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Ocean and Coastal Governance
The European Approach to Integrated Management:
Are There Lessons for the China Seas Region?

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Integrated Ocean Management is not only the most appropriate framework for achieving long-term goals for oceans and seas development, but also a necessary one to assure a proper sustainable development of the oceans and seas within the normative structure established by the United Nations Convention on the Law of the Sea.

Statement on behalf of the European Union,
H.E. Mr. José Antonio De Yturriaga Barberán.
Sixth Committee (Legal Affairs), United Nations, April 11, 2002

INTRODUCTION

The terrible events and human tragedy of the tsunami in the Indian Ocean on December 26, 2004, brought home to the world the unpredictable nature of the ocean in relation to affairs of mankind. It was a timely reminder of the fragility of the coastal zone when faced with the awesome power of the sea.¹ These catastrophic events demonstrate the importance of planning and management in coastal and ocean regions.

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They also provide us with a salutary lesson regarding the need for a coherent approach to the challenges posed by coastal and ocean use. Against this background, it is significant that a number of international organisations have called upon states to adopt an integrated management approach to manage human interactions with the ocean (IOM).² While the concept of integrated coastal zone management (ICZM) is well established in the domestic law of several states,³ both IOM and ICZM are relatively new concepts for policy development in the European Union (E.U.).⁴ This paper traces the background to these developments and assesses whether any lessons may be derived from the European experience that may benefit countries in other ocean regions, such as the China Seas region.

At the outset, it needs to be pointed out that the European Union still lags behind many other states and has only taken a number of tentative steps to introduce ICZM and IOM in coastal and ocean areas adjacent to the European land mass.⁵ These steps have been taken with a view to improving resource exploitation and environmental protection in coastal areas. Despite this progress, the European Union still lacks a coherent legal framework to ensure that the various sector policies that regulate shipping, the marine environment, marine scientific research, energy, fishing activity and international trade are consistent with each other and achieve the same goals. In particular, the European Union does not have instruments similar to the United States Coastal Zone Management Act of 1972 or Canada's Oceans Act of 1996 to unify the conflicting approaches adopted by the member States to coastal and ocean issues. Neither has the plethora of conflicting claims by member States to the various maritime jurisdiction zones such as the exclusive economic zone and the continental shelf facilitated the implementation of ICZM and IOC at a supra-national level. The European Union has, however, placed protection of the marine environment at the top of the political agenda and has a sophisticated institutional framework capable of policy development and conflict resolution. Though far from ideal, this framework may allow the European Union to follow the approach currently being pursued by the United States, Canada, Australia and New Zealand to ocean and coastal management.

For convenience, this paper is divided into three parts. Part I describes briefly the European Union, the legal order underpinning European integration, and the recent progress in adopting an integrated approach to the management of the coastal zone and ocean areas contiguous to the

European landmass. For comparative purposes, Part II looks at the move toward the adoption of an integrated ocean governance model in a number of countries outside of the European Union. A number of obstacles that need to be overcome if the European Union is to successfully implement ICZM and IOM are identified in Part III. This part also identifies a number of issues that may be relevant to other regional areas outside of the European Union such as the China Seas region.

Before turning to Part I, there are two other preliminary points. Firstly, much of the terminology describing ICZM and IOM is inconsistent and doesn't sit comfortably with the precise nature of the 1982 United Nations Convention on the Law of the Sea (hereinafter the "LOS Convention"). Consequently, this paper deals with ICZM and IOM concurrently. This perspective is justified on the grounds that both topics are interrelated and European documents seldom specify the precise geographical boundaries that separate the application of either concept. On a simple level, it may be argued that IOM applies the principles underpinning ICZM further offshore. Secondly, it also needs to be emphasised that the European approach to both ICZM and IOM is very much in a state of evolution and progress, which suggests that there is considerable scope within the European legal order to embrace and apply these concepts. Furthermore, it is also foreseeable that the implementation of these concepts will lead to policy elaboration and the adoption of legislative instruments in due course. The *acquis communautaire* [the settled law of the European Community], international law in general, and the law of the sea, in particular, will tailor any such instruments. In this context, this paper contends that the LOS Convention is the key normative framework for future policy and legislative developments implementing ICZM and IOM.

PART I THE EUROPEAN APPROACH

The European Union

The European Union is a regional integration organisation and is made up of 25 States,⁶ 20 of which are coastal States.⁷ As an international organisation,⁸ the European Union has no territory and only exercises jurisdiction over the territory and sea areas under the sovereignty and jurisdiction of the member States in accordance with the powers vested in

the European Union by the E.C. Treaties. Two oceans border Europe: the Atlantic and the Arctic. European member States share a large continental shelf in the north-east Atlantic and the European coastline, which is effectively the coastline of the member States, stretching from the Gulf of Bothnia in the Baltic Sea as far as the Aegean Sea in the eastern Mediterranean. Several European member States are islands, most notably the United Kingdom, Ireland, Malta, and Cyprus. The European Union is bordered by two semi-enclosed seas of great significance: the Mediterranean Sea in the south, which is mainly a high seas area⁹; and the Baltic Sea in the north, which is largely within the sovereignty and jurisdiction of seven member States.¹⁰ In addition, there are several regional seas such as the North Sea, the Irish Sea, and the Adriatic Sea that are in many ways unique from a geomorphologic and oceanographic perspective. Access to and from these semi-enclosed seas and regional seas is through international straits such as the Straits of Gibraltar and the English Channel, which act as pivotal points ensuring the smooth flow of international trade and commerce. In the north, Finland, Latvia, Lithuania, Estonia and Poland have access to the Atlantic Ocean through the Baltic Sea. Likewise, in the south, Italy, Greece, Malta and Slovenia only have access to the Atlantic through the Mediterranean Sea. Accession negotiations have commenced with Bulgaria, Romania, Croatia and Turkey.¹¹ Three of these states have extensive coastlines on the Black Sea. An application has also been received from the Former Yugoslav Republic of Macedonia to become a member of the European Union.

In terms of size, the sea area under the sovereignty and jurisdiction of the member States is equivalent in size to the European land mass.¹² Obviously, the size of sea areas under the jurisdiction of individual member States varies enormously. In the case of Ireland, for example, the extended continental shelf measures thirteen times the landmass of the island of Ireland.¹³ The European coastline is both long and diverse in terms of human activity, climate and ecosystems.¹⁴ More than 70 out of the 455 million citizens of the enlarged European Union, or 16 percent of the E.U. population, live in coastal municipalities.¹⁵ This proportion is increasing, and there are some estimates that suggest that approximately half the population of the member States (225 million) live within 50 kilometres of the sea.¹⁶ The benefit derived from the ecosystem(s) in coastal zones is estimated as exceeding the value of the national gross domestic product (GDP) in many of the smaller member States.¹⁷ European ports such as Rotterdam, Hamburg, London, Lisbon and

Liverpool act as gateways for international trade and link the European hinterland with the sea through a complex network of canals and rivers that bisect the continent. Several European countries such as Greece and Sweden have a large number of offshore islands that are popular holiday destinations. In contrast with the South China Sea region, there are no archipelagic states in the European Union.

Europe's geographical diversity is matched by a unique legal order that has evolved considerably over the last fifty years. This legal order may be traced back to the Treaty of Rome and a number of other international treaties concluded by five States in the 1950s.¹⁸ In addition to these "foundation treaties," other Treaties, Protocols and Acts delimit the powers and jurisdiction of the European Union.¹⁹ The objective of the European Union is "to promote economic and social progress and to achieve balanced and sustainable development."²⁰ In short, the European Union is an exercise in economic and political integration. Under the E.C. Treaties, the European Union has legal personality and common institutions (the European Parliament, the Council of Ministers, the European Commission, and the European Court of Justice) that bind the member States.²¹ Periodically, the heads of the member States sit collectively as the European Council and issue directions on general policy matters. The common institutions have issued forth a veritable tide of secondary legislation in the form of directives, regulations, decisions, and resolutions. Many of these instruments impinge and regulate activities in sea areas under the sovereignty and jurisdiction of the member States. In general, European law is an extra-territorial source of law binding in certain circumstances on the member States. Unsurprisingly, given the range and diversity of the member States, the European Union has adopted more than forty "common policies" and twelve member States share a single currency, the Euro. Furthermore, while many of the member States do not share a common legal tradition and have different forms of national, regional and local government, E.C. law in many instances is supreme and takes precedence over the law of the member States.²² The supremacy of E.C. law over national law is well established, and member States are obliged to take all appropriate measures to fulfil community obligations. Lawmaking in the European Union is complex and entails the European Commission initiating a legislative proposal, consultation with various committees and, in some instances, with the European Parliament, depending on the content of the proposal. Draft proposals do not become law until they receive the requisite votes in the European Council, which

is made up of the ministers representing the member States.²³ Lawmaking in the European Union is not straightforward, and this poses particular problems for the development of new normative initiatives such as those underpinning ICZM and IOM as explained in Part III of this paper. Recently, member States of the European Union have concluded a treaty elaborating a Constitution for the European Union. This treaty, which will have to be ratified by all member States, does not contain any express references to ICZM or IOM.²⁴ The Constitution does, however, bind the European Union to prudent and rational use of natural resources.²⁵ Furthermore, the Constitution clearly states that the European Union has exclusive competence in the conservation of marine biological resources under the common fisheries policy.²⁶ In other areas the European Union shares competence with the member States.²⁷

Importantly, the European Union and all of the member States with the exception of Estonia are party to the United Nations Law of the Sea Convention.²⁸ The institutions of the European Union are increasingly active in the regulation and management of marine activities beyond the traditional domain of sea fisheries.²⁹ In the context of the law of the sea, the European Union is an actor in its own right and the Declaration of the European Community on signature of the LOS Convention records the significance of the Convention as a major effort in the codification and progressive development of international law.³⁰ The European Union has used the LOS Convention as a backdrop for the development of community policies and for the development of its institutional role within international organisations such as UNEP and the IMO. Traditionally, European law has regulated marine-related activities on a sector basis and there was little scope for the coordination or integration of policies for fisheries, transportation, environment, energy and regional development.³¹ This shortcoming is compounded by the nature and extent of the legislative competence of the European Community, which, in some instances, is shared with the member States.³² The exercise of the competence that the member States have transferred to the community under the treaties is, however, by its very nature, subject to continuous change.³³ Other than the LOS Convention, the European Union is party to many international and regional treaties that regulate and manage the marine environment as well as the living resources of the sea. A full review of these treaties is not possible here.³⁴ As evident from the statement (cited above) delivered on behalf of the European Union to the United Nations Legal Affairs Committee on April 11, 2002, the European

Union is committed to establishing an integrated approach to ocean management in accordance with the normative framework set out by the LOS Convention.

Integration

A number of questions may be posed regarding the concept of “integration.” The first obvious question is: What is integration? The term “integration” is not defined *per se* in international law and is used by some specialist commentators to describe the bringing together of various parts of the planning and management activities into a single unified system.³⁵ Agenda 21 of UNCED describes the need for new approaches to marine and coastal management that “are integrated in content.”³⁶ From a legal perspective there is little doubt but that the term is ambiguous and open to a number of meanings.³⁷ In the case of ICZM, integration is a management concept that allows a range of issues to be taken into consideration in decision-making regarding the use, development and regulation of the coastal zone. The European Commission Communication on ICZM states that:

Integrated Coastal Zone Management (ICZM) is a dynamic, multi-disciplinary and iterative process to promote sustainable management of coastal zones. It covers the full cycle of information collection, planning (in its broadest sense), decision making, management and monitoring of implementation. ICZM uses the informed participation and cooperation of all stakeholders to assess the goals in a given coastal area, and to take actions toward meeting these objectives. ICZM seeks, over the long-term, to balance environmental, economic, social, cultural and recreational objectives, all within the limits set by natural dynamics.

‘Integrated’ in ICZM refers to the integration of objectives and also to the integration of the many instruments needed to meet these objectives. It means integration of all relevant policy areas, sectors, and levels of administration. It means integration of the terrestrial and marine components of the target territory, in both time and space.³⁸

Another feature of ICZM is that it is flexible in order to facilitate the implementation of different policies in different coastal areas. According to a report published by GESAMP,³⁹ an integrated framework should contain the following elements: law, international cooperation, resource management principles, a policy process, devolved institutional arrangements, stakeholder participation in decision making, financial and educational programmes.⁴⁰ There is general consensus in the specialist literature that the implementation of coastal zone management is a prerequisite for sustainable resource use in the coastal zone.⁴¹

The second question that may be posed is: Why is it necessary for the European Union to adopt an integrated approach? The answer to this question appears to vary. In the case of ICZM, the European Council has outlined a number of reasons why Europe needs to adopt and implement this management concept.⁴² The principal reason is based on the view that the coastal zone is of central importance for the protection of the environment, economic, social, cultural and recreational interests in the member States.⁴³ Also, there is general consensus that the coastal zone possesses a unique biodiversity in terms of flora and fauna. Unsurprisingly, the high population density and industrialisation in the coastal zone has placed a strain on the natural resources and the coastal environment. Recent studies indicate that European fisheries are greatly depleted and many European rivers are polluted and of poor ecological quality.⁴⁴ Furthermore, about 85 percent of the European coastline is threatened by development.⁴⁵ In global terms, the European Union is a major contributor to global warming and climate change.⁴⁶ Good ocean stewardship and coastal zone management are prerequisites to addressing the problems associated with climate change. In the European context, a recent report by the European Environment Agency estimates that climate change is resulting in: the rise of sea levels, an increase in the sea surface temperature, and changes in the marine growing seasons and species composition.⁴⁷ More specifically, the report estimates the current rise in sea level is 0.8–3.0 mm per year. The report tabulates increases in sea surface temperature in basins such as the Baltic Sea and the North Sea. This has resulted in an increase in phytoplankton biomass, a northward movement of indigenous zooplankton species by up to 1,000 km, and an increasing presence and number of warm-temperate species in the North Sea. Growth in the population in the coastal zone has also led to an increase in pollution of the sea from land-based sources. Many coastal activities are in decline and no longer support employment in remote

regional areas of the European Union such as Ireland, Portugal and Spain. In some instances, new economic activities such as offshore energy installations and aquaculture are creating new opportunities for coastal development. Another particular reason for adopting an integrated approach is that there is considerable disparity in the planning law and administrative structures of the member States that apply to the coastal zone. In other words, integration will facilitate the approximation of the law applicable to the coastal zone. Surprisingly, while there appears to be a credible case supporting ICZM, few member States other than France and Spain have introduced specific legislation governing ICZM at a national level and this, perhaps, has provided the European institutions with impetus for taking European measures. Furthermore, much of the European regulatory framework currently applicable to the coastal environment was not enacted for this particular purpose and it is now evident that the traditional terrestrial approach to the regulation of the marine environment is no longer sufficient to ensure the sustainable development of coastal activities.

Further offshore beyond the coastal zone, IOM is identified by a number of international bodies as an essential tool to address crosscutting issues such as sustainable fisheries, degradation of the marine environment, promotion of marine scientific research and the safety of navigation.⁴⁸ This shift towards integration is also evident in E.C. law where considerable effort is now being made to tackle trans-boundary issues through the medium of the common policies (the fisheries, transport and environmental policies in particular). The scope of these policies, in many instances, extends as far as the remit of the member States under international law. These policies remain in most cases sector policies that contain few integrated elements. The shift toward integration at E.C. level appears to be motivated by a need to achieve policy coherence at six different levels: environment, economic, social, spatial, temporal, scientific, and institutional.⁴⁹ Similarly, a recent commentary has suggested that the recent call for an integrated approach to ocean management could be achieved at three different levels: ecological, normative, and the implementation level.⁵⁰ The rationale supporting the adoption of an integrated approach appears to be based upon a presumption that the current frameworks (jurisdictional and otherwise) are inadequate to resolve conflict, achieve cooperation, and manage the exploration and exploitation of marine resources while ensuring the protection of the environment. There is little doubt that the adoption of

structures and regulatory provisions at a European level, *in extremis*, will ultimately usurp the role and powers of the member States in relation to ocean use. Integration may thus be viewed as a push for greater European control over the management of offshore resources that are under the sovereignty and jurisdiction of the member States. At a European level, the adoption of an integrated approach may be justified on the grounds that there is increased plurality of legal norms and parallelism in treaties concerning the sea. This is most evident in international conventions concerning the marine environment that, in many instances, contain provisions that are part of European law.⁵¹ Consequently, an integrated approach to international and European legal obligations will facilitate the coordination and implementation of a broad range of legal measures at the multilateral, regional, and local levels.

