

## THE EFFECTIVENESS OF EUROPEAN AGREEMENTS FOR WADER CONSERVATION

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This paper examines the role that both the EC Directive on the Conservation of Wild Birds and the Council of Europe Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention) have had in helping to protect wader habitats in Europe. Whilst both pieces of international legislation have the ingredients of an effective means of site safeguard, neither have achieved the results hoped for due mainly to lack of staff to back them up.

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### INTRODUCTION

In addition to the Ramsar Convention and the Bonn Convention described by Smart (1987), there are two pieces of international legislation specific to Europe which were designed to help to foster the concept of international co-operation in conserving wader habitat and other habitats. These are the EC Directive of 2 April 1979 on the Conservation of Wildbirds, and the Council of Europe Convention on the Conservation of European Wildlife and Natural Habitats, known also as the Bern Convention because it was signed there in September 1979.

#### THE EC DIRECTIVE ON THE CONSERVATION OF WILDBIRDS

The EC Directive was agreed by the Council of Ministers (representing Member States) and covers the 12 Member States of the European Economic Community; it is a law which is binding on them. Whilst it commits the Member Governments to an end result, it leaves the means by which this end result is achieved to the discretion of the Member States themselves. Lyster (1985) gives further details.

The EC Directive gives some protection to all naturally-occurring species within the territories of the Member States, but makes provision for a hutable list of species. It also allows derogation to be made to take or kill species in certain circumstances, such as damage to agricultural interest, but Member States have to report on all derogations to the Commission each year, and justify their actions if they are asked.

#### The Habitat provisions: Special Protection Areas

A particularly important provision is the requirement for each Member State to notify Special Protection Areas for certain vulnerable or endangered species of birds which are listed in Annex 1 of the Directive, and for all migratory species. The object is to establish a network of important sites throughout the EC, particularly wetlands of international importance. Article 4 of the Directive gives the instructions on how this habitat protection is to be achieved and managed. Member States are expected to establish such Special Protection Areas to cater for breeding, moulting, wintering and staging posts along the

migration routes. Member States are also required to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting a bird in so far as these would be significant having regard to the objectives of the Directive. It is also expected that Member States will select parts of the areas to be given intensive protection in order to prohibit disturbing activities. A Council resolution No C 103/6 of 2 April 1979 calls upon the Member States to notify the Commission, within 24 months following adoption of the Directive, of the Special Protection Areas and wetlands of international importance they are protecting. About the time the Directive was being finalised, the EC Commission asked the ICBP and the IWRB to draw up a list of important bird areas in Europe (Scott 1980, Osieck and Morzer Bruyns 1983). This was to become the yardstick against which the EC could judge each countries performance in putting forward suitable sites.

Guidelines are also being developed by the EC on the types of management expected in these sites.

#### Progress with designating sites so far

Most Member States have been very slow in designating sites. An exception is Denmark with 111 sites. So far the Federal Republic of Germany have put forward 45 Special Protection Areas, Italy has 40, United Kingdom 17, and Ireland 12. The remaining member states appear to have made no progress with designating Special Protection Areas under Article 4. Many of the sites are wetlands, although not all are important for waders. Some member states had already put forward Ramsar sites which count towards fulfilling obligations under the Wildbirds Directive, for example Greece (11 Ramsar sites), Portugal (2), Spain (3), and The Netherlands (13).

#### The EC Infraction Proceedings

The EC Commission is now to use its infraction proceedings to stimulate action by Member States. Although no administrative sanction is available in the EC, the Commission can ask the European Court of Justice to order the Member State in question to fulfil its Treaty of Rome obligations and apply the Directive. Before this stage is reached, if the Commission considers that a Member State has failed to fulfil an obligation under this Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. If the State concerned does not comply with the

opinion within the period laid down by the Commission, the latter may then bring the matter before the Court of Justice.

