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THE ROLE OF THE NORWEGIAN COAST GUARD IN CONTROL MANAGEMENT: DISCURSE OR GUNS?

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1. Introduction¹

In keeping with the tradition from Garrett Hardin's *The Tragedy of the Commons* (1968), controlling the harvesting of natural resources has been viewed as an element of power utilization: Authorities survey the observance of regulations in order to punish violators. This paper includes another aspect of enforcement in marine fisheries. Control bodies may reach their goal of preserving the resource basis by seeking to increase the legitimacy of fishery regulations among fishermen. The traditional view of enforcement implies a control activity based on *coercion*, where fishermen are threatened by economic sanctions if revealed in violation. An enforcement based on *discursive* actions,

¹ More elaborated accounts of the questions raised in this paper, are given in Norwegian language in Hønneland (1993 and 1995).

on the other hand, seeks to influence fishermen's behaviour by appealing to their reason and their trust in the righteousness of regulations.

These theoretic approaches will be further elaborated in the first part of this paper. Subsequently, a brief outline is given of the organization of fisheries control in the Barents Sea, as well as the jurisdictional and management framework it operates within. In the last part of the paper, relevant tendencies in the violation statistics of the Norwegian Coast Guard is presented, and this empirical material is discussed in view of the theoretical focus of the paper. Of special interest here is the fact that various parts of the Barents Sea have different jurisdictional status, rendering the preconditions for control activities in the various zones different. To the extent that the statistics of the Coast Guard in effect reflect the actual behaviour of fishermen, statistical variances may give us an indication of how different types of enforcement approaches affect fishermen's observance of rules.

2. Compliance Control - Coercive and Discursive Measures

A regime for fisheries management is usually understood to include three components: *research, regulations* and *enforcement or compliance control*. The focus of this paper is on how the last of these three components can contribute to implementing the declared goals of a given management regime. In order to avoid over-exploitation of a fish stock, authorities set up rules limiting access to the resource, amounts of fish to be caught and forms of exploitation. If we accept the view of the fisherman as an egoistically calculating actor (Hardin 1968), compliance control is not only an essential, but an indispensable component of resource management. The *instrumentally* rational actor, whose only motive is his own personal gain, will not renounce an extra share of the common unless such abstention represents the more favourable choice for him. Mere regulations will have no effect on such actors; they will only comply with established rules when the threat of sanctions in the event of violation is sufficiently high. *Coercion,*

in this perspective, becomes the leading implementation mechanism in compliance control. Inspectors are intended to make fishermen comply with the law because they are in a position to otherwise bring upon them substantial economic losses (fines). In the last resort, inspection vessels can threaten with the use of guns to implement regulations.

Alternative concepts of rationality validate different implementation mechanisms for the control bodies. If we accept that an actor behaves rationally primarily when his acts are in accordance with established *norms* and *values* in his surroundings (Parsons 1937), a main objective for fisheries management becomes tracing preservative aspects of prevailing norms within fishery societies, and, subsequently, persuading fishermen to act according to these norms. In line with the *communicative* rationality perspective of Jürgen Habermas (1981), an actor behaves rationally when he is capable of defending his actions through reasonable arguments. Ideally, individuals interact on the terms of reaching *agreement* with each other as a result of a *common understanding* of each other's arguments. The best argument in a discourse will invariably win *because everybody realizes this to be the best argument*. This perspective leaves control bodies and inspectors with the main task of argumentatively convincing² fishermen of the righteousness of regulations. Discursive measures are thus believed to increase the *legitimacy* of rules by appealing to either the norms or the reason of fishermen.

3. The Barents Sea: The Ecosystem and the Legal Setting³

The Barents Sea is one of the richest fishing grounds of the world. The basis for the

² The term *conviction* represents a two-way consensus oriented process, where both conversation partners are ready to adopt the argument of the opposite side if this - in the course of discussion - turns out to be the best. *Persuasion*, on the other hand, implies a result oriented one-way communication, where the speaker's intention is to leave an effect on the listener rather than reach an agreement.

