



LUND
UNIVERSITY

Department of Political Science

STV103
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The Loophole, the Power and the Sea

Small States in Asymmetric Negotiations

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Abstract

This paper takes on to examine the negotiations regarding fishing rights in a disputed area in Barents Sea called the Loophole. The negotiations of the loophole are interesting since they are conducted between states that differ a lot in size on account of aggregate resources. The aim is to apply ideas about power asymmetry in negotiation and small state behavior on the Loophole case. Different views on power and how to use the small state concept is discussed, in order to grasp the essentials behind the two theories. The asymmetry theory uses the idea of perceived power as main idea and the small state theory state that the prioritizing of the small states enables them to function despite small administrations. The negotiations were conducted between the three states Iceland, Norway and Russia in a manner that resembles a bilateral negotiation and by looking at the background, the actions taken and the result and then compare it with the predictions given. The conclusion is that the theories could be well applied to the Loophole case, if looked upon in its special context.

Key words: Power asymmetry, small states, negotiation, the Loophole, fisheries

Number of characters, including blanks: 68 960

Table of contents

1	Introduction.....	1
1.1	Purpose and Main Question	1
1.2	Negotiation, Power and Prioritizing.....	2
1.3	Outline and Method.....	4
2	A Question of Smallness	6
2.1	Views on Smallness	6
2.2	The Need for Clear Definitions.....	7
2.3	The Role of Small States.....	8
3	Power in Negotiations	10
3.1	The Concept of Power.....	10
3.1.1	Power and Perception.....	11
3.1.2	Further views on Power.....	12
3.1.3	What Definition is to be used?.....	13
3.2	Symmetry and Asymmetry in Negotiation.....	13
3.2.1	Resource Power.....	14
3.2.2	External Involvement.....	14
3.2.3	Power Calculations and Transformation.....	15
3.2.4	Negotiation process and Asymmetry	16
4	The Loophole Negotiations	17
4.1	Background Information	17
4.2	Norwegian/Russian Positions.....	19
4.3	Iceland's Positions.....	21
4.4	Analysis of the Negotiations	22
4.4.1	The Agreement and Smallness.....	24
4.4.2	The Agreement and Power Asymmetry	24
5	Conclusions.....	26
5.1	Further Research – Additional Loopholes?.....	26
6	References.....	28

1 Introduction

I had the privilege to attend a course called small states and European integration in Reykjavik during the summer of 2005. The course covered, among other things, how small states act in general and once completed it sparked an interest in me how small states get by in the anarchic world order. Once I've finished the reading course for my bachelor thesis, which dealt with diplomacy and international negotiation, I wanted to combine the things I've learned about diplomacy and negotiation with the questions I had about small states. The bachelor thesis provided a good opportunity to look into the specific diplomatic conditions that are in play when small and larger states meet by the negotiation table.

In this introduction we will look at the structure of the paper in regards to outline and choice of methods. We will also cover what problems that will be addressed in this paper and briefly look at the work done by other researchers that we intend to use. The question, which we are to answer with the thesis, is covered in this chapter as well a general introducing discussion.

1.1 Purpose and Main Question

In order to look closer at how smaller states interact when negotiating with other larger counterparts the first obstacle is to try and point out what, if the distinction of small states can be made at all, it takes to qualify as a small state. The concept of states that differ in size is far from revolutionary, the fact that not all states have the same size is hard to deny. But it is when we are starting to ask question about what we really mean by size that the concept smallness becomes blurred. Can one really say that there is such a thing as a border that defines one state as small and another as non-small, and if so where is this border of smallness drawn? What measurements are to be used that constitutes this border between the small and large?

We will not go into a lengthy discussion about what and where this border of smallness should be, since it is in many comes down to what theoretical approach one choose to use. Instead we will be content with the statement that the size gives us an approach to the negotiation behaviour of actors participating in a negotiation.

Besides the precise line of smallness there is the question if smallness constitutes weakness? Can one translate the not-large state as being a not-strong one? The answer is connected to the measurements on how one perceives smallness and how one defines strength. Thus the question of weakness is

interlinked with the question of smallness if the power is the measurement of strength. Given the size, and if you prefer strength, what alternatives or strategies are available in a diplomatic situation for the underdog?

Instead of debating on different useable measurements for smallness this paper is set out to apply negotiation theory and behaviour theory as laid out by scholars before me and apply them on a bilateral case to see if there is a consensus among two different theories. The *purpose* is thus not to redefine smallness or power but to examine the usefulness of existing theories by interpreting one case of international negotiation. How well can one explain the outcome and strategies of an asymmetric negotiation on the basis of theories of power and small state strategies?

The plan on how to accomplish this is to use a real world case study where one side can be defined as being significantly smaller than its counterpart and with this knowledge answer the *question* as follows:

- To what extent can the conclusions about small state behavior in asymmetric negotiations given by Zartman & Rubin and Thorhallsson be used to explain the behavior and strategies of Iceland as well as the outcome in the negotiations resulting in The Loophole agreement?

1.2 Negotiation, Power and Prioritizing

When we are dealing with smaller states the question of power almost automatically comes along in the discussion. When talking about small States it is easy to draw the similarities to small states as weak states in a sense of power-based terms. In my thesis it is useless to discuss negotiation between asymmetrical power bases if the concept of power is not striated out. We have no intention of defining an out of the blue new definition of what power is. Neither will we, because of the lack of space available, go through all available research on power. The interest is instead focused on the negotiation in which a significantly weaker actor takes on a stronger one. Still the thesis will include a brief summery of power as seen by the authors of the theories that we are intending to use in this paper. The reason for this is based on understanding, if the powerbase as seen by the scholars is not clarified then there is a risk of loosing the trail of thought following the theory. Is the number of conclusions, advice and forecasts offered by scholars useable in practice by a small state if you go beyond the researchers own examples?

So what is the problem in asymmetrical negotiations? And why do we need papers discussing and investigating this kind of negotiations? When we are talking about power we will discuss cases that contain states with power levels that differ a lot. This difference can be seen as an asymmetrical relation between the participants in a conflict as opposed to if the participants had an equal power level. How one chooses to view the concept of asymmetry is of course interlaced

with how one chooses to perceive the concept of power. We are well aware of that a specific view of power may make the idea of asymmetrical negotiations hard to accept. In order to present the way this paper view power in negotiations we have included a chapter that addresses this power concept.

As for why the asymmetrical negotiations are important we can point out a number of reasons. One is the increasing number of small state and their participation in different international organizations and the international community as a whole. Another more theoretical reason is that the structuralistic approach meets a paradox in the negotiation process since it's obviously is not always the most powerful player that walks away with the highest earnings.¹ To illustrate this we use the opening words of Zartman & Rubin where they point out the flaw in the structuralistic thoughts on negotiation²

“[...] how can weaker parties negotiate with strong parties and still get something? Or more specifically: How do known (or perceived) weaklings negotiate at all with known (or perceived) heavies and emerge satisfied with the results”

Zartman & Rubin question the structuralistic approach, as well as common belief that the more powerful side in a negotiation is more likely to get the most off the negotiation table.³ My intention, as explained in the purpose, is not to prove Zartman & Rubin wrong in their theory but rather to develop their thinking and try to include it with the small states theory put forth by Thorhallsson.⁴

The power basis offered by Zartman is not simple one sided bodies of power pitted against each other, but a multi-faceted view that includes the main theory that the *perceived* power is the essential one in negotiations.⁵ By looking at how the different sides perceive, not only themselves but also each other, the scientist can offer explanations why a certain negotiation produced a certain result. But more on this subject later on.

As for how the small state behave Baldur Thorhallssons research, even if it concentrate on small states within the EU, draws up characterizing outlines on how and why the small state prioritize between different issues in its foreign policies.

