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Policy Transfer in Ocean Governance: Australia, Canada and New Zealand

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Abstract

Since it entered into force in 1994, signatories of the Law of the Sea Convention (LOSC) have been obligated to demonstrate that they can effectively manage the resources within their Exclusive Economic Zones (EEZs). In 1998, the Australian Government took the first step to fulfil its obligation to LOSC and released Australia's Oceans Policy (AOP), a world first policy initiative focussed on providing a framework for integrated ecosystem based management of Australia's vast marine domain. Both Canadian and New Zealand representatives have been encouraged by the Australian Government to observe, and in some instances, take part in, the AOP development and implementation process. Subsequently, both Canadian and New Zealand governments have developed, or are in the process of developing their own ocean policies indicating that some policy components have been transferred from the AOP process.

Key researchers of policy transfer such as Dolowitz (2003); Dolowitz and Marsh (2000); Jones and Newburn (2002); and Evans and Davies (1999) argue that policy transfer processes increase innovation in policy making and allow policy makers, through globalisation and technological advances in communication, to become aware of what other political systems are achieving through policy initiatives. Dolowitz and Marsh (2000: 12) identify eight components of policy that can be transferred. These include policy goals, policy content, policy instruments, policy programs, institutions, ideologies, ideas and attitudes, and negative lessons. Policy transfer has become an important tool for governments as they look for quick solutions to their policy issues. This paper analyses the policy transfer approach and argues that policy transfer is strategically advantageous for states that want to fulfil their domestic and international obligations in ocean governance.

1. Introduction

Ocean governance has become an important issue for coastal states particularly since the deliberations of the United Nations Conferences on the Law of the Sea that spanned four decades (1958-1982).¹ The Conferences resulted in the Law of the Sea Convention (LOSC) which establishes the universally agreed framework for determining boundaries including the Exclusive Economic Zone (EEZ),² contiguous zone,³ continental shelves,⁴ and territorial seas.⁵ It also outlines the need for the

protection of various marine environments⁶ and balances the rights of states to conserve fish stocks.⁷ Special regimes for the fishing of anadromous and highly migratory fish species⁸ and the management and protection of marine mammals have also been determined by this Convention.⁹ Signatories of LOSC, since its ratification in 1994, have been obligated to demonstrate that they can effectively manage the resources within their EEZs. For Australia, Canada and New Zealand this has meant implementing LOSC's legally binding measures through domestic policies.

Although declaratory and not legally binding, the United Nations Conference on the Environment and Development's *Agenda 21* has also impacted oceans policy development in Australia, Canada and New Zealand. Whereas the Law of the Sea establishes the extent of each state's maritime boundaries, Agenda 21 provides the framework for environmental controls dealing with maritime activities within those boundaries through three key principles aimed at sustainable development – 'integrated',¹⁰ 'precautionary',¹¹ and 'anticipatory' actions.¹²

Australia, Canada and New Zealand have all commenced the development and implementation of management frameworks that encompass the regulatory measures of various international instruments and domestic law and policy dealing with ocean governance. Although the Canadian government passed an *Oceans Act* in 1997, it has not resulted in an effective integrated oceans management framework.¹³

In 1998, the Australian Government released *Australia's Oceans Policy* (AOP), a world first policy initiative focussed on providing a framework for integrated ecosystem based management of Australia's vast marine domain.¹⁴ The oceans policy

development and implementation process itself was unique and therefore of interest to other coastal nations with similar ocean and marine management issues to Australia. Both New Zealand and Canada were invited by the Australian government to be involved early in the policy process. Canada's interest in AOP was particularly focussed on new measures for a management framework and to overcome the limitations of the *Oceans Act*. New Zealand, on the other hand, had no policy framework for oceans management and its interests were vested in learning from the Australian experience.

In recent years, Canada has developed and begun to implement an *Oceans Strategy*¹⁵ and New Zealand has initiated the development of an Oceans Policy. Both Canadian and New Zealand involvement indicates that some policy components have been transferred from the AOP process. This paper analyses the policy transfer approach and investigates the extent of policy transfer from the AOP process to the Canadian and New Zealand oceans policies. It is argued that policy transfer is strategically advantageous for states that want to fulfil their domestic and international obligations in ocean governance.