³ See e.g. Hoel (1989) for a further elaboration on the legal setting of the Barents Sea fisheries.

abundant fish resources here is the high production of plankton. Favourable conditions for primary production are given by the melting of ice in summertime. This gives rise to currents whirling up bottom sediments, and the process is enhanced by warm water from southwest mixing with the cold Arctic water. Both groundfish and pelagic species are traditionally important in the Barents Sea fisheries. *The Norwegian Arctic cod* is by far the economically most important species in the area. Other groundfish species of importance are *haddock*, *redfish*, *saithe* and *greenland halibut*. *Herring* and *capelin* are the key pelagic species in the area. As they serve as food to groundfish and marine mammals, they are central to the functioning of the ecosystem. In addition, there is a considerable *shrimp* fishery, as well as a *whaling* and *sealing* industry, in the Barents Sea.

Since 1976, Norway and the Soviet Union/Russia have undertaken a common responsibility for the management of these marine resources. *The Joint Russo-Norwegian Fishery Commission* meets every autumn to establish TAC's for the three joint stocks: cod, haddock and capelin. Cod and haddock are shared on a 50-50 basis, while the capelin quota is shared 60-40 in Norway's favour. In addition, quotas of the parties' exclusive stocks are exchanged. Russia has traditionally given a share of its cod quota to Norway in return for a share in Norway's quotas of redfish, herring and greenland halibut. As a resource management regime, the Russo-Norwegian cooperation has proved itself fairly successful in recent years (Hoel 1994; Hønneland 1994). Most stocks have grown steadily since the end of the 1980s,⁴ and the Barents Sea fisheries at the moment appear to be among the most prosperous in the world. The TAC of Norwegian Arctic cod has amounted to approximately 700 000 tonnes in recent years.

⁴ The capelin stock, with its rapid fluctuations, represents a departure from this tendency. While the stock soon recovered from something close to a total breakdown in 1985-86, a new setback came in 1992-93. Commercial fishing was once more halted after the spring season of 1993. Furthermore, the direct fishing for greenland halibut was stopped in 1992; the stock had suffered a threatening decline and is now only taken as by-catch, besides a limited amount permitted in the inshore fishing by passive gears.

The question of jurisdiction is, however, still unsettled in parts of the ocean area. Both Norway and the Soviet Union established their 200 miles *exclusive economic zones* (EEZ's) in 1976. As the two states could not agree on the principle for a delimitation line between their respective zones, a temporary *Grey Zone* arrangement was reached in 1977 to avoid unregulated fishing in the area. This arrangement implies that Norway and Russia regulate and control their own fishermen and the third-country fishermen licensed by each of them, and abstain from interfering with the activities of the other parties' vessels (or vessels licensed by it).

Another area of contention is the Fishery Conservation Zone around Svalbard. Norway claims the right to establish an exclusive economic zone around the archipelago, but has so far refrained from this step due to protests from the other signatory powers of the Svalbard Treaty. The waters around Svalbard are important grazing grounds for the immature part of the cod stock, and the Conservation Zone, erected in 1977, represents a "middle course" which is supposed to secure this young fish a certain protection from unregulated fishery. The zone is not recognized by any of the other states which have had quotas in the area since the introduction of the EEZ's, and to avoid provocation Norway has refrained from punishing violators in this area.⁵ In order to secure a non-discriminatory basis, this applies also to Norwegian fishermen. Soviet/Russian vessels, which have been fishing in the zone regularly since its establishment, do not report to Norwegian authorities about their catches in the area, and the Russian captains consistently refuse to sign the inspection forms of the Norwegian Coast Guard. The Russians do, however, welcome Norwegian inspectors on board, and the same inspection procedures are pursued here as in the Norwegian EEZ.

⁵ Force was for the first time used in the Conservation Zone around Svalbard in the summer of 1993, when Icelandic trawlers and Faroese vessels under flags of convenience started fishing in the area without having been allotted quotas. Warning shots were fired at the ships by the Norwegian Coast Guard, and they left the zone. The following summer, an Icelandic fishing vessel was for the first time arrested for having fished in the Svalbard zone without a quota.