The “Soft Law” Route Towards Integration

The E.C. Treaties do not contain any express provisions on ICZM or IOM. Indeed, one particular feature of the European approach to ICZM has been the preference for “soft law” in the form of European Council resolutions, communications, and recommendations, none of which has legal effect and is thus not binding on the member States. One eminent jurist has described “soft law” as “all that is not law”.⁵² The European Union has taken several measures towards committing the member States to adopt an integrated approach in both the coastal zone and further offshore. Some of these measures are sketched here.

Integrated Measures for the Coastal Zone

The origin of ICZM in Europe may be traced back to two resolutions taken by the European Council of Ministers in 1992 and 1994.⁵³ Both resolutions called upon the European Commission to establish a strategy for the establishment of an integrated approach to coastal zone management in the member States. Subsequently, the European Commission established a sizeable number of experimental projects in the coastal zones of 13 countries with a view to assessing the suitability of ICZM as a management tool. Collectively, these projects became known as the European Demonstration Programme in ICZM. On completion of the programme, the European Commission established six thematic studies to synthesize the results and published two reports that set out the

general principles and policy options underpinning ICZM.⁵⁴ After completing a public consultation process, the European Commission sent a Communication to the European Council of Ministers and the European Parliament setting out a European strategy on ICZM.⁵⁵ Communications *per se* do not have legal effect and are only a means of providing background information to the European institutions on a particular subject.⁵⁶ This particular communication, nevertheless, pointed out that there is no simple legislative solution to the complex problems associated with coastal zone management. In light of this conclusion, the European Commission advocated the adoption of a strategy that would also reflect the physical, economic, cultural and institutional diversity in the member States. This strategy would also aim to discharge the European Union's obligations under international agreements such as Chapter 17 of Agenda 21. Significantly, the strategy defines the role of the European institutions as one of providing leadership. Consequently, implementation of ICZM was to be undertaken by the member States, at a local, regional, and national level. Importantly, the European Commission also proposed that the member States should retain complete flexibility in selecting the specific means to implement ICZM. The Commission noted that this approach mirrors the U.S. Coastal Zone Management Act of 1972 that has resulted in the adoption of ICZM programmes at state level, which cover 99 percent of the U.S. coast. The European ICZM strategy also places considerable emphasis on applying existing legal instruments as a means to implement coastal zone management. One of the core elements in the strategy was the adoption by the Council and the Parliament of a Recommendation inviting the member States to implement the principles of good coastal zone management.⁵⁷

- (a). A Broad "Holistic" Perspective (Thematic and Geographic)
- (b). A Long Term Perspective
- (c). Adaptive Management (responding to new information and conditions) During a Gradual Process
- (d). Local Specificity
- (e). Working with Natural Processes
- (f). Participatory Planning
- (g). Support & Involvement of all Relevant Administrative Bodies
- (h). Use of a Combination of Instruments designed to facilitate coherence between sector policies and planning and management.⁵⁸

One noticeable feature of these principles is that they place considerable emphasis on procedural matters and neglect to provide guidance on the substantive measures that should be adopted by member States to implement ICZM. Ostensibly, the aim of the Council Recommendation is to move coastal zone management away from project-led initiatives and toward a non-regulatory scheme based upon partnerships between local stakeholders in coastal zones and the relevant regional authorities. Whether this course will result in the successful implementation of ICZM is debatable. In the words of one commentator: "At the end of the day, the partnerships depend on the political will and commitment of individual government bodies and private individuals, all of which have different and often conflicting priorities."⁵⁹ Furthermore, under the E.C. Treaty, Council Recommendations are not legally binding on the member States and have "no legal force."⁶⁰ This means that the provisions in the Recommendation are dependent upon the political commitment of the Member States and the regional authorities to embrace the concept of ICZM.⁶¹ Tellingly, efforts by the European Parliament to introduce a more robust legal framework for ICZM were rejected by both the European Commission and the Council of Minister.⁶² Other than advocating a strategic approach and setting down the aforementioned principles, the Recommendation requires Member States to undertake a national stocktaking exercise reviewing the actors, laws, and institutions influencing the management of the coastal zone.⁶³ Based on the results of this stocktaking, each member State, in partnership with the regional authorities and inter-regional organisations, is to implement the principles of coastal zone management. Member States are also encouraged to implement existing conventions/treaties with neighbouring countries, including non-member States in the same regional sea area. This is aimed at establishing mechanisms for better coordination of cross-border issues. With a view to ensuring adequate follow-up action at a European level, member States are obliged to report to the European Commission on their experience in implementing the Recommendation by February 2006. The European Commission, in turn, is obliged to provide the European Council and Parliament with an evaluation report and a proposal for E.C. legislation, if appropriate, by January 2007.⁶⁴

Other than pursuing the soft law route on ICZM, the European Union has given considerable financial support to fund coastal zone management projects at a local level.⁶⁵ Since the adoption of the ICZM

Recommendation, there have also been a number of other developments in European law that will have a major bearing on the implementation of ICZM in the member States. Most notably, the European Union has adopted a Water Framework Directive that sets out a comprehensive policy for the management of European rivers, estuaries and coastal waters.⁶⁶ This Directive is aimed at reducing land-based pollution into the marine environment.⁶⁷ Implementation of the Directive will require all member States to manage the water resource in the coastal environment in a sustainable manner.

Integrated Measures Further Offshore

The soft-law route toward IOM is evident in a number of recent initiatives aimed at the adoption of both a European marine environment strategy and a maritime policy covering all marine sector activities. These initiatives have their origin in the 6th Environment Action Programme that aims to protect and conserve the European marine environment.⁶⁸ Regionally, the European marine environment extends as far as the Arctic, Northeast Atlantic, Baltic, Mediterranean, and Black seas.⁶⁹ The 6th Environment Action Programme identifies a number of threats to the quality of this environment including commercial fishing, oil and gas exploration, shipping, pollution, and the extraction of sand and gravel from the seabed. In 2002, the European Commission Communication published a blueprint outlining the principal elements in a strategy for the protection of the marine environment.⁷⁰ This Communication was discussed at a Stakeholder Conference in Køge, Denmark, in 2002 and at a European Council meeting which requested the European Commission, *inter alia*, to do the following:

- a. Base its proposal for a marine strategy on an *integrated approach*, which should include, where appropriate, relevant qualitative and quantitative targets and timetables, against which the foreseen measures can be measured and evaluated, as well as identify actions for its implementation (emphasis added);
- b. Guide the development and implementation of the ecosystem approach including the further development of biological and environmental targets and benchmarks;

- c. Recommend further measures for the integration of environmental aspects in other Community policies;
- d. Enhance and facilitate the coordination and cooperation with and between the Regional Seas Conventions and agreements, the European Environment Agency, the European Maritime Safety Agency and other relevant fora and to provide for a coordination and streamlining of monitoring and assessment to achieve the highest synergistic effect;
- e. Invite neighbouring countries to participate in the process and develop partnerships, particularly in the Baltic, the Mediterranean and the Black Sea.

Subsequently, 34 European countries and 30 international governmental and non-governmental organisations participated in a series of meetings on topics related to the strategy.⁷¹ In 2004, a second stakeholder conference on the development of a European marine strategy took place in Rotterdam. At this conference, the European Commission and several international organisations such as the International Council for the Exploration of the Seas (ICES) presented a broad range of documents including a paper entitled: “Thematic Strategy for the Protection and Conservation of the European Marine Environment.”⁷² Many of these documents set out guidance on the application of the ecosystem approach in the marine environment. The Barcelona, Black Sea, Helsinki and OSPAR Commissions presented reviews on current regional schemes to protect the marine. In an address to the conference, a senior representative of the European Commission expressed the view that the European marine environment strategy will consist of a common vision with the overall goal of ensuring that “future generations can enjoy biologically diverse and dynamic oceans and seas that are safe, clean, healthy and productive.”⁷³ This common vision will be accompanied by a long-term political commitment to achieve a number of agreed objectives: the protection of marine ecosystems; the phasing out of some types of pollution in the marine environment within a defined timeframe; and the development of marine goods and services in a sustainable manner. The European Commission also emphasised the need for Europe to adopt an integrated approach to the management of the marine environment based upon three things: the ecosystem approach, the precautionary principle, and involvement of the various stakeholders in the policy process.⁷⁴ Significantly, at the Rotterdam conference the various parties in

attendance all expressed broad support for further integration and coherence of E.U. policies. Other than stating the obvious, that integration is required at all levels (multilateral, regional and state levels), many of the conference documents are vague in how this is to be achieved in practice. There were some suggestions by delegates at the conference that horizontal legal instruments such as the Water Framework Directive, the Habitats Directive, the Environmental Impact Assessment Directive and the Strategic Environmental Impact Assessment Directive could be used for the purpose of integration.⁷⁵ This suggestion is particularly surprising as many of these instruments have been drafted from a terrestrial perspective and contain few provisions that are directly related to the marine environment. Nevertheless, the European Commission signalled their intent to propose a specific thematic strategy on the protection of the marine environment in 2005. Furthermore, the newly appointed President of the European Commission, Mr. Barroso, has indicated that the Commission will develop a concerted maritime policy and that one commissioner, Mr. Borg, will be responsible for the coordination of all the maritime activities within the College of Commissioners. The thematic strategy on the protection of the marine environment will thus form a major component of the wider maritime strategy that is also likely to be proposed in 2006. In the interim period, the European Commission is preparing a Green Paper setting the principal elements for such a strategy. Green Papers are generally aimed at promoting public discussion and seldom provide information on the precise content of legislative measures.

In addition to the European measures to develop a coherent European approach to the marine environment, several member States of the European Union are engaged in marine spatial planning exercises in response to commitments made at the 5th North Sea Conference and under the OSPAR framework.⁷⁶ Marine spatial planning has been identified by a number of organisations in the United Kingdom as a panacea to the management difficulties encountered in managing conflicting uses of the sea.⁷⁷ Germany has also taken several measures to spatially manage areas of the North Sea and the Baltic Sea with a view of reconciling offshore energy developments, maritime transport and nature conservation.⁷⁸ There are, however, many practical difficulties to be overcome before marine spatial plans become the norm for marine management, including: the scope of the plan; the scale of the plan; the information and data requirements; responsibility for the plan; stakeholder involvement; and responsibilities for implementation, enforcement, and compliance. There

have also been a number of suggestions in the United Kingdom regarding the establishment of a “pilot scheme” prior to the development of concrete proposals regarding marine spatial planning.⁷⁹ Early indicators suggest, nevertheless, that marine spatial planning may evolve as a planning and management tool for ICZM and IOM.

PART II

COMPARATIVE LAW: MOVING TOWARDS INTEGRATED GOVERNANCE

Background

As noted above, the law as it applies to sea areas under the jurisdiction and sovereignty of the member States of the European Union is tailored largely by developments in both public international law and the law of the European Community. Two of these states, Ireland and the United Kingdom, share a common legal heritage with a number of other common law jurisdictions with distinctive oceans and coastal policies. A brief review of recent developments in the United States, Canada, Australia and New Zealand is undertaken here with a view to provide some comparative context by which progress in Europe may be gauged.⁸⁰ This is followed by a description of some of the legislative measures adopted by China aimed at establishing a coherent framework regulating marine related activities.

The United States

The United States has provided leadership in the development of the law of the sea and oceans policy since the 1940s.⁸¹ The Commission on Marine Science, Engineering, and Resources (the “Stratton Commission”) has undertaken seminal work during the 1960s.⁸² More recently, in response to increased concerns regarding the pressures and opportunities regarding marine resource use,⁸³ the United States Congress enacted the Oceans Act 2000, which provided a legislative basis for the president to appoint a U.S. Commission on Ocean Policy made up of 16 independent experts in a range of maritime disciplines.⁸⁴ The mandate of the Commission extended to holding public meetings and submitting a report to Congress and the president regarding an oceans policy for the United States.⁸⁵ The Commission’s report is elaborate and makes more than 200 recommendations regarding ocean stewardship, the establishment of monitoring programmes, and public education on the values of ocean

management and ocean stewardship.⁸⁶ These recommendations were subsequently endorsed by the non-governmental Pew Oceans Commission (an independent organisation) that has recommended the adoption of a National Ocean Policy Act as a cornerstone for the development of a United States policy in relation to the sea.⁸⁷ These recommendations foresee the establishment of spatial planning in oceanic areas as well as a comprehensive network of marine protected areas. In particular, the Oceans Commission proposed the following:

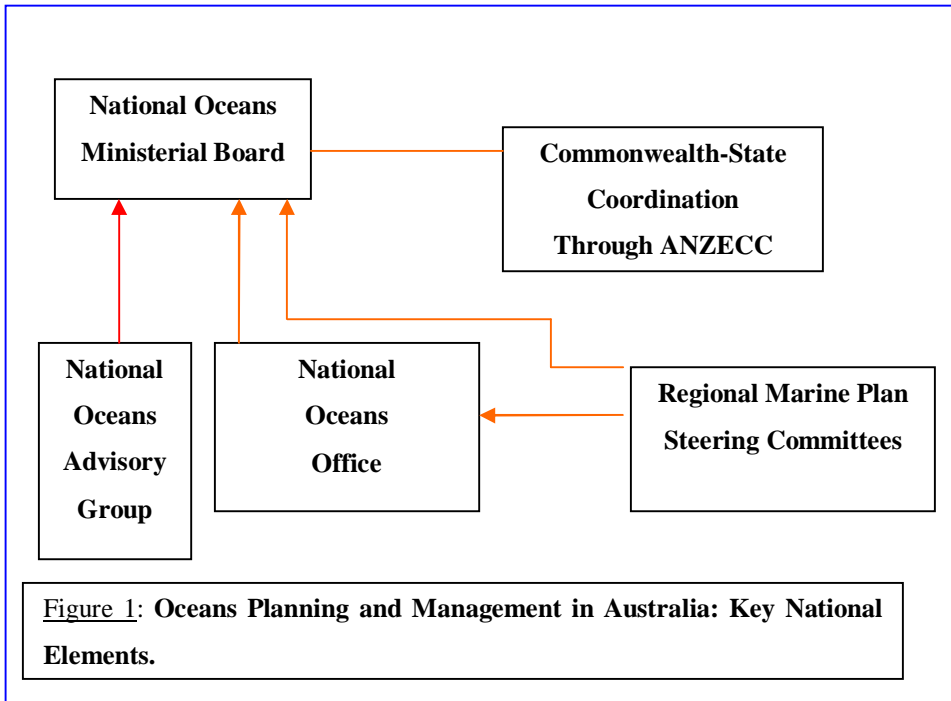
- (a).Creating a new national ocean policy framework to improve decision-making;
- (b).Strengthening science and generating high-quality, accessible information to inform decision makers;
- (c).Enhancing ocean education to instil future leaders and informed citizens with a stewardship ethic.