Thorallssons findings suggest, in line with other researchers before him, that small states have a tendency to concentrate their interest on a small number of key issues vital for the state. This behavior gives it imprint on how the small state acts during negotiations. Thorhallsson findings is an extension, and in a way a re-categorization, of the work and theories concerning small states given by Katzenstein. Thorhallsson points out that the small nations tend to prioritize their

¹ By pointing it out in a number of cases put together in *Power & negotiation* ranging from both bilateral high versus low cases to multilateral negotiations. Two examples of the cases studies are EU-Andorra in 1979-85 trade negotiations and US-Egyptian aid negotiations in 1980,1990

² Zartman, William & Rubin, Jeffrey, 2000, *Power & Negotiation*, page 3

³ Zartman, William & Rubin, Jeffrey, 2000, *Power & Negotiation*, page 4-5

⁴ Thorhallsson, Baldur, 2000, *The role of the small state in the European Union*, page 232

⁵ Zartman, William & Rubin, 2000, Jeffrey, *Power & Negotiation*, page 13

concerns on a few state-vital issues. The main reason for this prioritizing is contributed to the limited ability the small states administrations have to cover all issues at the same time.⁶

1.3 Outline and Method

The outline in this paper is to investigate how well two different theories work together when used to explain the outcome of a specific negotiation. The basic idea is to present the main core of each theory and then to apply them on a sample case in order to see how well respective theory works in conjunction with each other.

In order to get a grip of the essential concepts we look into in what way power and smallness is to be used. Once the essential concepts are straitened out we move on to look into how the concept is used in the theories we have chosen to use. Here we also look at the main idea of the theory and try to explain it briefly. The summaries of the two theories will be way to short to cover everything but since each theory is put forth in a full-length book there is no possibility to include everything.

Once the theoretic section of the paper is done we move on to the sample case, The Loophole conflict and the negotiations surrounding the conflict. The case chosen is a trilateral negotiation regarding fisheries. The trilateral negotiation is being performed in a way that makes it work more like a bilateral negotiation since one side is made up of a coalition of two states with common interests. So even if the agreement basically contains three sovereign states, namely Iceland, Norway and Russia, the negotiations held can be seen as one held between coastal EEZ⁷ owning countries and a DWFN⁸ and thus it is in fact a two-sided negotiation. The negotiation would not be easy to analyze if there were no background information about the issue being negotiated about. In order to cover this gap of information a brief run-through of The Loophole-case will be made. The run-through will particularly highlight the aspects that interact with the negotiation proceedings.

The reason for the choice of sample case is multifold. First the case in a way can be viewed upon in the manner of a bilateral one, which makes it easier to identify the workings of the contesting representations. Second the involved states are the type that easily could pass as an asymmetrical since the involved states differ a lot in the manner of fixed resources. Thirdly the case contains an

⁶ Thorhallsson, Baldur, 2000, *The role of the small state in the European Union*, page 234-5

⁷ Stated by Wikipedia.org, 1st December 2005, an EEZ is the exclusive economic zone reaching 200 nautical miles radius around the coast of the nation. The EEZ is not to be confused as being territorial waters that only reach 12 nautical miles from the coast. In an EEZ the coastal nation has special right over the marine resources.

⁸ DWFN is a Distant Water Fishing Nation, a nation not having a close EEZ and thus fishing in the international waters outside the EEZs of the coastal nations.

atmosphere of win-win situation since it already passed its first date of expiration and received an extension, which in fact means that all participants will rather have the agreement than facing the alternatives of not prolonging the runtime. Lastly when we look at the three states individually we have, even if one side is in a coalition, a distinctive order in fixed resources ranging from Iceland as the smallest participant to Russia as the largest with Norway as a middle runner.

In order to get more understanding with the negotiation process the option of approaching the involved and ask them for their opinions would be a fruitful alternative. An in-depth interview would be the ideal approach. The reason for an in-depth interview can be put in Fiona Devine motivations of using interviews.⁹

Intensive interviewing, for example, allows people to talk freely and offer their interpretations of events. [...] Where the discussion of issues flow naturally it is possible to understand the logic of an interviewee's arguments and the associative thinking that led them to particular conclusions.

By doing the interview there is an opportunity to crosscheck the findings in the literature with the views of the involved. So if the conclusions drawn about the negotiations are based on the wrong assumptions it will be noticed in an in-depth interview. Furthermore the basis of a qualitative interview fit very well with the aims of catching the states own perception of the negotiations and work well with the theoretical choice. The problem with interviewing would be the sensitivity in the case study thus the results of the interviews will not be used in any other way than purely as background information and inspiration.

⁹ Devine, Fiona, 2002, *Theories and methods in political science*, page 199

2 A Question of Smallness

In the section the concept of smallness will be confronted as regards to how it should be utilized in the paper. There are several different suggestions on how to define a small state and even if the precise definition of the small state in a way not really is necessary for the study a brief overlook will be made to give a grasp of the different ways to view a small state. We will besides this take a closer look on the work of Baldur Thorhallsson and how he looks at the behavior of small states in the EU.

2.1 Views on Smallness

When looked upon as a variable it can be very hard to find a decisive line or so to speak a place to put down the foot and say here is the separating line between small- and non-small states. When conducting this thesis we must ask is

The definitions of small states is multiple. Ranging from Hay's definition of a small state as "I know one when I see one" to systematic approaches of defining cluster variable theories. Of course the problems of using a definition like Hay is that it becomes very subjective and dependent on the reseacher. Worse yet how can a scientific using Hay's definition be reproduced, one of the basic criterias for science? More objective approaches have stepped away from Hay. The basic approaches with sorting the states as small or not by using a measurement variable have been used by many scholars.¹⁰ The choice of variable can vary some define the small state with land areal, others GDP and yet others use other variables or a combination. The problem of using a fixed variable is that states by the use of certain variables can put the reasercher in a problematic situation if the variable is placed under a temporal test. The definition for beeing small in one point of time can lead to that the world ending up only containing states that by definition is large.

Some more advanced attempt of defining small states have been approached. Wivel uused six criterias that were used to define a small state. The criterias covered not only absolute variables but also took a spotlight upon other more abstract variables like context,behaviour and self perception. By introducing a context based idea a system where the question of smallness evolved were states considered small in relation to eachother. By defining the largest states, in some

¹⁰ Such as Richard Griffiths, Baldur Thorhallsson and Katzenstein

variable, as large and that the ones only reaching a certain percentage of the indicated variable as small or by taking five and point out one as larger in one aspect.¹¹

Another approach is to define the small state from its behaviour the idea that small states behave in a certain way is not that revolutionary but if the definition of small states is made according to its behaviour then the risk of going nowhere is obvious at least if you try to explain a certain behavior. The behaviour was one of Wivels 6 criterias but it did not rank among the most important. The ideas of Wivel was followed by Olav knutsen who made an addition with making a distinction between small states as actors and when small states are arenas for actors. In the prior the realistic thoughtpattern with states as the main actors in IR fit in while the latter other theories is more appropriate.¹²

Croward developed a quantitative system for defining states with the use of clusters. He used endogenous variables like GDP and population. From that he identifies five groups of states ranging in size from microstates up to large states.

In the study performed on small states in the european union Thorhallsson used a relative definition. Based on the four variables size, population, GDP and administration size.¹³ By using a clearly defined geographical area he reduced the number of countries and made the distinction between small and large a bit easier. Even if the idea about “ I know a small state when I see one” can be heavily criticized it still got one point, when the differences are big the idea about smallness gets clearer. The problem is to operationalize the criterias used in If a general concept of smallness should be used to divide USA and Luxemburg my guess is that one would not say that USA is the small state of the two. But what are the variables that constitutes this categorizations? In EU the focus its categorization on population. That could work in the USA-Luxenburg case but maybe more important than a stone solid definition is to ask what kind of research one are planning to do and why the need is there for dividing the states in question in large and small.

