"Political advisory committees: their role and legitimacy"

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Abstract

Generally, politicians decide to appoint a political ad-hoc advisory committee if they have to solve a wicked policy problem that they were not able to solve thus far. Political advisory committees are common in Dutch politics and they can have a big impact on the policy process. However, we do not know much about how they operate. The advisory committees are appointed for several different reasons, they operate differently and they produce different outputs. In this paper, the diversity in committees is described by a typology based on two dimensions: the direction of time and their substantial focus.

This paper concentrates on committees that are appointed as an intervention in stagnating policy processes on wicked problems. If an advisory committee is appointed, three different phases can be distinguished: the formation phase, the committee's phase, and the implementation phase. In these phases different arenas and mechanisms are effective e.g. competing coalitions in the political arena producing a stagnation in the first phase. Committees differ in the way they operate and consult with interest representations and with the public agents that appointed them. Parallel to the 'crisis-reform' hypothesis committees are seen as an entrepreneur necessary to reach a break through in situations of policy stagnation. Legitimacy build up in the policy process is a vital condition for committees to reach a break through.

The legitimacy of political advisory committees is often contested because of their task, composition, the procedures they followed, their openness to interest representation, and final advice. In this paper we constructed legitimacy' criteria for committees based on the concepts of Beetham and Scharpf. We analyze the role of committees and apply these legitimacy' criteria to a case-study about the deepening and the long term development of the Western Scheldt estuary in the Netherlands and Flanders between 1995 and 2010.

1. Introduction

Politicians, stakeholders, and interest groups seek influence over policy processes. Access to a so-called interactive policy making procedure is nowadays one of the common ways to do this (Edelenbos, Klok and van Tatenhove, 2009). One nice example is the way how the long term policy view about the Western Scheldt estuary in the Netherlands and Flanders between 1995 and 2005 have been developed (Klinkers, 2005). However, not all actors can always get what they want and, as in this case, some of them started to protest against the outcomes. In a sense, they broke out of the interactive policy process and in the end the problem-definition and the pronounced solutions were contested and a complex long-lasting policy controversy had hit the political agenda.

We see these courses of events happen a lot in unstructured environmental problems, such as in the use of natural resources. If this ends in stagnation of the decision making process it very often leads Dutch politicians to appoint ad-hoc political advisory committees (Schulz et al., 2006). They are set up to intervene in the stagnated policy process and to 'solve' the political problem. These committees are usually seen as an opportunity for renewal of the participation arena and as a way to improve the decision making process.

Political advisory committees are a common phenomenon in Dutch politics, but they are hardly ever studied in detail. This is remarkable because Dutch politics are internationally well known for its so-called 'Polder Model'[1] and yet, we still know so little about this important tool of this model. This paper tries to fill in this gap.

This paper highlights the role of ad-hoc political advisory committees in the policy process. Committees are considered as an intervention to break through the stagnated policy processes. We will focus on a specific marine controversy, the deepening of the Western Scheldt estuary. In the past 15 years there have been three policy advisory committees. In more specific terms, we will, based on the concepts of Beetham and Scharpf, focus on the question of committees' legitimacy because the use of committees as an intervention is contested and we think that the success of a committee in large depends on its legitimacy.

2. Political advisory committees: some characteristics

The definition of a political advisory committee is: "An ad-hoc group of people installed by a political actor (a minister or a cabinet) on a specific political issue with an in time restricted and specified task; the members, at least the chair, are persons from outside the department" (Schulz et al. 2006; Siefken, 2006).

Advisory committees can be appointed in response to ongoing difficult political debates, sudden accidents, or policy failures that gain high amounts of media attention. The reasons for setting up a committee are various, such as gaining independency, removal of political pressure, slowing down the debate, or legitimizing a specific policy. Their assigned tasks differ as well. They are asked to do fact-finding, negotiate solutions, set a specific agenda or develop long term policy outlooks. Committees play different roles, such as promoter, broker or consensus builder, and they produce different outputs, as there are facts, proposals, agendas, and "next step" advices. They can cause an agenda shift, produce more factual

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[1] Committees can be seen as typical institution for the continuous consultation and deliberation in the political culture in The Netherlands. Perhaps the oldest committee was constituted by the Staten-Generaal of Holland on 15th of May 1626 (still at war with the Spaniards) on the prohibition of trading by the river cities with neutral cities such as Kleef, Goch, Luik en Keulen (Nijenhuis, 2006).

clarification, or reach a decision (Schillemans & van San, 2004; Schulz et al. 2006; Siefken, 2006).

Dutch politicians have several permanent institutionalized policy advisors at their disposal[2]. But they seem to put more trust in ad-hoc advisory committees because the number of committees is increasing in spite of a parliamentary amendment calling to stop appointing committees (Donicie and Oltshoorn, 2008). In 10 years (1995-2005) every fortnight a new committee was installed; 364 in total (Schulz et al. 2006).

