

# Future Cooperation Depends on Organization and Participation

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## Introduction

In the Stade Declaration of 1997 a strong call was made to inhabitants, users, visitors and stakeholders '... to provide ideas and inputs through the Wadden Sea Plan to the implementation of the targets.' Moreover it was said in this document that '...implementation of agreed policies and measures must be undertaken in dialog with the stakeholders.'

In this respect the 8th Trilateral Governmental Conference on the Protection of the Wadden Sea marked a clear turningpoint. For the first time a direct appeal was made to the inhabitants and users of the area to get involved in the policy and decision making processes in the trilateral Wadden Sea Area. In this one can see a first step towards an Integrated Coastal Zone Management concept in which a major role has to be played by the people in the region itself as became clear once more during a recent important international symposium on the legal aspects of integrated coastal zone management in Boulogne –s. Mer earlier this year.

However; subsequently questions arise how to organize this public participation? What will be the effect? What will be the target? In what way are the policy and decision making processes clear to every one in the three countries?

The nature conservation NGOs in the three countries considered the notions of the Stade Declaration a challenge and took the gauntlet to find some answers and possible solutions. In this they provided the governments in the three countries a 'package deal' consisting of 1) a proposal concerning disaster prevention and ship safety, 2) a concept for regional oriented public participation and 3) a model for a trilateral convention. Together these proposals, constituting 'theme, goal and framework for future trilateral cooperation' can be considered a contribution in the proces of discussions for the coming 9th Trilateral Governmental Conference to be held in October 2001 in Esbjerg. In this article the main outlines of this 'package deal' are discussed.

## Public Concern

Wadden policy in the three countries is a complex system. In fact it consist of three layers or circles: 1) EU policies, programs, directives and trilateral agreed upon policies as laid down in the Wadden Sea Plan; 2) these policies influence the national policies e.g. the National Parks, land use planning, different national regulations and major strategies on regional and local level, and 3) in these policies the various stakeholders, inhabitants, users and visitors are involved in different ways (Figure 1). Is it then any wonder that the people in the region is rather sceptical about all kinds of regulations and that there is now and again great public unrest as was recently the case with the designation of a great number of Special Protected Areas under the aegis of the Birds Directive in the Netherlands?

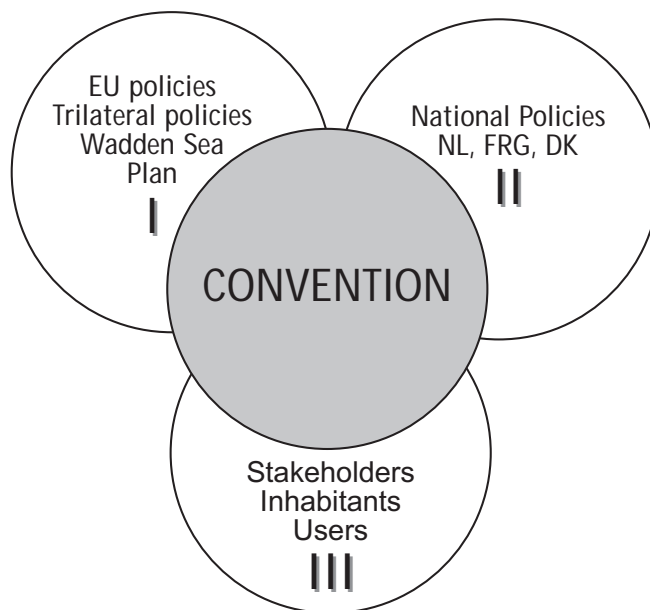


Figure 1: Wadden policy is a complex system. It consist of three layers/cycles: EU policies, programs, and directives and trilateral agreed upon policies as laid down in the Wadden Sea Plan (I). These policies influence e.g. the National Parks, land use planning, different national regulations and major strategies on regional and local level (II). In these policies the various stakeholders, inhabitants, and users are involved in different ways. The convention combines the three layers of Wadden policies. It brings the various schemes together in order to improve coordination and implementation.

On the other hand a great public concern can be noticed in the three countries for the safty of the entire area; threats coming from the 'outside.' In this especially after the Pallas accident in 1998 it became clear how vulnerable the area is, and how poor in fact coordination and cooperation is in disaster prevention and ship safety (early warning system, information, assistance, rescue equipment etc.). The accident and its consequences caused

except public unrest also a call for measures.