The so-called *Loophole* is a remainder of international water in the northeastern part of the Barents Sea. Icelandic and other vessels of various nationalities have taken up considerable amounts of cod in this area in the last couple of years. Norwegian Coast Guard vessels have followed this fishery closely without the possibility to interfere.

4. The Control Bodies

The Norwegian fisheries management sticks to the principle of *horizontal control*;⁶ fishermen are to be submitted to control both on shore and at sea. Moreover, the control measures may be separated into a *passive* and an *active* part. By the term *passive control*, I mean the examination of the information fishermen are obliged to submit about their activities at sea; authorities *passively* receive data from the vessels and examine whether they give evidence about a lawful behaviour or not. The concept of *active control* entails the physical checking by inspectors of this information.

The passive control of Norwegian fisheries management is exercised by the Directorate of Fisheries in Bergen. The Directorate receives information directly from the vessels at sea (foreign vessels and Norwegian factory trawlers), catch logs (Norwegian vessels over a certain length) and landing data from the fishermen's sales organizations (applying to all Norwegian fish factories on shore). On the basis of these data, the Directorate keeps a continuous track of the amount of a ship's or a foreign nation's quota that remains. When the quota is fished up, one can take steps to halt the fishing. In addition to this, a certain responsibility for quota control is rested with the sales organizations.

The active quota control takes place locally where the fish is landed and is exercised by the *Fish Control (Kontrollverket)*, a suborgan of the Directory of Fisheries. The Fish

⁶ As opposed to, for instance, the EU, which requires control only on shore.

Control is a decentralized body with 5 district offices⁷. Approximately 80 inspectors are scattered along the Norwegian coast, and they were originally assigned with the main task of quality control. Since the end of the 1980s, however, the quota control has become continuously more important for the organization. Inspectors calculate the amount of fish landed and examine whether it corresponds to the information in the catch log.⁸ Usually, they take a sample of, say, 10 boxes of fish and check if their weight agrees with the figures the captain has used in his own calculations.

The same random samples for the sake of quota control can be carried out at sea; inspectors check the actual quantity of fish on board at the time of inspection. In addition, inspections of the fishing gears (e.g. the mesh size) and the catch (composition of the catch,⁹ size of the fish, presence of fry) necessarily have to take place immediately after the fish has been hauled. These control tasks are performed by the military Coast Guard. This organization was erected in 1980¹⁰ as a response to the challenges presented by the new zone arrangements. The Coast Guard consists of a southern and a northern squadron with bases in Bergen and Sortland, respectively. Their area of responsibility is divided by the 62nd parallel. The latter is the more resourceful of the two with 8 inspection vessels, as opposed to 5 in the south. 3 of the vessels in the north have

⁷ In Northern Norway, the district office in Svolvær (Lofoten) covers the county of Nordland, while the inspectors living in the counties of Troms and Finnmark are subordinated to the office in Tromsø.

⁸ Subsequently, these figures may be held up against the information submitted to the Directorate of fisheries. The latter will, however, most often correspond to the catch log as the log is itself to be forwarded to the Directorate when it is completed. (This applies to Norwegian vessels only.)

⁹ This refers to the percentage of different species in the catch. Certain fishing gears are adjusted to catching a specific species and should not be used in fishing for other species. When fishing for redfish, for instance, a smaller net size is allowed than in the fishing for other groundfish species, and the by-catch of cod, haddock and greenland halibut should thus not exceed 10% in this fishery.

¹⁰ Before this time, a civilian fishery inspection had existed. This body had far less resources both in terms of finance, personnel and vessels than its successor.

helicopters on board, and the Coast Guard additionally uses aircraft for observation from the air. A special branch within the Directory of Fisheries, *The Fishing Ground Supervision (Overvåkingstjenesten for fiskefelt)* is responsible for closing areas with excessive presence of undersized fish (and re-opening them when the size of the fish is back to normal). The inspectors of this supervision hire ships to conduct investigations of the fish size, or they temporarily stay on board Coast Guard vessels.