Importantly, the Oceans Commission recommended that the United States accede to the LOS Convention; a National Oceans Council be created and be chaired by an assistant to the president; and a Presidential Council of Advisors on Ocean Policy in the Executive Office of the President be established. The Commission also recommended establishment of a range of subsidiary bodies, including, a Committee on Science, Education, Technology, and Operations; a Committee on Ocean Resource Management; and Regional Oceans Councils. The debate in Congress in relation to the recommendations received cross-party support. Ultimately, the outcome of the move towards the adoption of an integrated oceans policy in the United States may well depend on political support for the Oceans Commission's proposals. Significantly, many of the difficulties regarding accession to the LOS Convention have been overcome in the Senate's Committee on Foreign Relations, and this ought to pave the way for the adoption of an elaborate oceans policy as envisaged by the Oceans Commission.⁸⁸

Australia

Australia exercises jurisdiction over eight million square kilometres of ocean and is a world leader in many areas of ocean planning, scientific research, and industry practices. Australia's status as a world leader has been facilitated by the implementation of a distinctive oceans policy since

the late 1990s.⁸⁹ The policy was established under the auspices of the Department of Environment, Sports and Territories (referred to as Environment Australia), with a view to provide a framework, *inter alia*, for the development of marine science, technology, and industry.⁹⁰ Initial proposals to adopt an integrated management approach to ocean issues were opposed by several marine-based industries that sought to retain a sector driven approach to the management of offshore activities. Despite the initial reluctance of industry to support the policy, one of the outcomes of the broad consultation and policy formulation process pursued by Environment Australia is that the oceans policy has a range of objectives that hinge on the support of government, the private sector, scientific bodies, and the public for their implementation.⁹¹ The *leitmotiv* of the policy is stated as follows: “Healthy oceans, cared for, understood and used wisely for the benefit of all, now and in the future.”⁹² One of the drawbacks in the Australian oceans policy has been the failure of the Commonwealth Government to involve fully the State and Territory Governments which have legislative power for the sea area within 3 nautical miles of the baselines under the Offshore Constitutional Settlement of 1983.⁹³ From a comparative perspective, the most important aspect of Australian policy is the institutional arrangements that have been established for implementation and management of the policy (illustrated in [Figure 1](#) below).



The key Australian institutional arrangements include the establishment of a National Oceans Ministerial Board made up of the Commonwealth Ministers for the environment, industry, resources, fisheries, science, tourism and shipping. Other Ministers are co-opted as necessary, such as defence and foreign affairs. The Board has a broad ranging remit including the following: the coordination of cross-sector issues; consultation on priorities for programme expenditure; consideration of marine research priorities; and guidance of the actions of the National Oceans Office. The Board is advised by the Oceans Advisory Group made up of members with non-government interest, such as industry, science and conservation, who are selected for their expertise in ocean affairs. The National Oceans Office provides the Board with a secretariat, technical support and programme delivery in consultation with other Commonwealth agencies. Australia has also established regional marine plans and steering committees have been appointed by the Board to oversee the development of the plans. State and Territory Agencies participate in the steering Committees where they are involved with the plans. The initial budget to implement the policy was \$50 million over a

three-year period (approximately € 25 million).⁹⁴ One evaluation of developments in Australia has suggested that the success of the policy is largely dependent on reconciling sector interests with the new institutional arrangements.⁹⁵ The policy implementation followed to date is illustrated in Figure 2. At a local level, there has been considerable follow-up action including the re-designation of areas of the Great Barrier Reef for conservation as well as a range of actions to improve stakeholder and industry support for the policy.⁹⁶

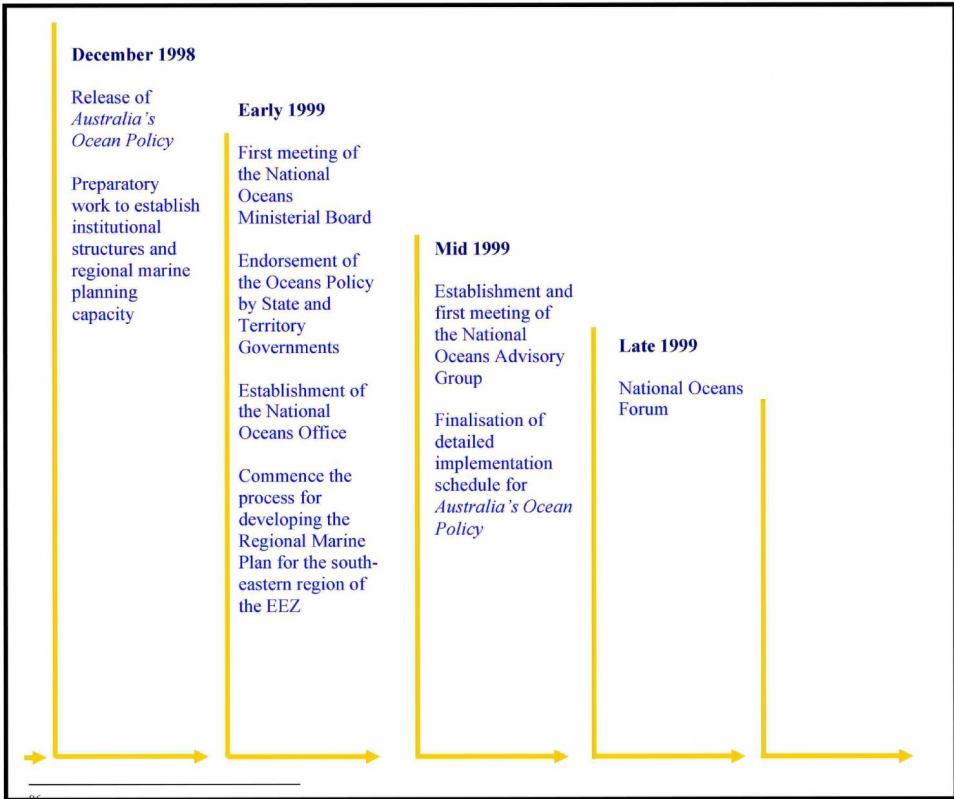


Figure 2: Steps followed by Australia in establishing the institutional structures to implement the Oceans Policy.

New Zealand

New Zealand exercises jurisdiction and sovereign rights over an extensive sea area.⁹⁷ New Zealand commenced developing an oceans policy in the late 1990s as a means to harmonise national policies and to implement international obligations. A Coastal and Oceans Task Force undertook much of the initial work under the auspices of the Department of the Prime Minister and Cabinet.⁹⁸ This Task Force has developed the policy in three stages as shown in Figure 3⁹⁹ These stages entail defining the vision, designing the tools to deliver the vision, and delivering the vision. Considerable emphasis is also placed on public and Maori consultation.¹⁰⁰

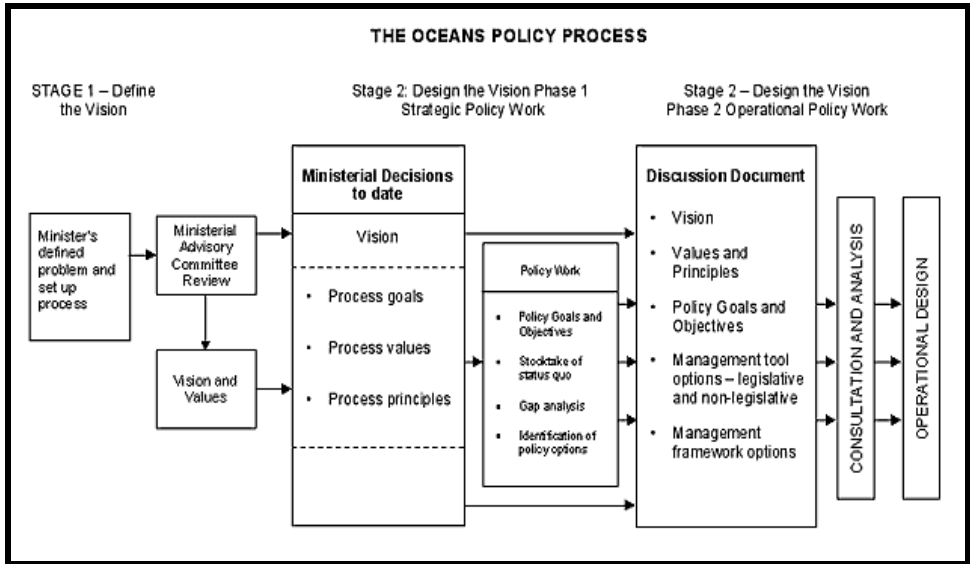


Figure 3.

The vision for the oceans policy is stated as follows:

Healthy Oceans: New Zealand understands marine life and marine processes and accordingly take responsibility for wisely managing the health of the ocean and its contribution to the present and future social, cultural, environmental and economic well being of New Zealand.¹⁰¹

A special Oceans Policy Secretariat was established in 2000 to undertake strategic policy work.¹⁰² Unexpectedly, progress was stalled for a considerable period between 2002 and 2004 because of difficulties in integrating the Treaty of Waitangi 1840 into the policy.¹⁰³ This Treaty protects Maori rights in New Zealand, including their interests in the foreshore and the marine environment.¹⁰⁴ The foreshore issues were largely resolved under the direction of the Department of the Prime Minister and with the enactment of the Foreshore and Seabed Act in 2004. Stage three of the process that entails designing the policies, tools, and processes for delivering the vision will integrate both the Treaty of Waitangi principles and the full range of New Zealand’s international obligations into the policy. The Oceans Policy Secretariat was stood-down while the Maori foreshore and seabed rights were being resolved, and there has been considerable delay in the adoption of framework legislation and the appointment of an Oceans Minister within the government. Other than the Treaty of Waitangi and obligations that stem from international

treaties, New Zealand has broad range of domestic legislation and policy initiatives such as the Resource Management Act 1991, the New Zealand Coastal Policy Statement, the Fisheries Act 1996 and the New Zealand Biodiversity Strategy, which will have to be incorporated into the oceans policy. Furthermore, New Zealand's Environmental Court may prove to be an appropriate forum for dispute resolution in relation to marine issues. Overall, New Zealand appears to be fully committed to establishing both ICZM and IOM, even if the precise legislative architecture of the policy is still on the drawing board.

Canada

Canada has a long and turbulent history in relation to the law of the sea and on occasion has resorted to unilateral action to defend its national interests in the Atlantic, Pacific and Arctic Oceans.¹⁰⁵ The division of legislative powers between the Federal and Provincial Governments in relation to marine resource use and management has exacerbated difficulties. In response to international developments and the failure of a number of domestic policies, Canada developed an oceans policy in the 1990s that aims to ensure healthy, safe, and prosperous oceans for the benefit of current and future generations of Canadian citizens.¹⁰⁶ In order to give effect to the policy, the Government of Canada enacted the Canada Oceans Act in 1996.¹⁰⁷ The Act authorised the Minister of Fisheries and Oceans Canada (the Minister) to put together a national oceans strategy guided by the principles of sustainable development, the precautionary approach and integrated management.¹⁰⁸ In 2002, the Minister published Canada's Ocean Strategy, which provides a strategic approach to oceans management for the 21st century and sets out the government policy statement for the management of estuarine, coastal and marine ecosystems.¹⁰⁹ The essence of the Strategy is to support policy and programmes aimed at understanding and protecting the marine environment, supporting sustainable economic opportunities, and providing international leadership. In 2005, Canada commenced the first phase of an Oceans Action Plan aimed at developing integrated management plans for large ocean areas on all three coasts with a view of preserving the health of marine ecosystems.

Surprisingly, prior to the enactment of the Oceans Act in 1996, Canada's policy for the management of the ocean was described as "piecemeal, fragmented and scattered" and summarised by the Canadian

National Advisory Board on Science and Technology (the Board) as “haphazard” and “ad hoc”.¹¹⁰ The genesis of primary legislation (an Oceans Act) lies in a report submitted by the Board to the Prime Minister. Subsequently, the Prime Minister expressed the view that prudent management of the ocean was needed as a tool for long-term regional development.¹¹¹ The Oceans Act 1996, aims to make Canada the world leader in oceans and marine management, and was considered by the Canadian Parliament as the first step toward recognising the importance and potential of sea areas under Canadian jurisdiction. As a framework instrument, the Act seeks to address the following: regulatory duplication; conflict and inadequacies that result in inefficiencies; failure to protect the marine environment adequately; and impediments to marine development. Under the Act, Canada proclaimed an exclusive economic zone and declared Canada’s jurisdiction over the contiguous zone.¹¹² As well as providing the legal basis for the implementation of an oceans management strategy, the Act re-orientates the organisational structure for the provision of coast guard services, marine sciences, and hydrographical services.¹¹³ The Strategy is largely complementary to the Act and has included a comprehensive range of actions to implement the policy, including the following: the appointment of two Ministerial Ocean Ambassadors; the establishment of a Minister’s Advisory Council, an Ocean Management Research Network, and an Oceans Task Group; as well as the establishment of marine-protected areas and a number of large ecosystems initiatives. A policy framework has also been adopted for integrated management in the coastal zone.¹¹⁴ Arguably, one of the most significant aspects of the Oceans Strategy is the redefinition of Canada as a maritime country and the emphasis upon wise development of the sea. While the Canadian framework is often held up as a panacea for the difficulties encountered in ocean management, there have been a number of recent commentaries on the effectiveness of Canada’s ocean policy and the implementation of the Act that indicate that the institutional arrangements are inadequate to realise the prescribed objectives.¹¹⁵ Progress toward implementation has been hampered by interagency tensions and interdepartmental conflicts as well as the absence of appropriate budgets for programme implementation.

China

China is one of the largest coastal States in the world with a coastline 18,000 kilometres in length. China became party to the Law of the Sea Convention in 1996.¹¹⁶ Since then, China has promulgated the Law on the Exclusive Economic Zone and Continental Shelves on June 26, 1998, and is committed to implementing both ICZM and IOM. This commitment is evident from the statement on the oceans and the law of the sea, delivered by H.E. Mr. Wang Yingfan, Permanent Representative of China to the United Nations, marking the 20th anniversary of the signing of the Convention in 2002.¹¹⁷ This statement noted that the Chinese government supported the strengthening of integrated ocean management that, in their opinion, should be focused on enhancing integrated coastal area management during the first phase of implementation.¹¹⁸ In this regard, China urged all coastal states to take effective measures to implement both ICZM and IOM.¹¹⁹ China's Ocean Agenda 21 (1996) and its Marine Development Program (1998) could count as a management framework for Integrated Coastal Zone Management, however, the contents of these documents emphasise general CZM topics and only very superficially provide guidelines for future management.¹²⁰ This commitment to integration is not surprising, as China's coastal zone area measures approximately 285,000 km² and this area is susceptible to pollution and many other problems associated with coastal zone development.¹²¹ Since 2000, China has completed a number of demonstration experiments to test the suitability of ICM and to promote sustainable development policies in the coastal zone.¹²² A considerable body of legislation concerning maritime matters further offshore has complemented these initiatives.¹²³ Considerable emphasis has also been placed on ensuring that the content of domestic laws and administrative regulations are consistent with the Law of the Sea Convention. The formulation and implementation of these laws, rules, and regulations are aimed, on the one hand, at protecting China's state sovereignty and marine rights and interests. Many of the initiatives are also tailored to promote, on the other hand, the rational development of marine resources and the effective protection of the marine environment. The Chinese law on the Use and Management of Sea Areas (2001) holds special relevance as it is the only law explicitly relating the management of certain activities in newly defined coastal areas. It also regulates the jurisdiction over marine zoning between the State Oceanic Administration, the Fishery Department and the Maritime

Safety Administration. Furthermore, there are amended versions of laws that deal with the coastal zone or coastal related sectors, e.g. the Fisheries Law from 1986 (amended 2002) and the Marine Environmental Protection Law from 1982 (amended 1999). As a result of these legislative measures, sea areas under the sovereignty and jurisdiction of China are now regulated by a comprehensive legal code. This code, however, lacks a framework instrument similar to Canada's Ocean Act of 1996. Furthermore, China has favoured bilateral agreements governing fisheries and marine scientific research in the China Seas Region.¹²⁴ Joint development of offshore hydrocarbons with neighbouring states in disputed areas has proven unsuccessful and it remains to be seen if states in the China Seas region are committed to adopting an integrated approach to resolve outstanding issues at a regional level.¹²⁵ Specific CZM related projects in China were started by the Xiamen demonstration site for CZM. Apart from the Bohai Sea Project, which is of inter-provincial nature, and a project on biodiversity protection in Fangchenggang/Guangxi, Yangjiang/Guangdong and Qingangang/Hainan in the north of the South China Sea, Xiamen remains the only city with its own CZM project. Instructively, it is also reported that China is unlikely to adopt a Coastal Zone Management Act before the end of 2005.¹²⁶

Summary of Developments in Comparative Law and Policy

As is evident from the discussion above, outside of the European Union, several countries have responded to the growing challenge of marine resource use by adopting an integrated management approach. More specifically, Canada, Australia, and New Zealand (as shown in [Figure 4](#)), which are party to the LOS Convention, are actively pursuing an integrated oceans policy approach that seeks to integrate science into decision-making regarding marine resource use and marine spatial planning. The United States, which considers many of the provisions of the LOS Convention to be rules of customary international law, is also embarking on a process that may lead to the revision of the established structures for ocean governance. In contrast to these countries, progress in the European Union has been dilatory and initiatives at member State level are constrained by the cumbersome division of competence between the European institutions and the member States in relation to ocean affairs (examined in Part III). Surprisingly, Norway, which has made little effort, has been made to move away from the sector driven approach to

marine regulation and management. In a number of countries, research is ongoing regarding the lessons that may be derived from the experience in the Antipodes and in North America.¹²⁷ As noted above, China has yet to adopt a framework instrument, although there have been a number of indicators that suggest a national commitment to implement both ICZM and IOM.