Against this background, and the above made reference to the Stade Declaration, one may conclude that public participation is not only an option but an obligation in order to remain the Wadden Sea Region a natural, beautiful and inhabitable area for the long term; an area which is good for residing in, working in or visiting. And in this public participation has to be concentrated on the regional aspect to make people feel living in a common region from Den Helder to Esbjerg with common concerns and common solutions. Therefore measures should be taken to include this participation in management processes rather than reducing people concerned to hey and nay sayers.

### Improved Coordination

Trilateral cooperation in the Wadden Sea Region is an important achievement in itself. In this voluntary and non legal instruments of public participation (such as recommendations, guidelines, resolutions, codes of good conduct etc.) have been of great value till now and the efforts in this field should be continued and improved. However it has also to be acknowledged that the non legal instruments are rather non-committal and therefore should be embedded in a legal framework in order to implement the results thereof or to take them (at least) into account in the policy and decision making processes. If not the credibility of the trilateral cooperation itself is at stake. In order to avoid this to happen it is unescapable to consider some kind of structure in order to make the public participation workable, effective and operational.

An adequate response to this would be the establishment of a Trilateral Convention on the Protection of the Wadden Sea Region. A team of judicial experts from the three countries researched and developed during a couple of years such a document and offered this recently to the governments involved. A convention (in short) that emphasizes a critical evaluation of the trilateral policies pursued so far, and that clearly indicates the goals set, the criteria and values used to attain these goals, the decision making processes playing a role in this, and how stakeholders, users and inhabitants should be involved in these processes.

In this way the main aim of this convention is to improve coordination and implementation of existing and jointly agreed upon Wadden policies in the three countries; a longstanding wish of the three governments and once more stressed in the Stade Declaration. Therefore the heart of the convention,

which includes only 13 articles, consists of an organizational structure which makes it possible to act and react if necessary quick, efficient and in a flexible way. Moreover it guarantees the involvement in the policy cycle of all the stakeholders, users and inhabitants in the region and makes the decision making processes more transparent. Along this line the convention is a tool or an instrument which operates in two directions: towards the public 'now matter where they live' and towards to competent authorities on all levels from local to national.

### Key Elements

In fact there are three key elements to be noticed: 1) a common trilateral objective, 2) a common trilateral geographical scope of the area, and 3) an institutional framework in order to attain the main objective.

As far as the first two aspects are concerned, there is nothing new. The three governments agreed already in 1991 on a common objective, and in 1994 they agreed on the geographical scope of the area; the so called cooperation area and conservation area. Thus a new element in the trilateral cooperation is the introduction of a Wadden Commission.

According to the proposed convention such a commission will be established made up of representatives of each country. This is an institutional framework to facilitate and improve the implementation of already agreed upon trilateral policies such as the Wadden Sea Plan. To this end the composition of the commission is not limited to an exact number of governmental representatives. This opens channels for appointing representatives of other competent authorities, including the already existing official advisory bodies in the three countries, as a member of the commission. On the other hand every country has only one vote.

This all is in line with the strong wish of the governments, included in the Stade Declaration, to involve the local and regional authorities directly in the trilateral policy and decision making process. In this respect there are also provisions by which citizens and NGOs, as well as advisory bodies, scientific institutions and the like can perform an active role by obtaining an observer status in the policy and the decision making process.

Background of this scheme is to use the existing national legal systems for the protection, and sustainable use of the area in the three countries, and to avoid creating a new level or (international) lay-

er of administration. In this respect one can conclude there are already enough rules and regulations. So the proposed convention is not supposed to be a new list of orders, prohibitions and/or exemptions. Nor should it be considered a 'new label' for the protection of the area. On the contrary. Its primary aim should be to coordinate existing agreed policies on local, regional, trilateral, European and international levels to make them transparent, and to involve all the stakeholders, users and inhabitants.

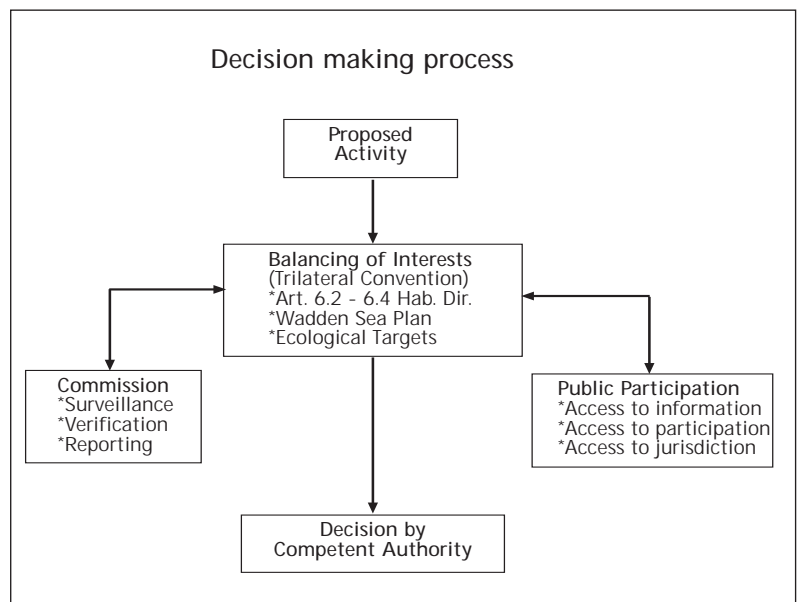
In the first instance this convention could thus be a tool to show clearly to each inhabitant of Germany, Denmark and the Netherlands what should be protected in the Wadden Sea Region, for what reason, how to act to do so, and how protection measures can be guaranteed in the future. In this it has to be emphasised that in this convention only a framework is given in which the principles for coordination and cooperation are laid down. There is a lot of issues which remain to be elaborated, discussed and filled in.