2.2 The Need for Clear Definitions

Are not clear definitions essential for the studies of Political Science? How can one tell anything at all without a proper definition that cuts out what the study is about? In this paper the aim is to look at an asymmetric power relationship, thus the need to put an exact definition of a small versus large states are not required in order to answer the question if the case study in deed exemplifies a asymmetry. The problem of finding a general, good for all definition of a small state would demand a huge amount of work practically if the definition is to be applicable on

¹¹ Discussion seminar, CSSS, Högskóla Íslandís, Reykjavik, 2005-06-27, Clive Archer

¹² Ibid

¹³ Thorhallsson, Baldur, 2000, *The role of Small States in the European Union*, Page 3-4

all states all over the world. The definition would be formed in many ways from how one sees power if the condition small is not just used in an area term. The view on power can differ and with this differentiated view comes a differentiated view of smallness as well. The notion can be made that the smallness of states or other actors can be seen as having multiple levels as well. Luxemburg is perhaps not the biggest nation when it comes to fisheries but in the banking sector the state is if not large at least bigger than in the fishing. The idea of this paper is to present a sample case where a difference in size in many areas is obvious, like the USA Luxemburg case. The work to define smallness will be left to another scholar or to a later time.

When it comes to our sample case the differences in many areas is huge. The smallest state in the case study, Iceland, has only a portion of the landmass, population or other resources compared to their opponent. Thus by using this obvious difference we come dangerously close to utilize Hays “I know one when I see one” definition, but in a way we could have used any of the theories since the difference between Iceland and a combination of Russia/Norway is obvious in most areas.

2.3 The Role of Small States

In *The role of small states in the European Union* Thorhallsson is set out to use the theory of Katzenstein to discern if the behavior, negotiation tactics and approaches of small states are different from large states in the European Union.¹⁴ The method the author used to look at this was to take certain important aspects and by a number of in-depth interviews with officials from EU isolate if the behavior-patterns was different between the larger and smaller members. The in-depth interviewing was complemented with relevant statistics.

The findings of Thorhallsson points out a number of differences between the states he categorized as small from the large ones. A finding in the thesis is that the smaller states tend to concentrate on fewer issues. The reason for this prioritizing is according to Thorhallsson due to the small administrations of the small states. The small states sort out the key issues in their foreign policy and give it their full attention, mostly because their small administrations don't have the capacity to handle every single issue.¹⁵ The behavior differs in the way that the small states “As a result [the small states are] reactive in many sectors. However they are pro-active in their most important sectors”¹⁶. The reactive stance means that the small states take no real action to push their agenda and accepts the consensus of the EU. In the pro-active stance the approaches of the small states is to actively work in order to change the commissions view to a, for

¹⁴ Thorhallsson, Baldur, 2000, *The role of Small States in the European Union*, Page 3-4

¹⁵ Thorhallsson, Baldur, 2000, *The role of Small States in the European Union*, Page 232

¹⁶ Ibid

the small state, preferred one. In addition Thorhallsson contributes the ability of the small states administration to work effectively in the pro-active stance partially to the fact of the smallness of the administration. Since the size of the administrations is limited certain characteristics can be found that helps the small state in its vital issues. The characteristics recognized by Thorhallsson are “informality, flexible decision-making, greater room for manoeuvre for the official guidelines given to negotiators rather than instructions and a greater role of Permanent Representatives in domestic policy-making, to ease their workload and to operate within the decision-making process [...]”¹⁷. Thorhallsson also points out that the small administration naturally gives possibilities of informal contacts that can be harder to obtain in a larger administration. An example of this can be the Icelandic lobby workings to counter a EU fishery agreement where as the Icelandic EU representative managed to affect and alter the suggestion put forth. The success was contributed to an informal contact existing between the representative and Iceland’s foreign minister.¹⁸

One can thus finally say that small states don’t have the capabilities to address every issue since their limited administration doesn’t allow them to. But when faced with for the state an essential issue the limited administrative size acts as a benefit due to the benefits gained from its size.

¹⁷ Ibid

¹⁸ Discussion seminar, CSSS, Högskóla Íslandís, Reykjavík, 2005-06-27, Baldur Thorhallsson

3 Power in Negotiations

What we are aiming at in this section of the paper is to sort out how the views of power can be included in this paper. Power is essential in one of the theories that we intend to use but in this chapter we try to expand the theory by including other views of power than the one used by the author. The different theories look at the power with their own theoretical “glasses” and thus view power can vary widely. If we are to use a specific theory the views on power can fit more or less into the specific theory. Towards the end of the chapter Zartmans theory will be looked more closely into as a preparation for the case study.

3.1 The Concept of Power

Power? Yes I know what that is! That’s when you tell others to do things and they have to do it. If they don’t do what you tell them you can tell them that you can sack their jobs.¹⁹

When discussing power one can choose practically any theory or approach and find that power is involved somehow. The ideas to draw from is at it seems limitless. It is in order to limit this flow that the need of clarification that we will look more closely on the way power is used in the theories we intend to use. When looking at power in negotiations the setting itself somewhat limit the scope of power. But still it leaves the most up to the researcher to clarify the views on the workings of power in negotiations.

The look at power in political science does not have the bliss of natural science to be easily defined and measured. One general view is that power in political science can be described as “the political actors’ ability to achieve its goals”.²⁰ The similarity of natural scientific definition of power as something that initializing movement is here evident. The notion of change or movement is shared in Tawney formulation of a definition of power as an “ability to move another in an intended direction”. Here the move is viewed as the changes in positions in thought and action. This definition was formulated as early as 1930 and has later been used and further developed by several researchers and disciplines.²¹ In the realistic school the perception of power is viewed upon in combination with possession of capability. The possession of capabilities give the

¹⁹ Quoted from my six year old nephew Erik Sjö when explaining his view of what power were.

²⁰ Willetts, Peter, 2001, *The globalization of world politics: A introduction to international relations*, page 378

²¹ Zartman, William & Rubin, Jeffrey, 2000, *Power & Negotiation*, page 7

actor the influence which to be used to affect others.²² The classical realistic point of view uses power in conjunction with force, where as the more powerful have the option of using force or not in order to move others.²³ Arguments about the problem with looking at power in direct conjunction of moving others in have been raised by scholars since the movement can be seen zero-sum base. This is based on the reasoning that a definition based on the movement of one part can be interpreted as the non- movement and thus non-power of the moved actor. The problem can be developed into an argumentation that the part in a win-lose situation that gets its position moved by a stronger actor is, according to the direct move definition, powerless. The problem of this view becomes obvious when dealing with negotiations since it don't allow both sides to make concessions. This comes into play when regarding non-zero sum based negotiation. Here concessions are made to meet the demands from the different sides. The use of power as the resultant movement may not be a good indicator about the power that was available to an actor in a certain situation.²⁴ The need for a more developed view of power that allows the power of every participant in the negotiation to be analyzed regardless of the outcome would be welcomed.

3.1.1 Power and Perception

But actual resource power is only a part of the actual power that comes into play when dealing with international relations in general and negotiations in particular. The argumentation that, in contradiction to the realistic view of the power relation as a capabilities - influence – power line of thinking, it is the perceived powers that acts out the ability to move another. Many include communication and other social aspects in the description of diplomacy and negotiation.²⁵ Since the process of negotiations involves social interaction the actual power contributed to one actor is measured in the eye of the beholder. Whether one is strong or weak is so to speak rather a question if the actor is perceived as being strong or weak since it's the perceptions that direct the actions by the negotiation table rather than non-perceived reality.²⁶ The view is not only others view of oneself but includes the perception one actor hold of their own power. This since ones own perceptions as superior or inferior to ones opponent most likely will direct the strategies taken.

