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Protecting the North-East Atlantic: Enhancing Synergies by Institutional Interplay

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Abstract

This article examines the interplay between three different international institutions on marine pollution in the North Sea and the wider North-East Atlantic: the International North Sea Conferences, the OSPAR-Convention and preceding conventions as well as the EU. It argues that interplay between these institutions have proved synergetic in two ways. First, the International North Sea Conference-process has speeded up decision making within OSPAR and the EU by means of leadership, change in membership and institutional arrangements. Second, OSPAR and the EU have subsequently facilitated domestic implementation of the North Sea Conference Declarations by means of higher authoritativeness and enforcement competence. These three institutions have fulfilled different functions all of which are needed to make international environmental cooperation effective.

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Keywords

Institutional interplay; international regimes; marine pollution, EU water policy; International North Sea Conferences; OSPAR-Convention;

1. Introduction

The North Sea has been a core area under the collaboration on the protection of the North-East Atlantic marine environment since the early 1970s. Many pollution problems such as land-based and ocean-based discharges of hazardous substances and nutrients have been among the major sources of contaminants to the North Sea. These problems have been dealt with more or less concurrently by three different types of international institutions: legal conventions on marine pollution; the International North Sea Conferences (INSC); and the European Union (EU).¹

Much of the literature on regime interplay tends to emphasise problems of institutional congestion and density [36, 28 and 23]. We would thus expect that a case such as this would represent a clear example of duplicated work and coordination problems leading to low effectiveness. Contrary to conventional wisdom, however, the three types of overlapping institutions covering the North Sea and the wider North-East Atlantic have proven mutually beneficial by fulfilling different functions all of which are needed to manage marine pollution effectively. Moreover, these functions would be difficult to manage within the same institution due to internal contradictory requirements. The result of institutional interplay in this policy field is evident in the significant overall reductions achieved in the emission of regulated organic substances, pesticides, heavy metals, nutrients, and dumping and incineration at sea [30–33].

The collective workings of the “soft law” INSCs, the “hard law” OSPAR and the “supranational” EU have proved instrumental for the achievements witnessed. The purpose of this article is to explore how and why these three institutions have proved synergetic in this policy field. After a brief introduction to the three core institutions, the article focuses on two relationships linked to various causal mechanisms. The first relationship centres on how the “soft law” INSC Declarations have speeded up collective decision making in OSPAR and the EU. This relationship is characterised by institutional interplay through joint international commitments at output level. The causal mechanisms are leadership, change in membership and institutional differences between the three institutions. The second relationship shows how OSPAR and the EU subsequently facilitated domestic implementation of the INSC Declarations by means of interplay through behaviour at outcome level. The causal mechanisms at work here are institutional authoritativeness and enforcement competence.

2. OSPAR, the International North Sea Conferences and the EU

The quarter-century history of international cooperation among countries bordering the North Sea/North-East Atlantic is the story of evolution from a state of water and marine pollution “anarchy” to domestic and international “governance”. In 1972, the Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft (Oslo Convention) was established. Signed by all 13 West European maritime states, the Oslo Convention covers the entire North-East Atlantic up to the North Pole. In 1974, the Convention for the Prevention of Marine Pollution from Land-based Sources – the Paris Convention – was signed in Paris by roughly the

¹ The term “European Union” will be used throughout this article also when referring to the period before the Treaty of Maastricht.

same states as the Oslo Convention. The Oslo and Paris Conventions were supported by a joint secretariat, executive commissions (Oslo and Paris Commissions) and several standing and ad hoc scientific/technical bodies.²

The Paris Convention allowed the European Union to join as a contracting member and water policy was the first sub-sector developed under EU environmental policy. The most significant directive concerned with water and marine pollution was the 1976 Directive on Pollution Caused by the Emission of Certain Dangerous Substances into the Aquatic Environment of the Community, the so-called Dangerous Substances Directive, which covers inland, coastal, and territorial waters. In addition, the 1979 Directive for the Protection of Shellfish Waters and the 1976 Directive for Bathing Waters were of some significance for marine pollution. However, the EU did not succeed in adopting a dumping directive, even though the first proposal had been submitted to the Council as early as in 1976. The environmental policy of the EU did not gain a firm legal basis until the Single European Act was adopted in 1986.