2. Policy transfer

During the late 1990s, writers across disciplines began to revisit the concepts "lesson drawing",¹⁶ "policy convergence",¹⁷ "policy diffusion"¹⁸ and "policy transfer".¹⁹

Although each concept is distinct from the other, they have some commonalities. The concepts in one way or another all refer to how

knowledge about policies, administrative arrangements, institutions and ideas in one political system (past or present) is used in the development of policies, administrative

arrangements, institutions and ideas in another political system.²⁰

Policy transfer is more than a process of copying or emulation. It is a deeper process of learning “about different concepts and approaches rather than specific policy designs.”²¹ Policy transfer can be voluntary or coercive and this element distinguishes it from the concept of lesson drawing which assumes that the actor who is borrowing the policy has a choice.²²

Dolowitz and Marsh identify nine categories of actors that are involved in the policy transfer process and these include “elected officials, political parties, bureaucrats/civil servants, pressure groups, policy entrepreneurs and experts, transnational corporations, think tanks, supra-national governmental and nongovernmental institutions and consultants.”²³ Empirical studies also demonstrate that some actors have become increasingly influential and experts in the transfer process.²⁴

Whilst the empirical approach to examining policy transfer is beneficial, Dolowitz and Marsh argue that analysing the process of transfer remains an important element in understanding the concept. They first ask the following questions to establish what the processes of transfer may be:

what motivates policy makers to engage in the policy transfer process? (For example, is it ideological or practical?) Do actors get involved at different stages of the policy transfer process? When is policy transfer likely to occur within the policy-making cycle? How does the type of transfer vary depending upon when it occurs within the policy-making cycle?...Do different agents of transfer engage in different types of transfer?²⁵

By analysing these processes, Dolowitz and Marsh developed a conceptual framework for policy transfer. They also identify which particular elements of policy can be transferred through eight categories. These include policy goals, policy content, policy instruments, policy programs, institutions, ideologies, ideas and attitudes, and negative lessons.²⁶ Their framework demonstrates that transfer leads to policy failure when it is uniformed, incomplete and inappropriate. In addition, they distinguish between voluntary and coercive transfer.

Dolowitz and Marsh argue that in many cases policy transfer can lead to policy failure.²⁷ The policy that is being transferred can often fail when implemented simply because it is not suited to the new environment. Stone raises the issue that transfer cannot occur in some cases because of the constraints and structural factors of agency and structure. The types of structure and the time of policy transfer can effect whether the transfer can even occur.²⁸

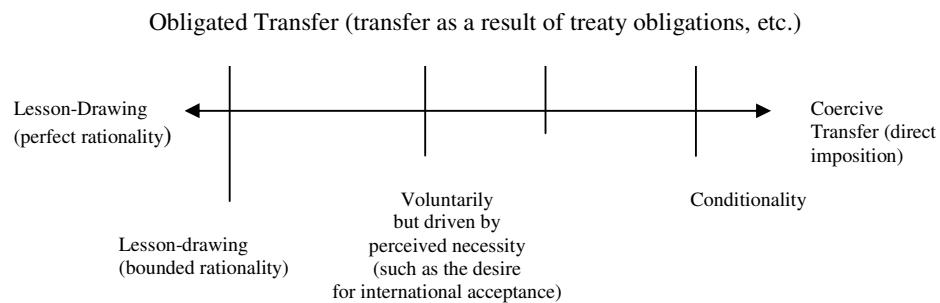
Despite the risks of policy failure, the actors involved in policy transfer find that innovation is increased in policy making. Policy makers become aware of what other policy makers in the international arena are doing and what progress they are making with a particular policy area. Schneider and Ingram observe that “unless the examples of other countries are brought to light through analysis, changes [to policies] will be incremental.”²⁹

On both the domestic and international levels, policy makers are relying more on the advice of consultants or policy experts in a specific policy area.³⁰ By using consultants, governments have more time to discuss policy issues and the consultants

offer expert opinions, advice and research. Dolowitz and Marsh believe that the consultants, especially in the international arena often blur the distinction between voluntary and involuntary policy transfer.³¹ They argue that over time relationships between governments and consultants change from either voluntary to coercive, and add to a mixture of elements complicating the study of policy transfer even further.³²

In order to examine the voluntary and coercive nature of policy transfer, Dolowitz and Marsh use a policy transfer continuum (see Figure 1). They argue that by labelling a transfer as “voluntary” or “coercive” is oversimplifying the process.³³

Figure 1. From Lesson-Drawing to Coercive Transfer



Source: Dolowitz, D. and Marsh, D. “Learning from abroad: the role of policy transfer in contemporary policy making”, *Governance: An International Journal of Policy and Administration* 13, no.1, January 2000: 13.