5. The Inspection Activity of the Coast Guard

The Coast Guard conducts fishery inspections in the Norwegian Exclusive Economic zone (NEZ), the Grey Zone and the Fishery Conservation Zone around Svalbard. The inspections from the two former zones are categorized together, while those of the Svalbard zone are grouped separately in the inspection statistics. The interesting point for our discussion here is the difference between the forms of control activity that are conducted in the two areas: In NEZ and the Grey Zone, serious infringements lead to sanctions (in the form of fines), while in the Svalbard zone, violators repeatedly get away with a warning due to Norway's *gentle enforcement* in this disputed area. In line with the traditional view of the necessity of coercive measures in compliance control, one should expect a pronounced difference in fisherman behaviour between these two ocean areas. The absent threat of punishment in the Svalbard zone should according to this view make fishermen catch as much as they were capable of without regard to quota limitations and other regulations. In NEZ and the Grey Zone, on the other hand, one should expect fishermen to stick to the rules in fear of being punished in the event of violation.

In the following, I shall render some main points from a study I have conducted on the inspection activity of the Norwegian Coast Guard in the years from 1987 to 1992 (Hønneland 1993). I have compared the violation rates in NEZ/ the Grey Zone with those of the Svalbard zone. In all the years from 1987 to 1992, the annual number of inspections was around 1100-1200, comparatively evenly divided between the two ocean

areas. A general tendency in the statistics is that fishermen in the whole of the area mainly seem to stick to the rules. If we split revealed violations into four main categories, we find that only a minor share of the inspections have resulted in some sort of a reaction to either of these violations.¹¹ Violations of reporting obligations and fishing gear regulations have mainly occurred in less than 10% of the inspections. When it comes to misreporting of catches and fishing in closed areas, the violation rate has seldom exceeded 2-3% annually. The total share of inspections that have resulted in fines, has varied between 2% (1986) and 7% (1991). These, of course, all occurred in NEZ/ the Grey Zone.

6. Discourse or Guns?

If we compare the violation rate in the two ocean areas, two main traits stand out: Firstly, there are few differences between the two areas when it comes to the share of inspections that have resulted in a reaction.¹² Secondly, to the extent that the reaction rates have varied temporally for the different violation categories, the tendencies of the two ocean areas are concurrent. I shall not go into a discussion here of which factors have brought about processes of increase or decrease for the different types of violation.

¹¹ There are three levels of reaction: oral warning, written warning and arrest. The more severe damage to the resource basis the violation has caused, the higher level of reaction is given. Oral warnings are most often given for violations of a formal type, like insufficient marking of the vessel or minor faults in the keeping of the catch log. Written warnings and arrests are used when fishermen have more deliberately attempted to circumvent the rules to achieve a personal gain.

¹² I.e. if we ignore warnings given to formal violations rooted in the unclear jurisdictional status of the Svalbard zone. All Russian vessels, for instance, automatically receive a written warning when inspected in the Svalbard zone because they have not reported to Norwegian authorities before they started fishing in the area. In fact, they are *obliged* according to Russian prescriptions to abstain from such reporting. Nevertheless, these violations represent mere formalities from a resource preserving point of view; they reflect diverging interpretations of the Svalbard Treaty and have no direct impact on the state of the fish stocks.

Likewise, I shall not assess whether the figures sooner reflect the behaviour of inspectors than that of fishermen.¹³ What is most important, is that fishermen *for the most part* seem to abide by the law in both NEZ/ the Grey Zone and in the Svalbard zone. As for the former area, a possible explanation to this behaviour may be the presence of a coercive control mechanism. Fishermen refrain from violations because they fear sanctions. This explanation cannot, however, be applied to the Svalbard zone due to the absence of coercive measures here. On the one hand, the concurrence of tendencies in the two areas may support the assumption that *control does not matter*; most fishermen abide by the law regardless of these measures.¹⁴ On the other hand, it may be argued that control *does* matter, but that the threat of sanctions is not the only feasible implementations mechanism in compliance control.