An example to the extent in which committees play a role in the policy processes, figure 1 gives, classified by six policy themes, the number of political advisory committees appointed by the Minister of Agriculture, Nature and Food quality (LNV) in the last two decades (1991 – August 2010)[3]. The total number of committees in the 20-year period is 47, on average 2 per year. Compared to other departments this is not even so much (Schulz et al., 2006). The number of committees appointed varies per year; usually one or two per year but it seems increasing to three or four up to twelve in 2008. The overall trend is upward.
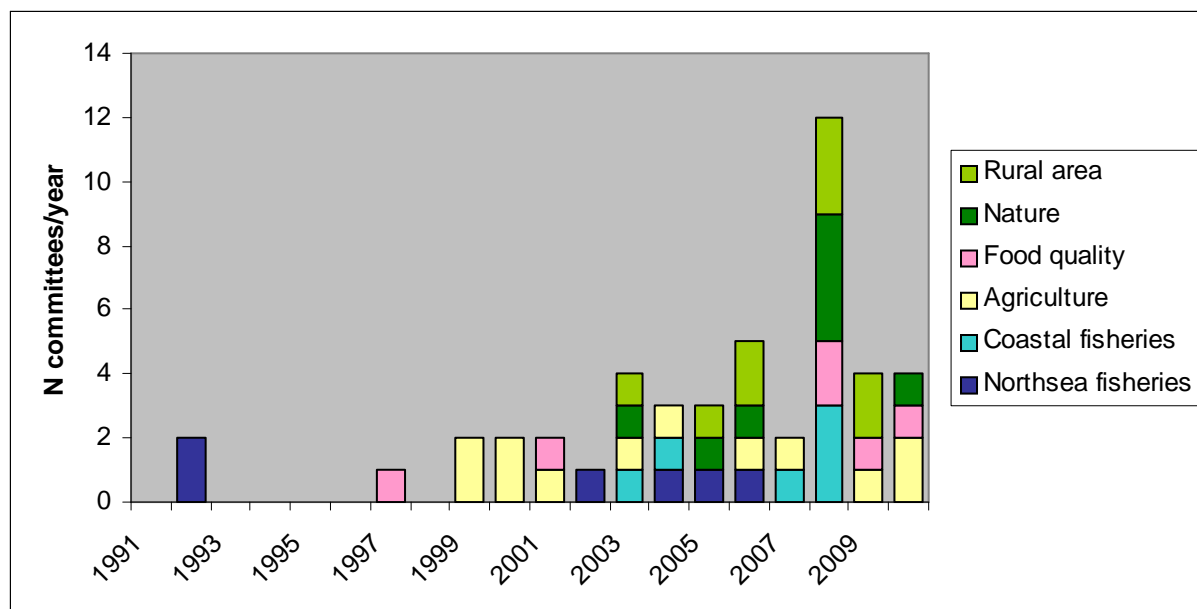
FIGURE 1 Number of committees per year in different policy domains of Dutch Ministry LNV

The Minister LNV is responsible for a number of societal relevant policy domains. In the domains coastal fishing, nature and rural area committees have been appointed since 2003 because new public and political controversial issues came up. Although the Ministry sets very regular committees there are also politically controversial issues where no committee was set up like milk cow disease and manure policy.

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[2] Legal advisors are 3 categories: the state councils: Council of State (RvS), Court of Audit (ARK), Social and Economic Council (SER) and Scientific Council for Government Policy (WRR); the bureaus for strategic policy analysis: Bureau for Economic Policy analysis (CPB), Institute for Social Research (SCP) and Environmental Assessment Agency (PBL); ca. 30 permanent policy advisory boards for different policy domains.
[3] I have chosen to LNV because I know that ministry from inside and this minsitry is responsible for a number of socially relevant policy domains with sometimes controversial issues where committee play a role. The period from 1991 onwards is the 1st Lubbers (CDA)/Kok (PvdA) cabinet (1989-1994) and with the resignation of minister Braks (September 1990) the renewal of policies in the field of nature and environment which from that moment on had to be created by the Ministry (Bekke, de Vries and Neelen, 1994).

Committees are appointed for good reasons, off course. They usually are part of a political response to some kind of increased attention to an issue. Committees are an answer to questions such as 'why did this happen?', 'who is to blame?', and 'what can be done?'. But issues do not always become politicized and do not always result in the creation of a committee. In other words, certain conditions have to be fulfilled before a committee will be installed (Marchildon, 2001; Brandström and Kuipers, 2003; Prasser, 2005).
Advisory committees attract a lot of media attention when politicians are in the process of deciding to appoint one and when the committee publishes her report or gives her advice. There are almost no legal or formal rules for appointing committees and for the procedures they have to take into account.. Usually, only the task of the committee is described in a few lines and the date the advice is expected to be ready. So each committee is a temporarily agent in itself and must set its own rules. Committees have to deal with all kind of tensions. They have to find out 'who is to blame' and yet, deal with political agents who want to avoid being blamed; they have to preserver their independency, but take care of the interests of their principal. Committees have to interpret the context, the motifs, and the expectations of all stakeholders. They have to analyze the facts, frames, and power relations and have to make choices on interest representation, use of knowledge, and about how to deal with the relations with their clients. So the practice of every committee; its task, composition, working process, kind of output, communication and so on have to be taken into concern in our analysis.

