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A Note on the European Union's Integrated Maritime Policy

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This article examines the European Union's (EU's) recently adopted Integrated Maritime Policy (IMP) in three contexts. The first is that within which all national integrated ocean policies need to function; namely, international ocean governance and the law of the sea. The second is a comparison of the integrated ocean policies of the EU and large federal states; that is, political entities that most closely resemble the EU in functional terms. This article will focus on a comparison with Canada. Third, the article undertakes a cursory assessment of the prospects of the IMP.

Keywords European Union, Integrated Maritime Policy

National Ocean Governance in Light of Evolving International Ocean Governance and the Law of the Sea

Not long ago, it would not have made sense to create or even speak about national ocean policies. Before World War II, the authority of coastal states extended only over a narrow 3- to 4-nautical-mile belt of sea.¹ In principle, ocean sea areas were the province of the few rules of customary international law that had emerged in the course of history. Then, came the 1945 Truman Proclamation,² by which the United States claimed exclusive national jurisdiction over large tracts of seabed resources and which prompted many coastal states to exercise power over their adjacent seabeds.³ This was followed in the 1970s first by the concepts of a fisheries zone and then the exclusive economic zone (EEZ), which extended coastal states' authority over the adjacent water column.

This expansion of coastal state authority into the oceans, which came to be known as "creeping jurisdiction," was constrained by the 1982 United Nations Convention on the Law of the Sea (UNCLOS).⁴ UNCLOS protected international navigation in various ways, maintained the freedoms of the high seas, and designated the seabed beyond coastal state jurisdiction ("the Area") as part of the "common heritage of mankind" to be managed by an international governance mechanism, the International Seabed Authority (ISA). Although much of UNCLOS was a codification of customary international law at the time, the

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Convention introduced many novel rules granting coastal states extensive powers over the oceans.⁵ The Convention also obliged coastal states to create sustainable fisheries policies and marine environmental protection policies in their EEZs and encouraged them to adopt broader ocean policies.

While UNCLOS, and customary international law, granted the coastal states extensive powers over large sea areas, it did not establish any institutional apparatus for reviewing, monitoring, and supervising how well states observed their duties under the Convention. This was a significant shortcoming, given that need for such an apparatus seems obvious today. Almost every recently negotiated global or regional convention contains plenary bodies to further develop the convention and review how the convention is being implemented nationally. Additionally, there often are compliance bodies that assist states to meet the letter and spirit of the convention's wording.⁶

There does exist the regular Meeting of the State Parties to the Law of the Sea Convention (SPLOS),⁷ but this is geared toward administrative and financial matters. There is also an annual review of ocean issues and the law of the sea by the UN General Assembly, which relies on the report prepared by the secretary-general as well as the recommendations of the Open-Ended Informal Consultative Process of Oceans and Law of the Sea (ICP).⁸ The General Assembly's annual review occasionally pays attention to national ocean policies and developments related to the UNCLOS, but it does not perform the multitude of tasks carried out by modern-day convention bodies. If UNCLOS had provided an institutional apparatus similar to that of modern conventions, national ocean policies and laws probably would have developed more uniformly and have been more closely related to the wording and expectations of the UNCLOS. For example, if there had been a system requiring periodic reporting to the plenary body of UNCLOS, this would have encouraged state governments to organize their ocean affairs in a coordinated manner to meet the obligations of the Convention. What has tended to occur is national ocean policy development that reflects national priorities and how these conform with UNCLOS.

Juda has correctly argued that the 1982 UNCLOS, the 1992 United Nations Conference on Environment and Development (UNCED), and the 2002 World Summit on Sustainable Development have contributed to the emergence of national integrated ocean policies.⁹ This seems to hold true for most states, but it can be argued that the impact of these instruments is different for a supranational organization like the European Union (EU). From the EU perspective, UNCLOS served as a catalyst for the member states to come up with more expansive ocean policies, as the Convention did not explicitly obligate parties to promote ecosystem-based integrated ocean governance. Significantly, it was only with the emergence of the concept of ecosystem-based integrated ocean governance, which requires full-scale adoption of ocean governance actions guided especially by Chapter 17 of Agenda 21,¹⁰ that the EU could make a case for governing all European seas holistically. In other words, the developing international consensus on integrated ocean governance was the basis on which the EU could justify its increasing mandate over the European seas with the adoption of the Integrated Maritime Policy (IMP).¹¹

The Emergence of National Integrated Ocean Policies: Problems and Possibilities

It is difficult to create an effective national integrated ocean policy. The reasons for this are well known, but useful to review. It is difficult to find an area of policy comparable in scope to integrated ocean policy, as it goes beyond the coordination of maritime policies, not least because 70%–80% of marine pollution is caused by land-based activities. Therefore, the

coordination of the policy areas that an integrated ocean policy requires is not an easy task. Established policy areas typically operate on the basis of their own values and traditions, a fact reflected in the legal system, where various legal regulations guide action on sectoral issues related to ocean areas and policy supervision is entrusted to a variety of ministries and agencies.