Country	Oceans Act	Oceans Policy	Oceans Strategy Cross Cutting Structures	Jurisdictional Framework
Canada ¹²⁸	Oceans Act 1996	Yes	Yes	TS, CZ, EEZ, CS ¹²⁹
Australia ¹³⁰	No ¹³³	Yes	Yes	TS, CZ, EEZ, CS ¹³⁵
New Zealand ¹³¹	No ¹³⁴	Under Development	Under Development	TS, EEZ, CS ¹³⁶
United States ¹³²	Ocean Act 2000 (establishing Oceans Commission)	Proposed by Oceans Com. & endorsed by Pew Com.	Under Discussion	TS, CZ, EEZ, CS.
China	No	Elements	Elements	TS, CZ, ¹³⁷ EEZ, CS ¹³⁸

Figure 4.

PART III

THE EUROPEAN EXPERIENCE IN INTEGRATED MANAGEMENT: ARE THERE LESSONS FOR COUNTRIES IN THE CHINA SEAS REGION?

Obstacles to Integrated Management

The European Union, as a sophisticated regional integration organisation, is a useful paradigm for testing the feasibility of applying an integrated approach to the management of the coast and ocean. There are, however, a number of impediments that must be overcome if the European Union is to successfully apply these concepts in land and sea areas under the sovereignty and jurisdiction of the member States. These obstacles pertain to maritime jurisdiction, institutional structures, legal competence,

and strategic frameworks. It is now proposed to elaborate on how these issues will impede the application of ICZM and IOM with a view to determine a number of lessons for countries in other ocean regions.

An Incomplete Jurisdictional Framework

Clearly, integrated management requires a coherent approach by states to the maritime jurisdictional framework as set out in the LOS Convention. In Europe, the authors of this paper believe that there are several matters that will lead to difficulty in the application of ICZM and IOM in practice, including:

- (a). Several member States have not implemented the LOS jurisdictional framework in a consistent manner and have failed to enact legislation asserting their maritime jurisdiction to the maximum possible extent permissible under international law. This is evident from the data displayed in Figure 5, which lists the various maritime jurisdictional zones claimed by the littoral member States of the European Union. While Portugal, Spain, France, Belgium, the Netherlands, Germany, Sweden, and Norway have claimed exclusive economic zones, neither Ireland nor the United Kingdom has proclaimed such a zone. This is all the more surprising as both of these states have significant maritime interests as well as extensive sea areas under their sovereignty and jurisdiction. Nor have these states established a contiguous zone adjacent to the territorial sea to facilitate the exercising of extended customs, fiscal immigration and sanitary jurisdiction. There is a cogent case, which does not require detailed elaboration here, supporting the view that all maritime States ought to establish both a contiguous zone and EEZ where geographical and political circumstances permit. In this context, it needs to be stressed that both Irish and British legislation, establishing jurisdiction over fisheries, continental shelf, and pollution control activities, does not address adequately the wide range of new economic and technology related activities that will be undertaken in sea areas under their respective jurisdiction in the coming years. In particular, the proposed establishment and use of artificial islands, installations and structures on the seabed for marine scientific research and other purposes, the deployment of structures for the

production of energy from the water, current and winds, as well as the exploration and exploitation of new resources, will all impinge on the state's sovereign rights, jurisdiction and responsibilities. This failure by Ireland and the United Kingdom to assert their full maritime jurisdiction may be contrasted with the approach taken by the countries with progressive policies in relation to ocean (such as those in mentioned in Part II above) that have maximised their jurisdiction zones in accordance with the LOS Convention.¹³⁹

- (b). The baseline legislation of several north-Atlantic States does not comply with the letter or indeed with the spirit of the LOS Convention.¹⁴⁰ This is significant as the maritime limits of several jurisdictional zones including the limits of the territorial sea, the exclusive fishery zone, the contiguous zone, the exclusive economic zone, and the continental shelf in certain circumstances¹⁴¹ are projected from the baselines. Other than impinging upon the navigation freedoms protected by the LOS Convention, this failure may also have a number of European law implications. The implementation of the water framework directive in the marine environment is, for example, linked to the baseline.¹⁴² In effect, this means that the LOS Convention and many European legal instruments that apply to the marine environment will not be applied by the member States in a consistent manner.
- (c). Similar to the South China Seas, there are many outstanding disputes regarding maritime boundaries in the north Atlantic, such as the dispute over the Rockall Bank and the adjacent sea area (see Figure 6). In the absence of delimitation agreements it is difficult to perceive how states will be able to adopt an integrated approach to the management of marine-based activities in these areas. Indeed, it is significant that the request for advice from the European Commission TO ICES regarding the identification of eco-regions for the implementation of an ecosystem approach in sea areas adjacent to Europe was based upon the need to identify boundaries based upon biogeographic and oceanographic features while taking into account political, social, economic, and management divisions (see Figure 7).¹⁴³ ICES presented this advice without prejudice to the existing boundaries of states, their

territorial seas, their exclusive economic zones (or similar jurisdictions), or their continental shelves.¹⁴⁴ In light of the diverse approach of European States to maritime jurisdiction, it will be interesting to see if states will be able to resist from using the ecosystems approach as an argument for extending their jurisdiction. These difficulties ought not to be underestimated as two eminent commentators have already pointed out that management along political boundaries cannot account properly of the ecosystems spatial interactions and transboundary effects and, conversely, that the management on the basis of ecosystem boundaries does not lead to elective decision-making.¹⁴⁵

- (d). The absence of common definitions and understanding regarding the meaning of many of the key terms in the integrated approach may lead to difficulties in the implementation of both ICZM and IOM. In particular, there is no definition of the coastal zone in European law. Inexplicably, for the purposes of the European Demonstration Programme that tested the feasibility of establishing ICZM, the coastal zone was defined as a strip of land and sea of varying width, depending on the nature of the environment and management needs. This definition does not correspond to the framework provided by the LOS Convention and certainly does not correspond to the administrative and planning boundaries that are currently established in the member States. The European Commission expressed the view that the coastal zone may well extend beyond the limit of the territorial sea and many kilometres inland.¹⁴⁶ While there is no uniform definition in European law regarding the extent or the size of the coastal zone and no consensus on how far landward or seaward such a zone should extend, it is entirely foreseeable that the baseline may be used at some future date as the obvious datum to measure such a zone. The blurring of definitions and the absence of a consistent approach to the baseline will undoubtedly undermine the ability of the member States to implement both ICZM and IOM in a uniform manner.

In view of the above, it may be argued that the capacity of the member States to implement ICZM and IOM is restricted by the absence of a common approach to maritime jurisdiction and the failure of several

states to assert their jurisdiction to the maximum permissible extent under international law. Furthermore, while there is precedence for European Member State coordination in establishing fisheries jurisdiction zones,¹⁴⁷ there is no legal obligation placed on member States under the E.C. Treaties or elsewhere to maximise their jurisdiction under the LOS Convention.¹⁴⁸ Such a step could in any case exacerbate existing boundary disputes between States. In particular, there is considerable potential for dispute in the Mediterranean Sea that remains high seas.

Figure 5: Claims of Maritime Jurisdictional Zones by member States of European Union (Breadth in Nautical Miles).¹⁴⁹

	TS	CZ	EEZ	FZ	CS
Belgium*	12	24	DBC	+ ¹⁵⁰	
Cyprus	12	24	200		EXP
Denmark*	12		200	200 ¹⁵¹	200d/EXP/CL
Estonia	12 ¹⁵²		DBC		200d/EXP
Finland*	12	14		DBC	200d/EXP
France*	12	24	200 ¹⁵³		200d/EXP
Germany*	12		DBC		200d/EXP
Greece*	6 ¹⁵⁴				200d/EXP
Iceland*	12		200		CL
Ireland*	12			200	DBC/CL
Italy*	12				200d/EXP
Latvia*	12		DLM		200/CL
Lithuania*	12		DLM		
Malta*	12	24		25	200d/EXP
The Netherlands*	12		DBC		200d/EXP
Norway*	12	24	200	200 ¹⁵⁵	CL
Poland*	12		DLM		
Portugal*	12	24	200		EXP
Spain*	12	24	200 ¹⁵⁶	+ ¹⁵⁷	
Slovenia*					
Sweden*	12		+ ¹⁵⁸		200d/EXP
United Kingdom*	12 ¹⁵⁹		200 ¹⁶⁰	200 or 12 ¹⁶¹	DBC/CL

TS: territorial sea

CZ: contiguous zone

EEZ: exclusive economic zone

FZ: fisheries zone

CS: continental shelf

*: party to the UN Convention on the Law of the Sea

CL: States that may claim the continental shelf beyond 200 nautical miles

DBC: defined by coordinates

200d: depth of 200 metres

EXP: exploitability test

Figure 6: Overlapping Continental Shelf Claims in the North-Atlantic.

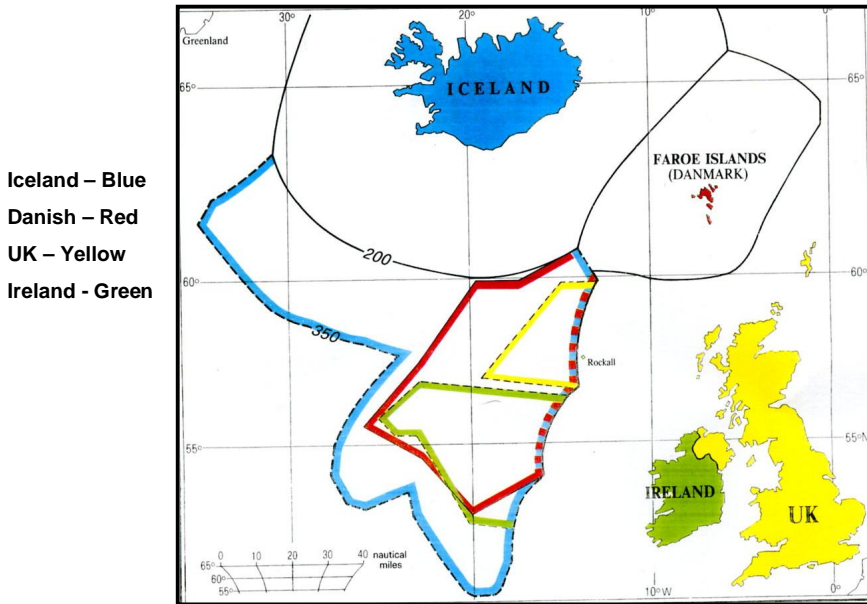
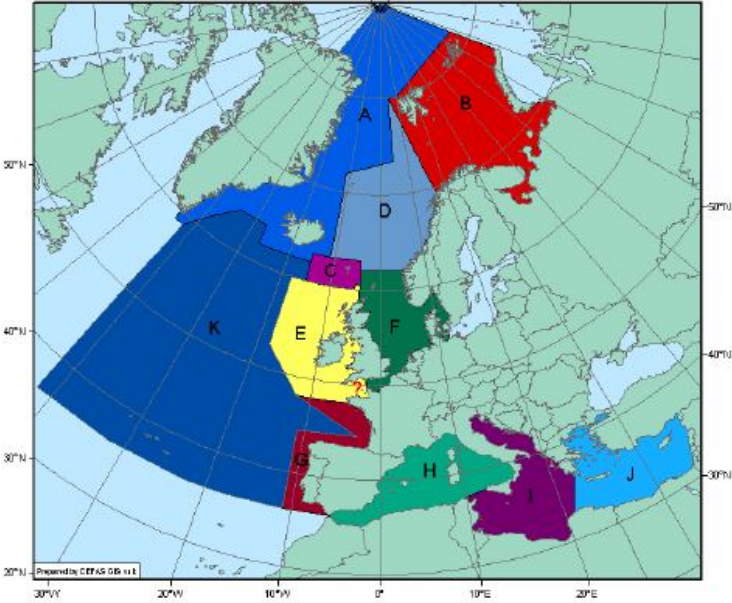


Figure 7: Proposed eco-regions for the implementation of the ecosystem approach in European waters.



Inadequate Institutional Structures

The European institutions do not have appropriate centralised structures for implementing and overseeing ICZM and IOM.¹⁶² This is most apparent in relation to the coastal zone where spatial planning law regulating the physical environment is almost exclusively exercised by the administrative and planning authorities in the member States. Moreover, in most member States, the power to make planning decisions is devolved down to local planning authorities, which often do not have the technical expertise, financial or political will to fully embrace planning and management restrictions in the coastal zone.¹⁶³ Further offshore, many of the key decisions to protect the marine environment have been implemented through the regional seas programmes. In particular, the European Union has used the Barcelona process, the OSPAR, HELCOM and the North Sea Conferences as frameworks for cooperation in the regional sea areas adjacent to the Europe. If the integrated approach is to work in practice, these regional organisations may have to adjust their institutional structures and policy objectives to reflect the push by the European Union to implement ICZM and IOM. Similarly, the European Union will have to adopt some type of centralised organisational structure to coordinate work in relation to the formulation of a coherent policy pertaining to the sea. Much of the work completed to date has been taken without the assistance of an “Oceans Office” in the European Commission. In the absence of such an office, the several different directorates within the European Commission have discharged the legislative and administrative burden. Considerable demands are also placed on the executive functions of several external agencies and other bodies. Indeed, with a view to coordinating action in relation to the ocean, the European Commission tasked a directorate with specific responsibility for maritime affairs in 2005. This function is now placed in the fisheries directorate that has been renamed as the “Fisheries and Maritime Affairs Directorate.” The specific duties of this directorate are unclear at the time of writing and may not include ICZM as this has heretofore been within the remit of the Environment Directorate. As noted above, the appointment of a specific commissioner with responsibility for maritime affairs is a step in the right direction and may lead to the establishment of integrated structures within the European institutions in due course. The first significant development has been the appointment a Maritime Task

Force within the European Commission, which will draft the Green Paper on a future European Union Maritime Policy in 2005.¹⁶⁴

Split Legal Competence

Should the European Community resolve the current difficulties regarding the institutional structures, the precise limits of E.C. power to adopt binding legal instruments governing ICZM and IOM may well remain unresolved because of the crosscutting nature of many sector policies. While it is not feasible for reasons of space to undertake a sector-by-sector analysis of which areas are within or outside European competence, there is, nevertheless, considerable scope for policy integration at a European level. In particular, the exclusive competence exercised by the European Union in relation to fisheries matters will facilitate the adoption of IOM measures governing the fishing activity in sea areas under the sovereignty and jurisdiction of the member States, as well as over the activities of E.U. vessels operating elsewhere. This is not the case in relation to the non-living resources of the continental shelf as the member States retain exclusive sovereign rights to explore and exploit the non-living resources of the seabed in sea areas under their jurisdiction or sovereignty. The exploitation of these resources is, however, subject to compliance with E.C. law, and offshore oil and gas companies are obliged to adhere to E.C. measures that apply to the marine environment.¹⁶⁵ Indeed, there is an expanding body of European legislation that applies to the marine environment and there have been considerable efforts made through the medium of E.C. law to integrate environmental considerations into the fisheries, transport, agriculture, energy, and trade policies.¹⁶⁶ The European environmental policy may thus act as a Trojan horse for the introduction of ICZM and IOM.