Spurred by dissatisfaction with existing international institutions, Germany took the initiative to arrange the first International North Sea Conference (INSC) in Bremen in 1984. This was originally conceived of as a one-off event, but these conferences evolved as a more permanent institution over time by the establishment of the standing Committee of North Sea Senior Officials (CONSSO).³ The Bremen Conference was followed by conferences in London 1987, The Hague 1990, Esbjerg (Denmark) 1995 and, most recently, Bergen (Norway) 2002. Conference participants have been the eight North Sea coastal states and the EU, which represent a sub-set of the original Oslo and Paris Conventions parties. From 1990, Switzerland was also invited to participate.

The London Declaration represented a turning point in its ambition to phase out dumping of industrial waste and incineration at sea, to reduce inputs of nutrients to sensitive areas, and to reduce total inputs of hazardous substances reaching the aquatic environment. The 1990 Hague Declaration clarified and strengthened the London Declaration, particularly concerning land-based sources. The Oslo and Paris Commissions together with the EU took significant steps in the same direction in the wake of the 1987 North Sea conference. In addition, these institutions were appreciably amended in the latter part of the 1980s. The 1987 Single European Act incorporated environmental protection into EU legislation, the 1991 Maastricht Treaty and the 1997 Amsterdam Treaty changed EU environmental decision-making from unanimity to qualified majority, and the Oslo and Paris Conventions were brought together in 1992 to form a single legal instrument for the protection of the North-East Atlantic (OSPAR Convention). In 2000, the EU adopted a Water Framework Directive (WFD) which replaced seven old directives, including the directive on dangerous substances.

The synergetic relationship between these institutions has been enhanced by means of conscious institutional design. The cases show how internal contradiction

² Two executive commissions – which met annually – were set up in order to implement and review the functioning of the Conventions. The Oslo Commission (OSCOM) and the Paris Commission (PARCOM) were assisted by the Standing Advisory Committee for Scientific Advice (SACSA) and the Technical Working Group (TWG) respectively, by ad hoc working groups and by the Joint Monitoring Group (JMG).

³ Accordingly, OSPAR and INSC can be treated as two separate although closely related institutions. OSPAR and INSC have separate agendas, differ in membership as well as in norms, rules and communication processes.

within the institutions initially “trapped” the parties in a situation of inertia. However, the North Sea experience show that the parties were able to change their path through leadership by creating a new institution – the INSCs – that became linked to OSPAR and the EU water policy. The INSCs were deliberately designed to speed up the decision making processes in these bodies.

3. Speeding up decision making by “soft laws”

By the early 1980s there were growing indications that specific regions in the North Sea were becoming severely polluted [4]. At the international level, neither the work of the Oslo and Paris Commissions or the EU suggested that stringent commitments could be initiated without additional political impetus. Against this backdrop of inertia, Germany took the initiative to arrange the first INSC at ministerial level in 1984. The International North Sea Conferences have had a profound impact on the Oslo and Paris Commissions as on the water and marine pollution policy of the EU. In this section we analyse the outcome of these INSC conferences, explore the responses of the Oslo and Paris Commissions and EU and explain why the INSCs succeeded in changing OSPARCOM and EU policies.

3.1. The Breakthrough: International North Sea Conference Declarations

The aim of the *1984 Bremen conference* was not to create a new set of international agreements, but to provide political impetus for intensifying the work of the existing international bodies [21]. Ministers of the eight North Sea Coastal States – Belgium, Germany, France, the Netherlands, Norway, Sweden, Denmark and the United Kingdom – met, as did representatives of the European Commission. However, the Conference Declaration contained hardly any substantive commitments and it did not significantly strengthen international marine pollution commitments [24]. On the other hand, the Bremen Declaration was probably the first international text to hint at the precautionary principle: “...coastal states and the EEC must not wait for proof of harmful effects before taking action” [21, p. 22]. The Bremen Conference had initially been envisaged as a one-off event, but the Ministers welcomed an invitation from the UK to host a second INSC to review implementation and adopt further measures.