3. Political advisory committees: gap in knowledge

A lot is known about the operation of all kinds of permanent policy advisory committees in the Netherlands, but not so much about the ad-hoc committees. Putters et al. (2004) analyzed the permanent advisory boards and Muller and Coenen (2002) published about the parliamentary inquiry committees. Schulz et al. (2006) have made the first attempt to systematically describe the role of ad-hoc political advisory committees in Dutch politics. Besides that, there is a case study about the constitutional reform committees 'Staatscommissies' (Leeuwen, van 2008) and a journalistic report about the 'Meijer Committee' (Linde, van der 2008). In some overviews on committees the little impact of these committees is stressed (Korsten en Willems, 1993; de Bruijn, 2007). In some research on policy processes an advisory committee appear as a relevant factor, but then the committee is not their main focus (Hajema, 2001; Hanssen et al. 2001; Mourik, 2004). Even in the well studied interactive policy process of the Western Scheldt little attention has been given to the successive committees (Meijerink, 1999, Buuren, van 2006, Gerrits, 2008).

In several other countries, though, a lot of research has been conducted on political advisory committees: the Royal commissions of inquiry in UK, Canada and Australia (Gosnell, 1934; Marchildon, 2001; Prasser, 2006) and the 'Expertenkommissionen' in Germany (Burkhardt, 2005; Siefken, 2006). Research has been done on specific types of committees as the 'Truth commissions' e.g. in South Africa (Chapman and Ball, 2001), the 'Bioethics commissions' (Johnson, 2006), public panels in the perspective of 'deliberative politics' (Dryzek and Tucker, 2008), the 'Riot commissions' in the US (Lipsky and Olson, 1969) and the so called 'Brownlow Committee' (officially named the President's Committee on Administrative Management) has received much attention (Fesler, 1987; Arnold, 2007; Newbold and Terry, 2006). On European level the system of comitology get a lot of attention (EIPA, 2000; Rhinard, 2002).
The above mentioned researches focus on different topics: they look at the reasons why a committees is appointed (Prasser, 2006; Sulitzeanu-Kenan, 2008), their legitimacy (Rhinard,

2002), the role of scientists (Lipsky, 1971), the impact on policy (Owens and Rayner, 1999), success factors (Nittoli, 2003) and sense-making and authority (Brown, 2003; Boudes and Laroche, 2009).

Against this background this research, which is part of a larger (PhD) research, has the objective to gain more explanatory insight in the use, role and impact of political advisory committees and to reflect on the legitimacy of these committees in relation to governance and democracy. The overall research question is: *'how and to what extend do political advisory committees reach a break through in marine policy controversies?'* The main research question is divided into the following sub questions:
1. *Under what conditions and for what reasons do political advisory committees appear in (marine) policy processes?*
2. *How do these committees function and which factors explain their impact on marine policy controversies as to reach a break through?*
3. *What is the legitimacy of political advisory committees in relation to representative democracy, public participation, governance and the relation between science and politics?*

The empirical research is based on the study of three marine policy controversies concerning the sustainable balance between the use of the great potential economic and natural resources and the high natural values in marine waters in the Netherlands. This paper gives the first results of one of these case-studies: the deepening of the Western Scheldt with specific emphasis on the legitimacy of committees. The other two case-studies in the overall research are the North Sea bottomtrawl fisheries and Waddensea shellfish fisheries and gas drilling. All three cases are unstructured problems and each became a truly political issue with a long history in domestic politics. All three grew into political controversies including political deadlocks and even political crises. The political controversies are about the expropriation of agricultural land and the public resistance against this in the case of the deepening of the Western Scheldt estuary, the fraud with quota and media-hype that was caused by Greenpeace's action in the case of the North Sea fisheries, and the unexpected mass-dead of birds and court rulings in case of the shellfish fisheries in the Waddensea. In all three controversies several committees have played a (significant) role as negotiator or as the initiator of a break through.

This research is a combination of theoretical and empirical research. New theoretical concept and frameworks on the phenomenon of committees are introduced and "tested" on case-studies. The case-studies are based on the analysis of policy documents, websites, archives of committees and interviews with members of the committees and representatives of different stakeholders.