Reports from the Coast Guard reveal an extensive use of discursive measures in the enforcement of regulations. The most striking examples are the attempts to avoid killing of undersized groundfish in the fishing for capelin and shrimps in the Svalbard zone. A considerable share of this fishery (admittedly when capelin is allowed to fish at all) takes place in the grazing grounds of cod, haddock, redfish and greenland halibut, and Norwegian authorities have set up rules limiting the permitted intermingling of undersized groundfish in capelin and shrimp catches (where, of course, a much thinner net is allowed than in the catch for groundfish). The challenge of enforcing these regulations without coercion is left with the Coast Guard. I have earlier quoted an example of how extensive killing of undersized cod by Russian capelin vessels was halted through discursive methods (Hønneland 1993: 106-108 og 1995: 72-73): 45 Russian trawlers were taking up 4-5 million specimen of undersized cod daily in their catch for capelin. This was revealed by the Coast Guard, and inspectors immediately went about trying to convince the Russians of the need to stop fishing. After one and a half days of intensive argumentation on board the Russian vessels, the whole Russian fleet agreed to

¹³ Such a discussion is given in Hønneland (1993: 82ff and 113ff).

¹⁴ It can be argued, for instance, that regulations enjoy a sufficient degree of legitimacy among fishermen to render control measures superfluous.

leave the area. There are many examples of this sort.

Another example of successful argumentative measures in the Svalbard zone is the effort to make Russians follow Norwegian fishing gear regulations in the area. Russian authorities urge their own fishermen to stick to Russian fishery regulations when fishing in the Svalbard zone. These allow for smaller net sizes than Norwegian regulations do. Nevertheless, a great number of Russian vessels have started using nets that agree with Norwegian rules in recent years. Moreover, those who do *not* use such nets, usually change to such on the inspector's command. The use of nets with a greater selection ability thus becomes an example of *self-imposed restrictions* from the part of Russian fishermen.

I have no ambition to establish whether these fishermen are *convinced* or *persuaded* (ref. note 2) to abide by the regulations. Both processes may very well be in function, and on the basis of the existing empirical material, it is hard to tell the one from the other. On the one side, it can be argued that fishermen adopt the inspectors' arguments and adjust their behaviour according to these; they realize that the inspectors have the best argument for securing the common good as well as their own long-term interests. On the other hand, the discursive actions of the Coast Guard may be understood as furthering traditional fisherman norms. To the extent that it is a traditional value not to kill undersized fish, for instance, the inspection activity of the Coast Guard serves as a *reminder* towards the fishermen of this value. Without the presence of the Coast Guard, they might have been tempted to fish in the area *in spite of* this being contrary to old fisherman norms. The function of the Coast Guard thus becomes one of making the fishermen choose the norm-rational action to the alternative that seems most rational from an instrumental point of view.

The challenge of Coast Guard inspectors to implement regulations without the use of force is probably facilitated by the fact that the Coast Guard is much more than a mere control body to the fishermen. Above all, the Coast Guard ships serve as rescue boats in

the event of shipwreck or other less serious accidents to the fishing vessels. Furthermore, they can offer a lot of other services ranging from medical assistance and transportation to ice-breaking. These services are all free of cost for the fishermen, and they may contribute to a certain obligation to the control body from the fishermen's part. This may especially be the case in the Svalbard zone, where climatic conditions are harsh and the presence of other auxiliary bodies more limited than closer to the mainland. This *may* have an influence on the relationship between fishermen and inspectors. Fishermen may be more heedful to inspectors' instructions because they want to be *on good terms* with the Coast Guard.¹⁵

However, rather than stressing the fishermen's possible sense of obligation, one may accentuate *the spontaneous spirit of community* that may arise between people who have their occupation in these deserted areas, regardless of their functional *roles*. The very desertedness along with the extreme climatic conditions may render roles less important here than in most other situations of human interaction. When inspector and fisherman meet in the polar night and over a cup of coffee discuss when the ice will come in from the east, the situation sooner reminds of a meeting between *polar sea colleagues* than of one between a *watchdog* and a potential criminal. In such a situation, it may be argued, it