While the E.U. environmental policy presents an obvious route toward integration, split legal competence and the failure of the E.U. institutions and the member States to adopt a unified approach may undermine the implementation of integrated measures in the long-term. This failure was evident at the time of the *Prestige* oil spillage off the northwest coast of Spain.¹⁶⁷ In response to this and similar incidents (the *Braer* in the Shetlands in 1993, and the *Erika* in France in 1999), a number of European States sought to use the IMO process as a means to designate the entire northwest coast of Europe as a particularly sensitive sea area (PSSA).¹⁶⁸ While the European institutions had little control over the

action of the member States within the IMO, the European Council, nevertheless, adopted a regulation that banned the transport of heavy fuel oil in single-hull carriers to and from E.U. ports while speeding up withdrawal of single-hull oil tankers. In contrast to this twin approach to pollution control, the establishment of the European Maritime Safety Agency after the *Erika* incident in 1999 has a clear basis in European law.¹⁶⁹ The principal task of this Agency is to achieve “a high uniform and effective level of maritime safety and prevention of pollution from ships.”¹⁷⁰

The division of legal competence between the European institutions and the member States is also evident in a number of high profile law of the sea disputes. In the *Mox Plant* dispute, for example, Ireland sought a remedy in a number of international fora outside of the framework provided by E.C. law.¹⁷¹ This dispute illustrates the complexity of E.C. and international law that applies to law of the sea issues, as well as the proliferation and overlapping jurisdiction of international fora for dispute resolution. Significantly, as a result of the legal proceedings taken by the European Commission against Ireland, it is anticipated that the European Court of Justice will rule on whether Ireland has failed to uphold its obligation to seek redress within the framework of E.C. law. This decision is also expected to clarify the division of competence between the European Community and the member States regarding their respective roles under the LOS Convention.¹⁷² Ultimately, the outcome of these proceedings may offer useful guidance on how member States should resolve future law of the sea disputes concerning matters that do not come within the exclusive competence of the law of the European Union. Therefore, this may have some practical consequences for the future implementation of IOM by the member States and the institutions of the European Union.

Absence of a Strategic Framework

In the context of identifying barriers to good ocean governance at the national level, the Report of the Independent World Commission on the Oceans expresses the following view:

National ministries and agencies responsible for fisheries and aquaculture, off-shore oil, ports and harbours, marine transport, tourism, and the environment, all have an interest in ocean use, but

the exercise of their mandates is rarely coordinated. Protection of the marine environment has not yet been subsumed into sectoral concerns of national strategies, even in the cases where the attainment of development goals is dependent on environmental integrity. There are additional deficiencies in inter-ministerial arrangements for addressing conflicts of use in coastal areas, with marine objectives often failing to receive the attention they deserve. The expansion of international legal instruments makes it increasingly difficult for governments and the general public to obtain and to maintain a clear picture of national objectives and commitments.¹⁷³

This observation resonates true for many coastal States that are endeavouring to take economic advantage of the sea areas under their jurisdiction. This task is compounded by the difficulties encountered by many countries in generating awareness of how national and international goals can generate meaningful local benefits. This has resulted in some states, such as those identified in Part II, adopting a new approach to ocean policy issues with a view of improving decision-making at a national and local level. Experience in these States indicates that a solid legislative basis and integrated governance structures are necessary to address the challenges encountered in modern ocean management. In particular, these structures provide a framework for ensuring that the knowledge derived from marine scientific research is taken into consideration in decision-making at the highest political level within national administrations.

In contrast to developments elsewhere, and despite having jurisdiction over one of the largest marine spaces in the world, Europe has been slow to develop an over-arching policy framework or a primary legislative instrument to guide decisions with respect to the sea. Moreover, there is little scope within the current European structures for addressing the concerns of the different stakeholders groups in an integrated manner.¹⁷⁴ Thus, there appears to be a cogent case supporting the adoption of framework legislation at a European level in the form of primary legislation similar to Canada's Oceans Act of 1996 and the U.S. Coastal Zone Management Act of 1972.¹⁷⁵ The rationale for the introduction of European instruments governing both ICZM and IOM include the following: the increasing number and diversity of marine resource users; the need for increased coordination at a national level to ensure the

sustainable economic development of the marine resource; the need for increased coordination to meet Europe's international obligations; and the need to involve local communities and other stakeholders in the decision-making process. Arguably, Council and European Parliament Directives appear to be the most suitable legal instruments to achieve this task as these instruments are directed at member States and normally oblige them to act in a certain way. Under the E.C. Treaty, directives are considered flexible instruments because although they are binding on member States on the result to be achieved in a particular domain or policy area, they leave the form and method of how this is to be achieved to the member States.¹⁷⁶ Directives addressing both IOM and ICZM would provide the strategic framework for European policy and act as a plinth for decisions regarding the future economic development of land and sea areas under the sovereignty and jurisdiction of the member States. The directives could also provide a mechanism for putting the results of marine scientific research and innovation to good use in the policy process by addressing the increasingly complex issues pertaining to sustainable marine resource use. Such legislation could act as a conduit for science-based decision-making and for the establishment of integrated governance structures. In particular, the directives could affirm the role of scientific research in understanding oceanic and atmospheric processes, the functioning of ecosystems, as well as the role of science in maximising economic and social opportunities in the member States. The need for the adoption of framework instruments at a European level will become more apparent as expanding scientific knowledge, new technology, and market forces put the current legislative regime for marine resource use under increased pressure to resolve conflicts and to manage future uses of the sea in a responsive and flexible manner. In this context, the directives could aim to provide certainty for existing marine resource users and provide a framework for accommodating new developments in ocean use without compromising the needs of present or future generations. This legislation would have to reflect the diverse nature of the European coastal and ocean areas and should be sufficiently flexible to allow member States to adopt appropriate measures at a national level, which could then be tailored for local circumstances.

Experience outside the European Union suggests that the move toward the integrated management approach requires political leadership, crosscutting governance structures, stakeholder support, resources, and a shared vision at all levels of the nature and importance of the marine

affairs agenda.¹⁷⁷ The magnitude of this task should not be underestimated. Significantly, Australia has not adopted framework legislation to implement its national oceans policy and has nevertheless made remarkable progress in implementing a national oceans governance strategy. This policy-driven approach has provided a stable regime for the future growth of marine industries in Australia by ensuring that these industries are internationally competitive and ecologically sustainable. Importantly, governance structures in Australia allow for various levels of national administration to respond to the changing needs of the sector in a flexible and responsive manner. In Europe, however, framework legislation (as opposed to a policy-driven approach) will ensure that the commitment to policy formulation and implementation is not subject to the vagaries of political and local imperatives. Furthermore, framework legislation and integrated decision-making structures will facilitate coordination and cooperation at a time when there is a pressing need for a focal point to guide decisions with respect to the sea. The adoption of framework instruments will move the European Union toward the establishment of a solid legislative framework that will guide the future growth of the marine sector. Such an initiative would also indicate a move toward a consensus-based approach to marine resource management undertaken for the benefit of the European citizens as a whole.

Other Obstacles to Integration

While the issues of maritime jurisdiction, legal competence, institutional structures and the absence of a strategic framework will clearly impede the European Union in adopting an integrated approach to the management of coastal and ocean issues, there are also well-established normative constraints in European law that may well impede progress. More specifically, any measure taken to promote either ICZM or IOM will have to be reconciled with the principles of subsidiarity and proportionality as prescribed in the E.C. Treaties.¹⁷⁸ Essentially, the principle of subsidiarity provides that in areas that are not within its exclusive competence, the European Community shall only take action if the proposed action cannot be achieved by the member States and by reason of scale and effects be better achieved by the community. The proportionality principle requires that E.C. action in a particular domain should not go beyond what is necessary to achieve the objectives of the E.C. Treaty. As noted by one commentator, “these principles impose some

practical limitations on the potential scope of E.C. legislation for ICZM [and presumably for IOM], since any measure would need to be general in nature and leave sufficient flexibility to accommodate the diverse coastal environments of ... [the] Member States.”¹⁷⁹

While European directives look like an obvious solution to the current difficulties encountered in ocean management, it should also be recalled that many member States also have a poor track record of transposing European directives into national law.¹⁸⁰ This has particularly been the case in relation to directives that are aimed at giving effect to environmental policy.¹⁸¹ Furthermore, proper transposition and implementation of the directives will require the establishment and coordination of appropriate structures in the member States to ensure enforcement and compliance. There is, however, little information available regarding the effectiveness of the legislation in place to manage and regulate marine resource use. Furthermore, there are many state bodies and agencies responsible for marine law enforcement at sea and for the implementation of marine scientific monitoring programmes. This aspect of marine resource development in Europe requires further research and analysis that is beyond the scope of this paper.

At a practical level, perhaps the most serious impediment to the adoption of an integrated approach in Europe is the absence of definitive scientific data for applying sophisticated tools to implement the ecosystems approach to marine resource management. While there is little doubt that marine scientific research provides the analytical framework for policy choices, there appears to be an absence of a political commitment at a European level to promote marine scientific research. This is most evident in the projected proposal for the Seventh Framework Research Programme, which, at the time of writing, does not have a specific marine programme.¹⁸² The absence of such a programme may undermine the capability of the European maritime strategy to deliver tangible results in the long-term.

Are There Lessons from the European Experience for Countries in the East and South China Seas Region?

While it may be too early to determine with any certainty if there are any lessons that may be derived from the European experience aimed at adopting ICZM and IOM, a number of trends are evident that may be useful for the future application of these concepts in other regional areas.

The first lesson that may be derived from the experience is that Europe lacks a solid legal basis for ICZM such as that provided in the United States by the Coastal Zone Management Act of 1972. For obvious reasons, the member States are reluctant to cede competence to the European Union over coastal resources and offshore energy resources in particular. Consequently, much of the emphasis has been placed on harmonising national measures and the coordination of E.U. policies. The success of this approach will become more apparent when the European Commission publishes its report on ICZM in 2006. In principle, however, the European experience to date suggests that coastal zone management should be undertaken at the state and local level. This also appears to accord with the approach adopted successfully in the United States under the Coastal Zone Management Act of 1972. Coastal zone management undertaken at a local level can also reflect economic, political and cultural diversity of regional areas. Further offshore, the shift toward IOM by the European Union may have come about by the failure of the sector policies to deliver sustainable ocean use. There is also a proliferation of international instruments regulating marine resource use and this in itself demands a more sophisticated approach to the regulation and management of the different sector interests, such as fisheries, transport, energy, and marine scientific research. Ideally, the enactment of a primary legislative instrument similar to Canada's Oceans Act of 1996 may facilitate the coordination of European decision-making with respect to the sea. Without such an instrument there is considerable scope for states in regional areas to enact legislation that is fragmented and does little to reduce conflicts between different marine resource users and between users of the land and the sea. Significantly, while member States of the European Union appear to be rejecting the "hard law" options for ICZM and IOM,¹⁸³ experience in Australia suggests that the absence of such an instrument may not be fatal to states wishing to implement a coherent approach to oceans policy.

The second aspect of the European experience that is significant is the considerable confusion over terminology, and there is little agreement between lawyers and scientists on key definitions such as the extent of the coastal zone.¹⁸⁴ While the authors of this paper contends that the coastal zone should be defined in terms of the baseline in order to assist states in implementing the jurisdictional frameworks under the LOS Convention, there is little consensus on this point. As noted above, the European

Commission has suggested that the coastal zone may in some circumstances extend beyond the limits of the territorial sea. This confusion over definitions and the fragmentation of jurisdictional zones is compounded by the failure of states to implement the maritime jurisdictional framework set out in the LOS Convention. Furthermore, the different approach of states to implementing the LOS Convention will make the application of ICZM and IOM difficult in practice.

The third lesson that may be drawn from the European experience is the importance of undertaking marine scientific research. There is little doubt that new scientific and technology initiatives are central to developing the knowledge base for ICZM and IOM and for providing decision-makers with an analytical framework for making decisions in the planning process. In the long-term the development of marine resources in regional areas will not be sustainable unless there is good quality scientific advice that is put to use in the policy process.

The fourth lesson is that European institutions, member States, regional bodies and neighbouring states are working toward solutions for applying new tools for ocean governance such as the ecosystems approach. Experience suggests that these tools are complementary and not a replacement for established structures and frameworks under international, regional and European law. More specifically, these tools will only be applied within the normative framework established by the LOS Convention. The successful application of these tools will thus require cooperation and coordination of actions by all states within a regional area. This approach also acknowledges one of the central considerations in the LOS Convention, which is that the problems of ocean space are closely interrelated and need to be considered as a whole.¹⁸⁵

Finally, it should be pointed out that ICZM and IOM pose new challenges that should only be addressed through the medium of law. Experience in other areas of E.C. law such as the common fisheries policy tell us, however, that sustainable development does not automatically flow from the adoption of a common policy. One of the principal failures of common policies has come about as a result of poor compliance or no compliance in some instances.¹⁸⁶ Integrated management should not be seen as a panacea that will deliver sustainable development but as an iterative process that may facilitate ocean and coastal management in geographically complicated areas. Ultimately, prescription will have to be matched with rigorous implementation and compliance with the scheme of law set out in the LOS Convention.

Notes

¹ The European landmass does not have history of tidal waves or tsunamis. Southern Europe is, however, located on the western side of the Eurasian/African Plate that runs through the Mediterranean Sea. Sudden movements along the plate boundaries create shock waves that are sometimes felt in southern Europe as boundaries.

² See, United Nations General Assembly Resolutions: 56/12, para.48, November 28, 2001; 57/261, February 27, 2003; Chapter 17 of Agenda 21. Also, Report of the United Nations Open-ended Informal Consultative Process, A/57/80, July 2, 2002, p.4, para.4. A number of commentators have identified and discussed this development, see, *inter alia*: Y. Tanaka, "Zonal and Integrated Management Approaches to Ocean Governance: Reflections on a dual Approach in International Law of the Sea," (2004) *International Journal of Marine and Coastal Law*, Vol. 19, No. 4, pp. 483-514; G. Chao, "Moving from International 'Good Steward' to Domestic Integrated Manager: Challenges of Importing Principles of Integrated Coastal and Ocean Management into Canada's Ocean Law," *Ocean Yearbook*, (Chicago, University of Chicago, 2002), 16:421-462.

³ For a discussion of the concepts, see, *inter alios*: B. Cicin-Sain, R.W. Knecht, *Integrated Coastal and Ocean Management. Concepts and Practices*, (Washington DC, Island Press, 1998); R. Beckman, B. Coleman, "Integrated Coastal Zone Management: The Role of Law and Lawyers," (1999) 14 *International Journal Marine and Coastal Law* pp. 491-522. On the practical aspects of ICZM, see, A. Vallega, *Fundamentals of Integrated Coastal Management*, (Dordrecht/Boston/London, Kluwer Academic Publishers, 2001); T. Bealtley, D. J. Brower, A. K. Schwab, *An Introduction to Coastal Zone Management*, 2nd Ed., (Washington/Covelo/London, Island Press, 2002);

⁴ The terms "European Union" ("E.U." in its abbreviated form) and "European Community" (E.C.) are used interchangeably in the literature. The term E.U. came into being as a result of the Maastricht Treaty on the European Union in 1992 and is used in this paper. The E.C. is used to refer to all matters where the Member States have relinquished part of their national sovereignty to the E.U. institutions under the E.C. Treaties.