4. Types of advisory committees

Advisory committees, appearing under different names, are appointed for different reasons, play different roles and hence they can have a different impact on the policy process. This diversity can be sketched by using a typology based on two dimensions:
- The first dimension is the direction of time. There are committees looking backward upon unexpected events or processes of policy failure who have to find out what is the 'truth' about the facts. And there are committees that are looking to the future who need to answer the question about how to act and these committees have to find out which values and beliefs are at stake.
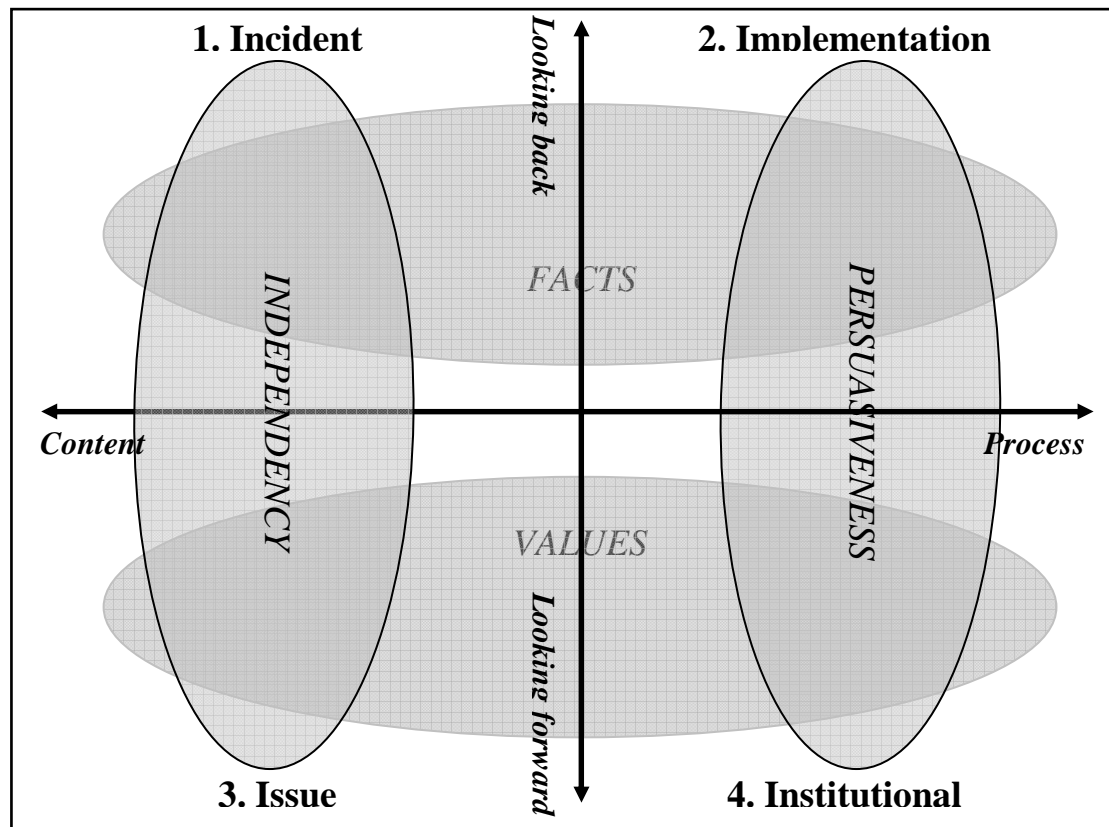
FIGURE 2 A two dimensions model for committees resulting in 4 types of committees

- ▪ The second dimension is the substantive orientation. There are committees who are interested in the substantial aspects of an issue and these committees need to keep their independency to several interests and stakeholders. And there are committees with the task to analyze the process, the working modes and the responsibilities and these committees give advice about who should do what and when. These committees need to have persuasive competencies.

A combination of both dimensions (figure 2) results in four types of ad-hoc advisory committees (Wiersinga, 2009) which can be shortly described as:
1. Committees doing (technical) inquiries on causes of accidents and incidents such as the out breaks of violence or pests (e.g. Piper Alpha, Riot commissions);
2. Committees investigating failures in a policy process like exceeding budgets or schedules (e.g. infrastructural projects as the Amsterdam metro line) or how an implementation process has been executed based on organisational responsibilities;
3. Committees seeking for substantive solutions about actual or long term policy issues (fisheries, social reform) based on different visions of actors (e.g. Hartz-Kommission);
4. Committees formulating an outlook on the future institutional steering of a policy field like a constitutional reform (e.g. The Brownlow committee, Dutch State committees).

It is obvious that these are four ideal types and thus the borders between these types of committees are gradually and in practice all kinds of mixed types will be present. A committee that has the explicit task to look backwards on the causes of an incident will give recommendations about how to prevent such an event in the future.
This paper focuses on one of these four types of committees: the ad-hoc political advisory committee which is appointed as an intervention in a stagnating policy process. Throughout

fifteen years three of this particular type of committee, were appointed in the case we are presenting below, the case of the deepening of the Western Scheldt (type number 3).