Member States can also bring another Member State before the Court of Justice if it considers it has failed to fulfil an obligation under the Treaty, in this case the Directive. However, before a Member State brings an action against another member State for an alleged infringement of an obligation, it has to bring the matter before the Commission. The Commission then delivers a reasoned opinion after each of the States concerned has been given the opportunity to submit its own case and its observations on the other party's case, both orally and in writing. Even if the Commission has not delivered an opinion within 3 months of the date on which the matter was brought before it, the matter can still be brought before the Court of Justice.

If the Court of Justice finds that a member of State has failed to fulfil an obligation under this Treaty, the State shall be required to take the necessary measures to comply with the judgement of the Court of Justice. According to Article 172 of the Treaty of Rome, regulations made by the Council pursuant to the provisions of this Treaty may give the Court of Justice unlimited jurisdiction in regard to the penalties provided for in such regulations.

This stage has not been reached in any matter concerning the Directive on the conservation of wildbirds as yet. This is despite the fact that the Directive came into effect in 1979 and that the Council called upon the Member States to notify the Commission within the following 24 months of the Special Protection Areas which they have classified under Article 4.

#### A case history: Duich Moss

The intervention of the EC over a threat to an important site can have positive effects. Duich Moss on Islay in western Scotland is an internationally important site for Greenland White-fronted Geese *Anser albifrons flavirostris*, an Annex 1 species. Duich Moss is also a bog with a particularly rich botanical and peatland interest. The Greenland White-fronted Goose Study (1986) gives full details of this case, the following is a summary of events. In the first half of 1984 Scottish Malt Distillers, who have peat-cutting rights over Duich Moss, applied for planning permission to drain part of the bog to cut peat from it for whisky making. Despite Nature Conservancy Council objections, outline planning permission was granted on 18 July 1984. The RSPB lodged a complaint with the EC. On 10 September the EC wrote formally to the British Government requesting that Duich Moss be added to the UK list of Special Protection Areas and given protection appropriate to its status.

Due to what has been described as a 'minor administrative hitch' the letter was not copied to the Scottish Office by the UK Department of the Environment and on 18 December the Scottish Office confirmed detailed planning consent. On 11 March 1985 the EC sent the British Government a reminder. Between the end of March and 21 May the EC wrote twice more to the British Government, saying that three further complaints had been filed.

On 1 July 1985 the British Government wrote to the EC stating that the site was receiving the necessary protection and that peat-cutting was compatible with the maintenance of its conservation importance. On 31 July 1985 the

Environment Commissioner, Stanley Clinton Davies, wrote to the Secretary of State for Scotland asking for a postponement of work for two months to allow the Government's claims to be investigated. This was rejected. The EC then sent Dr Kramer, a senior official in DG 11 (Directorate General for the Environment Consumer Protection and Nuclear Safety), on a fact-finding mission to Islay on 4 October. On 12 December the EC confirmed its decision that prosecution proceedings would start for breach of the Directive. However, on 28 May 1986 Scottish Office announced peat cutting possibilities would be investigated elsewhere, specifically due to the intervention of the EC. Discussions are now underway concerning the protection of the site.

Here then is an example of how EC intervention can have a positive effect for nature conservation.

#### Problems associated with the EC Directive

There are insufficient staff involved in the commission to intervene as much as it should with the various Member States which are not progressing with their duties under the Directive. Ideally there needs to be, on average, one officer per member state to give the necessary backing to the Directive, at least in the early stages of its implementation.

#### THE BERN CONVENTION

This Convention covers the protection of Birds, Mammals, Amphibians and Reptiles as well as plants. There are future plans to extend the protection to certain invertebrates and freshwater fish. There are three appendices: the first covers rare plants, the second gives strict protection to various listed animal species and the third gives weaker protection to some other animal species. Full details of the Convention can be found in Lyster (1985). The protection extends to habitats.