Another factor making effective national integrated ocean governance challenging is the comparatively marginal role of ocean issues in national or local politics. In most constituencies, political issues related to the ocean, the immediate coastline being an exception, escape the attention of politicians, who should take the lead in advancing such a challenging policy initiative. Ocean policy as an instrument of coordinated planning and supervision is also a relatively new phenomenon because, until the mid-twentieth century, ocean activities remained at a relatively low level and their environmental impact was negligible.

It is also important to note the main reasons why integrated national ocean policies have emerged. Conflicting decisions and plans by various arms of a state, resulting from a fragmented agency and legal structure, induced many to think about how the situation might be improved.¹² The ever-increasing degradation of the oceans, an awareness of which has been made possible by the more sophisticated findings of the marine sciences and whose publicity is guaranteed by dedicated environmental nongovernmental organizations (NGOs), has provided an additional impetus for integrated policies since ocean ecosystems can produce their services up to only a certain point.¹³ A zonal approach to national ocean policy is, in many cases, the preferred option for making an ocean policy coherent internally (that various maritime zones are established and legislated on the basis of the law of the sea and function consistently as part of national ocean policy). But, this approach can cause problems of uncoordinated development given that, for different policy areas, the maritime zones mean different things and thus can lead to calls for integrated ocean management.¹⁴

The first generation of national ocean policies was focused more on the coordination of various ocean uses, rather than on how their overall impact on the marine ecosystems could be addressed.¹⁵ With the rise of the environmental movement, and especially its culmination in the 1992 UNCED, the trend changed toward full-scale integrated ocean governance policies such as those adopted in Canada in 1996 with the Oceans Act¹⁶ and the ensuing policy instruments. The coming into force of UNCLOS in 1994 served to strengthen this trend, but only indirectly,¹⁷ inasmuch as UNCLOS as such did not encourage the use of integrated ocean governance policies. Yet, because the Convention laid many new powers and duties with respect to the marine environment, it served as a catalyst for integrated ocean policies. The various legal and policy instruments aiming to close the gaps on the path to using oceans as commons, with the related danger of a tragedy of the commons, were important in inducing states to think of their maritime areas in a new way. The management tools developed first in science and then nationally were gradually transferred to the instruments adopted in various intergovernmental organizations, pushing states to adopt integrated management approaches, one of which was the designation of marine protected areas (MPAs) in their coastal areas and in large marine ecosystems.

There is an overwhelming consensus that more holistic ways to manage the oceans are imperative.¹⁸ Yet, as the research has pointed out, such approaches face many kinds of problems.¹⁹ States may opt nationally for divergent policies, not uniform ones, and try to expand or even abuse their already expanded ocean powers on the basis of national interests. As noted above, if there had been a modern institutional body created by UNCLOS, national ocean governance might have developed in more coordinated and uniform manner than it has, given that the state parties would have closely followed the development of one

another's ocean policy through meetings of the parties and implementation committees. Arguably, such a process would have also meant that national ocean policies would have paid more attention to the law of the sea than to national interests.

Comparison Between the EU and Canadian Approaches to Ocean Policy

The EU IMP is a unique exercise in the history of ocean governance. Even though the EU is acting like a federal state in many ways (in some policy areas, in an even more integrated manner than federal entities), its ocean powers differ vastly from those of federal states. Although federal states may have constitutionally delegated many of their powers in numerous policy areas to their subunits, this does not typically apply to maritime areas, where the federal level usually exercises powers affecting areas beyond the immediate coastal zone or territorial sea. This does not hold true for the EU which, apart from having exclusive jurisdiction over fisheries, has only shared powers over many other maritime areas. The EU member states are the ones that legislate the extent of their maritime areas, and exercise and enforce most powers therein. This is a significant difference between the EU and federal states with respect to ocean governance and inhibits a straightforward comparison. This is not to say that useful lessons cannot be found, but care must be taken in such comparisons.

The IMP is best seen as the first-ever social experiment in integrated ocean policy where the governing entity is a supranational organization. As pointed out above, the increasing legal development toward holistic ocean management has justified increasing the EU's powers in maritime areas. Yet, the overwhelming challenge of coordinating the actions of many sovereign nations that exercise most of the powers pertaining to their sea areas distinguishes the EU's formulation of an integrated maritime policy from the efforts of federal states to create such a policy. More generally, the IMP can be seen as the most comprehensive policy ever adopted by the EU, as it crisscrosses all possible policy areas, adding to the challenge of coordinating action within the EU.