5. Committees as intervention in policy controversies

Issues related to the sustainable balance between preservation of natural resources and human use as the deepening of gullies, fisheries or gas drilling in marine areas are unstructured problems[4] (Hisschemöller & Hoppe, 1998). First, because they are about the coupling of the natural and the social sciences with connected problems as their bad visibility, uncertainties and which often leads to misunderstandings over facts, figures and arguments used.
Second, because of involvement of many different interest groups, public and private actors, with different frames, conflicting values and interests and multi-level policy arena.
In the policy making process on these issues incremental progress is usually made in different rounds, on various levels and multiple of arenas. Stagnation and deadlock are common in these policy processes (Lutchman & Scherr, 2008). If these unstructured problems are not solved and if then the issue becomes politicized then an ad-hoc political advisory committee can be installed as an intervention (Duyvendak et al., 2005; Schulz et al., 2006).
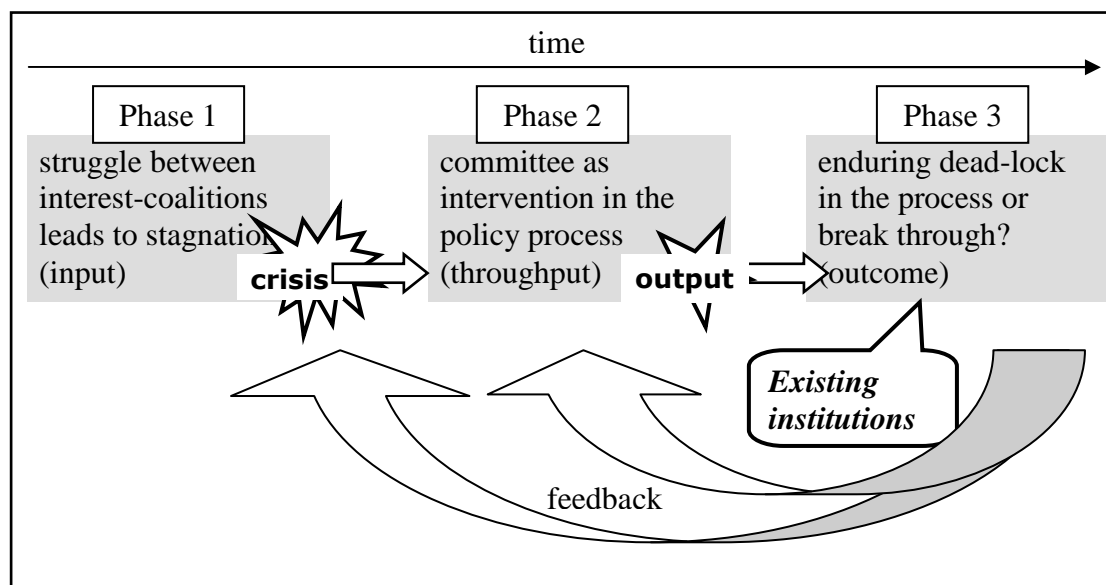

FIGURE 3 Committees as an intervention in a stagnating policy process

The policy processes in which ad-hoc advisory committees comes into play, three phases can be distinguished on the time-axis (figure 3). In these phases we observe different policy arenas and different mechanisms that affect the policy process:

1. The *formation phase* sets the specific context. In this phase a political actor chooses to appoint a political advisory committee as an intervention in the policy process. During this phase the issue usually becomes highly politicized and the normal incremental policymaking processes stagnate. The motifs to appoint a committee can be many: to remove the political pressure from the politicized situation, to slow down the debate, to postpone or (re)negotiate a solution. At the end of this phase the task and constitution of the committee is negotiated, official installed, and starts its activities. Interest groups may

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[4] As synonyms are used 'wicked problems' or 'intractable issues' even though they are not fully comparable.

act as entrepreneurs in this phase with the purpose to (de)politicize the issue by triggering media attention. They could also try to influence the composition and the task of the committee. The support for appointing a committee and its task is an essential part of the committees legitimacy. During this phase different actors develop various expectation about the role of the committee. These expectations will affect the legitimacy of the committee later on.

2. The *committee's phase*: This is the phase when the committee is officially in charge. Now the committee is the central venue of policy making taking up an intermediate role between stakeholders, scientists, and politics. The committee is usually free in choosing its approach. The committee-members have to decide to what extend they let interest groups getting involved. They have to monitor their relationship with the political agent by which they where installed. The chair or the committee's secretariat may play a specific role in personal leadership. The committee can focus on content and fact-finding or it can focus on multi-stakeholder process and negotiating. Hence, it can use interactive methods or not. And it also should decide to what extend it makes use of scientific knowledge. Interest- and lobby groups, depending on their resources and strategy, may try to influence the activities of the committee.

3. The *implementation-phase* starts as soon as the committee publishes its report: the committee is now off duty and the output of the committee has to be translated in (new) policy outcomes. The 'old' bureaucratic institutions take over again. The key question then is: to what extend will the 'normal' politics be influenced by the output of the committee? Actors may discuss whether or not the committee has done a good job: did it stick to their tasks or took the committee her freedom to address other questions as well? Based on their perceived authority, findings and quality of the committee's advice exert impact on the further debate. Communication can support the report. Its impact will depend on the way the media give attention to the report. In this phase the perceptions by stakeholders, media and politicians will intermediate the impact by putting their views forward and by collective action and lobbying. If the committee's advice has opened new horizons in comparison with the stagnation in the formation phase and if these views are supported by the majority of the stakeholders, then the committees can indeed reach a break through in the policy controversy.

6. Contested legitimacy of advisory committees

The legitimacy of an advisory committee determines the acceptance of its advices and therefore we highlight this issue in our paper. The legitimacy of advisory committees is a central issue in the public debate on the use of these committees[5].

A committee's legitimacy is discussed during the formation phase when its task is being negotiated and afterwards during the implementation phase, when actors discuss whether or not the committee has fulfilled its assignment.
The legitimacy of political advisory committees is mostly contested in relation to the motifs to install them. Legitimacy can for instance be low if it is seen as a political tool to postpone a decision. In stead to this the committee's legitimacy can be high if it is meant to have added

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[5] Anonymus, 2005.'Pechtold gets crazy of all advisory committees' ('Pechtold wordt helemaal gek van alle adviescommissies'). Leeuwarder Courant 10-11-2005. Nieuwenhuijsen, B. 2007. 'To many committees? Not at all' ('Te veel commissies? Helemaal niet!'). Staatscourant 07-01-2007.

value as an independent actor. Another point of dispute which relates to its legitimacy is the committee's closeness or openness for participation by specific stakeholders and the role of the committee in interactive policy making (Donicie and Oltshoorn, 2008).