The *1987 London Declaration* represented a turning point in stringency compared to the Bremen Declaration particularly with respect to dumping at sea. For the first time, it was decided to impose significant targets on dumping and incineration at sea within fixed time-limits. For example, the parties aimed at phasing out the dumping of industrial wastes in the North Sea by 31 December 1989. Commitments covering land-based sources were made subject to similar targets. Eutrophication was included for the first time, and ambitious goals were agreed for phosphorus and nitrogen substances: a substantial reduction (of the order of 50%) between 1985 and 1995 of inputs of phosphorus and nitrogen to those areas of the North Sea where such inputs are likely, directly or indirectly, to cause pollution. In effect, the agricultural sector was saddled with joint commitments. The commitments made with regard to hazardous substances also appear quite specific at first glance: a substantial reduction (of the order of 50%) between 1985 and 1995 in the total inputs to the North Sea via rivers and estuaries of substances that are persistent, toxic and liable to bioaccumulate. However, the Ministers failed to agree on specific substances beyond those already covered by international commitments. In contrast to the

Bremen Declaration, the London Declaration focused squarely on domestic implementation by requiring the preparation of national action plans on implementation. The 1987 London Declaration was finally the first international environmental text ever to incorporate explicitly the principle of precautionary action [2, p. 267].

The *1990 Hague Declaration* clarified and strengthened the London Declaration particularly concerning land-based sources. With regard to hazardous substances, the aim of reducing discharges of such substances to levels not *harmful to man or nature* was adopted for the first time, as a principle in Article 1 [21]. Against this backdrop, a list of 36 hazardous substances was adopted and directly linked to the 50% reduction target concerning hazardous substances. Moreover, the goal was changed from “of the order of 50%” to “50% or more”. With regard to nutrients, measures in the municipal, industrial and agricultural sectors were agreed upon, the most specific covering the municipal sector. Targets aimed at 70% reduction of land-based and atmospheric inputs were adopted for the most dangerous substances – dioxins, cadmium, mercury, and lead. Some new obligations were also adopted at the Hague Conference. Agreement was reached on phasing out and destroying PCBs and hazardous PCB substitutes by 1999 at the latest.

The *1995 Esbjerg Declaration* contained commitments on hazardous substances that could stand as a symbol of the significant gains made in international commitments from the 1970s to the present.⁴ In the mid-1980s, only a few substances were under international regulation and even fewer were made subject to elimination. Only, ten years later, the Ministers were agreeing to prevent the pollution of the North Sea by phasing out all hazardous substances:

“...by continuously reducing discharges, emissions and losses of hazardous substances thereby moving towards the target of their cessation within one generation (25 years) with the ultimate aim of concentrations in the environment near background values for naturally occurring substances and close to zero concentrations for man-made synthetic substances.” [11, p. 18].

3.2. *The Responses: OSPAR and the EU*

The decision procedures with the Oslo and Paris Commissions changed from the requirement of unanimity to consensus linked to various “fast track options” as a consequence of the INSCs. Previously, all 13 states bordering the North-East Atlantic had to agree on the same international regulations. The INSCs led to new decision making procedures that allowed differential obligations between North Sea and non-North Sea states.

The direct consequences of OSPAR and EU responses to the North Sea Declarations would be twofold. First, the North Sea Declarations would be transformed into legally binding commitments within the framework of international law in the form of OSPARCOM commitments and/or EU Regulations, Directives or Decisions. Second, the geographical coverage of the Declarations would be extended to the EU area and/or the North-East Atlantic area.

⁴ The 2002 Bergen Declaration is too recent to have caused any significant change in target institutions.

The specific pathways this process took resulted from a conscious effort to link the activities of different institutions. As we have seen, the INSC addressed issues and adopted commitments aimed at subsequent action within – to paraphrase the Declarations – “other competent bodies”. The key to understanding how this worked lies in (partly) the overlapping participation of involved bodies. The Oslo and Paris Commissions were not invited to participate in the preparatory work of the INSCs, although they attended as observers [18, p. 94]. The Secretariat, acting on behalf of the Oslo and Paris Commissions, responded to the Declarations by preparing documents on their implications for the Oslo and Paris Commissions. The relations between the EU and INSC were even closer in the sense that the European Commission was a party to INSC.