#### The habitat protection

Article 4(1) requires each party to take appropriate and necessary legislative and administrative measures to ensure the conservation of the habitats of the wild flora and fauna species, especially those specified in the Appendices I and II, and to ensure the conservation of endangered natural habitats. Article 4(3) requires parties to give special attention to the protection of areas of importance for migratory species in all stages of their life cycle. This is not limited to sites within their own territories and aid to African countries to maintain sites is envisaged as a means of conforming to Article 4(3) (Lyster 1985). African sites are indeed being encouraged to join the Convention.

The requirements of the Bern Convention are mandatory on the parties involved, unlike some other conventions, which merely encourage certain actions.

#### The Standing Committee and Council Secretariat

The requirements of the Bern Convention are rather general and Member States party to the convention need guidance on how the provisions should be implemented. Accordingly a Standing Committee was formed to meet annually to review the implementation of the convention and advise on how it should work. There is also a reporting requirement on what Member States are doing and what derogations they have made, and a secretariat to oversee all this.

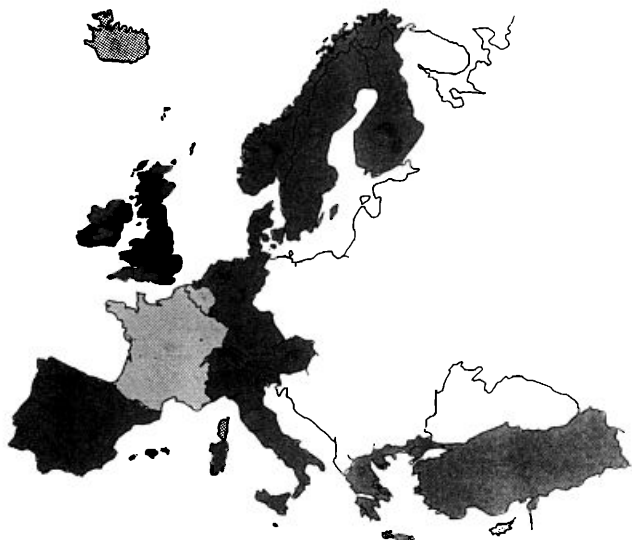


Figure 1. Contracting parties to the Bern Convention. Countries shown with light shading are signatories; those with dark shading have ratified the Convention.

In theory these are all ingredients to keep Parties on their toes and encourage them to comply with the Convention. There is the likelihood of public criticism if they do not.

#### Progress so far and the problems with the Standing Committee

In reality the progress so far is disappointing. First of all, the fact that representatives of participating states sign the agreed text of the Convention does not mean they are legally bound by its terms. To become a party to the Convention the State must deposit instruments of ratification. In other words to confirm acceptance and make any necessary changes to its domestic legislation. It is only when a previously agreed number of Member States (5) have ratified, that that Convention comes into force. The Bern Convention did not come into force until 1 June 1982, three months following the date the fifth signatory state ratified, and nearly three years after it was signed on 19 September 1979. Member States not among the original signatories may still become parties by a process of accession. There is no legal obligation on a Member State who has signed to ratify at a later date. However, this is generally expected.

Excluding the EC which has signed and ratified, 17 out of the original 20 signatories have ratified the Convention, the most recent being Spain in late 1986. This leaves only France, Belgium and Cyprus. Reports from the last standing committee indicate that France and Belgium are likely to ratify in 1987.

The Standing Committee has met four times and attempts to further the implementation of the Convention have been made through various questionnaires. Norway sought to clarify the rather general terms of Article 4(1) at the first meeting by producing a set of guidelines on how each party should interpret it. A document was prepared for the November 1983 meeting which proposed the development of criteria for the identification and evaluation of sites, organisation of field survey, the

preparation of priority lists, the publication of a draft plan for the protection of the sites on the priority lists, consultations with relevant owners and others with an interest in the sites and the final conclusions on which sites are to be protected. The Standing Committee was to play an important initial role in advising on the type of habitat to be protected and to provide guidelines for each stage of the exercise.

The Standing Committee fully supported the proposals but deferred any specific action until the third meeting, where it was debated at length but deferred to the fourth meeting when it was further debated and where it may have died.