Duyvendak et al. (2005) highlight the negative sides of committees such as their culture of 'closed backdoor politics'. Committees would lack transparency and accountability, are seriously influenced by political motifs, and have strong ties to public administration and business. Committees are also accused of legitimating existing policies (Leeuwenburgh, 2004). Instead of establishing new ad-hoc committees, politicians should make use of existing advisory boards and parliament should take their own responsibility by doing own inquiries. Schulz et al. (2006) instead emphasize the positive aspects of committees for being 'a normal e.g. conflict resolving political instrument': they are independent, they use stakeholders for consultation, they use external expertise, they respond quickly, and they are inexpensive. These two opposite views originate from different perspectives on democracy, the policy process, and democratic representation. Committees acting as a new arena can be judged based on normative models of democracy (Hendriks, 2006; Sorensen and Torfing, 2005). In each model institutions have a certain legitimacy, power and different kind of relations to each other. In a representative democracy model, institutions are dominant, citizens are voters and stakeholders are only 'lobbyists' who act out of their own interest. In a deliberative, participatory model of democracy, citizens and stakeholders are considered as valuable 'decision makers' (Dryzek and Tucker, 2008). Duyvendak et al. originate from the representative (parliamentary) democracy model whereas Schulz et al stem from the pluralist participatory model.

7. Analytical framework: the 'Stagnation – committee – break through' hypothesis

Just as external events, such as incidents, crises, and elections can have a large impact on the policy process, so can some advisory committees have too. They can cause an agenda shift or a breakthrough (Schillemans & van San, 2004). The 'Meijer Committee', for instance, which was named after its chair, was installed in 2004 and after only six months the advice it gave ended a 20-year old discussion on the permit(s) for gas drilling in the Dutch Waddensea. So a committee, at least this one, could be very powerful policy instrument in politics. Institutionalism focus on path dependency of policies and their historical, political and/or social constrains on change (Hall and Taylor, 1996). Sources for change from inside the policy process like interests, norms, practices or ideas only chance gradual or gain slowly support and only incremental change seems possible. Because of this theories on policy change concentrate on sources outside the policy domain. In political science the roots for this hypothesis are Downs (1972), Keeler (1993) and Kingdon (1995). Kingdon stressed the importance of 'focusing events' and opening of a window of opportunity by the activities of entrepreneurs.

In order to understand the impact of committees on the policy process, we consider a parallel theory about the 'crisis-reform-thesis' (Alink et al., 2001)[6]. The basis for this thesis is that a

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[6] The concept 'crisis' in this tradition has specific meanings being a emergency, disaster or a catastrophe mostly coming from outside. Different kind of crisis: institutional, electoral, economic, political. 'Institutional crises' are periods in which a policy sector experiences major legitimacy shortfalls, i.e. when its established policy frames, organizational structures and modes of decision-making and service delivery are being fundamentally criticized by political actors within and outside the sector (Alink et al., 2001). I don't want to suggest that crises

crisis diminishes existing constrains and opens a window of opportunity for policy change and institutional renewal. The reactions by policy makers to a crisis-situation can be reform or restoration of the policy or of the entire institutional system (cf. Noll, 2005; Resodihardjo, 2006). The crisis has to be politicized (Brandström and Kuiper, 2003), that is, if the crisis was intentionally guided by political actors, than it becomes a reason to blame politicians. But if a crisis leads to reform depends on the framing of the crisis (De Vries 2004): "the crisis is not (only) the event itself but very much the interpretation of what has happened, what is going on". So, a crisis is not per definition a window of opportunity to change but can also be interpreted as a threat which leads actors to down play the crisis and its causes.
For reform conditions must be strong as path dependency does not stop so critics of the crisis-reform- thesis state that you need leadership and a specific entrepreneur. This entrepreneur could be a committee operating between crisis and reform[7].

Thus parallels to the 'Crisis-reform-hypothesis' we formulate the 'Stagnation – committee – break through' hypothesis. The reason for appointing a committee in a policy process is mostly a response to a certain 'crisis feeling' by responsible politicians: some events become politicized, leading to stagnation in the policy process, and a committee might seem very well the 'right' political intervention in the eyes of politicians. It is at best to speak about stagnation if a policy is fundamentally criticized by political actors, if the debate about a policy is repeated over and over again, if public resistance against a solution continues, and if mass media pay attention to the issue.
If a committee results in a break-through it is usually due to a set of different factors. Besides, not all committees end in a policy change or breach through. A committee faces resistance from normal routines, institutional constrains, and big implementation costs. Leadership helps to overcome this resistance if it stresses the need to change, acts strategically, builds alliances, gains authority, and uses rhetorics (Brown, 2003). In the end, committees do not control the outcomes because the committee-members are out of duty and mostly they don't interact with the policy process anymore. The final results thus depend on the actions and interests of the "regular" political actors and state officials.

The aim is to find mechanisms (Hedström and Swedberg, 1998) that leads us to understand why some committees are successful and others are not. For a political advisory committee that act as an intervention in a political controversy its legitimacy will be essential to have influence in the stagnating policy process. The entire policy process as described in section 5. will constitute the legitimacy of the committee. In the next section the concept of legitimacy is worked out into criteria for the legitimacy of committees. The case-study in section 9. will pay attention to the legitimacy of the appointed committees as perceived by the involved actors.