The cooperative process within the Oslo and Paris Commissions in the wake of the 1987 conference followed the same procedure of preparing documents on INSC implications as followed after the Bremen Conference. However, the second INSC was given higher priority than the first. The London Declaration made its strongest impact on the Oslo Commission. The first decision adopted by the Oslo Commission in 1988 stated that the riparian states of the North Sea would apply the principles on the reduction and cessation of dumping of polluting materials as set out in the North Sea Conference Declaration. This represented a sea change in dumping policies and the collective results of the Oslo Commission in this period show a significant expansion in number, legal status, and content compared to previous periods [30]. The Oslo Commission achieved significantly more from 1987 to 1990 than it had from 1974 to 1987.

Even though the total number of Paris Commission commitments did not increase significantly, the parties adopted several “new” commitments including a recommendation on the reduction of inputs of nutrients in 1988 and a coordinated programme for the reduction of nutrients in 1989. On the other hand, the Paris Commission did not act effectively to reduce discharges of hazardous substances.

EU responses to the 1987 conference related mainly to inputs of nutrients. In the fourth Action Programme on the Environment, adopted by the EU Council of Ministers in 1987, the fight against sea-water pollution from either point or diffuse sources was considered to be a matter of priority. In 1988, the Council adopted a resolution specifically related to the protection of the North Sea, requesting the Commission to take two specific actions. First, the Commission was requested to combat nutrients from different sources, particularly agriculture. Secondly, the Commission was requested to present proposals on urban waste water treatment. These Directives were to become the major means of combating eutrophication in the North Sea. Concerning hazardous substances, a proposed directive on the elimination of PCBs and PCTs was directly inspired by the 1987 London Declaration [25].

The Hague Declaration made its strongest impact on the Paris Commission. On the basis of the list of hazardous substances adopted by The Hague Conference, the Paris Commission started systematically addressing discharges from specific industrial sectors. The Paris Commission took action on several fronts, including Best Environmental Practices (BEP) on diffuse sources and BAT on specific industrial point sources. In addition to the two recommendations adopted in 1988 and

1989 on nutrients, the Paris Commission adopted Recommendation 92/7 on the Reduction of Nutrient Inputs from Agriculture.⁵

The INSCs and OSPAR created a dumping policy for the EU. The EU copied the INSC/Oslo Commission decision on phasing out sewage sludge dumping by including this obligation in the Urban Waste Water Directive (see below). Moreover, the EU attended to OSPAR dumping policy by ratifying the 1992 OSPAR Convention in 1998 [3]. Concerning nutrients, two important EU Directives were adopted in 1991 based on the initiatives of the late 1980s. Besides their importance for the North Sea, the Nitrates and the Urban Waste Water Directives reflected a slightly different approach from previous directives. Like the North Sea commitments, the new Directives attacked the sources of pollution and described clear goals within given time-frames, while relying less on quality objectives [27, p.150]. The Urban Waste Water Directive set specific requirements on waste-water collecting systems to be implemented by the year 2000 or 2005 concerning nutrient discharges. The Nitrates Directive aims at supplementing the above Directive by specifically addressing nutrient emissions from the agricultural sector. The agricultural sector was also made subject to a regulation on environmentally friendly production methods in 1992. These commitments overlap both the INSC Declarations and Oslo and Paris Commission commitments.

The Esbjerg Declaration on hazardous substances initiated actions both within OSPAR and the EU. In 1995, the North Sea Ministers agreed to phase out hazardous substances within 25 years with the ultimate aim of achieving concentrations in the environment near background values for naturally occurring substances. Para 17 of the Esbjerg Declaration has been viewed a breakthrough, and has subsequently served as a model for many international environmental regimes. In 1998, OSPAR adopted para 17 in the so called SINTRA statement on a total phase out of emissions of hazardous substances by 2020 [29]. In 2000, the EU adopted the Water Framework Directive which sets out its ambition to eliminate priority substances:

“The ultimate aim of this directive is to achieve the elimination of priority hazardous substances and contribute to achieving concentrations in the marine environment near background values for naturally occurring substances.” [15].