²² Willetts, Peter, 2001, *The globalization of world politics: A introduction to international relations*, page 378

²³ Dunne, Tim, Schmidt, Brian C, 2001, *The globalization of world politics: A introduction to international relations*, page 144 but also, Zartman, William & Rubin, Jeffrey, 2000, *Power & Negotiation*, page 9

²⁴ The line of thinking is presented here is manly the argumentation held by Zartman, William & Rubin Jeffrey, 2001, *Power & Negotiation* pages 5-9

²⁵ Communications role in diplomacy is discussed in length by Jönsson, Christer, *Communication in international Bargaining*,

²⁶ Zartman, William & Rubin Jeffrey, 2001, *Power & Negotiation* pages 13

But as pointed out by Zartman & Rubin the perception is only a part of the power involved.²⁷ Often perceptions are based on a number of factors and once the perceptions and these factors tread too far from each other the perceptions may be forced to change into a new perceptive set more inline with reality. For example if one part sees itself as having more military power than its opponent but is faced with a number of lost battles then the perceptions of the military strength most likely is forced to adjust.

3.1.2 Further views on Power

When looking at power Habeeb decides to include resources as he defines power as “the way which actor A uses its resources in a process with actor B so as to bring about changes that cause preferred outcomes”.²⁸ But in the definition is also included a split between power seen as a, for the case specific, resources and general, applicable everywhere, kind of power. Thus an actor’s power can be differ from time to time and from place to place. The type of power that is limited to a specific situation is called issue power and can for example include geographical factors, time specific factors or other limited factors. The general power is called aggregate power and represents total power resources.²⁹ By dividing the power concept into these two different distinctions Habeeb makes it a bit easier to distinguish why the same actor using roughly the same tactics fail to reach an agreement in one negotiation but succeeds in another.

Regarding other views of power Lukes’s definition uses different ways to differentiate the power concept. Lukes have divided power into three different dimensions where the first, basically that A makes B do something it otherwise wouldn’t have done, have the most in common to the definitions of Habeeb and Tawney.³⁰ The second dimension handles the kind of power that is not obviously visible by a direct observation, such as the power to set the agenda. This dimension is the kind of power that keeps some actors in the seat of power while other are kept away from it. The third dimension of power described by Lukes is the power of non-action. This power is the subtlest and acts out in a way that the one exposed acts accordingly without even thinking about it. The third dimension power never makes it as far as a confrontation between the contesters since the underprivileged party chooses to act in compliance with the power without consideration of the alternatives. Lukes offer an alternate normative view of power as something more indirect than the realist view of power. The problem with Lukes’s dimension idea, if you buy the concept, can be to operationalize the more abstract dimensions of power and that alone can perhaps avert researchers from using the ideas.

²⁷ Ibid

²⁸ Habeeb, William, 1988, *Power and Tactics in International Negotiations: How Weak Nations Bargain with Strong Nations*, page 15

²⁹ Ibid

³⁰ Lukes, Steven, 2005, *Power a radical view. The original text with two new chapters*, page 15-19

3.1.3 What Definition is to be used?

As stated earlier the purpose of this paper is to examine the usefulness of existing theories by interpreting a case of international negotiation. The option to use certain theories is in a way limiting on the definitions to be used in the paper. If the definitions used stray far away from the ones used in the theories then one can argue that the paper in fact are not using the said theories stated in the main question. The definition summarized and used by Zartman & Rubin is based on Tawney's definition but altered to fit both in the reasoning of perceived power and the non-resultant thinking presented above. Their definition given for power as following:³¹

The perceived capability of one side to produce an intended effect on another through a move that may involve the use of resources

In this paper this is the definition of power that will be used most of the time, based on the argument that we get the most out of the theory if we use a similar definition. Inspiration will be gathered from other researchers as well since it would be unwise to totally ignore their ideas. It could be interesting to look at the negotiations from another perspective, like Lukes's dimension aspects, but given the formulation of the question this must be saved for a future paper.

3.2 Symmetry and Asymmetry in Negotiation

The title of this sub-chapter is taken from the concluding chapter in *Power & Negotiation*.³² In the chapter the authors present their conclusions regarding asymmetric negotiations. In the chapter a number of lessons drawn from the cases studied in the book are presented as well as four conclusion sections. The lessons drawn from the study is answers to the questions asked in the beginning of the book, but for this paper we will concentrate on the conclusions put forth. Apart from the conclusions the lessons for the weak will be given space since it will be utilized in the analysis of our case study. The asymmetry power relations dealt with by Zartman & Rubin is dealt with by taking several statements about negotiations and, when available, looking at experimental conclusions made about the statements. The statements are then looked at in a larger perspective by applying them on a number of case studies. Asymmetry itself is noted as "a slippery notion"³³. This is contributed to the base on which asymmetry rests, power, it self is slippery. This doesn't make our work any easier since we now have to concepts that both are far from solid. The asymmetry concept on the other

³¹ Zartman, William & Rubin, Jeffrey, *Power & Negotiation*, 2000, page 14

³² Zartman, William & Rubin Jeffrey, 2001, *Power & Negotiation* pages 271-290

³³ Ibid

hand is as strong as the power concept, so if we accept our choice of power definition then we can put the slipperiness of asymmetry aside as well.

3.2.1 Resource Power

Zartman & Rubin comes in this part to the conclusion that “Resource powers asymmetries do not yield corresponding asymmetries in the exercise of power”.³⁴ Here the authors mention several interesting points, starting with the notion about asymmetry of resource power. If we accept the aggregate power thought then the conclusion is fairly easy to accept. More than one aspect play into the negotiation table and looking at resources alone does not provide a satisfying answer. The structuralistic answer can thus not be accepted on accords to asymmetrical negotiations. Furthermore the authors go into length with pointing out the importance of negotiation to fall out with a positive-sum result.³⁵ They mean that the agreement signed must feel as a better alternative for all involved than a non-agreement. The possibility of a positive sum result instead of a zero-sum is due to different values attached to the same items. This mean that both parties can walk out of the negotiation room satisfied because the value associated with the concessions given are different for the participants. The value of the result of the negotiation must be compared with the price of a non-agreement as well.

3.2.2 External Involvement

One of the possibilities for a weak party is to lend someone else’s strength and with it boost their own to counter the asymmetric power relation in a negotiation. The support can take on different shapes but the option of bringing in outsiders is described to be one of the last resorts for the involved parties. One way to do this is to get a mediator to stand in and help in the conflict. The mediator can, by adding their power to the negotiation, offset an asymmetry and thus in a way help bridge the gap in power. The mediators are put forth as the “[...] external intervention rides the diplomatic equivalent of a Trojan horse”³⁶ The relationship between the parties in the negotiation and the external intervening party is covered in length by Jacob Bercovitch. The motives for a mediator to get involved can be very different ranging from personal ones, to structural or influence enhancing reasons. The summery given is:³⁷

³⁴ Ibid page 286

³⁵ Ibid page 287

³⁶ Ibid page 288

³⁷ Bercovich, Jacob, 2002, *Studies in international mediation*, page 9

The relationship between mediator and disputants is thus, never entirely devoid of political interest. To overlook this feature is to miss an important element in the dynamics of mediation

And in a way it might be useful to keep that quotation in mind if we are to understand the conclusions on external intervention. Zartman & Rubin makes an additional point in this second conclusion besides the arguments regarding mediators. They point out relationship as a source of power. This is not specified to either strong or weak parties' since anybody may want to maintain a certain relationship. The relationship can compensate and help up to a straining point when the issue outweigh need to keep the relationship, or as the authors put it:³⁸

[...] system maintenance effects tend to outweigh the momentarily calculations of power and interests.