The strong maritime traditions of European states would seem to pose difficulties for creating anything like integrated ocean governance at the EU level. It would have been a safe assumption that nothing like the IMP would have materialized and, if it had, it certainly would not have been able to borrow from earlier federal integrated ocean policies, in particular, Canada's. Yet, there exist some interesting similarities between the policies. The following will examine both similarities and differences between the ocean policies of the EU and Canada.

No similarities are evident in the way that the policies are legally constructed. The Canadian policy has a clear legal foundation through the 1996 Oceans Act, which provides for the various maritime zones and lays down the institutional powers and management structures. The goals, values, principles, and management strategies are specified by political means through the 2002 Oceans Strategy,²⁰ (executed to implement the Section 29 obligation of the minister and based on practical experience gained in the interim) and the 2004 Action Plan.²¹ Important guidance for implementing integrated management plans pursuant to the Oceans Act is provided in the "Policy and Operational Framework for Integrated Management of Estuarine, Coastal and Marine Environments in Canada,"²² adopted in conjunction with the 2002 Oceans Strategy.

The development was essentially the reverse in the case of the IMP, even though it also started with a legal instrument, the Marine Strategy Framework Directive (MSFD).²³ The process started with the Sixth Environmental Action Programme, which identified marine environment protection as a priority area. This paved the way to the adoption of

the MSFD, under the lead of the Director-General Environment, which was part of the European Marine Strategy and which focused on protecting marine ecosystems. This was later deemed by the European Council to be the “environmental pillar” of the IMP.²⁴ The MSFD required the member states to identify their marine regions and subregions and achieve good environmental status in all of them by the year 2020. The European Commission started the process of creating the full-scale IMP in 2005, as a political initiative, not using formal legal procedures, led by Director-General Maritime Affairs and Fisheries (DG MARE).²⁵ The IMP was adopted by the Commission on 10 October 2007 and later by the European Council in December 2007.

The difference in how the integrated policies of the EU and Canada were developed and implemented may have concrete consequences. In the EU, work on holistic ocean governance started from the “environmental pillar,” which was adopted through a legal act (the MSFD) requiring, among other things, that “Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 15 July 2010 at the latest. They shall forthwith communicate to the Commission the text of those provisions.”²⁶ Hence, the process of identifying the marine regions and subregions as well as actions to achieve good environmental status for these waters has started, given that it is legally required of the member states. The same does not hold true for the IMP, which is a political document and coordinated by a different directorate (DG MARE) than that supervising the implementation of the MSFD. The Commission has recently issued guidance to assist member states in creating their national IMPs, but the problem in practice may be that there is no legal backing for this guidance. In Canada, by contrast, all of the goals of the ocean policy are contained in the Oceans Act and related policy documents and are coordinated by a single government agency, the Department of Fisheries and Oceans (DFO). Having a different legal basis and coordinating agency than its Canadian counterpart, the IMP may well tilt toward environmental goals.

Another difference between the EU and Canadian ocean policies is that the Canadian instruments provide only broad strategic guidance, whereas the IMP and the accompanying Action Plan sets out specific operational actions for the EU. The Canadian 2002 Oceans Strategy is a strategic document whose final part, “Strategic Directions for Implementing Canada’s Oceans Strategy,” moves to some extent into operational goals. Although Canada’s Oceans Action Plan does contain some operational goals in its final part, “Initiatives for Phase I of the Oceans Action Plan,” overall even this document is mostly strategic in nature.²⁷ As has been aptly noted in the Oceans Action Plan, the Oceans Strategy is based on a phased approach toward implementation. The EU IMP and EU Action Plan, though both contain strategic level guidance, go more into the details of individual actions to be taken by member states and the Action Plan even evaluates the benefits of those actions. This has the advantage of providing more specific guidance but, of course, leaves less discretion for the European Commission in implementing the IMP.

The differences between the policies appear to be numerous. The Canadian approach proceeds logically, in a step-by-step fashion, from a clear legal foundation to political goal setting; whereas the EU approach follows two distinct, but interlinked, tracks. The tracks differ in that the MSFD is legally binding while the IMP is not, and each is led by different directorates. They are linked in that the MSFD is the “environmental dimension” of the IMP. Importantly, the process of drafting both the IMP and the Canadian ocean policy were as inclusive as possible, with all the relevant stakeholders involved. The same approach has continued with the implementation of both ocean policies: transparency, public participation, and stakeholder involvement have been given a lot of attention. This is clear in the Canadian approach, which not only aims to involve the levels of government

and the Aboriginal peoples who have interests in the relevant maritime areas, but also encourages citizens to participate, the rationale being to gain legitimacy for the ocean management.²⁸

In the EU, the IMP was the result of extensive stakeholder participation. Over 490 contributions were received and over 230 events held in the year-long stakeholder consultation process, which enhanced the legitimacy of the exercise.²⁹ The guidance given to member states in drawing up their national integrated maritime policies also demonstrates that the EU is dedicated to the principle of subsidiarity in the making of the IMP and encourages the member states to draw up their national IMPs together with all relevant levels of government and stakeholders.³⁰

An examination of the substantive elements of the two policies reveals that the EU benefited from the Canadian experience.³¹ First, the institutional powers in the IMP have been designed in much the same way as in the Oceans Act. In contrast to the integrated ocean policy of the United States, which is based on a committee working under the Council on Environmental Quality,³² the lead agency in Canada is the minister of the DFO. The same approach was used in the EU. It was the Director-General Fisheries and Maritime Affairs that acted as the lead agency in developing the IMP. The directorate has been administratively reorganized on the basis of marine regions and renamed DG MARE³³ and is the directorate that steers the IMP process.