8. Analytical framework: concept of legitimacy

Legitimacy is a basic concept in political theory, connected to other concepts such as authority, power, trust, and public support. Hague and Harrop (2007) argue that the concept of 'legitimacy' is broader than 'authority'. Legitimacy refers to more encompassing phenomena

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around policy issue is comparable with crisis like fires, accidents or hurricanes where lives and livelihood is under concern.
[7] Resodihardjo (2006) gives nice examples of the driving force of committees (inquiries) as condition for reform and the factors which influence if so: tactics, authority, timing, feasibility of its recommendations etc. Beside committees she identifies media attention and political context e.g. elections as additional conditions for reform.

such as a political system or a regime, while 'authority' only refers to a specific role for the right to act. Authority, in turn, is broader than power because authority is the right to act and 'power' is the ability to act (it's a resource). Tyler (1997) states that legitimacy is a psychological process by which individuals voluntary obey authorities based on two components: their instrumental resources and the identification by their social relations. Once a political authority is legitimate, its' decisions and actions are accepted by parties, even if though they are not always in the immediate interest of these parties (Jentoft, 2000). Legitimacy is not given but it can be gained and lost: a study on public policies over a long-time period shows that legitimacy can erode by successive steps (Hanberger, 2003). The public opinion is in the end the arena where legitimacy originates from (Hague and Harrop, 2007). In their analysis of the European Union (EU) Lord and Beetham (2001) say that the source of legitimacy of any political authority, lies in its popular loyalty and support from the people constituting a nation.

The concepts of legitimacy by both Beetham and Scharpf are developed in relation to the exercise of power by liberal democratic states and the EU and to classify how democratic systems organize political processes to secure legitimacy[8]. Their concepts are used by different authors upon other authorities and processes.

Lord and Beetham (2001) and Parkinson (2003) both follow Beetham who distinguish three normative and irreducible criteria of legitimacy: 1. legality which means 'according to rules', 2. legitimacy or normative justifiability as named by Parkinson (this is legitimacy s.s.) and 3. legitimation or consent as named by Parkinson. Lord and Beetham name these three criteria in other words as: identity, democracy and performance.

Other authors use the distinction made by Scharpf. He linked the system theoretic terms 'input', 'throughput', and 'output' to different types of legitimacy. He based his classification on Abraham Lincoln's description of democracy: *government of the people, by the people and for the people*" (Engelen & Sie Dhian Ho 2004). Van Tatenhove (2008, 2010) describes legitimacy of the new EU's marine strategy using Scharpf's distinction and adds to this the feedback legitimacy. Input legitimacy refers to existing legitimacy capital such as support and trust. Throughput legitimacy is about accountability and transparency of the process, and about participation or interest representation. Output legitimacy considers effective policy that serves the needs and values, problems and needs of the affected people.

A committee appointed by a minister as an intervention in a policy process can be seen as an authority with a certain legitimacy. Stakeholders must be willing to cooperate with and in the end 'listen' to the committees' advice. As a committee don't take binding decisions with legal effects they only have persuasive power to actors to comply to their findings. So that legitimacy has to be gained and once established a certain amount of legitimacy is dynamic and has to be preserved, seems very relevant for committees.

Based on both concepts by Beetham and Scharpf table 1 summarizes the criteria for the legitimacy of committees. These criteria are coupled to the policy process in which the committee is involved (see section 5.). Because the concept of legitimacy is more-fold and the sum of legitimacy is the dynamic interaction of these three criteria, there is no clear line between legitimate committees and non-legitimate committees (Parkinson, 2003 ibid: 183).

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[8] Beetham (1991) 'The Legitimation of Power'. Beetham (with Lord) have written a book in 1998 on the legitimacy of the EU. Scharpf (1999) 'Governing in Europe. Effective and Democratic?' Lord and Beetham (2001) relate their concept to Scharpf and put identity and democracy under input-legitimacy and performance as output-legitimacy.

Criteria for legitimacy related to the policy process	Concept of legitimacy by Beetham (1991)	Concept of legitimacy by Scharpf (1999)
1. The appointment of the committee	Legality/identity: ■ a legal basis ■ accordance to existing rules ■ authority, independency ■ resources ■ reason and motifs	Input-legitimacy: ■ felt urgency issue ■ felt need for a committee ■ political/public support for the motifs and for the task ■ composition of the committee
2. The way of working and functioning of the committee	Legitimacy/justifiability: ■ authority of the committees ■ sources for the tradition, network, scientific	Throughput-legitimacy: ■ participation by stakeholders ■ transparency of the use of their input and views
3. The receipt and support for the committees' advice	Legitimation/performance: ■ portrayal and evaluation of the committees' advice ■ public control ■ needs, values and interests of stakeholders	Output-legitimacy: ■ reflection of the assignment ■ authority of the text, its advice ■ whose interests has been considered Feedback-legitimacy: ■ stick to assignment ■ communication; accountability

TABLE 1 Criteria of legitimacy of committees based on concept of Beetham and Scharpf

A committee needs legality which means that a committee is appointed and acting according to the existing law or well known rules, such as the code for good governance. A minister is for instance authorized to install a committee. In the Netherlands a specific law is created to appoint ad-hoc committees (the 'Kaderwet Adviescolleges') but this law is often neglected and committees are being installed 'by speech' or by letter. Even the official announcement containing the tasks and deadlines are hardly ever published.