3.2.3 Power Calculations and Transformation

When we are looking at a negotiation the calculation of the participating parties power levels can be a source of mistake. Zartman & Rubin uses Habeeb's aggregate power ideas in this part of the conclusion when they point out that a position of power is not automatically transformed into negotiation power. The cases used by Zartman & Rubin give according to the authors mainly two distinctive reasons why the aggregate power cannot allow any direct coincidence. The first reason is in a way already noted and is the option to borrow outside power. The power lenders resources can't, argue Zartman & Rubin fall in under the as the actors own resources since it is outside the definition. The second reason, called attention factor, is more relevant in our study. It suggests that the big and strong tend to have big and broad sphere of interest while small and weak have a more focused interest. This, argues the authors, give them a better ability to enter a negotiation with "a single-mindedness that strongly increases their ability to get what they want"³⁹ The ideas about concentration is made more alive by the following metaphor:

It is the spear, after all, that kills the elephant, and even though the elephant has far greater total strength than the spear. And it is the beggar who gets the alms from the rich, even though the beggar is weaker on all counts than the wealthier patron.

The discussion then moves on to an idea that suggests that there is tactics and behavior that can equalize power. The authors support this idea.

³⁸ Zartman, William & Rubin Jeffrey, 2001, *Power & Negotiation* pages 289

³⁹ Ibid page 289

3.2.4 Negotiation process and Asymmetry

The final conclusion put forth by the authors is in a way a summary of the findings in the book. Here the pressure is put on the recognition of the ability of the weaker party in an asymmetrical negotiation to even out the difference in power levels through well thought strategies and imagination. The negotiation process as such is recognized as the act making this possible since it “work to level the playing field”.⁴⁰ The difference in power before the negotiation change into a new deal once the negotiation starts. In the negotiation other things matter than before and the parties seen as weak before the process started can utilize this to perform acts that as per the definition constitutes as power.

As for the lessons learned many have already been mentioned in the previous conclusions. Some not previously included contain a value making them worth mentioning as well. The lessons will be, only be included as stated without the examples that are used to put out the lessons.⁴¹

- Getting the stronger side’s attention at the highest level is often a first step to increasing power
- The stronger side’s size and complexity offers opportunities for increasing power in negotiation
- Positions taken by the stronger party in other areas can sometimes be used to increase power in a given negotiation
- Power can be augmented by taking initiatives in negotiation
- Power can be increased by understanding and exploiting the international context in which the negotiation is taking place
- Power can be increased to the extent that you foster in the leadership of the stronger side an increased commitment to a negotiated settlement of the dispute

These suggestions on how the weak can use certain strategies to counter the stronger are, as explained earlier, together with the conclusion drawn from the case studies presented in *Power and Negotiation*. In the next chapter we will look at how well they can be used on our sample case.

⁴⁰ Zartman, William & Rubin Jeffrey, 2001, *Power & Negotiation* pages 289

⁴¹ Zartman, William & Rubin Jeffrey, 2001, *Power & Negotiation* pages 260-266

4 The Loophole Negotiations

In this part we will look into what The Loophole negotiations were about, how they were done and what they resulted in. We start with a run-down of the background in order to grasp the essential basics of The Loophole conflict the background will cover the time period up to the conflict years of early 1990 and what happened during the actual conflict. The Loophole will be looked at while other contested areas in the Barents Sea, like the Svalbard area and the Grey Zone, will be only briefly addressed. After that a structure of the different nations positions will be covered, some of the options available will be covered and what each side wanted to get out of the negotiations will be looked at. Finally we will look at the actual negotiations and see how well our chosen theories apply on The Loophole case.

4.1 Background Information

The fishing in Barents Sea involves several nations; given the proximity of their EEZs Norway and Russia have natural say in the region. Due to their interest in managing the fisheries Norway and Russia set up the Joint Fisheries Commission⁴². The Joint Fisheries Commission henceforth called JFC had as a main function to allocate the fish quotas based on a consensus of the representatives⁴³. The basis for the JFC is the establishment of the EEZs since the EEZs of Norway and Russia share almost all of the Barents Sea area. The JFC served besides the quota distribution as a framework in which a number of bilateral agreements were formed. The agreements covered among other things the enforcement of jurisdiction, parallel access to EEZs and coordination of research of the area.⁴⁴ The establishment of the 200 nautical mile EEZs left a 62400-km² area in the middle of Barents Sea not covered by either Norwegian EEZ or Russian EEZ.⁴⁵ This high sea area got known as The Loophole, as seen in figure 1.

⁴² The joint fishery commission was originally set up in 1975 between Norway and Soviet union the Russian federation replaced Soviet Union in the treaties regarding Norwegian/Soviet union Barents Sea fishery agreements. Henceforth all references to Soviet Union/ Russia's part in the agreements will be called Russian.

⁴³ Stokke, Olav, FAO fisheries Report no 695, 2002, *Management of shared fish stocks in the Barents Sea*

⁴⁴ Ibid

⁴⁵ Churchill, Robert R., 1999, *The Barents Sea Loophole Agreement: A "Costal State" Solution to the Straddling Stock Problem*, page 468

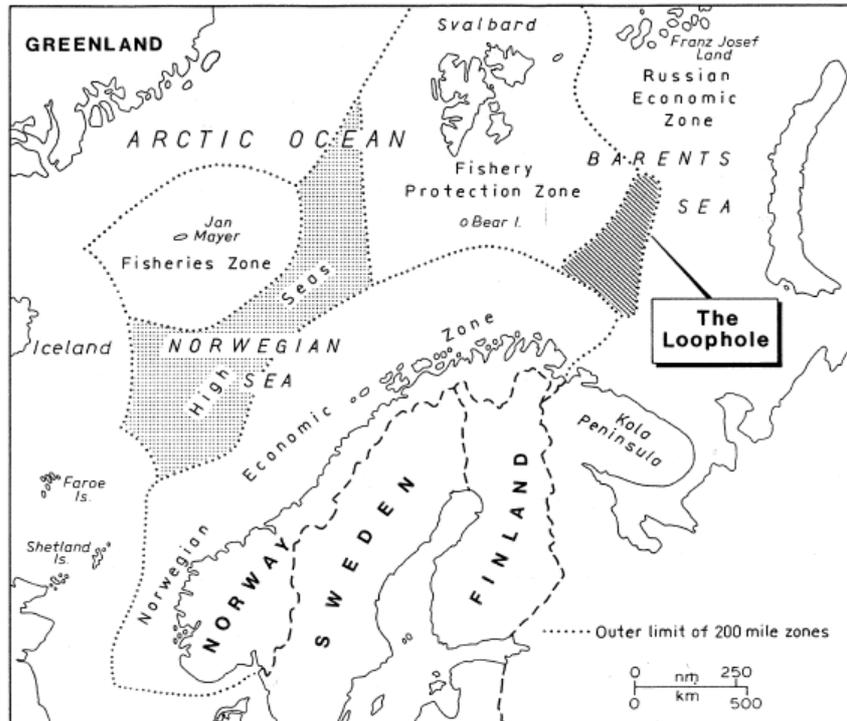


Fig 1 Barents Sea and the Loophole⁴⁶

Stokke mentions that one reason for the smooth diplomacy of the bilateral fisheries agreements between Norway and Russia could be due to the military importance of the Barents Sea. Given its importance as a base for northern nuclear submarines during the cold war both of the two nations wanted to avoid political tension and thus it helped the fishery negotiations.⁴⁷

One of the diplomatic problems is how to regard the fish stock of Barents Sea. The JFC defined the fish stocks as per species-basis, where as the three main stocks each is regarded as single biological units.⁴⁸ But the stocks are not stationary and since the migrate between both the EEZs of Norway and Russian as well as over The Loophole they are regards as straddling stocks⁴⁹

The Loophole area didn't began to see DWFN vessels until 1991, Stokke contributes this change to changing in water temperature and salinity⁵⁰ where Churchill in addition contributes this change to: "[...] the phasing-out of foreign fishing in 200-mile zones and partly by increasing over-capacity in the worlds fishing fleets" and a "decreasing quota of cod in Icelandic EEZ waters"⁵¹ The Barents Sea, including The Loophole area has conditions that makes it contain a lot of ice making the fishing harder and the season last shorter. The fishing in The Loophole started by few vessels in 1991 from EU, Faeroe Islands and Greenland