The goals of the EU and Canadian marine policies are essentially the same—to promote economic development in such a way that possibly conflicting uses of the ocean can coexist and prosper and that the overall health of ocean ecosystems is maintained in the long term. These overarching goals are guided by similar principles in both policies: decision-making principles (e.g., the precautionary principle) and management principles (e.g., an ecosystem approach and comanagement). Moreover, specific goals are expressed in remarkably similar terms (e.g., promoting economic prosperity, stimulating better marine science, building maritime heritage, and taking international leadership in the development of the law of the sea).³⁴ The common goal of becoming an international leader in ocean governance is a good illustration of the similarities between the two policies; yet, the ways the two policies intend to realize that goal show the differences in their approach.

Both Canada and the EU are committed to similar goals in regard to high seas biodiversity and MPAs. Canada's 2004 Oceans Action Plan provides that:

There are a number of important areas, such as the protection of high-seas biodiversity and the concept of high-seas marine protected areas, where Canada can bring to the global stage practical solutions that can lead international benchmarking and best practice exercises.³⁵

The EU provides much more specific guidance on this issue, as on many others. Section 4.4. of the IMP provides that:

The Commission will propose an Implementing Agreement of UNCLOS . . . on marine biodiversity in areas beyond national jurisdiction and work towards successful conclusion of international negotiations on Marine Protected Areas on the high seas.

The EU Action Plan provides the background to this action, describes it, and describes the benefits of choosing exactly this action.

Background:

The Green Paper on Maritime Policy highlights the importance of protecting the marine environment and biodiversity in Areas Beyond National Jurisdiction (ABNJ), including through a multilateral implementing agreement protecting marine biodiversity under UNCLOS. These initiatives are necessary to meet the objectives agreed in the World Summit on Sustainable Development Joint Plan of Action to significantly reduce current rates of biodiversity loss by 2010 and to establish representative networks of marine protected areas by 2012.

Action:

International negotiations are focussing on developing an international regulatory framework that will allow co-ordinated action to protect marine biodiversity in the high seas, including through the establishment of marine protected areas in ABNJ. They also include participation by the EU in international discussions on marine genetic resources in ABNJ to better understand the underlying environmental and socio-economic issues. Negotiations are ongoing in several global fora, including in particular the United Nations General Assembly context (law of the sea), the Convention on Biological Diversity and sectoral organisations. At regional level, negotiations are ongoing under regional seas conventions (e.g. North Atlantic, Mediterranean, Baltic) and regional fisheries organisations. Delivering on these objectives will depend on the outcome of such international negotiations, which makes it difficult to estimate a timetable. In addition to these negotiations, the Commission will before the end of 2009 put forward a strategy for the protection of high seas biodiversity through the designation of marine protected areas.

Benefits of an integrated approach/relevance for an integrated maritime policy:

Action in this area must be seen in conjunction and coherent with EU internal action on the protection of habitats, and the across-the-board implementation of an eco-system-based approach, including in fisheries. Furthermore, an integrated approach to these issues aims at going beyond the current sectoral fragmentation of measures in the high seas. The joint implementation of international commitments under UN instruments is necessary to ensure coherent action by economic sectors in the high seas, a condition for sustainable development in areas beyond national jurisdiction.³⁶

Clearly, the goals of the EU and Canadian approaches are very close to each other, but the EU's approach identifies future steps specifically, even explicitly justifying the planned action and having specific policy and legislative actions identified in the IMP.³⁷

The more specific integrated management of the EU approach has similarities, but also differences, to that of Canada. The differences mainly stem from the constitutional structures of the two policy entities, but also from their management traditions. Both Canada and the EU promote the establishment of MPAs. Canada has three schemes for establishing MPAs, with the responsibilities allocated to three agencies for different issue areas, but the DFO having overall authority in coordinating the development and implementation of a national system of MPAs on the basis of Section 35(2) of the Oceans Act.³⁸ In the EU, the responsible directorate is the Director-General Environment, which supervises the Natura 2000 Programme³⁹ and ensures that the EU complies with its international obligations with respect to MPAs. These areas may therefore be those already designated under the Wild Birds or Habitats Directives or under international legal obligations. The MSFD lays

down a legal obligation for the European Commission to report on the progress made with respect to the MPAs.⁴⁰

