted for the 2000-2006 period: Spain alone received 46% of aid for fleet modernisation and renewal, meaning that almost half of the funds for these measures went to a single Member State. Also, the AdlP countries and Finland spend significantly more money on modernisation and renewal than most other Member States (European Information Service, 27 November 2002).

Although subsidies were not immediately scrapped, all countries except 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 AdlP's agreement to the compromise was the intention to put the issue on the table again at a later point for the period after 2006 as they saw public aid as a permanent feature of the policy (Hegland, 2004: 87).

As during the 1983 negotiations, when Commissioners at a certain point voted against adopting the Commission's proposals, domestic interests 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 activities were widespread, especially after the fisheries minister from Spain said on national television that the AdlP instructed their Commissioners to obstruct the reform. Commissioner Franz Fischler, when questioned by the EP, rejected any allegations that he had been influenced or put under pressure regarding the content and the postponement of the proposals for the new CFP. That Smidt was removed on the request of Spain could not be proven 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 AdlP 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, where the fact that he comes from a landlocked country (Austria) might play a role. 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.

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. 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.[15]

The Commission realised, 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 any further.

Noteworthy is also the role of the European Parliament during the 2002 reform process. It was 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 AdlP were taking, mainly due to Spain's influence in the EP's fisheries committee. According to Hegland (2004: 90) this 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 AdlP 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 AdlP countries, which is a view than can only be partly shared. While it is purely speculative, it can 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 AdlP countries since Spain,

[15] 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."*

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.

8. 2012: 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 again 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 was launched that lasted throughout 2009, the results have recently been published (SEC(2010)428 final).

The solutions, however, are already on the table. A definitive end of public aid for the industry is almost inevitable, but it might come at the price of more extensive programs to enable coastal areas to deal with the transformation accompanying it, primarily enabling fishers 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 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. When it is from a point of profitability and resource conservation not possible to sustain the current 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 to be able to get the approval of the former AdlP countries in the Council and it must also be ready to spend more money on vessel scrapping programs. Such measures, accompanying an end to public aid, make it possible for the Community to ensure in the medium to long term an efficient and sustainable

fishing sector and a drastic reduction of Community spending on fisheries or activities related to the sector.

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 has 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 intensifies 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 levy on fishing vessels' 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 have never heard of the Common Fisheries Policy (Agence Europe, 28 May 2008).

The reform of the CFP could also be a springboard for Norway and especially Iceland to join the EU (see especially Foss, Matthíasson and Ulrichsen, 2003). The CFP's failure combined with the high importance of the sector in both countries has made them wary of such a move. On an initiative of Icelandic Prime Minister Jóhanna Sigurðardóttir, the Icelandic parliament

gave a mandate to the government to start accession negotiations with the EU. Negotiations started on 27 July 2010, although a clear majority of Icelanders were opposed to entering the Community at that point.

Former European Commissioner for Enlargement Olli 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 (Þórhallsson, 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 privatisation of the resource, have been proven to effectively prevent collapses of fish stocks and to recover declining ones (The Economist, 18 September 2008). 2The introduction of more market-based systems for fisheries management in the Community is undoubtedly 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 will be 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 analysed 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. Conclusions will therefore be presented regarding a) the structural level; b) policy paradigms; and c) common-pool resource deliberations:

a) <u>On the largest level of social/political structures</u>

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 has been 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 principle.

This *conservative approach* is a strong indicator that the *liberal intergovernmentalist notion of European integration* can 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, the benefits that certain Member States anticipated for their domestic industries were important reasons why aspects of the CFP were put on 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. Another example is the formation of public actors on the supranational level: Except for the EU-wide lobbying group *Europêche* that was formed in the 1970s, organisation of fishers at the European level has, until recently, 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, the tables are turned. The third pillar of the CFP, the transfer of power to enter agreements from the national to the supranational level through the Hague Resolution, 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 are enthusiastic about a common conservation regime, they realised 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 that they would be unable to take part in 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-year-long transition period. Both countries, at least initially, 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. Spain was also one of the driving forces behind the *Amis de la Pêche* ('Friends of Fisheries'), the group of countries that successfully lobbied against the Commission's radical plans to eliminate subsidies and decrease overcapacity.

Figure 4: Overview of important coalitions and voting for the four major CFP packages

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.	*de jure*: QMV *de facto*: 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.	*de jure*: QMV *de facto*: unanimity (Luxembourg Compromise)	-
1992	12	-	QMV	ES
2002	15	*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)	QMV	DE, SE

As it can be seen in Figure 4, *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.

Additionally, one must not overlook the contribution that the European Court of Justice (ECJ) has made. 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 on 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 on *Factortame II* clarified the definition of the freedom of establishment.

ECJ jurisprudence in the field of fisheries therefore *not only strengthened the Community's competences and regulatory capacity pertaining to the CFP but also with regard to Community principles at large* – a fact that 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.

b) <u>On the level of aggregate individual actors: policy objectives</u>

After looking at the structural level, the policy will now be analysed 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 *rationalisation paradigm*, has traditionally encompassed Germany and the Netherlands. These countries have been criticising subsidies for the fisheries sector since the late 1960s, when Germany and the Netherlands only agreed on 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.

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*. 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 rationalisation 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 rationalisation as well as conservationists.

Clearly different preferences can be found when looking at the third group, which always devoted the most attention to the *socio-economic aspects of the CFP*. Interests of fishers and social coherence always come first for actors in this group, who are *friends of fishers* rather than *friends of fish*. France initially led it, when it fought together with Italy for Community funds from the EAGGF 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 AdlP, a partnership that managed to defend its interests during the 2002 reform process. 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.

c) <u>The CFP as a management tool of a common-pool resource</u>

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 collective action in a field concerning the distribution of a good that cannot be classified as a private good 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 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.

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