⁴⁶ Churchill, Robert R., 1999, *The Barents Sea Loophole Agreement: A "Costal State" Solution to the Straddling Stock Problem*, page 471

⁴⁷ Stokke, Olav, FAO fisheries Report no 695, 2002, *Management of shared fish stocks in the Barents Sea*

⁴⁸ Both Churchill and Stokke are referring to the stocks as single biological units

⁴⁹ A straddling stock is according to <http://www.fishonline.org/information/glossary/>, 1st December, 2005, a fish stock that migrates through more than one EEZ

⁵⁰ Stokke, Olav, FAO fisheries Report no 695, 2002, *Management of shared fish stocks in the Barents sea*

⁵¹ Churchill, Robert R., 1999, *The Barents Sea Loophole Agreement: A "Costal State" Solution to the Straddling Stock Problem*, page 471

but in 1993 Icelandic vessels joined in as well.⁵² The EU, Faeroe Islands and Greenland were approached and in negotiations received quotas in Norwegian EEZ for reducing fishing in the Loophole. The amounts of fishing by Icelandic vessels were on a different level compared to the earlier DWFN and even though a discussion, excluding Russia, began as early as 1993 but soon broke down. Instead the coastal states introduced economic measures, this was done by both Norway and Russia but the Norway was most active in introducing industrial boycotts, blacklisting of vessels fishing in the loophole and prohibition to land catches caught in the loophole area in Norwegian harbors. Russia pressed their vessels not to land cod in Icelandic harbors and thus tried to put a strain on the Icelandic cod industry.⁵³ The blacklisting of vessels meant that vessels were denied access to Norwegian water even after a change in owners. This had effect on the second hand sales value of the vessels ending up as blacklisted. The ban of vessels fishing in the Loophole from Norwegian harbors were viewed by Iceland as a violation in international law and presented to EFTA Surveillance Authority. The authority agreed to the Icelandic claims that denial of port services broke the EEA agreement but no further actions were taken.⁵⁴ In comparison the Russian measures were not as serious as the Norwegian.

Negotiations began anew in 1995 on the basis of solving the conflict. The negotiations broke down in 1996 with a rejection of the Norwegian/Russian proposal. In 1997 new formal negotiations began again but on a different basis, where the quotas were calculated in a different way. Suddenly things started to work fast towards a solution of the issue with three consultative meetings leading up to a framework being accepted by the foreign ministers of Iceland and Norway and the vice-foreign minister of Russia in March 1999. Within two months two additional negotiations were held and in May the representatives of each state signed the agreement. The agreement was set so it could be cancelled by any of the involved states. Up to this date the agreement is still active.

4.2 Norwegian/Russian Positions

The Norwegian/Russian coalition that formed the JFC was a somewhat solid one, not only did the two states have similar goals and views their coalition had a long history of successful co-operation, even if the co-operation wasn't without its quarrels. There were, only to mention some, debates on by which models the borders should be calculated, talks of who had the right to board whom and where, The Grey Zone issue and more. But on the whole the JFC fulfilled its obligations, to manage the fish stocks and distribute quotas.

⁵² Ibid

⁵³ Stokke, Olav, FAO fisheries Report no 695, 2002, *Management of shared fish stocks in the Barents sea*

⁵⁴ Churchill, Robert R., 1999, *The Barents Sea Loophole Agreement: A "Costal State" Solution to the Straddling Stock Problem*, page 471

Both Norway and Russia were concerned with the introduction of DWFN vessels in The Loophole even if the actions taken were on different scales. Mostly this can be contributed to the consideration of the fish stocks of The Loophole in a way were considered as the same as in the Norwegian/Russian EEZs. The view of the cods stocks in Barents Sea as straddling stocks after the changes in the conditions is strengthening this view.

The Stocks set by the Barents Sea JFC were based on the calculations of the same assumption and thus already fully utilized by the coastal states. Any DWFN vessels taking of the stocks in The Loophole were, as far as Norwegian/Russian fishing authorities saw it, over-fishing and endangering the re-growth of the fish stocks. The view of the catches by DWFN as unregulated and thus totally out of control for the JFC is important to make since JFC were used to controlling the TAC⁵⁵ in the Barents Sea. The Norwegian/Russian views of DWFN vessels without zonal or historical attachments made them render Icelandic vessels as if they were uninvited guests with no rightful claim to conduct fishing in Barents Sea. Norway/Russia did enter agreements with other DWFN but chose not to enter negotiations with Iceland using the zonal attachment/historical arguments as a reason. But not only flagged DWFN was considered a problem by Norway/Russia. The fishing ships flying a flag of convenience were a concern for the Norwegian/Russian position. The flags of convenience were a nuisance to the JFC because they, like DWFN, took their catches outside of the TAC set up by JFC. The vessels flying a flag of convenience were in addition to the out of quota fishing difficult to get a hold of since they were not represented by a flagged nation involved in The Loophole fishing.

The main objective for Norway/Russia could be said to be to get the fishing outside of the administration of JFC to halt, a cease of Icelandic fishing in The Loophole were vital since the other areas in Barents sea were considered either national EEZs or covered by the controversial Svalbard protection zone.

Norway had a history of a fishing nation but the fishing industry have not the same economic factor as it used to representing only 0.3 % of the GDP.⁵⁶ Neither in Russia had fishery a major impact on the economy. In entire Russia the total fishing industry stand for 0.7 % of GDP and one have to keep in mind that Russian fishing was represented on many more places than the Barents Sea area.⁵⁷ The fishing fleets of 1995 were approximately 300.000 tonnages for Norway and 2.990.000 for Russia.⁵⁸ If we look at the tonnage in conjunction with the GDP we see that for its size Norway holds a larger fishing fleet.

⁵⁵ TAC is Total Allowed Catch or the maximum tonnage of a fish species to be taken each year according to <http://www.fishonline.org/information/glossary/>, 1st December, 2005

⁵⁶ <http://www.ssb.no>, 2nd January 2006

⁵⁷ <http://www.fao.org/>, 1st January 2006

⁵⁸ The tonnage is one of three ways to measure how large the fishing fleet is the others, number of vessels and the pulling power of the engines could be used as well but since we are just looking for a estimate on the fishing fleets the tonnage will do. The figures was found at <http://www.fao.org/> and <http://europa.eu.int/comm/eurostat>, 1st January 2006

Russia had during the same time as The Loophole- years two other fishing related incidents. In the first, The Peanut Hole a small area surrounded totally by Russian EEZs DWFN were faced with a Russian unilaterally moratorium of Pollock.⁵⁹ The DWFN present brooked a deal with fishing rights in Russian EEZs in exchange to size fishing in The Peanut Hole. The other area, called The Donut Hole, where Russia shared EEZ with USA proved as a bad example in how fisheries can be managed. Here as well as in The Loophole case nations with EEZs were visited by DWFN. When the treaty covering the TAC were signed the fish stock that it covered had already been over-fished and it was in reality not allowed to catch Pollock in the Donut Hole anymore. The treaty is set to become operational once the stocks have recovered.⁶⁰

Both Russia and Norway had a history of distant water fishing but at the time of the loophole conflict both had its reasons for going in support of the coastal states in the UN fish conference. For Norway the problem was the spring spawning herring catches by high seas DWFN. Russia's coastal alliances on the other hand came both the declining fish fleet that was forced to take more of its catches in Russia's own territory. Russias used to take half their catches outside their own EEZs but at the time of The Loophole conflict it had rapidly dwindled to a merely 22 per cent. In addition Russia had a "well established high seas dispute in the far east a region where today no more than two percent of the harvest is taken outside the EEZ" that gave them incitements to support the coastal states.⁶¹ The Loophole issue coincided in time with the UN Fish Stock Conference, which held importance for both nations, and the fishing ministries had to keep that in mind when dealing with the Loophole issue.