The management scheme in Canada is more flexible in the sense that the DFO minister can establish different kinds of integrated management systems depending on the situation facing the ecosystem. The Canadian system also develops incrementally. There is no requirement to first map out all the marine regions; rather, the large ocean management areas (LOMA)—and more specific integrated governance schemes—can be created over time.⁴¹ Even though more specific guidance in implementing these various integrated governance schemes is given in the “Policy and Operational Framework for Integrated Management of Estuarine, Coastal and Marine Environments in Canada,”⁴² the management system is built on tailoring for each area the kind of management structure that best suits the specific conditions in the area. The EU system is more rigid in the sense that it first requires all marine regions to be mapped out by member states, with the help of the Commission, and then management measures are to be laid down to achieve good environmental status by 2020 at the latest. The guidance given to member states to implement their own national IMPs contains possibilities for creating various sorts of ocean management models, with the participation from the national coast guard, national maritime agencies, and operators of surveillance systems together with all possible stakeholders. It is interesting that this stage of national management and implementation is to be carried out by the maritime spatial planning,⁴³ so indeed there are possibilities to come up with various kinds of integrated management structures all over the European seas.

Even though the constitutional structures of the EU and Canada differ in maritime affairs, it is clear that their ocean policies exhibit similar features. This is perhaps not surprising given that the international binding and nonbinding instruments have established the basic ideals for integrated ocean governance and have found their way into both Canadian and EU ocean policies. Moreover, similarities between the two may also result from Canada being one of the first states to establish a comprehensive integrated ocean policy. The greatest challenge for the EU, in comparison to federal states, in implementing its IMP is how the member states will implement the MSFD and, perhaps most importantly, the national IMPs for which guidance was given recently. As the IMP requires, the European Commission will:

invite Member States to draw up national integrated maritime policies, working closely with stakeholders, in particular the coastal regions; propose in 2008 a set of guidelines for these national integrated maritime policies and report annually on EU and Member States’ actions in this regard from 2009⁴⁴

Hence, the first signs of whether the member states are reacting to this political initiative in their national policy will be seen in 2009. As noted above, however, it seems that the EU might find it that the member states fulfill their “environmental dimension” obligations of the IMP, given that the MSFD obligations are legally required whereas the other obligations adopted via the communication are not.

Evaluation of the IMP

The IMP can be evaluated only in terms of the ideals, goals, principles, and actions that it aims to implement, since the IMP has yet to go through the process of implementation. What can be observed is that the IMP as a whole, including its environmental pillar, contains ambitious goals and principles which, if implemented, would clearly improve

ocean management in European waters. This is well argued in the impact assessment of the MSFD.⁴⁵ It can be agreed that coordination between various, often conflicting, ocean uses or managing their overall impact on the ocean ecosystems cannot be achieved through member states' ocean policies alone, let alone voluntary agreements between them. Neither can this be accomplished within the existing European regional sea governance mechanisms given the problems faced in enforcement and control. On the other hand, on the basis of the EU constitutional principles of subsidiarity and proportionality, the best approach is not to concentrate too much power at the EU level, but leave member states free to plan and implement measures at the national and regional level on the basis of the common objectives, principles, and actions adopted in both the MSFD and the IMP.

It seems clear that the IMP was the best possible approach in the difficult politicolegal setting in which it is meant to function. It has innovative mechanisms to increase coordination and cooperation between member states in maritime surveillance and marine data systems and to promote the establishment of maritime spatial planning.⁴⁶ The system of member states identifying the various marine regions and establishing the long-term goal of good environmental status in these regions provides a firm basis for ensuring that the specific actions laid down in the IMP do not exceed the resilience of the ecosystems. Also important is that member states are politically encouraged to produce their own national IMPs which, if undertaken, will result in a move closer to holistic management of the European seas.

The challenge, of course, is to ensure that the IMP functions in the real world of institutional politics within the Commission but, more importantly, in the member states with their long traditions of fragmented national maritime policies, laws, and institutions. How can the IMP (in particular the MSFD) achieve a good environmental status in all of the marine regions by 2020 when land-based pollution constitutes 70%–80% of the degradation of the marine environment? Will the national IMPs be established on the basis of the guidance from Commission, even though the member states are not legally required to create these? These and other difficult questions will certainly test the IMP. The first signs of whether the IMP is making a difference will be when the member states submit their lists of marine regions and, especially, if and when they come up with their national IMPs. Even if it can be argued that the EU IMP is important on its own terms, previous experience with national integrated ocean policies demonstrate the IMP may have a hard time achieving its goals. Yet, whether or not it succeeds in reaching its stated goals, the IMP has other important functions.