⁵ Recent developments in coastal zone management in the European Union are discussed in *Coastal Management*, Vol. 31, No. 2, 2003. Therein, see, *inter alia*: P. Burbridge, S. Humphrey, "Introduction to Special Issue on the European Demonstration Programme on Integrated Coastal Zone Management," pp. 121-126; J. Gibson, "Integrated Coastal Zone Management Law in the EU," pp. 127-137; S. Humphreys, P. Burbridge, "Sectoral and Territorial Cooperation in the European Demonstration Programme on ICZM," pp. 155-163. S. Humphreys, P. Burbridge, & C. Blatch, "U.S. Lessons for Coastal Management in the EU," (2000) *Marine Policy*, Vol. 24, pp. 275-286. On international progress, see, J. Sorensen, "The International Proliferation of Integrated Coastal Zone Management Efforts," (1993) *Ocean and Coastal Management*, pp. 2145-2180. For earlier material, see: S. Mullard, "Towards an EU strategy for integrated coastal zone management," (1995) *European Law Review* Vol. 4, pp. 16-20; D.J. Huggett, "Progressing coastal management in Europe: a case for continental zone planning and management" in J. Taussik *et al.*, *Partnerships in Coastal Zone Management*, (Cardigan, Samara Publishing Ltd., 1996), pp. 47-56.

⁶ Austria, Belgium, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

⁷ Austria, Czech Republic, Hungary, Luxembourg, and Slovakia are land-locked.

⁸ For the purpose of allowing the EEC to sign and ratify the LOS Convention (Article 305 and Annex IX), “international organization” means: an intergovernmental organization constituted by States to which its member States have transferred competence over matters governed by the Convention, including the competence to enter into treaties in respect of those matters.

⁹ A number of coastal States in the Mediterranean Sea such as Spain, Cyprus and Croatia have claimed jurisdictional zones beyond their territorial sea. Spain, for example, adopted Royal Decree 1315/1997 on August 1, 1997, which provides for the establishment of a “fishing protection zone” in the Mediterranean.

¹⁰ Jurisdiction over the Baltic Sea is shared with the Russian Federation by Sweden, Finland, Latvia, Lithuania, Estonia, Poland, Germany and Denmark.

¹¹ Accession negotiations with Croatia were suspended in 2005 pending the establishment of full-cooperation by Croatia with the UN war crimes tribunal.

¹² The territory of the European Union is estimated to measure 3.9 million square kilometres.

¹³ See, R. Long *et al.*, *Ireland’s Maritime Limits*, (Galway, Marine Law Centre), (forthcoming).

¹⁴ A number of different figures have been suggested in different publications for the length of the European coastline. The European Commission estimate that it measures in the region of 68,000 kilometres. See,

<www.europa.com.int/comm/fisheries/maritime/fishe1-en.pdf> This figure suggests that the European coastline is relatively short when compared with the Canadian coastline which measures 243,797 kilometres and the coastline of the United States which measures approximately 88,000 miles.

¹⁵ See, address by Director-General, DG Environment, European Commission, Catherine Day, at the Marine Strategy - Second Stakeholder Conference, Rotterdam, November 10-12, 2004. Copy at <www.forum.europa.int>.

¹⁶ <www.oceanatlas.org>. See also the European Commission estimate at: <www.europa.com.int/comm/fisheries/maritime/fishe1-en.pdf>.

¹⁷ See, “An assessment of the socioeconomic costs and benefits of integrated coastal zone management,” (Firm Crichton Roberts, November 2000). Copy available: <http://europa.eu.int/comm/environment/iczm/socec_en.pdf>.

¹⁸ Treaty establishing the European Economic Community 1957. Prior to 1957, five European States (France, Germany, the Netherlands, Belgium and Luxembourg) ratified both the Treaty establishing the European Atomic Energy community (1957) and the Treaty establishing the European Coal and Steel Community (1951).

¹⁹ Treaty on European Union (1992), OJ C 191 of July 29, 1992; Treaty establishing the European Community OJ C 340 of November 10, 1997. Treaty of Amsterdam, OJ C 340 of November 10, 1997; Single European Act (1986), OJ L 169 of June 29, 1987; Greenland Treaty (1984), OJ L 29 of February 1, 1985; Protocol on the Statute of the

European Investment Bank (1975), OJ L 91 of April 6, 1978; Treaty amending certain financial provisions (1975), OJ L 359 of December 31, 1977; Treaty amending certain budgetary provisions (1970), OJ L 2 of January 2, 1971; Merger Treaty (1965) OJ 152 of July 13, 1967; Protocol on the Netherlands Antilles (1962), OJ 150 of October 1, 1964.

²⁰ Treaty of the European Union, Article 2.

²¹ For a discussion of the European institutional structure, see, *inter alios*: J. Steiner, L. Woods, L. *Textbook on EC Law*, 8th Ed. (Oxford, Oxford Higher Education, 2003); P. Craig, & G. de Burca, *The Evolution of EU Law* (Cambridge, Cambridge University Press, 1999); and by the same authors, *EU Law Cases and Materials* 2nd Ed. (Cambridge University Press, 2002).

²² Article 10, European Community Treaty. The supremacy of E.C. law over national law has been underpinned by a long line of decisions since Case 6/64, *Costa v ENEL* [1964] ECR 585.

²³ For a description of how the Council makes decisions and the operation of the qualifies majority voting system, see, <www.eurounion.org/infores/euguide/Chapter2.htm>.

²⁴ By March 2005, only one Member State (Spain) had completed ratification of the Constitution.

²⁵ European Constitution, Article III-233 1(c).

²⁶ European Constitution, Article 1-13, 1(d).

²⁷ European Constitution, Article 1-14, 2(d).

²⁸ See Table 5 *infra*. Under Article 5(2) of Annex XI of the LOS Convention, member states of international organisations are obliged to make a declaration at the time they ratify or accede to the Convention or when the international organisation deposits its instrument of formal confirmation or of accession to the Convention, specifying matters which governed by the Convention in respect of which it has transferred competence. The European Community submitted its instrument of formal confirmation to the Convention in 1998 and submitted a declaration on the matters that member States had transferred competence. Previously, 12 member States had made declarations that they had transferred matters governed by the Convention to the European Community. See, Council Decision of March 23, 1998 concerning the conclusion by the European Community of the United Nations Convention of December 10, 1982 on the Law of the Sea and the Agreement of July 28, 1994 relating to the implementation of Part XI thereof (98/392/EC), OJ L 179/1, June, 23, 1998.

²⁹ For a comprehensive assessment of State practice in the European Union in relation to the law of the sea, see, T. Treves, L. Pineschi (eds.), *The Law of the Sea: The EU and its Member States*, (The Hague, Martinus Nijhoff, 1997).

³⁰ See, Council Decision No 98/392 of March 23, 1998, OJ L 179, June 23, 1998, 129-133.

³¹ Environmental protection must be integrated into Community policies, however, with a view to promoting sustainable development. On how this is being achieved, see, L. Krämer, "Legal Aspects of Integrated Environmental Requirements," 5th Ed., *EC Environmental Law*, (London, Sweet & Maxwell, 2003), pp. 348-369.

³² The term "competence" is commonly used in European law and literature to refer to the power of the European institutions to prescribe law or what lawyers versed in the common law tradition refers to as legislative jurisdiction. Considerable care, however,

needs to be exercised with the term as many of areas of Community law such as sea fisheries where the Community competence is said to be “exclusive” is not completely exclusive in the sense that enforcement jurisdiction remains largely with the member States. The Declaration of Competence published by the European Community at the time of their formal confirmation of the LOS Convention contains a detailed list of all Community legislation relevant to the 1982 Convention. See, “The Law of the Sea: Declarations and statements with respect to the United Nations Convention on the Law of the Sea and to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea,” (United Nations publication, Sales No. E.97.V.3).

³³See, Part III, *ante*. Difficulties regarding the areas where the European Union shares competence with the member States is examined by R. Churchill, J. Scott, “The MOX Plant Litigation: the first Half-Life,” Vol. 53, *The International and Comparative Law Quarterly*, pp. 643-676, (especially 660-660).

³⁴The following treaties were listed by the European Community in the Declaration lodged with the UN at the time of their formal conformation of the Convention in 1998: Convention for the prevention of marine pollution from land-based sources, Paris, June 4, 1974 (Council Decision 75/437/EEC of March 3, 1975, published in OJ No L 194, July 25, 1975, p. 5); Protocol amending the Convention for the prevention of marine pollution from land-based sources, Paris, March 26, 1986 (Council Decision 87/57/EEC of December 28, 1986, published in OJ No L 24, January 27, 1987, p. 47); Protocol for the protection of the Mediterranean Sea against pollution from land-based sources, Athens, May 17, 1980 (Council Decision 83/101/EEC of February 28, 1983, published in OJ No L 67, March 12, 1983, p.1); Convention for the protection of the Mediterranean Sea against pollution and the Protocol for the prevention of the pollution of the Mediterranean Sea by dumping from ships and aircraft, Barcelona, February 16, 1976, (Council Decision 77/585/EEC of July 25, 1977, published in OJ No L 240, September 19, 1977, p. 1); Protocol concerning cooperation in combating pollution of the Mediterranean Sea by oil and other harmful substances in cases of emergency, Barcelona, February 16, 1976 (Council Decision 81/420/EEC of May 19, 1981, published in OJ No L 162, June 19, 1981, p. 4); Convention on long-range transboundary air pollution, Geneva, November 13, 1979, (Council Decision 81/462/EEC of June 11, 1981, published in OJ No L 171, June 27, 1981, p. 11); Protocol of April 23, 1982 concerning Mediterranean specially protected areas, Geneva, April 3, 1982, (Council Decision 84/132/EEC of March 1, 1984, published in OJ No L 68, March 10, 1984, p. 36); Agreement for cooperation in dealing with pollution of the North Sea by oil and other harmful substances, Bonn, September 13, 1983, (Council Decision 84/358/EEC of June 28, 1984, published in OJ No L 188, July 16, 1984, p. 7); Cooperation agreement for the protection of the coasts and waters of the north-east Atlantic against pollution, Lisbon, October 17, 1990, (Council Decision 93/550/EEC of October 20, 1993, published in OJ No L 267, October 28, 1993, p. 20); Basel Convention on the control of transboundary movements of hazardous wastes and their disposal, signed in Basel on March 22, 1989, (Council Decision 93/98/EEC of February 1, 1993, published in OJ No L 39, February 16, 1993, p. 1).

³⁵ See, *inter alia*: R. Kay, J. Alder, *Coastal Planning and Management*, (London and New York, E & FN Spon, 1999), pp. 49-51; R.A. Kenchington, D. Crawford, "On the meaning of integration of coastal zone management" (1993) 21 *Ocean and Coastal Management* 109-127

³⁶ Agenda 21, Paragraph 17.1

³⁷ From a scientific perspective, there also appears to be considerable ambiguity regarding the definition of ICZM, see, A. Vallega, *Fundamentals of Integrated Coastal Management*, (Dordrecht/Boston/London, Kluwer Academic Publishers, 2001), p. 16

³⁸ Commission of the European Communities, "Communication from the Commission to the Council and European Parliament on integrated coastal zone management: A strategy for Europe." COM (2000) 547 final. Brussels, p. 25.

³⁹ GESAMP is made-up of experts from the IMO/FAO/UNESCO-IOC/WMO/WHO/IAEA/UN/UNEP. Their principle task is to provide scientific advice concerning the prevention, reduction and control of the degradation of the marine environment to the Sponsoring Agencies. See, Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection (GESAMP) and Advisory Committee on Protection of the Sea, 2001, "A Sea of Troubles," Rep. Stud. GESAMP No. 70.

⁴⁰ More specifically: *Legislation* to provide the legal basis for the management of seas and coasts and defines the conditions under which natural resources are to be used and conserved; *International co-operation* to identify areas of common interest; *Principles* which are central to managing the resources of the seas and coasts responsible such as precautionary approach, the principle of preventative action, the polluter pays principle, and the principles of equity; *Policy process* which regularly sets *goals* and objectives for managing the marine environment...; *Policy process* that ensures there is adequate and *meaningful information* informing the decision-making process; *Institutional arrangements* which provides for *devolved management* to the lowest level practicable...and allows for the *participation of stakeholders* in the decisions that affect them; *Procedures* in the policy process which will provide *timely notice of environmental change* due to human activities; *Policy process* which fosters effective *communication* between experts, policy-makers and the public; *A readiness* to evaluate the range of policy instruments, and apply the most appropriate ones; *Financial mechanisms* that make it possible to attain the goals and address the priorities; and *Educational programmes* to ensure informed public participation (emphasis added). This list is taken from the GESMAP Report, "A Sea of Troubles," 2001, Rep. Stud. GESAMP No. 70, p. 30.

⁴¹ See the authorities cited in fn 5 *op. cit.*

⁴² Recommendation of the European Parliament and of the Council of May 30, 2002 concerning the implementation of Integrated Coastal Zone Management in Europe (2002/413/EC), OJ L 148/24, June 6, 2002. (hereinafter referred to as Recommendation (2002/413/EC)).

⁴³ These are some of the reasons outlined in the recitals to Recommendation (2002/413/EC).

⁴⁴ See, OSPAR Commission for the Protection of the Marine environment in the North-East Atlantic, "Quality Status Report for the North-East Atlantic" and the authorities cited therein, (London, 2000). On the decline of European fish stocks, see, European

Commission, Green Paper on the Future of the Common Fisheries Policy, Brussels, March 20, 2001, COM(2001) 135 final.

⁴⁵ For a recent overview, see, Report prepared by F. Breton for the European Environment Agency, State of the Coasts in Europe, Towards an EEA Assessment Report,” (Universitat Autònoma de Barcelona, 2004),

⁴⁶ See, European Environment Agency Report No 2/2004, Impacts of Europe's changing climate, (Copenhagen, 2004)

⁴⁷ *Ibid.*

⁴⁸ See, fn 4 *op cit.*

⁴⁹ Laffoley, D.d’A, Maltby, E., Vincent, M.A, Mee, L., Dunn, E., Gilliland, P., Hamer, J, Mortimer, D., & Pound, D., 2004. *The Ecosystem Approach. Coherent actions for marine and coastal environments.* A report to the UK Government. Peterborough, English Nature. 68pp.

⁵⁰ See, Y. Tanaka, “Zonal and Integrated Management Approaches to Ocean Governance: Reflections on a dual Approach in International Law of the Sea,” (2004) *International Journal of Marine and Coastal Law*, Vol. 19, No. 4, pp. 483-514.

⁵¹ In addition to the Law of the Sea Convention, for example, the European Union adheres to the following treaties, many of which have protocols which are also binding on the European Community: Barcelona convention on the Protection of the Mediterranean Sea against pollution, Council Decision 77/85, [1977] OJ L 240/1; Bonn Agreement for co-operation in dealing with pollution of the North Sea by oil and other harmful substances, Council Decision 84/358 [1984] OJ L 188/7; Co-operation Agreement for the protection of the coastal and waters of the north-east Atlantic against pollution, Council Decision 93/550, [1993] OJ L 267/20; Helsinki Convention on the protection of the marine environment of the Baltic Sea area, Council Decision 94/156 [1994] OJ L 73/1; Helsinki Convention on the protection of the marine environment of the Baltic Sea, Council Decision 94/157 [1994] OJ L 73/19; Paris Convention for the protection of the marine environment in the north-east Atlantic (OSPAR Convention), Council Decision 98/392, [1998] OJ L 197/1.

⁵² Judge Wolfrum Vice-President of the International Tribunal on the Law of the Sea.

⁵³ Council Resolution of February 25, 1992, on the future Community Policy concerning the European coastal zone, OJ C 59/1; Council Resolution of May 6, 1994, on a Community strategy for integrated coastal zone management, OJ C 135/2.