4.3 Iceland's Positions

Fishing on the high seas is not in the economic control of an EEZ and since The Loophole were outside EEZs of both Norway and Russia Iceland could in theory fish there without interference from the other nations. The reason for Iceland's interest in The Loophole fishing was mainly the cod. The cod were and is the most important part of the Icelandic fish export standing for almost 40% of the export value of marine products.⁶² The TAC of cod in Icelandic waters had gone down since 1988 but the Icelandic fish-industry still needed cod in the same amount.⁶³ The initial catches in The Loophole were very good, met in tonnage, but the area had no guarantee that it would continue to produce similar catches.

⁵⁹ Churchill, Robert R., 1999, *The Barents Sea Loophole Agreement: A "Costal State" Solution to the Straddling Stock Problem*, page 482

⁶⁰ Ibid, page 481

⁶¹ Stokke, Olav, FAO fisheries Report no 695, 2002, *Management of shared fish stocks in the Barents sea*

⁶² Icelandic ministry of fisheries, *Icelandic fisheries in figures 2004*, 2004

⁶³ Icelandic ministry of fisheries, *Icelandic fisheries in figures 2005*, 2005

Especially if the TAC allocated by JFC were calculated on the entire Barents Sea area continued landing might endanger the re-growth of the stock and thus the catches could decrease. Since a large portion of the Icelandic economy relied on fisheries uncertain catches was not as preferred as a steady, certain flow of cod. Icelandic government declared willingness from the beginning to negotiate restrictions fisheries of Icelandic vessels.⁶⁴

Iceland had a history of not going quietly when it came to their rights to fishing waters. Most know is the so-called cod-wars with UK. The “wars” or conflicts raged several times (1958, 1972-73, 1975-76) and were all concerning Icelandic fishing rights in waters surrounding Iceland.⁶⁵ During these conflicts fishery were absolutely vital to Iceland, even if other areas have grown fisheries still count for as much as 40 % of Icelandic export earnings and employ 8 % of the workforce.⁶⁶ The Icelandic fishing fleet was in 1995 approximated to 120.000 tonnages.⁶⁷ Compared with the other two nations the fishing fleet was the smallest in tonnage put if we take it in conjunction with GDP we find that it is in fact a huge fleet given the size of Iceland.

Having fought for their right to fish before, Iceland was not in an unknown situation. The difference between the cod war and The Loophole conflict were that instead of acting as a coastal state contesting against other nation’s vessels Iceland this time found itself in the position of a DWFN instead of a coastal state. Normally a member of the core group of coastal states at international negotiations Iceland’s position were a bit odd, especially when regarding the upcoming international meeting on straddling stocks. Iceland did, as well as the other states involved in The Loophole, participate in the UN Fish Stock Conference.

The relations with primarily Norway were both culturally and economically important for Iceland. Both being Nordic countries with historical and cultural ties give them together with a membership in NATO a previous connection not easily thrown away. Furthermore Norway were one of the five primarily import countries for Iceland making the need for at least functional relations a necessity.⁶⁸

4.4 Analysis of the Negotiations

⁶⁴ Handout on Smugudeilan, *Lausn deila við nágrannarríkin á sviði fiskveiða og hafréttar*, 2000 sid 7

⁶⁵ http://en.wikipedia.org/wiki/Cod_Wars, 22nd December 2005

⁶⁶ <http://en.wikipedia.org/wiki/Iceland#Economy>, 22nd December 2005

⁶⁷ <http://europa.eu.int/comm/eurostat>, 1st January 2006

⁶⁸ <http://www.iceland.is/economy-and-industry/>, 1st January 2006

The agreement, called *agreement concerning certain aspects of cooperation in the area of fisheries*⁶⁹ was finally signed in 1999, after lengthy negotiations. The form of the treaty was a trilateral part with the basics and a bi lateral part between Iceland and respective nation. The treaty was accomplished by using what Stokke refer to as the quota card; a certain quota is allowed inside the EEZs of the different nations. The treaty did include a, for each nation, number of important issues and we will comment the most vital. The previous agreements with Greenland and the Faeroe Islands regarding their fishing in the loophole were similar in the layout and could have served as a frame for the negotiation.

Firstly Iceland agreed to stop unregulated catches of certain species in The Loophole. This was the main objective in the negotiation but in order to get Iceland to stop the catches they gave Iceland a quota of cod in their own EEZs. Getting a steady and certain inflow of cod to the Icelandic industry were important to Iceland. But in order to get these quotas they had to make concessions as well by giving quotas of Capeling to Norwegians and compensation to the Russians. The idea of using the quota card seems to be an idea that both sides felt were an agreeable one. The problem was to put number on the loss of the Loophole how big should the different quotas be? The difficulties could have been that two different views on how to calculate were pitted against each other. The zonal attachment is basically a way to calculate how quotas of fish stocks that exist in several zones, like EEZs, should be calculated. The problem is that certain calculations didn't give quotes even near the catches of the Icelandic fleet in the Loophole. In the agreed upon agreement the exchange of quotas is important, the access to catches of cod was a prime objective for the Icelandic delegation and by giving out quotas of other species the different parties could each call the negotiation a success. The agreement thus turned into a non-zero sum negotiation since the value of the spices was differentiated between the different parties. Other fishing related areas were covered by the agreement. In the trilateral treaty all nations agreed to prevent landings of catches taken that been taken in a way that undermines the treaty. Another important issue is regarding the vessels flying flags of convenience. Here the agreement went in a rather careful wording that:⁷⁰

[...] work together to investigate possibilities, and take measures, when relevant to discourage any of their nationals from being party to arrangements by which they register a fishing vessel under the flag of another state for the purpose of engaging in fishing activities that undermine the effectiveness of this Agreement

The careful wording can be because a number of Icelandic vessels were flying under flag of convenience.

⁶⁹ The actual agreement will henceforth be called the loophole agreement

⁷⁰ The Loophole agreement art 6

4.4.1 The Agreement and Smallness

The negotiation regarding the Loophole can, due to Iceland's self-view as a fishing nation, be considered to be one where the government prioritized. The degree of prioritizing is hard to measure, but one can see by looking at the important role the fishing and cod-catches play for the Icelandic economy that if Iceland would lose its cod industry it would strike a severe blow not only to the national image but also to the Icelandic economy. The Icelanders would not settle with just any deal, proven with their withdrawal from the negotiation in 1996. But they were not alien to an agreement that provided them with a, although less, but stable quota of cod. One can point out that both Norway and Iceland, the two smaller nations involved in the conflict, put a greater weight on the issue than Russia. In the beginning of the conflict for instance, Russia didn't participate in the discussions and during the talks leading up to the framework of the treaty they sent their vice-foreign minister unlike the Norway and Iceland who sent their own foreign ministers. One can argue that the Loophole conflict was not as important for Russia as for the other two involved states. Russia, being a state with a broad range of interests, could or perhaps didn't feel the need to prioritize the Loophole issue. The Russian administration is as well many times larger than the Icelandic and Norwegian taken together and other large events like for instance the conflict in Chechnya called for attention. The concepts of re-activeness and pro-activeness can't be fully applicable on the Loophole negotiations. The reactive stance requires someone else to act even if the small state is not participating and since the conflict involved only three states no reactive stance was available.

4.4.2 The Agreement and Power Asymmetry

On the concept of power many aspects can be said to play in on the Loophole negotiations. First the most obvious question is if the parties in the conflict perceived themselves as being in an asymmetrical stance. If we regard aggregate resources one would say that the power relations were heavily asymmetrical prior to the negotiations. One side represented by one of the largest states in the world were in league with another state against a, in resources measured, tiny state. If we look at the issue specific power relations we can attribute power to the coastal states with their territorial closeness to the Loophole area. Their position within the JFC gave them a perception as the caretakers of the Barents Sea fish stocks. The Loophole was in many aspects a legal dispute and the perceptions of the Icelandic government as having the legal right to fish in the High Seas gave them a stand where they could perceive themselves as righteous. Even when the coastal states invoked economic measures they were not powerful enough to on their own halt the fishing in the loophole. Furthermore Iceland held the important card saying that it was the coastal states that felt the necessity to halt the fishing. Thus they felt no need to negotiate even if they exclaimed a willingness to do so. This view boosted their perceived notion of their own bargaining power.