So basically the convention does not effect existing responsibilities. It provides only a possibility to align the policies of the various levels of authority with each other. To this end the convention is linked up to what has become usual in international law over the last two decades. Under this convention the national governments remain the chiefly responsible authorities of the overall policy i.e. they remain the primary convention prerogative. This is expressed in the legal status which is given in the convention to the Wadden Sea Plan and its ecological targets. By doing so the Wadden Sea Plan is the fundamentation of the trilateral Wadden Sea policies. At the same time the competence and responsibility of the Wadden Commission to be established is limited and restricted. Its main task will be to fill in the details and coordinate all the various activities. The different duties and functions of the Commission therefore perform the heart of the convention. They are clearly defined in a) functions related to the implementation of the convention, b) duties related to the development and implementation of plans and measures and c) duties related to the work of the Commission itself.

### European Law

An additional advantage of this proposed structure is the possibility to (trilateral) coordinate the implementation of the applicable European directives. Another longstanding wish and recommendation of the three governments. As known a large number of European directives apply to the Wadden Sea

Region. The most important and wellknown of these are the Birds Directive, the Habitats Directive and the Nitrate Directive. All member states, including the three Wadden countries, are obliged to manage and carry out these directives. Recently a hefty fine, which can rise to as much as a half million Deutsh Marks per day was introduced to penalise member states who fail to fulfil these obligations. Up till now the three countries have done very little to adhere to European law, despite the solemn promises they made with each other in the Joint Declaration of 1982 to work together and coordinate the execution and implementation of the European directives. Very little has come of these promises over the years.



The convention creates the possibility of arriving at a trilaterally coordinated determination of the extent and boundaries of designated areas according to the European directives. Above all however, it provides an opportunity for arriving at a harmonised and coordinated interpretation of the manner in which the directives in the Wadden Sea Region need to be applied.

Especially the establishment of the in the directives required Natura 2000 network triggers a lot of difficulties and problems on all administrative levels. The essence of these provisions is to ensure that a Natura 200 site, which is the entire Wadden Sea Region, is not damaged or disturbed before an activity or proposed activity has been properly considered and the nature conservation interests have been balanced against other (mainly economic) interests (see Figure 2). In particular the

Figure 2: Decisions made by the competent authority may differ from each other. They may be yes, no or under certain conditions or restrictions.

obligations and concepts drawn from article 6 of the Habitats Directive have to be mentioned. In this article the bottom line is given for the conservation status of the area.

It is indeed the execution of these directives which provides the source of much public unrest and insecurity and leads to resistance.

### World Heritage Site

Another additional advantage of this convention may be the support to the proposal of the three governments to nominate the Wadden Sea Region as a 'site of universal value' under the aegis of the World Heritage Convention. It certainly would be a great honour if the area would be designated as such. In this the nomination to be included in the List of World Heritage Sites has to meet the criteria of the so called Operational Guidelines. According to these guidelines a management plan and an adequate long-term legislative, regulatory and insti-

tutional framework is required, as well as participation of the local people in the nomination process to make them feel a shared responsibility in the maintenance of the site.

It has to be concluded, however, that at present there is no trilateral management plan available, nor a trilateral legislative, regulatory framework or a kind of organizational trilateral structure for public participation. This gap can be bridged by the proposed convention.

Against this background the coming 9th Governmental Conference on the Protection of the Wadden Sea in October 2001 in Esbjerg will be a very important one. Not only a decision has to be taken on the proposal to nominate the area as a World Heritage Site, the governments also have to clarify how they want to proceed the trilateral cooperation in the years to come taken the recommendations of the previous State Conference into account.

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