⁵⁴ Commission of the European Communities: “Lesson’s from the European Commission’s Demonstration Programme on Integrated Coastal Zone Management”; “Towards a European Integrated Coastal Zone Management Strategy: General Principles and Policy Options,” 1999. <<http://europa.eu.int/comm/environment/iczm//consc.pdf>>.

⁵⁵ Commission of the European Communities, “Communication from the Commission to the Council and European Parliament on integrated coastal zone management: A strategy for Europe.” COM (2000) 547 final. Brussels.

⁵⁶ Communications are discussion papers published by the Commission on a specific policy area and often provide an impetus for subsequent legislation.

⁵⁷ Commission of the European Communities, Recommendation of the European Parliament and of the Council of May 30, 2002, concerning the implementation of

Integrated Coastal Zone Management in Europe (2002/413/EC), OJ L 148/24, June 6, 2002.

⁵⁸ Recommendation 2002/413/EC, Chapter II, *ibid.*

⁵⁹ P. Burbridge, S. Humphrey, "Introduction to Special Issue on the European Demonstration Programme on Integrated Coastal Zone Management," 2003 *Coastal Management*, Vol. 31, No 2, p. 125

⁶⁰ European Community Treaty, Article 249.

⁶¹ There is scope however for a national Court to refer a question to the European Court regarding their interpretation or validity of a Recommendation, see, Case C-322/88, *Grimaldi* [1989] ECR 6399. For annotation, see, D. Martin, (1990) *Revue de jurisprudence de Liège, Mons et Bruxelles* p.330 ; D. Simon, (1990) *Journal du Droit International* p.459 ; S. Neri, (1990) *Affari Sociali Internazionali* No. 3, pp.189-198 ; A. Arnulf, (1990) *European Law Review* pp.318-321

⁶² See, European Parliament, Report of the Committee on the Environment, Public Health and Consumer Policy on the proposal for a European Parliament and council recommendation concerning the implementation of integrated coastal zone management in Europe, A5-0219/2001, Strasbourg; Common position with a view to the adoption of a recommendation of the European Parliament and of the Council concerning the implementation of integrated coastal zone management in Europe. C5-0698/2001, Strasbourg.

⁶³ Council Recommendation 2002/413/EC, Chapter III, *op.cit.* fn 59.

⁶⁴ In accordance with the Recommendation (2002/413/EC), OJ L 148/24, June 6, 2002, the European Commission is obliged to report and make recommendations to the European Council and European Parliament by 2006 on the following:

- The result of the national stocktaking exercise;
- The national strategy for implementing ICZM;
- Present a summary of the actions taken to implement the national strategy;
- An evaluation of the expected impact of the strategy on the status of the coastal zone;
- An evaluation of the implementation and application of Community legislation and policies that have an impact on coastal areas.

⁶⁵ Financial support is provided through a number of regional programmes and through the European 6th Framework Research Programme.

⁶⁶ European Council Directive 2000/60 establishing a framework for Community action in the field of water policy [2000] OJ L 327/1.

⁶⁷ For commentaries and reports on the Directive, see, *inter alia*: H. Bloch, The EU Water Framework Directive: taking European water policy into the next millennium, (1999) *Water Science Technology*, Vol. 10, pp. 67-71; D. Grimeaud, "Reforming EU Water Law: Towards Sustainability," (2001) *European Environmental Law Review* Vol. 41, pp.125- ??? ; K. Irvine *et al.*, Review of monitoring and research to meet the needs of the EU Water Framework Directive (200-DS-M1) Final Report, (Wexford, Environmental Protection Agency, 2002); P.A. Chave, *The EU Water Framework Directive. An Introduction*, (London, IWA Publishing, 2001); C. Demke, *Implementation and Enforcement of the Council Directive Establishing a Framework for Community Action in the Field of Water Policy in the Member States of the EU*, Ex-ante study

commissioned by the Federal Ministry of the environment, Nature and Nuclear Safety, (Maastricht, European Institute of Public Administration, 1999).

⁶⁸ In addition, under the 6th Environment Action Programme, the European Community decided to develop thematic strategies for soil protection, the urban environment, the use of pesticides, the use of natural resources, the recycling of waste and air pollution. *De facto* these thematic strategies are sector action programmes which are underpinned by specific legislative measures.

⁶⁹ See, the Report on the Outcomes of the Second Stakeholder Conference on the Development of a European Marine Strategy, November 10-14, 2004 (copy with the authors).

⁷⁰ 'Towards a strategy to protect and conserve the marine environment,' COM(2002)539.

⁷¹ These meetings sought to work-on the following subjects: strategic goals and objectives, ecosystem approach to management of human activities, European marine monitoring and assessment: hazardous substances.

⁷² Copies of these documents may be viewed at <www.fourum.eu.int>.

⁷³ See, address by Director-General, DG Environment, European Commission, Catherine Day, at the Marine Strategy - Second Stakeholder Conference, Rotterdam, November 10-12, 2004 . Copy at <www.forum.europa.int>.

⁷⁴ *Ibid.*

⁷⁵ The SEA Directive requires that plans and programmes regarding the building and location of large-scale infrastructure such as gas terminals, deep-water ports, and offshore energy installations will undergo environmental impact assessment and that public consultation takes place. The SEA Directive came into effect in July 2004 applies to a wide range of plans and programmes which impinge on marine activities including, agriculture, forestry, fisheries, energy, industry, transport, fisheries, water management, telecommunications, tourism, town and country planning or land use as well as projects listed in Annexes I and II to Directive 85/337/EEC. SEA may be distinguished from EIA, which is carried out for an individual project or activity. In the United Kingdom, SEA is currently performed for hydrocarbon activities on the United Kingdom continental shelf and is being rigorously implemented by the United Kingdom Department of Trade and Industry. Significantly, the application of SEA in the United Kingdom extends to inshore bays and inshore areas even though these are not open for hydrocarbon licensing with a view to ensuring that the assessment applies to marine environment as a whole as far as the high water mark. See, <www.offshore-sea.org.uk>.

⁷⁶ OSPAR Marine Spatial Planning Workshop, January 8-9th, 2004. See also conclusions of OSPAR Biodiversity Committee Meeting, February, 2004.

⁷⁷ See Conference Proceedings, "Spatial Planning in the Coastal and Marine Environment: Next Steps to Action." Conference sponsored by English Nature, Royal Society Protection Birds, and World Wildlife Fund.

⁷⁸ See, OSPAR Commission, Spatial Planning. Secretariat Paper to the BDC Meeting of OSPAR. BDC 03/4/10-E(L), (London, 2003).

⁷⁹ Conference, *Coastal Futures 2004, Review and Future Trends*, University of London, January 21-22nd, 2004.

⁸⁰ For comparative studies, see, *inter alia*: L. Juda, "Changing Approaches to Ocean Governance: The United States, Canada, and Australia," 2003 *Ocean Development and*

International Law, Vol. 34, pp. 161-187; R. Peart, Report completed for Conservation International (copy with the authors).

⁸¹ This may be traced back to the President Truman proclamation on the continental shelf in 1945.

⁸² In particular the report of the Stratton Commission provided a road map for the development of a coherent Ocean's policy in the United States. See, Commission on Marine Science, Engineering, and Resources, *Our Nation and the Sea* (1969).

⁸³ On recent developments in the United States, see, *inter alios*: B. Cicin-Sain, R.W. Knecht, *The future of U.S. Ocean Policy: Choices for the New Century*, (Washington D.C. Island Press, 2000); L. Juda, "Changing Approaches to Ocean Governance: The United States, Canada, and Australia," 2003 *Ocean Development and International Law*, Vol. 34, pp. 161-187. The United States Senate has also noted the complexity of the legal and bureaucratic framework relating to the ocean and the absence of a common mechanism for establishing a common vision or set of objectives. See, United States Senate, "Oceans Act of 2000," Report of the Committee on Commerce, Science and Transportation, May 23, 2000.

⁸⁴ Oceans Act of 2000, S.2327.

⁸⁵ Section 2, Oceans Act of 2000 sets out the purpose and objectives of the Commission which is to make recommendations for coordinated and comprehensive national ocean policy that will promote:

⁸⁶ Report U.S. Commission on Ocean Policy.

⁸⁷ The Pew Commission was established to support the passage of the Oceans Bill through Congress as well as to promote greater public awareness regarding ocean issues. See, Pew Oceans Commission, *America's Living Oceans: Charting a Course for Sea Change*, (Arlington, Pew Oceans Commission, 2003).

⁸⁸ See, paper presented by M. Mattler, Deputy Chief Counsel, U.S. Senate Committee U.S. Senate Committee Foreign Relations, Conference International Energy Policy and the Law of the Sea, St. Petersburg, June 23-26, 2004.

⁸⁹ Australia signed and ratified the LOS Convention in 1994. For a description of Oceans policy in Australia, see, *inter alios*: D.R. Rothwell, M. Haward, D. Vanderzwaag, B. Davis, "Australia and the Law of the Sea: Recent Developments and post-UNCED Challenges" in L.K. Kriwoken *et al.* (eds.), *Ocean Law and Policy in the Post-UNCED Era: Australian and Canadian Perspectives*, (London, Kluwer Law International, 1996); M. Howard, "Institutional Framework for Australian Ocean and Coastal Management," (1996) *Ocean and Coastal Management*, Vol. 33, pp. 19-39; E.G. Foster, M. Howard, "Integrated management Councils: A Conceptual Model for Ocean Policy Conflict Management in Australia," (2003) *Ocean and Coastal Management*, Vol. 46, pp.547-563.

⁹⁰ For further background information, see, Consultation Paper, *Australia's Oceans: New Horizons*, (March 1997); *Australia's Oceans Policy – An Issues Paper* (May 1998); *Australia's Oceans Policy* (Canberra, Australia's Oceans Policy, 1998). On a seminal report which set the context, see, L.P. Zann, "The State of the Marine Environment Report for Australia (SOMER): Process, Findings and Perspectives," (1996) *Ocean and Coastal Management*, Vol. 33, pp. 63-86. The political, institutional and legal background concerning development of the policy is reviewed by G. Westcott, "The

Development and Initial Implementation of Australia's 'Integrated and Comprehensive' Oceans Policy," (2000) *Ocean and Coastal Management*, Vol. 43, pp. 853-878.

⁹¹ These objectives include:

- To exercise and protect Australia's rights and jurisdiction over offshore areas, including offshore resources;
- To meet Australia's international obligations under the LOS Convention and other international treaties;
- To understand and protect Australia's marine biological diversity, the ocean environment and its resources, and ensure ocean uses are ecologically sustainable;
- To promote ecologically sustainable economic development and job creation;
- To establish *integrated oceans planning and management arrangements* (emphasis added);
- To accommodate community needs and aspirations;
- To improve expertise in ocean-related management, science, technology and engineering;
- To identify and protect Australia's natural and cultural heritage;
- To promote public awareness and understanding.

See, Government of Australia, *Australia's Ocean Policy*, (Commonwealth of Australia, 1998), p. 4.

⁹² See, <www.oceans.gov.au>.

⁹³ See, D. Norton, *Review of the Implementation of Oceans Policy, Final Report*, TGF International Pty Ltd., (2002).

⁹⁴ Commonwealth of Australia, *Australia's Ocean Policy*, (Canberra, Environment Australia, 1998)

⁹⁵ See, G. Westcott, "The Development and Initial Implementation of Australia's 'Integrated and Comprehensive' Oceans Policy," (2000) *Ocean and Coastal Management*, Vol. 43, pp. 853-878.

⁹⁶ Contemporaneous with the development of Australia's Oceans Policy the Commonwealth Government endorsed a Marine Industry Development Strategy. This Strategy is now perceived as part of a multi-track approach to marine resource utilisation and an essential component of the Oceans Policy. Initiatives undertaken include; the establishment of marine industry associations and networks to strengthen the representative capacity of marine industries; the raising of public awareness of the contribution made by marine industries to the economy and sustainable development; and the establishment of a strategy for the development of a National Marine Data Programme. The Oceans Policy is thus seen as one of the means to ensure the future growth and competitiveness of the marine industry and related services in Australia. See, Marine Industry Development Strategy (Canberra, Australian Marine Industries and Sciences Council, 1997), Marine Science and Technology Plan (Canberra, Department of Industry, Science and Tourism, 1999).

⁹⁷ The ocean area under New Zealand's jurisdiction is approximately ten times larger than the land area. Furthermore, New Zealand's exclusive economic zone is the fourth largest in the world. This area does not include the continental margin under which New Zealand has potential jurisdiction under Article 76 of the LOS Convention. See, Report completed by the Institute of Geological and Nuclear Sciences Ltd., "New Zealand's Continental

shelf and UNCLOS Article 76,” (Wellington, Institute of Water and Atmospheric Research, 2003). An enthralling account of the ecology and resources of the sea area adjacent is presented by P. Batson in *Deep New Zealand, Blue Water, Black Abyss*, (Canterbury, Canterbury University Press, 2003).

An excellent account of the legal and institutional problems to be overcome is presented by Angela Foster, “New Zealand’s Ocean Policy,” 2003 *Victoria University of Wellington Law Review*, Vol. 34, pp. 469-496. For comprehensive account of the law pertaining to the environment and resource management in New Zealand, see, D. Williams (ed.), *Environmental and Resource Management Law in New Zealand*, 2nd Ed., (Wellington, Butterworths, 1997).

⁹⁸ See, *inter alia*: Parliamentary Commissioner for the Environment, *Setting Course for a Sustainable Future, The management of New Zealand’s Marine Environment*, (Wellington, 1999).

⁹⁹ The then New Zealand Minister Responsible for Oceans Policy, the Hon. P. Hodgson, MP, chaired an *ad hoc* Ministerial Group charged with developing New Zealand’s Oceans Policy. The Group was made up of Ministers of Foreign Affairs and Trade, Conservation, Fisheries, Maori Affairs, Commerce and the Environment.

¹⁰⁰ The results of the consultation were published in a report by the Ministerial Advisory Committee on Oceans Policy, *Healthy Sea: Healthy Society; Towards an Oceans Policy for New Zealand*, (Wellington, 2001).

¹⁰¹ See, <<http://www.oceans.govt.nz/>>.

¹⁰² See, eleven working papers produced by the Oceans Policy Secretariat. Also, G. Willis *et al.*, *Oceans Policy Stocktake Part I – Legislation and Policy Review*, (Wellington, Oceans Policy Secretariat, 2002)

¹⁰³ See, decision of New Zealand Court of Appeal (June 2003) regarding Maori entitlement to seabed and foreshore.

¹⁰⁴ The Treaty also creates a special fiduciary relationship between the British Crown and Maori communities. Under the Treaty, the Maori ceded sovereignty to the British Crown which undertook to protect Maori lands, forests and fisheries. See, R. Boast, A. Erueti, D. Mc Phail, and N.F. Smith, *Maori Land Law*, (Wellington: Butterworths, 1999); A. Alston, *et al.*, *Guide to New Zealand Land Law*, (Wellington: Brooker’s, 2000), Chapter 4.

¹⁰⁵ See, for example, Arctic Waters Pollution Prevention Act, 1971; amendment to the Coastal Fisheries Protection Act 1995. On unilateral action, see, P. Curran, R. Long, “Unilateral Fishery Law Enforcement: The Case of the *Estai*,” (1996) *Irish Journal of European Law*, Vol. 5, No. 2, pp. 123-163.

¹⁰⁶ See, *inter alia*: C.L. Mitchell, “Sustainable Oceans Development the Canadian approach,” (1998) *Marine Policy*, Vol. 22, No 4-5, pp. 393-412; L. Hildebrand, A. Chircop, “Integrated Coastal and Ocean Management in Canada,” (Vancouver, 2000); G. Chao at fn 4 *op.cit.* For an early perspective on the policy, see, D. Day, “Public Policy and Ocean Management in Canada,” (1995) *Marine Policy*, Vol. 19, No 14, pp. 251-256.