3.3 Assessing the causes: Leadership, membership and institutional arrangements

Why did the breakthrough on nutrients, hazardous substances and dumping and incineration at sea take place within the INSCs and not the Oslo and Paris Commissions or the EU? The INSCs solved the two contradictions present in existing institutions. As noted, the Oslo and Paris Conventions covered the entire North-East Atlantic, although the pressing ecological problems concerned the North Sea. Moreover, the Oslo and Paris Commissions and the EU lacked political momentum, though for different reasons. The Oslo and Paris Commissions had developed into a stagnant institution which proved hard to change. Collaborative

⁵ A report by the Oslo and Paris Commissions to the 1995 Esbjerg Conference on follow-up actions from 1990, shows clearly that a wide range of actions was directly related to the 1990 Conference (1995: Meeting of Heads of Delegation (HOD):OSPAR HOD 95 (1)/Document No. 1).

efforts induced only low levels of participation, the decision making procedures in use were based on unanimity, decision making systems were incremental and bureaucratic, access for the green movement was denied and actors worked together within a legally binding framework that was difficult to amend and changed very little in practice [31]. The EU embraced a unanimity decision making procedure at the time – and the environment was not included in the Treaty until the adoption of the Single European Act. The establishment of the INSC process was an act of leadership which solved the internal contradictions by changing its *membership* and *institutional arrangements*.

Germany's initiative was a combination of entrepreneurial and intellectual leadership [35 and 37]. Entrepreneurial leadership can be seen in the establishment of institutions conducive to “good” solutions. Germany had a choice between essentially two different ways of transforming the cooperation within the Oslo and Paris Commissions. First, a new convention on the North Sea could be established.⁶ This would have taken care of the first contradiction by excluding states not bordering the North Sea, but could easily lead to new time-consuming legal re-arrangements including the need for dismantling existing conventions. The second option was to generate political impetus in existing conventions by convening a North Sea Conference aimed at producing “soft law” declarations that could take immediate effect. This option coped with both problems and obviated the need for dismantling existing conventions.

In addition to this entrepreneurial leadership, intellectual leadership was evident in the introduction of the principle that protection of the North Sea had to be based on “Vorsorgeprinzip”, i.e. the precautionary principle. Agreement on the precautionary principle was a precondition for the percentage reduction targets and the phasing out of dumping at sea. In 1980, The Council of Environmental Advisors, an independent body of experts appointed by the German Government, introduced the principle in a report on environmental problems of the North Sea [21]. As noted, the Bremen Declaration subsequently hinted at the precautionary principle and the London Declaration adopted it.

The scope of OSPAR institutional arrangements entailed that Mediterranean states such as Portugal and Spain were parties. These states frequently allied with the UK to form a strong minority that was in a position to secure that decisions reflected the lowest common denominator. In essence, the INSCs excluded the non-North Sea states and left the UK alone as the main “laggard” among the North Sea states. The position of the UK rested upon its dedicated defence of Environmental Quality Objectives (EQO) which in turn was closely linked to the fact the UK was a net-exporter of marine pollution due to the counter clockwise direction of the North Sea currents. In contrast, the majority preferred Uniform Emission Standards (UES). Crudely put, UES advocates emphasised that discharges of substances known to be toxic, persistent and bioaccumulative and listed on the “blacklists” should be limited as far as possible at source, whereas the EQO defenders maintained that standards set should be determined by observable negative effects in the marine environment for each particular substance.

Changes in the membership were not sufficient to reach any breakthrough since the UK remained within the INSCs. However, thanks to its soft law qualities

⁶ This option was proposed by the European Parliament in 1993.

and political nature the INSCs became a truly dynamic institution. First, the INSCs were based on ministerial representation, a circumstance which opened up for political pressure to be put on the UK. Second, INSC Declarations could take immediate effect since they were based on soft law while proposed amendments to OSPAR or EU could take many years. Third, INSC Declarations were specific and visible and verification procedures and practice improved dramatically. In contrast to the Oslo and Paris Commissions, the INSCs systematically reviewed the achievements of the preceding declarations by preparing comprehensive progress reports on measures taken by each country as well as reductions in inputs from each country. This raised the level of transparency and generated pressure from within the green movement and more progressive states towards the UK. As a consequence of the increasing political costs involved, the UK accepted the precautionary principle and Uniform Emission Standards. The change in the position of the UK was made explicit in a 1988 position paper which was to have far reaching implications for both the UK and the North Sea/North-East Atlantic cooperation particularly with regard to dumping and hazardous substances [31, p. 124].