Dolowitz and Marsh contend that this continuum assists researchers by identifying different categories to frame their empirical work and that it deepens their knowledge on the transfer process.³⁴ In addition, the environment is an important factor in policy transfer and actors are influenced and motivated by it. If the transfer occurs during a period of political and economical stability then it is likely to be voluntary. In contrast,

if the transfer occurs in periods of political and economical instability the transfer is likely to be coercive.³⁵

Nevertheless, it is often difficult to tell whether the transfer has actually been voluntary or coercive. Dolowitz and Marsh admit that the distinction is often blurred,³⁶ and when taking into account that transfer occurs across time and space, the changes to a transfer relationship, the roles of actors and institutions can also change. This makes identifying and keeping track of policy transfer a difficult exercise. Moreover, analysts have found that this has complicated the task of formulating a policy transfer model.

Dolowitz claims that the last two decades have seen global forces impact on states and an increase in policy transfer.³⁷ There are two main reasons why policy transfer has increased recently.³⁸ Arguably, the influx of technological advances, especially in communication and media devices has resulted in easier and faster methods for policy makers to communicate with each other. In some cases this communication can be accidental, unintentional, or secretive. This does not mean that the traditional forms of transfer that were used before the technological advances are not in effect any more. These will continue to exist, in particular within in smaller countries with less advanced economies.

The second reason why there is pressure towards policy transfer is globalisation. The effects of globalisation can be viewed as an accessory to policy transfer and certainly why transfer literature has been revisited. As Stone reasons, however, “transfer is not necessarily the consequence of globalisation although it is likely that the frequency of transfer has increased.”³⁹ The pace of change is greater now than ever before and as a

result, governments have looked to the political systems of other countries as a source of ideas and even legislation.⁴⁰ On the international level, international governing organisations (IGOs) and nongovernmental organisations (NGOs) are playing a larger role in the transfer of policy and ideas. Both IGOs and NGOs, depending on the policy in question, can act as agents of both voluntary and coercive transfer.⁴¹

Evans and Davies contend that while most political scientists find the term ‘globalisation’ problematic, most would agree that increased internationalisation has occurred.⁴² They argue that all processes can act as facilitators of policy transfer and “at the same time, policy transfer facilitates processes of globalisation...through the creation of further opportunity structures.”⁴³ They go on to say that international regimes and epistemic communities influence state behaviour in regard to policy transfer.⁴⁴

Policy transfer is more than likely to become a common occurrence. “Faced with an increasingly complex and quickly changing policy environment, governments look for ready-made policy solutions; to put it another way, there is considerable pressure to look for a ‘quick fix’.”⁴⁵ Jacobs and Barnett acknowledge that “in practice, policy making is a messy process in which different policy solutions and problem streams combine for a particular policy to develop.”⁴⁶ The policy transfer concept is flexible, adaptable and can be used on global, international, and transnational levels; between regions on the domestic level and on the inter-organisational level.⁴⁷ As the following sections indicate, policy transfer in ocean governance is likely to occur on the international level, between regions and on the inter-organisational level. Primary research has mostly been used to demonstrate policy transfer because, as Dolowitz,

Greenwold and Marsh put it, “Governments do not provide convenient lists of what they borrow, or from where they borrow.”⁴⁸

3. *Australia’s Oceans Policy* and the institutional arrangements for transfer

The Australian Commonwealth Government released *Australia’s Oceans Policy* on 23 December 1998.⁴⁹ Preceding the policy were two consultation papers, four Background Papers and seven Issues Papers that were publicly consulted upon and analysed for the drafting of the final policy document.⁵⁰ The Oceans Policy documents accompanied by Background and Issues Papers are the first thorough biophysical, environmental, social, cultural and legal examination of Australia’s ocean domain.

The Oceans Policy is introduced by an opening message from Prime Minister John Howard. He states that

with the release of *Australia’s Oceans Policy* we again demonstrate our world leadership by implementing a coherent, strategic planning and management framework capable of dealing with the complex issues confronting the long term future of our oceans.⁵¹

The document outlines that the development of Regional Marine Plans (RMPs) will be the core of the Oceans Policy and all Commonwealth agencies are bound to those plans.⁵² To date, the South East RMP is in its final stages of implementation whilst the Northern RMP and South West RMP are in the early stages of development and implementation.