¹⁰⁷ The Oceans Act, 1996, c.31, received Royal Assent in the House of Commons on December 18, 1996, and came into force on January 31, 1997.

¹⁰⁸ Section 29, Oceans Act, 1996.

¹⁰⁹ See, *Canada's Ocean Strategy, Our Oceans, Our Future*, (Ontario, Fisheries and Oceans Canada, 2002)

¹¹⁰ Notes for an Address by the Honourable Brian Tobin, Minister of Fisheries and Oceans, House of Commons, Second Reading, The Canada Oceans Act, September, 1995.

¹¹¹ *Ibid.*

¹¹² Sections 10 through to 16, Oceans Act, 1991.

¹¹³ Part 111, Oceans Act, 1991.

¹¹⁴ Government of Canada, Policy Operational Framework for Integrated Management of Estuarine, Coastal and Marine Environments in Canada, (Ottawa, Fisheries and Oceans, 2002).

¹¹⁵ See, for instance, L. Juda, "Changing Approaches to Ocean Governance: The United States, Canada, and Australia," 2003 *Ocean Development and International Law*, Vol. 34, pp. 161-187.

¹¹⁶ China ratified the LOS Convention on June 7, 1996. On China and the law of the sea, see, *inter alia*: J. Greenfield, *China's Practice in the Law of the Sea*, (Oxford, Clarendon Press, 1992); M. Valencia, *Sharing the Resources of the South China Seas*, (The Hague/London, Kluwer Law International, 1997)

¹¹⁷ See, <www.china-un.ch/eng/gjhyfy/hflygz/t85690.htm>.

¹¹⁸ *Ibid.*

¹¹⁹ *Id.*

¹²⁰ M. Lau, "Integrated Coastal Zone Management in the People's Republic of China – An assessment of structural impacts on decision-making processes", *Ocean and Coastal Management* Vol. 48, pp. 115-159.

¹²¹ See, *inter alia*: S. Chen, J.I Uitto, "Governing Marine and Coastal Environment in China: Building Local Government Capacity Through International Cooperation," *China Environmental Series*, Issue 6, pp.67-80.

¹²² Four projects were undertaken in Xiamen in Fujian Province, Fangcheng in the Guangxi Zhuang Autonomous Region, Yangjiang in Guangdong Province, and Wenchang in Hainan.

¹²³ For example, the National People's Congress has adopted the Law of the People's Republic of China on Its Territorial Seas and Adjacent Zones, Marine Environmental Protection Law of the People's Republic of China, Maritime Traffic Safety Law of the People's Republic of China, Fisheries Law of the People's Republic of China, Mineral Resources Law of the People's Republic of China and other related laws. The State Council has promulgated administrative regulations, encompassing the Regulations on the Exploitation of Offshore Petroleum Resources in Cooperation with Foreign Enterprises, Regulations on the Administration of Sino-Foreign Oceanographic Surveys, Regulations Governing the Laying of Submarine Cables and Pipelines, and Procedures for the Registration and Administration of Mineral Resources Survey Zones and Sectors. See, <[http://english.people.com.cn/whitepaper/3\(5\).html](http://english.people.com.cn/whitepaper/3(5).html)>.

¹²⁴ See, Z. Keyuan, "Governing Marine Scientific Research in China," (2003) *Ocean Development and International Law*, 34:1-27; M.J. Valencia, Y. Amae, "Regime Building in the East China Sea," (2003) *Ocean Development and International Law*, 34:189-208.

¹²⁵ On hydrocarbon issues, see, Kuen-chen Fu, "China's Energy Policies and the Law of the Sea" in M. H. Nordquist et al. (ed), *International Energy Policy, the Arctic and the Law of the Sea*, (Leiden/Boston, Martinus Nijhoff Publishers, 2005), pp.41-62.

¹²⁶ See, M. Lau, "Coastal Zone Management in the People's Republic of China: A Unique Approach?," *China Environmental Series*, Issue 6, pp. 120-123.

¹²⁷ See in particular report commissioned by Conservation International on Integrated Ocean Management, (copy with the authors).

¹²⁸ Ratifies LOS Convention in 2003.

¹²⁹ The Canada Oceans Act, 1996. TS – Territorial Sea; CZ – Contiguous Zone; EEZ- Exclusive Economic Zone; and CS-Continental Shelf.

¹³⁰ Ratified LOS Convention in 1994

¹³¹ Ratified LOS Convention in 1996

¹³² Ratification pending outcome of deliberations in the United States.

¹³³ Australia utilises Commonwealth Constitutional Powers to enact laws relating to the oceans and their management. Under the Coastal Water States, Powers and title Act 1982, the States have primary responsibility over coastal waters out to three nautical miles.

¹³⁴ The basis for New Zealand's oceans policy may be traced back to recommendations made in New Zealand Biodiversity Strategy and in the report of the Parliamentary Commissioner entitled *Setting Course for a Sustainable Future: The Management of New Zealand's Environment*. See, *inter alia*: "Memorandum for the Cabinet Policy Committee: Oceans Policy," July 17, 2000; CAB(00) M23/2C, para. 7; Ministerial Advisory Committee, *Healthy Sea: Healthy Society – Towards an Oceans Policy for New Zealand*, (Oceans Policy Secretariat, Wellington, 2001)

¹³⁵ Seas and Submerged Lands Act 1973 (Australia).

¹³⁶ Territorial Sea, Contiguous Zone and Exclusive Economic Zone Act, 1977. New Zealand is currently preparing a submission for the Commission on the Limits of the Continental Shelf.

¹³⁷ Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone. Adopted: February 25, 1992.

¹³⁸ Law on the Exclusive Economic Zone and the Continental Shelf of the People's Republic of China. Adopted: June 26, 1998.

¹³⁹ See, for example, the zones claimed by Canada, United States, Australia, New Zealand, as indicted in [Figure 4](#) above.

¹⁴⁰ See, for example, the application of straight baselines by Denmark in relation to the Faroe Islands. For commentary, see, J.A. Roach, *United States Responses to Excessive Maritime Claims*, 2nd Ed., (The Hague, Nijhoff, 1996) *passim*. The International Court of Justice applied the provisions in the LOS Convention on straight baselines in its judgement of March 16, 2001, *Case Concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain Merits*, ICJ Reports 2001, para's 212-215.

¹⁴¹ The 350 nautical mile constraint line under Article 76 of the LOS Convention.

¹⁴² Directive 2000/60/EC establishing a framework for Community action in the field of water policy on October 23, 2000, O.J. L 327/1, December 22, 2000. Into force December 22, 2000. Under Article 2(6) of this Directive, coastal waters are defined in the context of the baseline.

¹⁴³ A copy of this report is available at: <www.forum.europe.eu.int>.

¹⁴⁴ ICES response to E.C. request for information and advice about appropriate eco-regions for the implementation of an ecosystem approach in European waters, paragraph 3.7.

¹⁴⁵ See, S. M. Garcia, M. Hayashi, "Division of the ocean and ecosystem management: A contrastive spatial evolution of marine fisheries governance," (2000) *Ocean and Coastal Management* Vol. 43, pp. 445-474 (at pp. 470-472).

¹⁴⁶ See, European Commission, web page ICZM, <<http://europa.eu.int/comm/environment/iczm/home.htm>>.

¹⁴⁷ In 1976 the EEC member States agreed to take concerted action to extend the fishery jurisdiction of the member States in the northeast Atlantic and the North Sea to 200 nautical miles. See, Council Resolution on certain external aspects of the creation of the 200-mile fishing zone in the Community with effect from the January 1, 1977, OJ C 105/1, May 7, 1981.

¹⁴⁸ On this point, see, D. Freestone, "Some institutional Implications of the Establishment of Exclusive Economic Zones by EC Member States," *Ocean Development and International Law*, Vol. 23, pp. 97-114, at 107 and 108.

¹⁴⁹ Compiled by Dr. Y. Tanaka, Marine Law and Ocean Policy Centre, National University of Ireland, Galway.

¹⁵⁰ Coterminous with the exclusive economic zone.

¹⁵¹ For Greenland and Faeroe Islands.

¹⁵² In some parts of the Gulf of Finland, defined by coordinates.

¹⁵³ Applies to the North Sea, the English Channel and the Atlantic Ocean from the Franco-Belgian border to the Franco-Spanish border, Saint Pierre and Miquelon, French Guiana, Réunion, New Caledonia, French Polynesia, French Southern and Antarctic Lands, Wallis and Futuna, Tromelin, Glorioso, Juan de Nova, Europa and Bassad da India Islands, Clipperton Island, Mayotte, Guadeloupe and Martinique.

¹⁵⁴ Ten-mile limit applies for the purpose of regulating civil aviation.

¹⁵⁵ Jan Mayen and Svalbard.

¹⁵⁶ In the Atlantic Ocean.

¹⁵⁷ In the Mediterranean Sea.

¹⁵⁸ To be determined by agreement or up to equidistance line.

¹⁵⁹ Also, three nautical miles. (Three nautical miles in Anguilla, Guernsey, British Indian Ocean Territory, British Virgin Islands, Gibraltar, Monserrat and Pitcairn; 12 nautical miles in United Kingdom, Jersey, Bermuda, Cayman Islands, Falkland Islands, Isle of Man, St. Helena and Dependencies, South Georgia, South Sandwich Islands, and Turks and Caicos Islands.)

¹⁶⁰ Bermuda, Pitcairn, South Georgia and South Sandwich Islands.

¹⁶¹ 12 nautical miles in Guernsey; 200 nautical miles in United Kingdom, Anguilla, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands, Monserrat, St. Helena and Dependencies, and Turks and Caicos Islands.

¹⁶² On the difficulties regarding the implementation of cross-cutting environmental themes into E.C. policies, see, L. Krämer, "Legal Aspects of Integrated Environmental Requirements," 5th Ed., *EC Environmental Law*, (London, Sweet & Maxwell, 2003), pp. 348-369.

¹⁶³ Indeed, as pointed out above both the European Council and the European Commission rejected attempts in the European Parliament to introduce a *binding legal* framework for ICZM. See, European Parliament, "Common position with a view to the adoption of a recommendation concerning of the implementation of integrated coastal zone management in Europe," C5-0698/2001, (2002, Strasbourg). For commentary on this decision, see J. Gibson, "Integrated Coastal Zone Management Law in the EU," pp. 127-137; *Coastal Management*, Vol. 31, No 2, 2003.

¹⁶⁴ The need to develop such a policy was set out by Dr. Borg in an address to the IMO Maritime Law Institute, Malta April 4, 2005, (European Commission, Speech/05/196). See, discussion on the absence of a strategic framework, *infra*.

¹⁶⁵ On this point see the decision of the High Court in the United Kingdom in *The Queen v. The Secretary of State for Trade and Industry ex parte Greenpeace Limited*, High Court of Justice Queen's Bench Division, November 5, 1999.

¹⁶⁶ See, fn 25 *op.cit*.

¹⁶⁷ A single-hull tanker, the *Prestige*, sank off the coast of Galicia in Spain in November 2002. A large quantity of fuel oil was released into the sea and caused over one billion Euro worth of damage. The European Commission endeavoured to map out a strategy to improve the transport of oil and other substances by sea and to improve safety at sea. See, European Commission Report to the European Council on action to deal with the effects of the Prestige disaster, COM (2003) 105 of March 5, 2003.

¹⁶⁸ See. Julian Roberts et al., "The Western European PSSA proposal: a political sensitive sea area," *Marine Policy* (in press).

¹⁶⁹ Council Regulation No. 1406/2002, OJ L 208/1, 2002.

¹⁷⁰ *Ibid.* Article 1

¹⁷¹ Of the two sets of proceedings commenced by Ireland, only those taken within the framework provided by the OSPAR Convention at the Permanent Court of Arbitration have been concluded. For commentary on this case, see, T. Mac Dorman, "Access to information under Article 9 of the OSPAR Convention (Ireland v. United Kingdom): OSPAR Arbitral Tribunal, July 2, 2003: arbitral award regarding duty to provide access to information about nuclear facility under treaty on marine environmental protection," (2004) *American Journal of International Law*, Vol. 98, pp. 330-339; D. Devine, Provisional Measures ordered by the International Tribunal for the Law of the Sea in the Area of Pollution : the MOX Plant Case (Ireland v. United Kingdom) ITLOS Case No 10, December 3, 2001, (2003) *South African Yearbook of International Law*, Vol. 28, pp. 263-275 / 2003; M. Tanaka, Lessons from the protracted MOX plant dispute : a proposed protocol on marine environmental impact assessment to the United Nations Convention on the Law of the Sea, (2004) *Michigan Journal of International Law*, Vol. 25, pp. 337-428.

¹⁷² See, R. Churchill, J. Scott, "The MOX Plant Litigation: the first Half-Life," Vol. 53, *The International and Comparative Law Quarterly*, pp. 643-676.

¹⁷³ Report of the Independent World Commission on the Oceans, *The Ocean Our Future*, (Cambridge, Cambridge University Press, 1998), p. 148.

¹⁷⁴ A recent initiative to resolve this difficulty has been the establishment of Regional Advisory Councils under the common fisheries policy. See, Council Decision of July 19, 2004 establishing Regional Advisory Councils under the Common Fisheries Policy, OJ L

256/17, August 3, 2004. These Councils will allow representatives of the fishing industry, scientists and other stakeholders to participate in the policy process. This limited role does not, however, entail vesting the Councils with any executive or legislative functions. Nonetheless, these Councils may demonstrate the utility of involving a wide range of stakeholders in the policy process and could thus form a useful precedent for the establishment of similar type structures for the implementation of ICZM and IOM.

¹⁷⁵ A number of ICZM experts have called for the introduction of such legislation, see, *inter alios*: S. Humphreys, P. Burbridge, & C. Blatch, "U.S. Lessons for Coastal Management in the EU," (2000) *Marine Policy*, Vol. 24, pp. 275-286; D.J. Huggett, "Progressing coastal management in Europe: a case for continental zone planning and management" in J. Taussik *et al.*, *Partnerships in Coastal Zone Management*, (Cardigan, Samara Publishing Ltd., 1996), pp. 47-56; and D. Huggett, "The role of federal government intervention in coastal zone planning and management," (1998) *Ocean and Coastal Management*, Vo. 39, pp. 33-50.

¹⁷⁶ E.C. Treaty, Article 249.

¹⁷⁷ See, discussion regarding Canada's Oceans Act 1996 *supra*.

¹⁷⁸ E.C. Treaty Article 5.

¹⁷⁹ See, J. Gibson, "Integrated Coastal Zone Management Law in the EU," 2003 *Coastal Management*, Vol. 31, No 2, 2003. pp. 127-137 at 130.

¹⁸⁰ For a detailed exposition of E.C. Directives, see, S. Prechal, *Directives in EC Law*, 2nd Ed., (Oxford, Oxford University Press, 2005), *passim*.

¹⁸¹ L. Krämer, "Legal Aspects of Integrated Environmental Requirements," 5th Ed., *EC Environmental Law*, (London, Sweet & Maxwell, 2003), *passim*.

¹⁸² The European framework programmes are the EU's main instrument for funding international collaborative research projects.

¹⁸³ See Part I *supra*.

¹⁸⁴ On difficulties regarding definitions in Canadian legislation, see, G. Chao, "Moving from International 'Good Steward' to Domestic Integrated Manager: Challenges of Importing Principles of Integrated Coastal and Ocean Management into Canada's Ocean Law," *Ocean Yearbook*, (Chicago, University of Chicago, 2002), 16:421-462, at 448. This commentator points out that *coastal waters* may be comprised of harbours, bays, estuaries, other inland waters, and the territorial sea, typically under the provincial jurisdiction. *Offshore waters* consist of the contiguous zone, the EEZ, and the continental shelf, typically under federal jurisdiction.

¹⁸⁵ Third recital, Preamble, LOS Convention.

¹⁸⁶ See, R. Long, P. Curran, *Enforcing the Common Fisheries Policy*, (Oxford, Blackwell Science, 2000), *passim*.