Several exogenous factors also contribute to explaining the patterns witnessed but cannot fully account for them. First, there were “shocks and crises” in the North Sea in the form of the exceptional 1988 and 1989 toxic algae blooms and seal epidemics. They helped instigate the 1988 EU resolution on the North Sea [25]. But they cannot explain the 1987 INSC breakthrough since they occurred later. Moreover, they should not be exaggerated since their political impact faded rapidly [30].⁷ Second, public opinion on environmental matters changed significantly throughout Europe in the latter part of the 1980s [19]. The adoption of Ministerial representation within the INSC became important at this point. Since Ministers are responsible to their domestic electorates, the “green wave” of the late 1980s could be channelled more effectively into international negotiations than the former low-level government representation in the Oslo and Paris Commissions allowed for. In this way, the impact of the changes in level of representation became closely linked to the changes in public opinion. However, since public values and attitudes changed most significantly after 1987, they can hardly in themselves explain the 1987 INSC breakthrough, even in connection with the algae blooms. Moreover, public interest in environmental questions has been on the wane in most central North Sea states since the early 1990s. Nevertheless, the 1995 INSC and OSPAR have continued to tighten up previous commitments, not least on hazardous substances, which shows that the dynamic impact of the institutions have continued despite fluctuations in public opinion.

4. Strengthening domestic implementation by “hard” and “supranational” law

Commitments aimed at combating North Sea pollution have, over time, clearly become more stringent. However, the INSC process also introduced “soft law” on a relatively systematic basis that was not legally binding for the parties. Since ministers come and go as governments change, the political Declarations clearly

⁷ Important for the North Sea was action within the Rhine Commission at this point, stimulated in part by the Sandos accident. The adoption of the Rhine Action Programme addressed a number of issues, including marine, and included some institutional strengthening to aid compliance, thus ensuring continued action after public interest declined.

carried a potential risk of ending up as “paper tigers”. Below, we shall see how this was avoided through institutional interplay characterised by “hard” law authoritativeness and “supranational” enforcement capacity.

4.1 OSPAR and EU legislative instruments: implementing INSC declarations

The 1995 Esbjerg Declaration identified previously adopted OSPAR decisions and EU Directives and Regulations as the principal measures for goal attainment. While this change in focus reflects important changes in EU marine and water policy, it also reflects the fact that Norway and Switzerland were the only non-EU North Sea conference countries as of 1995. Concerning hazardous substances like pesticides, the Declaration refers to PARCOM Recommendation 94/7 on national plans for reduction of pesticides from agriculture as well as the Directive concerning the placing of plant production products on the market [13]. On nutrients, the declaration links progress directly to national action plans based on a number of OSPAR recommendations and EU Directives, i.e. the Urban Waste Water and Nitrates Directives. According to the Progress Report [26]:

“Although the North Sea Conferences have provided the political skeleton, it has been left to the established legal frameworks, in particular the Oslo and Paris Commissions, the EU (and more recently the EEA Agreement),...to implement Ministers’ decisions by providing the necessary detailed and binding (legal) framework for the North Sea States, in particular through the medium of Decisions and Recommendations adopted by the Oslo and Paris Commissions and by EU Directives.”

This process of identifying previously adopted EU and OSPAR commitments continued at the latest INSC in Bergen in 2002 [1]. The conference showed that there had been progress towards achieving the targets on hazardous substances, and most North Sea states had achieved a 70% reduction of mercury, lead and cadmium. The OSPAR strategy on hazardous substances and the EU Water Framework Directive were regarded as effective means for coping with remaining implementation deficiencies and future challenges. According to the European Environment agency (EEA), the control of hazardous substances in marine waters has been a success largely due to OSPAR [16].

There were more problems for the North Sea states in terms of nitrogen. Lack of progress was directly related to delays in implementing the Nitrates and Urban Waste Water Treatment directives. In Bergen, the North Sea Ministers agreed on full implementation of these directives, the water framework directive as well as reducing the use of fertilizer through the Council Regulation on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) [14].