The same committee agreed that an exchange of views on the implementation of the habitat provisions would be useful on the basis of national contributions and a synopsis prepared by the secretariat. However that document could not be prepared for lack of contributions. A further recommendation called for national inventories, but by December 1985 no contributions had been received from countries outside the EC except for Austria, Sweden and Switzerland.

Even when major contraventions of the Convention are reported, such as the peat digging on Duich Moss or the damming of the River Danube at Hainburg (which threatened to destroy a large area of scarce riverine forest), there has been a reluctance to take action. The Standing Committee has so far failed to carry out many of its objectives, and the Convention's known contribution to the conservation of wader habitat is much less than expected.

#### Progress so far with designating sites

Outside the EC only Switzerland and Austria have put forward sites for protection. Sweden is compiling an inventory of wetlands with a view to selecting some for protection. Except for some EC countries no action has been reported by the remaining states. (The latter have destroyed Ramsar sites and Special Protection Areas which were mentioned under the section above dealing with the EC Directive on the Conservation of Wild Birds.)

In the case of Switzerland, new provisions of the Federal Nature and Landscape Conservation Act came into force on 1 January 1985 and reinforced provisions for the protection of natural habitat including shores and marshes, natural forests, hedgerow, thickets and dry grasslands. About 13% of the land surface has some form of protection. An inventory of habitat types is being prepared, together with a study of the general state of the littoral zone and shores of Swiss lakes. A guide has been prepared on the maintenance of wetlands in Switzerland.

Austria has put forward well over 20 peatlands for protection and many more peatland and other sites are to be protected in the next five years, under Article 5 of the Conservation of Nature Act. The Council of Europe study on European peatlands co-ordinated by Goodwillie (1980) may have helped to stimulate this interest and action, as 31 experts from 17 countries were involved in this study.

#### CONCLUSIONS

Whilst both pieces of international legislation

have the ingredients of an effective means of site safeguard, neither have achieved the results anticipated. The EC is making positive but slow progress and the main problem lies in the lack of staff in Brussels to implement the Directive, to review progress frequently, and to keep sufficient pressure on member states to encourage them to carry out their duties under the Directive. For example, the Committee for the Adaptation to Scientific and Technical Progress has met only twice, and not since September 1984.

The Council of Europe is making even less progress due to lack of staff in the Bern Convention secretariat, and a standing committee reluctant to make decisions. It further suffers from not having the legal strength of a directive nor the political kudos which appears to be attached to a global convention such as the Ramsar Convention, which partly relies on the desire of parties to demonstrate to the world their commitment to conserving wetlands.

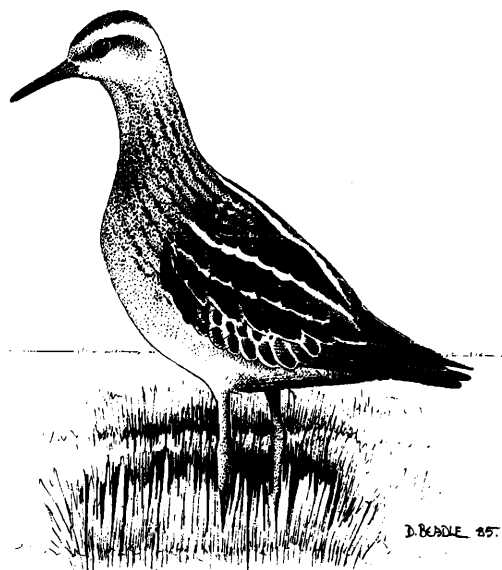
Unless there is an increase in support staff for the EC Directive and the Council of Europe Convention, which also needs a much stronger and effective Standing Committee, there does not seem to be any likelihood of an improved performance for the protection of wader habitats in Europe in the foreseeable future from these two pieces of international legislation, particularly not from the Bern Convention.

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*Long-toed Stint, Juv.*