As pointed out by many, national integrated ocean policies have an important role in effecting a paradigm shift toward more holistic ways of perceiving and understanding the oceans and, thereby, enabling new political solutions to the problems that the sea areas face.⁴⁷ This may be more important in the EU than in federal polities, given the traditionally strong control of European nations and regional sea governance bodies over their maritime spaces. This paradigm shift will not happen overnight, but needs to be seen as an incremental learning process, sometimes even requiring a new generation of managers to challenge the old sectoral ways of policy implementation.

It is also good to keep in mind the role of the IMP in forging a new vision of the EU's maritime areas. Before the MSFD and the IMP, there were no real "EU Oceans," but only member states' national seas, which could at most be understood as regional seas shared by the other littoral states. Now it is possible to view these European seas as part of the territory of the EU and, through this, the IMP has contributed to a vision of a more unitary EU, which will likely promote the process of further EU integration. With the IMP, the EU's position as a major maritime actor will gradually solidify, probably through an incremental

process whereby international maritime policy is increasingly done at the EU level. Such processes will take time, given the strong maritime traditions in many member states, but it is a fair assessment that the ocean policy and law will be intensely influenced by the EU in the foreseeable future, not least because of the IMP.

Notes

1. It should be noted that, even though they cannot be considered integrated ocean policies in the modern sense, several imperial powers had ocean policies from early on, mostly as a result of the growth of their powers in sea areas. See Alfred Thayer Mahan, "The Influence of Sea Power upon History, 1660–1783" (1890), available at www.gutenberg.org/files/13529/13529-h/13529-h.htm (accessed on 20 November 2008).

2. United States, Executive Order 9633 of 28 September 1945—Reserving and Placing Certain Resources of the Continental Shelf Under the Control and Jurisdiction of the Secretary of the Interior, 59 U.S. Stat. 884.

3. For a classic account of this development, see Z. J. Slouka, *International Custom and the Continental Shelf: A Study in the Dynamics of Customary Rules of International Law* (Martinus Nijhoff, 1969).

4. 1833 *U.N.T.S.* 397.

5. See the remarks by Tommy T. B. Koh, president of the Third United Nations Conference on the Law of the Sea, "A Constitution for the Oceans," available at www.un.org/Depts/los/convention_agreements/texts/koh_english.pdf (accessed on 20 November 2008).

6. For a recent study in different fields of international cooperation, see G. Ulfstein, T. Maruhn, and A. Zimmermann, eds., *Making Treaties Work: Human Rights, Environment and Arms Control* (Cambridge: Cambridge University Press, 2007).

7. See www.un.org/Depts/los/meeting_states_parties/meeting_states_parties.htm (accessed 18 January 2009).

8. See www.un.org/Depts/los/consultative_process/consultative_process.htm (accessed 18 January 2009).

9. L. Juda, "Changing National Approaches to Ocean Governance: The United States, Canada, and Australia," *Ocean Development and International Law* 34 (2003): at 162–164.

10. Chapter 17 is entitled "Protection of the Oceans, All Kinds of Seas, Including Enclosed and Semi-Enclosed Seas, and Coastal Areas and the Protection, Rational Use and Development of Their Living Resources," available at www.un.org/esa/sustdev/documents/agenda21/english/agenda21chapter17.htm (accessed on 20 November 2008).

11. The term "IMP" is used to denote the following three documents: the Integrated Maritime Policy, adopted via a Communication (the so-called Blue Book); its accompanying Action Plan; and the "environmental dimension" of the IMP, the Marine Strategy Framework Directive (MSFD). The European Council that adopted the Integrated Maritime Policy understood it as composing of all these elements. It is important, however, to keep in mind that, when referring to the Communication, the term IMP will be used. When the Action Plan or the Maritime Strategy Framework Directive (MSFD) are referenced, their names will be used.

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "An Integrated Maritime Policy for the European Union," Brussels, 10.10.2007 COM(2007) 575 final, adopted by the European Council in December 2007, available at eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0575:FIN:EN:PDF (accessed on 20 November 2008). The Action Plan that accompanied the IMP specifies the broad guidance given in the IMP. Commission Staff Working Document, accompanying document to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "An Integrated Maritime Policy for the European Union," Brussels, 10.10.2007, SEC(2007) 1278, available at ec.europa.eu/maritimeaffairs/pdf/ActionPaper/action_plan_en.pdf (accessed on 20 November 2008). Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008

establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive). Official Journal L. 164, 25/06/2008 P. 0019–0040, available at eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008L0056:EN:HTML (accessed on 20 November 2008).

12. Chapter 2 (Context) of the IMP, *supra* note 11, contains the following passage:

Increasing competition for marine space and the cumulative impact of human activities on marine ecosystems render the current fragmented decision-making in maritime affairs inadequate, and demand a more collaborative and integrated approach. For too long policies on, for instance, maritime transport, fisheries, energy, surveillance and policing of the seas, tourism, the marine environment, and marine research have developed on separate tracks, at times leading to inefficiencies, incoherencies and conflicts of use.