4.2 Assessing the causes: Institutional authoritativeness and enforcement

OSPAR has strengthened implementation mainly through the legally binding nature of commitments. In general, there is a conviction in the legal literature on international obligations that joint commitments should preferably be legally binding on states [22]. This view is based on the assumption that states will be more inclined to comply with legal than with non-legal obligations. The distinction between binding and non-binding commitments has been perceived as important by the

OSPAR parties and the legal nature of commitments has been discussed repeatedly [30]. Likewise, the INSC Declarations contain several references indicating that the North Sea states considered it important that joint commitments be implemented as binding decisions within OSPAR. However, the legal literature on marine pollution emphasizes also that the distinction between binding and non-binding obligations has little effect – if any – when it comes to enforcement. Enforcement has been regarded as the weakest part of international efforts to regulate marine pollution: deterrence is considered unlikely since very few disputes are actually settled by international courts [20 and 22]. The 1992 OSPAR Convention contains detailed dispute settlement procedures and places slightly more weight on enforcement, but does not set out which specific steps should be taken in cases of non-compliance. Thus, it seems reasonable to assume that legally binding OSPARCOM decisions have constrained state behaviour due to their authoritativeness rather than due to their theoretical capacity to affect incentives.

The phasing out of dumping of industrial waste in the North Sea is quite illustrative. In this case, the EU had no competence and the Community was not a party to the Oslo Convention. The 1987 London Conference took the decision to phase out such dumping by December 31, 1989, and the Oslo Commission followed up by translating this political agreement among the North Sea states into a legally binding Decision. There are clear indications that the UK did not seriously plan to change its behaviour in accordance with the international commitments [32]. In late 1989, the UK Ministry of Agriculture, Food and Fisheries decided to support applications for licensing 50,000 tons of toxic waste through the OSCOM Prior Justification Procedure (PJP). This procedure was adopted in 1988 as a direct consequence of the introduction of the precautionary principle by the 1987 INSC: PJP reversed the burden of proof upside down: potential dumpers were now obliged to prove through complicated and expensive laboratory tests that substances they were intending to dump *could not* harm the marine environment. Several North Sea states protested against the UK decision and Greenpeace brought the case to the media's attention. An extraordinary meeting of the OSCOM ad hoc working group on dumping was convened. The final decision to phase out dumping of industrial waste (and sewage sludge) was taken by the Agriculture Minister John Gummer in 1990.

In cases of non-compliance, OSPAR has more competence than the INSCs due to its legally binding qualities and the EU has more competence than OSPAR owing to its supranational qualities. When the EU acts it does so with significantly more force than traditional regimes simply because the compliance instruments at its disposal are more powerful. Concerning enforcement, the main formal difference between OSPAR and the EU is that EU Directives impose legal obligations directly upon the member states [34]. Failure to comply with EU law can be relied upon in national courts required to interpret national laws in line with EU law (sympathetic interpretation). Such failure can even result in awards of damages to individuals who have suffered loss as a consequence.

The enforcement powers of the European Court of Justice (ECJ) are also unique. According to Haigh [17], the ECJ has developed a number of principles affecting national law, policies and how EU policies apply. One of these tools is fines against member states. Since 1993, the ECJ may impose fines on states that have failed to comply with previous rulings of the court. This provision is being applied for the first time against Greece for its failure to observe a court ruling on waste

management and a new fine may be underway for its breach of the dangerous substance in water directive [7]. The UK was also threatened with heavy daily fines for persistent failure to comply with EU bathing water rules [9]. Note that the UK is now in compliance with regard to the specified bathing waters so the threat has passed – if a few decades behind schedule. The ECJ has initiated legal action on a number of water directives linked to marine pollution including the dangerous substances directive, the urban waste water directive, the shellfish directive, the surface waters directive, the nitrates directive and the bathing waters directive.

The INSC obligation to reduce nitrogenous substance by 50% in sensitive areas illustrates institutional interplay by higher enforcement competence. The INSC Declaration had scant effect on implementation. Implementation problems in the case of nitrogen have mainly been related to strong farming lobbies and conflict of interests between environmental and agricultural authorities. The UK, for example, argued that there were no sensitive areas around the UK coast and the country did not take any significant steps to reduce inputs of these substances. However, the INSC obligation triggered the adoption of the EU Nitrates Directive. Even though the Nitrates Directive is an extremely poor example of “effective” EU implementation, it nicely illustrates that the EU has more powerful tools at its disposal than OSPAR and the INSCs when states do not comply.

