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Perspectives on the Trilateral Cooperation – A brief note

The trilateral governmental cooperation on the protection of the Wadden Sea is likely to be reduced to technical adjustments of the trilateral Wadden Sea Plan. A Wadden Sea Convention could be an appropriate organizational instrument and a means to ensure further progress.

Since 1982, the trilateral governmental cooperation between the Netherlands, Germany and Denmark has a formal basis in the Joint Declaration on the Protection of the Wadden Sea. Later, trilateral governmental agreements have all been made within the institutional framework of the Joint Declaration. The Joint Declaration is a political agreement on cooperation without legal obligations, according to international law. It expresses an acknowledgement of joint governmental responsibility with regard to the cooperation on the protection of the Wadden Sea and an authorization of a conservation discourse with the Wadden Sea as an object. Since the cooperation has no basis in an international legal instrument, such as a treaty or a convention, it is legitimized through already existing international agreements, among these the Ramsar, Bonn and Bern Conventions as well as the Convention on Biological Diversity. Other legitimizing references are the EC Bird and Habitat Directives.

The adoption of a common management plan, the Wadden Sea Plan, at the Stade Conference in 1997 could be seen as a fulfillment of the originally agreed upon governmental cooperation, which poses some interesting questions concerning the future: Will the trilateral governmental cooperation be reduced to technical adjustments of the Wadden Sea Plan? Will the frustrating difficulty in national implementations of the Wadden Sea Plan, especially in Denmark, cause the governments to abort the trilateral governmental cooperation and displace the protection of the Wadden Sea to EU and various national regulations? Or will the trilateral governmental cooperation develop into a legal regime according to international law?

In my interpretation, the trilateral governmental cooperation is at a point where the cooperation is likely to be reduced to technical adjustments of the Wadden Sea Plan unless some sort of organizational change takes place.

A Wadden Sea Convention would not solve all environmental problems in the Wadden Sea by mere existence, but from an organizational point of view, it could be an appropriate instrument in order to clarify who is cooperating, how it is done, and with what objective and status of the agreements made. Furthermore, a convention would be a symbol of parliamentary mandate that would strengthen the national implementation of trilateral agreements and facilitate negotiations in a broad sense. Finally, a Wadden Sea Convention could be a binding benchmark that could ensure further progress in trilateral policy-making, if negotiated among the contracting parties, keeping the Guiding Principle of the Wadden Sea policy in mind: "to achieve, as far as possible, a natural and sustainable ecosystem in which natural processes proceed in an undisturbed way" (Esbjerg Declaration 1991).

But a Wadden Sea Convention as a basis for future trilateral governmental cooperation is not on the governmental agenda at present and will probably not be in several years to come. The governments have generally been reluctant in committing to legal obligations and recent NGO attempts to address this issue have been met by ignorance. Still, NGOs, such as the World Wide Fund for Nature and the Wadden Society, have an important role to play in order to get a Wadden Sea Convention on the political agenda by exerting a persistent pressure (see WSNL 2000 No. 2).

Meanwhile, a recommendation is to make an updated governmental declaration, including all relevant trilateral decisions from the past, in one political agreement; among these the Guiding Principle and the Common Management Principles of the Esbjerg Declaration of 1991, the agreed upon Ecological Targets and the geographical delineation of the area of cooperation of the Leeuwarden Declaration of 1994, and the adoption of the Wadden Sea Plan for the Cooperation Area of the Stade Declaration of 1997. This could be considered a preparatory document and after a ripening period put in the Statute Book.

At the conference "The Wadden Sea – Our Compassion and Concern" in 1995 someone stated: "We need something more systematic, more comprehensive, and more workable than the present situation". This is still true.