13. *Ibid.*

Ensuring that use of the marine environment is genuinely sustainable is a prerequisite for these industries to be competitive. The growing vulnerability of coastal areas, increasingly crowded coastal waters, the key role of the oceans in the climate system and the continuous deterioration of the marine environment all call for a stronger focus on our oceans and seas.

14. See, for example, Y. Tanaka, “Zonal and Integrated Management Approaches to Ocean Governance: Reflections on a Dual Approach in International Law of the Sea,” *International Journal of Marine and Coastal Law* 19 (2004): 483–514.

15. For a historical overview, see L. Juda, *International Law and Ocean Use Management: The Evolution of Ocean Governance* (London: Routledge, 1996).

16. *Statutes of Canada, 1996*, chap. 31.

17. UNCLOS, *supra* note 4, Preamble provides: “Conscious that the problems of ocean space are closely interrelated and need to be considered as a whole.”

18. For an early, but still useful, theoretical insight into the basic requirements from an integrated ocean policy, see A. Underdal, “Integrated Marine Policy: What? Why? How?” *Marine Policy* 4 (1980): 159–169.

19. See, for example, Jean-Pierre Lévy, “A National Ocean Policy: An Elusive Quest,” *Marine Policy* 17 (1993): 75–80. For a recent authoritative comparison, see International Oceanographic Commission, *National Ocean Policy: The Basic Texts from Australia, Brazil, Canada, China, Colombia, Japan, Norway, Portugal, Russian Federation, United States of America* (IOC Technical Paper 75, Law of the Sea Dossier 1), (Paris: UNESCO, 2007), 280 pp., available at ioc3.unesco.org/abelos/index.php?option=com_docman&task=doc_download&gid=267 (accessed on 20 November 2008). See also R. Friedheim, “Designing the Ocean Policy Future: An Essay on How I Am Going to Do That,” *Ocean Development and International Law* 31 (2000): 187–189.

20. See www.dfo-mpo.gc.ca/oceans-habitat/oceans/ri-rs/cos-soc/index_e.asp (accessed on 20 November 2008).

21. See www.dfo-mpo.gc.ca/oceans-habitat/oceans/oap-pao/index_e.asp (accessed on 20 November 2008).

22. See www.dfo-mpo.gc.ca/oceans-habitat/oceans/ri-rs/cosframework-cadresoc/page01_e.asp (accessed on 20 November 2008).

23. Because the MSFD, *supra* note 11, was subject to the co-decision procedure, it had to be accepted by both the European Parliament and the Council.

24. The heads of states and governments of the EU agreed to the following conclusions on maritime policy at the meeting of the European Council of 14 December:

The European Council welcomes the Commission Communication on an integrated maritime policy for the European Union and the proposed Action Plan which sets out the first concrete steps in developing an integrated approach to maritime affairs. The broad participation in the preceding public consultation and the comprehensive debate

at the Lisbon Ministerial Conference reflected the interest which stakeholders show for the development of such a policy. The future integrated maritime policy should ensure synergies and coherence between sectorial policies, bring added value and fully respect the principle of subsidiarity. Furthermore it should be developed as a tool to address the challenges facing Europe's sustainable development and competitiveness. It should take particularly account of the different specificities of Member States and specific maritime regions which should call for increased cooperation, including islands, archipelagos and outermost regions as well as of the international dimension. The European Council welcomes the conclusion of the Marine Strategy Framework Directive as the environmental pillar of this policy. The European Council invites the Commission to come forward with the initiatives and proposals contained in the Action Plan and calls on the future Presidencies to work on the establishment of an integrated maritime policy for the Union. The Commission is invited to report on progress achieved to the European Council at the end of 2009.

See ec.europa.eu/maritimeaffairs/conclusions_20071214_en.html (accessed on 20 November 2008).

25. For a useful overview, see V. Frank, *The European Community and Marine Environmental Protection in the International Law of the Sea* (Martinus Nijhoff, 2007), 94–104.

26. MSFD, *supra* note 11, art. 26 (1).

27. More specific guidance is, however, provided by the above-mentioned “Policy and Operational Framework for Integrated Management of Estuarine, Coastal and Marine Environments in Canada,” *supra* note 22, in implementing integrated management plans.

28. See the Policy Framework section of the 2002 Oceans Strategy, *supra* note 20.

29. See the Report on Consultations, available at eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0574:FIN:EN:PDF (accessed on 20 November 2008).

30. Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, “Guidelines for an Integrated Approach to Maritime Policy: Towards Best Practice in Integrated Maritime Governance and Stakeholder Consultation Brussels,” 26.6.2008 COM(2008) 395 final, available at ec.europa.eu/maritimeaffairs/pdf/com08_395_en.pdf (accessed on 20 November 2008).