The AOP framework established new institutional structures to implement the policy through RMPs. These included the National Oceans Ministerial Board, Nation Oceans Office (NOO), Regional Marine Plan Steering Committees and the National Oceans

Advisory Group (NOAG).⁵³ The Australian and New Zealand Conservation Council (ANZECC) was an institutional body that was not new, but agreed to the role of facilitating intergovernmental (cross-jurisdictional) coordination for the oceans policy. The Council was made up of Environment Ministers from all states, the Commonwealth and Territories as well as New Zealand's Environment Minister. Members of the Ministerial Board who are also part of ANZECC and other relevant state/Commonwealth ministerial councils were to "ensure that linkages are made on issues of mutual interest."⁵⁴ ANZECC's main responsibility was to assist Commonwealth and state consultations on the implementation of the oceans policy. Additionally to consulting on intergovernmental issues, the Council discussed transboundary issues that relate to the environment and ocean resources.⁵⁵

The Australian states did not formally involve themselves with the oceans policy when it was released, however, they continued to participate in decisions made within the policy community through ANZECC. The state participation through ANZECC was limited as the ANZECC responsibilities are restricted to environmental matters. Broader marine issues that deal with fisheries or oil and gas proved difficult to address through the ANZECC forum.⁵⁶ As of 2001, ANZECC was no longer operational and was replaced by the Natural Resource Management Ministerial Council.⁵⁷ Its function is to monitor, evaluate and report on natural resource management, including marine and coastal issues in Australia.⁵⁸

The National Oceans Ministerial Board was also disassembled in early 2005 due to a restructuring of the Australian ocean institutions. The NOO lost its executive agency status and is now located within the Marine Division of the Department of

Environment and Heritage.⁵⁹ The Minister for Department of Environment and Heritage now has the responsibility for NOO through the department and reports to Cabinet on its progress.⁶⁰

Throughout development and implementation, the Australian government has been eager to have New Zealand and Canada participate in the AOP process. It has been uniformly acknowledged by Australian, Canadian and New Zealand representatives in respective ocean agencies that the AOP process has been very open.⁶¹ As a result, it is people on the officer level of Canadian and New Zealand government agencies that have taken the opportunity to examine AOP information, institutions, policy programs and policy goals.⁶² New Zealand, in particular, has had a unique view of the AOP process as a representative of ANZECC, the Natural Resource Management Ministerial Council and as a geographical neighbour.

4. New Zealand

New Zealand was involved in ANZECC and the Natural Resource Management Ministerial Council during the AOP development and implementation.⁶³ Being part of the main institutional structure of oceans policy implementation has meant that New Zealand has had ‘inside’ access to policy decisions and institutions. New Zealand also sent a representative to participate in the National Oceans Forum in April 2000.⁶⁴ The South East RMP was launched at the long awaited NOAG’s “Towards a Regional Marine Plan for the South East” National Oceans Forum held in Hobart. The 185 individuals present at the Forum represented Commonwealth agencies, NGOs including conservation groups, and key research institutions.⁶⁵ Cozens argues that

Australia's Oceans Policy at the time provided New Zealand a “point of reference, giving guidance and principles of direction, to national and local policy makers...”⁶⁶

In 2000, New Zealand announced the development of its own Oceans Policy.

Similarly to the Australian oceans policy process, the New Zealand government is developing the policy in stages with a focus on public consultation between each stage and the inclusion of new institutional structures.⁶⁷ The following institutional arrangements have been suggested: Ad Hoc Ministerial Group; Oceans Policy External Reference Group; Officials Steering Group; Oceans Policy Secretariat; Working Groups; Oceans Policy Group Chair; and Departmental Reference Group.⁶⁸ It is important to note that although the titles of each institution differ to the Australian institutions their structure is almost the same. For example, the Ad Hoc Ministerial Group was to be made up of relevant Ministers,⁶⁹ just like Australia's Ministerial Advisory Group on Oceans Policy, while the Oceans Secretariat⁷⁰ has similar provisions to the NOO (as originally described in the AOP documents being located in the Department of Environment and Heritage).