In October 1997, EU Environment Commissioner Ritt Bjerrgaard made a strong plea for better implementation of the nitrates directive. Thirteen out of 15 members states were facing legal proceedings. The EU Parliament issued a resolution in late 1998 in which the MEPs said they were “shocked by the lack of progress” in implementing the nitrate law and called for action from governments, the Commission and farmers [6]. EU members have been pulled before the court for different reasons. Germany, for example, had prepared an action plan as required by the law, but the plan was considered “insufficient” in its provisions for allowable storage capacities of livestock manure and failing to calculate maximum fertilizer application rates [5]. The UK was condemned in the European Court of Justice in December 2000. According to the Commission and the Court, the UK had implemented the directive too narrowly. Whereas the Directive requires member states to identify all surface or ground waters polluted by nitrates or at risk of being so, and to designate all such areas as NVZs, the UK had only identified surface and ground waters used as sources of drinking waters. The UK accepted the Commission’s complaint, and announced steps to broaden its definition to substantially increase the area of land designated as nitrate vulnerable [8]. However, in October 2001 the Commission announced a repeat legal action stating that the UK still had too few NVZs. In December, the environment ministry proposed measures to bring England and Wales into compliance with the Nitrates Directive [10]. During 2003, the Commission continued to take action over bad application of the Directive by a number of Member States. In some cases, the Commission had to open infringement procedures in order to make member States to comply with earlier judgements by the Court [12].

The EU Commission and the ECJ took swift action in this specific case of non-compliance and the response from the UK indicates that enforcement may indeed work. Time will show whether these actions prove sufficient for the North Sea Ministers to conclude that the nitrogen target has been met at the next North Sea Conference in Stockholm.

5. Conclusion

The interactive workings of the International North Sea Conferences, OSPAR as well as the EU have proved synergetic in two ways: First, the political “soft law” INSCs have speeded up decision making within OSPAR and the EU by interplay through commitments. Synergetic interplay has been caused by leadership, change in membership and institutional arrangements in combination with several exogenous factors. Second, OSPAR and the EU have facilitated domestic implementation of the INSC Declarations by interplay through behaviour caused by higher institutional authoritativeness and enforcement competence.

The most robust finding in this study is that overlapping between different international institutions does not necessarily imply duplication of work and low effectiveness. In essence, *institutional differences* between the INSCs, OSPAR and the EU account, at least partly, for the progress in joint decision making and implementation witnessed. Cooperation on North-East Atlantic environmental management shows that different types of institutions can fulfil different functions all of which are needed to make international environmental cooperation effective. Moreover, it would be difficult to fulfil these functions within one and the same institution due to conflicting institutional requirements. For example, there seems to be a trade-off between decision making speed and domestic implementation. Due to their legal nature, OSPAR and the EU could not match the decision-making speed of the INSCs, but were needed to keep up the pressure on implementation and compliance. The struggle put up by the UK over the bathing quality law represents an extreme example: In 2000, the UK was given a final warning for breaching the 1976 EU bathing quality law based on infringements originally committed in the 1980s. The EU possesses more power to act when the going gets tough. EU Directives and Regulations are more commanding than INSC or OSPAR commitments due to the “supranational” nature of the EU. EU action on the 1991 Nitrates Directive shows that EU’s enforcement tools in cases of non-compliance are significantly more powerful than those possessed by “traditional” regimes. The legally binding OSPAR also provided a legal and stable basis for the INSCs and gave authoritative force in the crucial implementation phase. Such qualities proved particularly important concerning the dumping at sea issue where the EU had no competence.

The 2002 Bergen Declaration does not contain any new significant commitments on hazardous substances or eutrophication. Instead, it sets out a number of new issue areas such as climate change, biodiversity, renewable energy and an integrated ecosystem approach. The search for new challenges show that INSCs have “solved” most of the problems related to hazardous substances, nutrients, dumping and incineration at sea through international cooperation. Further achievements now depend largely on domestic political will and capacity to follow through. The EU will have an important role to play facilitating implementation and enforcing compliance also in the future.

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