31. The EU Guidelines to Member States, *ibid.*, referred to the experience of many countries, including Canada, and stated, at 5, that:

The principles, objectives and modalities of all these maritime policies are largely similar. All these countries recognise the major contribution made by sea-based activities to their economy. They all acknowledge that the intensive development of these activities poses a challenge to sustainable development and use of their sea resources. And they have all decided to develop an overall policy that allows a comprehensive, coordinated approach, ensuring sustainable development of the different sea resources and activities.

32. See generally, www.whitehouse.gov/ceq (accessed 19 January 2009).

33. This is a recent development; see Press Release 27 March 2008, available at ec.europa.eu/maritimeaffairs/press/press_re1270308_en.html (accessed on 20 November 2008).

34. The three policy objectives outlined in Canada's 2002 Oceans Strategy, *supra* note 20, are: Understanding and Protecting the Marine Environment; Supporting Sustainable Economic Opportunities; and International Leadership. This is complemented in the Oceans Action Plan, *supra* note 21, by the inclusion of Ocean Science and Technology. The IMP, *supra* note 11, includes as its action areas: Maximising the Sustainable Use of the Oceans; Delivering the Highest Quality of Life in Coastal Regions and Seas; Building a Knowledge and Innovation Base for the Maritime Policy; Promoting Europe's Leadership in International Maritime Affairs; and, finally, Raising the Visibility of Maritime Europe.

35. Oceans Action Plan, *supra* note 21, Initiatives for Phase I of the Oceans Action Plan, International Leadership, Sovereignty and Security.

36. EU Action Plan, *supra* note 11, at 30–31.

37. See, for example, the IMP, *supra* note 11, at 9, “The Commission will: reassess, in close cooperation with social partners, the exclusions affecting maritime sectors in EU labour legislation,” and, at 8, “The Commission will: propose a new ports policy, taking account of the multiple roles of ports and the wider context of European logistics; make proposals to reduce the levels of air pollution from ships in ports, namely by removing tax disadvantages for shore side electricity; issue guidelines on the application of the relevant Community environmental legislation to port development.”

38. See www.dfo-mpo.gc.ca/oceans-habitat/oceans/ri-rs/mpapolicy-politiquezpm/page05_e.asp (accessed on 20 November 2008).

39. See www.natura.org (accessed on 19 January 2009).

40. MSFD, Progress Report on Protected Areas, reads:

On the basis of the information provided by the Member States by 2013, the Commission shall report by 2014 on progress in the establishment of marine protected areas, having regard to existing obligations under applicable Community law and international commitments of the Community and the Member States. The report shall be submitted to the European Parliament and to the Council.

See Marine Strategy Directive, available at www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2007-0595 (accessed on 20 November 2008).

41. Appendix to the 2002 Oceans Governance document lists the integrated management schemes already in progress, available at www.dfo-mpo.gc.ca/oceans-habitat/oceans/ri-rs/cos-soc/page09_e.asp (accessed on 20 November 2008).

42. See www.dfo-mpo.gc.ca/oceans-habitat/oceans/ri-rs/cosframework-cadresoc/index_c.asp (accessed 19 January 2009).

43. See Director-General Maritime Affairs and Fisheries, European Commission, “Towards Best Practice in Integrated Maritime Governance and Stakeholder Consultation. Guidelines for an Integrated Approach to Maritime Policy,” Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, COM(2008) 395 final (Brussels, 26 June 2008), available at ec.europa.eu/maritimeaffairs/pdf/com08_395_en.pdf (accessed 20 November 2008). See also IMP, *supra* note 11, sec. 3.2.2. and European Commission, “Roadmap for Maritime Spatial Planning: Achieving Common Principles in the EU,” Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of Regions, COM(2008) 791 final (Brussels, 25 November 2008), available at eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0791:FIN:EN:PDF (accessed 10 January 2009).

44. The IMP, *supra* note 11, at 5.

45. Commission Staff Working Document on “impact assessment” (SEC (2005) 1290). Commission Staff Working Document, Annex to the Communication from the Commission to the Council and the European Parliament, Thematic Strategy on the Protection and Conservation of the Marine Environment and Proposal for a Directive of the European Parliament and of the Council Establishing a Framework for Community Action in the Field of Marine Environmental Policy (Marine Strategy Directive), available at ec.europa.eu/environment/water/marine/pdf/2005_10_impactassess_en.pdf (accessed 20 November 2008).

46. The IMP, *supra* note 11, sec. 3.2, Tools for Integrated Policy-Making:

An integrated governance framework for maritime affairs requires horizontal planning tools that cut across sea-related sectoral policies and support joined up policy making. The following three are of major importance: maritime surveillance which is critical for the safe and secure use of marine space; maritime spatial planning which is a key planning tool for sustainable decision-making; and a comprehensive and accessible source of data and information.

47. See, for example, L. Juda, *supra* note 9, at 178–179.