New Zealand's Oceans Policy was to be released in late 2003, however, only months before the target date the development process ceased. Issues regarding the ownership of the foreshore and seabed needed to be resolved before any further oceans policy development continued. The *Foreshore and Seabed Act* was passed in 2004 and the Ministry for the Environment is awaiting agreement from Government to resume the Oceans Policy development process.⁷¹

Despite the Oceans Policy being placed “on hold”, officers of the Oceans Secretariat and later the Ministry of Environment, have regularly visited Australia to work with the NOO and to gather information. They have found that information gathered on the Ministerial level through the Natural Resource Management Ministerial Council was not as helpful to the oceans policy development process in New Zealand as actually travelling to Australia and accessing people and information directly.⁷²

New Zealand officials acknowledge that they have also identified negative lessons from the Australian oceans policy experience. By working on location with NOO, New Zealand officials found (at the time) that the placement of NOO in Hobart, Tasmania, and the Office’s executive status not ideal for the implementation of the AOP. An officer of the Ministry of Environment claims that “...Trying to set it [NOO] up independently or separate from the actual core of power is not a good idea. We were looking at different options...”⁷³ In addition, the officer argues that New Zealand has learned from Australia’s decision not to develop an Oceans Act that a legislative framework is necessary “to make the plans happen.”⁷⁴ They go on to say

So we learned from Australia that planning was a great idea, and I think that we will still continue it, but we need legislation. We learned from Canada that they had legislation but they had no plan...so we decided...that we would just do both. So that’s our learning. It’s good coming in later...[after] a couple of countries that are already in it.⁷⁵

Interestingly, a representative from one of New Zealand’s non-governmental organisations (NGOs) echoes the same lessons, both negative and positive, that have been learned from the AOP.⁷⁶ They argue

If Australia hadn’t developed anything we would be sitting here in New Zealand thinking we ought to develop an Oceans Policy,

where do we start? And what will it be?...so there wouldn't be anywhere else to go for this much learning and we would have been starting from scratch, it's been enormously useful actually. We can learn from it, draw from it, and ideas... it means we can build on them...and we are a lot further ahead.⁷⁷

5. Canada

Canadian officials also participated in the oceans policy development process and were invited to the National Oceans Forum in April 2000.⁷⁸ Unlike New Zealand, Canada has not been able to gain membership within institutional structures, however, it has never hidden its interest in the oceans policy development process. The Canadian oceans community has had a number of 'oceans policies' and is governed by the Canadian *Oceans Act* 1997. A number of difficulties with ocean and marine resource management have been identified with ocean policy development in Canada. The Canadian Oceans Policy developed in the 1980s was not successfully implemented and its failure was announced in 1987.⁷⁹ The *Oceans Act*

has been criticised for being too general and lacking firm commitments or deadlines; failing to embrace other important guiding principles such as pollution prevention, polluter pays, public participation, community-based management, intergenerational equity, and indigenous rights; failing to achieve the level of integration promised in the Act; and allowing too much political discretion to ensure effective implementation.⁸⁰

The advice of Canadian officials has been particularly sought by Environment Australia during the oceans policy development stage. In fact, the Second Background Paper suggested that if *Australia's Oceans Policy* is to succeed, lessons from Canada's policy failures and difficulties must be examined.⁸¹ If anything, the Canadian experience demonstrated to the Australian oceans policy community that immediate legislation in the form of an Oceans Act would not solve the difficulties of ocean and

marine resource management. Consequently, Australia's approach has been to use existing legislation as the legal framework for the Oceans Policy.

In 2002, Canada released *Canada's Oceans Strategy*, which builds upon the *Oceans Act* and provides an "integrated approach to ocean management, coordination of policies and programs across governments, and an ecosystem approach."⁸² Similarly to AOP, the Strategy establishes a framework based on Agenda 21 principles of sustainable development, integrated management and the precautionary approach.⁸³ The Strategy also involves a planning structure, one that was learned from AOP. *Canada's Oceans Action Plan* was released in 2005 which outlines the first phase of implementation of the Plan.⁸⁴

Officers from Fisheries and Oceans Canada (DFO) have regularly visited NOO, particularly those that are involved in APEC.⁸⁵ The DFO's *Strategic Plan 2005-2010* emphasises the need to work with international partners to "strengthen the international fisheries and oceans governance regime."⁸⁶ Representatives of the Office of Auditor General of Canada also visited Australia in 2004 and did a review on oceans policy which is to be released in September 2005.⁸⁷ Part of this review was to outline the lessons learned by Canada in ocean governance. Interestingly, an officer of DFO claims "They made it generic because they didn't want to get into a comparative thing. But many or most of the lessons are from the Australian experience."⁸⁸