¹⁵ A certain stability in the fishing fleet over time is necessary for such a relationship between control body and fishing vessels to develop. This precondition is to a large degree present in the case of the Barents Sea. The trawlers' part of the Norwegian cod quota is shared between a limited amount of vessels being allotted quota year by year. The same is true when it comes to the quota of third countries. A small amount of vessels (2-5) from Germany, France, Great Britain and Portugal every year takes the main share of the EU's quota in NEZ. The same Spanish twin trawlers, on their hand, return to the Svalbard zone every summer to take their quota of cod allotted on the basis of traditional fishing in the area. Russia's fleet is considerably larger, but again it is mainly the same vessels that year by year fish in the Barents Sea.

The Coast Guard thus becomes more than an *occasional control body* to the fishermen. Russian fishermen, for instance, do not use the Russian translation of the words *Coast Guard* when they mention the Norwegian control body in their mother tongue; they use the Norwegian word *Kystvakt*, pronounced with a Russian accent. With its distinctive features, the Coast Guard becomes an *institution* in Selznick's (1957) sense, rather than an anonymous, mechanical *organization* to the fishermen.

becomes awkward for the captain to be revealed as a violator, and he will thus take steps to ensure abidance by the law.

7. Conclusion: No Need for Coercion?

To the extent that Norwegian fishery authorities have succeeded in implementing regulations in the Svalbard zone without the use of coercion, one may question the need for such measures in the other parts of the Barents Sea. Are the same mechanisms in function in NEZ and the Grey Zone as in the Svalbard zone? Is the threat of sanctions mere symbolism in an enforcement system based on discourse? Without totally excluding this possibility, we must bear in mind that the preconditions for a successful use of discursive measures are more apparent in the ocean areas around Svalbard than farther south. Firstly, the Coast Guard vessels' role as guarantors of the fishermen's security is more important here than closer to the mainland. Secondly, it is probably easier to appeal to fishermen's values and sense of reason in the case of killing of immature fish, than when it comes to underreporting of catches, which has been the most serious control problem in NEZ the last few years.

Moreover, it should be emphasized that a compliance control system without an element of coercion will always rest on a fragile foundation. It has to a large degree succeeded in the Fishery Conservation Zone around Svalbard for nearly two decades, but this should be considered a result of purposeful efforts to make the best out of a situation where the use of force was politically impossible. Additionally, the period until 1993 was marked by stable surroundings to the regime along with a tacit acceptance of Norway's and Russia's right to manage the fish resources of the Barents Sea. When Icelandic and Faroese vessels without a quota entered the Loophole in August 1993, this right was fundamentally challenged. The willingness of fishermen from other nationalities to impose restrictions on themselves, may be reduced when they observe that no limitations are laid upon those who do not even have a legal right to fish here. So far, Icelandic and

Faroese attempts to start fishing in the Svalbard zone have been halted by Norwegian authorities.¹⁶ If these attempts had succeeded, however, they would not only have been strikes towards Norway's sovereignty in the area, but possibly also a serious challenge to the compliance control system based on discursive measures.

The achievements of the Norwegian Coast Guard in the Svalbard zone should, however, be kept in mind by designers of compliance control systems in fisheries management regimes. An enforcement based consistently on coercion requires considerable financial resources to fulfil the demands of extensive supervision and high inspection frequency (Hønneland 1993: 85ff). To the extent that the established goals of a management regime can be attained through other implementation mechanisms, these may constitute feasible alternatives or supplements. A relationship of trust between control body and fishing fleet may prove no less fruitful than a strict supervision and threats of punishment.

¹⁶ Admittedly, by use of force; when I claim that coercion is not used in the Svalbard zone, I primarily speak about Norwegian policy towards those nations Norway has endorsed the right to fish in the Barents Sea. So far, force has been used only towards vessels from nations which have *not* been given this right.

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