The notion of resource power and exercise of power is proven to hold in the Loophole case. Russia with the most extensive resource power of the three was held back both in a diplomatic sense and when it came to exercising economic measures. Of course many of the resource power available could not be transformed into issue related power. Military resources, for example, were never utilized, in the Loophole.

Of the conclusions drawn and the lessons presented by Zartman & Rubin the most apparent power related aspect that deviates from their theories is the lack of external actors. No external mediator or power lenders were present in the Loophole case. Here I don't count EFTA Surveillance Authority as an external power lender since it was actually never introduced in the negotiations. The reason for the absence of external actors could be multifold. First Iceland may not have perceived them as less powerful in the negotiation and thus they didn't feel a need for someone to balance their resource power. But maybe more important is the timing of the UN fish stock conference. All involved nations wanted to solve the conflict on a regional basis since an alternate solution could give them backlashes in the dealing with other conflicts. But apart from the external involvement the closeness between primarily Norway and Iceland could have been a contributing factor the solving of the crisis. Once the framework was set up and the foreign ministers agreed the treaty was solved within two months.

The negotiations have with the allocations of stocks provided a positive-sum for each nation. The coastal states could say that they not only provided means to halt unregulated fishing in the Loophole but also point to the quotas given in Icelandic waters. The Icelandic government could emphasize on the cod quotas given in EEZs as a more secure flow of cod. Thus all parties in the negotiation could call the deal a success for the own nation. The price of giving away quotas of cod to Iceland must also be weighed against the non-regulated fishing an unsigned treaty would mean.

Iceland showed a willingness to negotiate during the conflict and this fits in well with Zartmans & Rubins idea of initiating a negotiating in order to gain power. But there are more of the lessons that fit in well with the Loophole case. The complexity and size of the coastal state party was considerable. The Icelandic government could act with directives from the top while the coastal party needed to agree among their own governments as well as with each other before they could sign anything.

How much the positions of Norway and Russia in other areas affected the negotiations is hard to tell, as well as if it affected the power of Iceland in the negotiations. However Russia already had a similar case where the lack of a consensus hurt the fish stocks and Norway had already given away quotas to other DWFN and thus proved a willingness to do so.

The international context in this conflict can be said have worked both ways. Neither side wanted the Loophole issue to affect the Fish Stock Conference the only way of keeping that from happening was to make a regional treaty amongst themselves.

5 Conclusions

In this last chapter the main question will be viewed in the light of our findings in the previous chapter. We will try to draw conclusion on what we have found. Lastly we will look into some remaining question marks and see how the research could be further looked into.

When starting this paper we were set out to answer the question:

To what extent can the conclusions about small state behavior in asymmetric negotiations given by Zartman & Rubin and Thorhallsson be used to explain the behavior and strategies of Iceland as well as the outcome in the negotiations resulting in The Loophole Agreement?

The conclusions of the authors can be said to explain in a way the outcome of the negotiations. The small state relied heavily on the issue on which the Loophole conflict were based and put an effort into getting an agreement that fulfilled the vital criteria's for the state. The difference how the states choose to prioritize the conflict, particularly the difference between Russia and Iceland can be seen as an example of Thorhallsson's thesis. Thorhallsson's ideas on re-active and pro-active stances could not be implemented on the case study since the negotiations were only between very few nations.

When it comes to the conclusions drawn about asymmetry in the negotiation one can say that a criteria introducing a external actor is that the cost benefit for the involved must be greater than the could be costs associated with brining in external aid. In our case none of the involved wanted outside involvement so this option was ruled out of the negotiation. The idea of power as a perceptive instrument in negotiations can hold true since in our case the aggregate resources were not reflected in the outcome of the negotiation. The case shows a possibility for smaller nations to meat other states on the negotiation table and come out with a result to the small states liking.

5.1 Further Research – Additional Loopholes?

The idea of power as a measurement can in many ways be associated with a realistic view often criticized to put an emphasis on states. During my work on this project I have played with the thought on the asymmetrical thought can be transferred onto other non-state actors without loosing its edge. Since we're moving towards a community where states becomes only one of many actors in the international arena it would be interesting to see the ideas transferred to a

NGO perspective. Is the conclusions drawn on negotiating with power asymmetry a general rule on negotiating or can it just apply for states.

I have run across a number of factors that could have influenced the negotiations, such a change in government in both Norway and Iceland, how much these x-factors influenced are hard to tell and could be another area to look into. It is possible that the rapid solution of the problem were made possible by a personal initiative and commitment by the newly elected governments.

There are other disputed regions where DWFN enter water not formally belonging to a EEZ but, since the fish stock don't have much regard for borders drawn in meeting rooms, affecting the nearby. The solution of a regional treaty can be seen as one way to solve the problem. It could be interesting to look at how other Loophole-like conflicts were solved.

6 References

Written sources:

- Bercovich, Jacob (Ed), 2002, *Studies in International Mediation*, Anthony Rowe Ltd, Chippneham and Easybourne
- Churchill, Robert R., 1999, The Barents Sea Loophole Agreement: A “Costal State” Solution to the Straddling Stock Problem, *International Journal of marine and costal law*, vol14 no 4,
- Jönsson, Christer, 1990, *Communication in international bargaining*, Printer pub, London
- Habeeb, William, 1988, *Power and Tactics in International Negotiations: How Weak Nations Bargain with Strong Nations*, John Hopkins University, Baltimore
- Lukes, Steven, 2005, *Power a radical view. The original text with two new chapters*, Palgrave Macmillan, New York
- Marsh & Stocker, 2002, *Theories and Methods in Political Science*, creative print & design, Ebbw Vale
- Stokke, Olav, FAO fisheries Report no 695, 2002, *Management of shared fish stocks in the Barents Sea*
- Starkey, Brigid, Boyer, Mark, Wilkenfeld, Jonathan, 1999, *Negotiating a Complex World*, Rowman & Littlefield Publishers, Lanham
- Thorhallsson, Baldur, 2000, *The Role of Small States in the European Union*, Ashgate, Vermont
- Zartman, William, Rubin, Jeffrey, 2000, *Power and Negotiation*, the University of Michigan Press, USA
- Örn, Torsten, 2002, *Varför Diplomati*, WS Bookwell, Finland

Official Handouts

- Icelandic ministry of fisheries, 2005, *Icelandic fisheries in figures 2005*, Reykjavik
- Icelandic ministry of fisheries, 2004, *Icelandic fisheries in figures 2004*, Reykjavik
- Handout on Smugudeilan, 2000, *Lausn deila við nágrannarríkin á sviði fiskveiða og hafréttar*, Reykjavik
- Norwegian stortingsproposisjon 74 (1998-1999), 1999, *Om samtykke til inngåelse av avtale av 15. mai 1999 mellom Norge, Island og Den russiske føderasjon om visse samarbeidsforhold på fiskeriområdet («Smutthull-avtalen») og tilhørende protokoll*, Oslo

Discussion seminar:

CSSS, Högskóla Íslandís, Reykjavík, 2005-06-27, participating scholars:
Thorhallsson, Baldur. Gstöhl, Sieglinde. Eiríkur Bergmann Einarsson and
Archer, Clive

Internet sources:

<http://eng.sjavarutvegsraduneyti.is/> 1st January 2006

<http://www.iceland.is/economy-and-industry/> 1st January 2006

<http://www.fishonline.org/information/glossary/> 1st December, 2005

<http://wikipedia.org>, 22nd November, 2005 and, 22nd December 2005

<http://www.ssb.no> 1st January 2006

<http://www.fao.org> 1st January 2006