There is also encouragement in DFO for individuals to go to Conferences for networking purposes. An officer working on the *Canada's Federal Marine Protected Areas Strategy*⁸⁹ emphasises that this networking between individuals has been

essential to the completion of the Strategy.⁹⁰ A particular focus has been on Australia's Marine Protected Areas and the development of the System of Marine Protected Areas through AOP's South East Regional Marine Plan.⁹¹

6. Lessons Learned from Policy Transfer Between Australia and Canada, and Australia and New Zealand

It was found when applying Dolowitz and Marsh's questions to identify the processes of transfer that the motivation behind policy transfer in both cases of New Zealand and Canada was practical. Evidence gathered from New Zealand suggests that without the transfer of ideas, institutional structures, attitudes and negative lessons from AOP, their oceans policy process would never have been instigated. For practical purposes, Australia initially learned negative lessons from Canada and its legislative solution to ocean management. The situation changed during AOP policy implementation where Canada sought to transfer ideas, particularly about planning, to its Strategy.

Transfer has occurred on many different levels in the development of oceans policies in Australia, Canada and New Zealand. The transfer of the many aspects of the oceans policy process between Australia and Canada, and Australia and New Zealand has been voluntary, although Dolowitz and Marsh's continuum (see Figure 1)⁹² demonstrates that the voluntary transfer was driven by a perceived necessity by both states to have an oceans management framework in place.

Canada and New Zealand have learned lessons from the AOP process both formally and informally. They have formally gathered and used information such as AOP *Issues and Background Papers* and Oceans Policy documents. Interestingly, whilst

being interviewed, officers from Canada and New Zealand admitted that the AOP *Issues and Background Papers* are the most comprehensive account of Australian ocean governance they have encountered and have used in their work.⁹³ There is also formal representation by Ministers of Parliament in the AOP process, particularly in the case of New Zealand being involved in the Natural Resource Management Ministerial Council.

In addition, information has been transferred informally through networks made up of government officers, academics, NGO representatives and ocean stakeholders. NGOs in particular have been an important part of the development and implementation of ocean policies in Australia, Canada and New Zealand.⁹⁴ Both in Canada and New Zealand it was constantly reinforced that the reason why lessons are learned and policy is transferred is a result of the communication between each government's agencies on the officer level. As an officer of DFO argues

I find oceans is an area where the people are real missionaries, the people really believe in the content and the subject matter so they want to make it work and institutionally it's very difficult to make it work...a lot of it gets done informally...through other types of networks.⁹⁵

Technological advances and globalisation have increased the rate of transfer and has made these informal networks larger and more accessible. Email, internet, video conferencing and telephone technology has helped increase communication for officers of agencies, and other interested parties to communicate. All public government documents, whether Australian, Canadian or New Zealand, are readily available on the internet and the process of policy learning can begin by an individual in an agency downloading the required document.

It has been argued earlier that transfer can cause policy failure, yet policy transfer in ocean governance has been reasonably successful and there are a number of reasons for this. First, international frameworks dealing with oceans are universal and the language and aims of LOSC and Agenda 21 are the same for all states involved. Each state is willing to achieve a global understanding of ocean governance. Second, similar political systems of all three Commonwealth states has allowed for adaptation of policy processes and institutional structures. Third, Australia, Canada and New Zealand have similar ocean resource management problems such as sectoral based management and lack of integration across sectors. This allows for similar solutions to similar problems. Forth, there is very little conflict or secrecy involved in ocean management for any of these states and therefore policy learning and transfer is acceptable.

7. Conclusion

This paper has demonstrated that many aspects of AOP process have been transferred to the development of *New Zealand's Oceans Policy* and *Canada's Oceans Strategy*. It was found that in the process of transfer each state has also learned what to avoid in the management of their oceans. For example, Australia deliberately did not enact oceans legislation after learning of Canada's difficulties and New Zealand will not devise an Oceans Office that is geographically or institutionally isolated as the NOO was when still an executive agency.

The reality remains that many signatories of LOSC need to fulfil their obligation demonstrating that they can effectively manage the resources within their EEZs.

Voluntary policy transfer is one method that can assist states in achieving appropriate ocean resource management without having to develop policy completely from scratch, hence making transfer practical and strategically advantageous.

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- ³ LOSC, Articles 55-75.
- ⁴ LOSC, Articles 76-85.
- ⁵ LOSC, Articles 2-32.
- ⁶ LOSC, Articles 192-237.
- ⁷ LOSC, Articles 116-119.
- ⁸ LOSC, Articles 64-67.
- ⁹ LOSC, Articles 65 and 120.
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