The normative justifiability of appointing a committee is important with respect to the reason and motifs coming from the political context and policy process in which the intervention is made to appoint the committee.

Each committee has to be confident that it has a sufficient legitimate basis in terms of support in parliament, among stakeholders, in the media, and from the general public.

Relevant to input-legitimacy is the articulation of a committees' task. A concrete task that is well placed within the political context of the policy process and that is transparent in its procedures beforehand will increase the legitimacy of the committee. The more open or the more diffuse it is, the more room there is for the committee to fill in but also for informality in the working-process. A closed shop will not enhance transparency and accountability and thus burdens risks for the through-put legitimacy of the committee.

The way of working and functioning of a committee constitutes in large part its throughput-legitimacy. Performance means that its working-process is problem-orientated and that stakeholders participate so the committee considers all values and interests of the involved stakeholders. Participation is a key element which gives legitimacy to committees especially appointed in political controversies on wicked problems.

Note, however that the use of interactive public participation tools, does not automatically improve the legitimacy of the committee. The question is: who participates and what is their decisive influence on the committees' advice? (Konisky and Beierle, 2001). As there are no formal rules the committee has to decide who participates, how and if they have a say in their final advice. For their legitimacy committees must hold that they are independent and draw up their own conclusions. Especially their relationship with their initiator is of importance for its

independency. So committees have to earn their legitimacy after a rather closed process and thus transparency is very important by telling in their advice how they came to this advice and to whom they have spoken to.

Especially to committees is their output legitimacy which can be seen as a product if the former two aspects of legitimacy are secured and if the quality of its advice is not questioned. Based on Beethams criterion 'performance' the advice must have taken into account the needs and values of all stakeholder groups.
In the implementation phase an influential part of a committee's legitimacy will be the feedback by stakeholders upon the task (input) and working process (throughput) of the committee. In the debate on the committees advice actors will (strategic!) look back if the committee has sticked to the task, if stakeholders did have a chance to bring forward their opinion etc. This can question the committees and thus its legitimacy.

9. Practice of committees: the deepening of the Western Scheldt

The Western Scheldt is an estuary crossing the border between Flanders and The Netherlands. The access of the port of Antwerp has been a struggle between the Netherlands and Flanders for decades. However, since the 1970ties the Western Scheldt was deepened in a few stages so Antwerp could be reached by the endlessly growing ships. Each next step in the deepening had a more complicated and strife-ridden process. The negotiations about the 2nd deepening started at the end of the '70s and took until 1995 to come to an agreement due to the lack of trust between the two States and the trade-offs of interests. Decision making was top-down and met regional and local resistance resulting in mistrust. The policy process about the 3rd deepening (1999-2005) was, according to many stakeholders, a success (Klinkers, 2005). The most important reason is that the previously so strained relations between the Netherlands and Flanders got improved. The outcome of the process was a set of treaties approved by the parliaments of the Netherlands and the Flemish region.

Both treaties of 1995 and 2005 include a package for nature restoration. Because of reclamations in the past and the recent deepening the estuary had became narrower and deeper and consequently the in- and outflow of water and the flow rate increased and the intertidal area decreases in surface. The ecological status of the Western Scheldt was assessed as 'unfavourable' and the Netherlands had the obligation due to European directives to restore nature. The starting point of the nature restoration was 'ontpoldering': a typical Dutch wording for physically widening the estuary by adding agricultural land to the estuary.
The process of the 3rd deepening gave rise to two opposite advocacy coalitions; a nature coalition that was against the deepening but in favour of the nature restoration measures by 'ontpoldering' and, from approximately 2003, an agriculture coalition which was against 'ontpoldering' because of its impact on the regional economy and on the cultural in heritage. These effects were not investigated and agriculture, as ground supplier, felt themselves victim of the measures.

From that moment on the Province of Zeeland, various municipalities and water boards, and different interest groups develop an important role in the decision-making process (Floor, 2009) and the process became a rather turbulent period. The public and political debate from 2005 onwards has almost exclusively been focused on the nature measures. The leading question was time and again: should the nature measures be taken inside the Western Scheldt estuary itself or outside the Westerschelde. This last option would mean that agricultural land

would be sacrificed by 'ontpoldering', and the Duchess Hedwigepolder as the most appropriate location in particular.

The Western Scheldt has been deepened three times, but nature has not been restored adjoining to this because of a lack of political support. The decision making about nature restoration measures, ended in a policy deadlock at three moments and three times a committee was appointed to find a way out. The initiators of the committees were respectively the Minister of Transport, Public works and Water management, the Provence of Zeeland, and the Minister of Agriculture, Nature and Food quality. All three committees have had nearly the same but narrow type of task: what are alternatives to the 'ontpoldering'?
The first committee had the explicit task to find a solution that would have had public support in the region; the other two committees were asked to consider all kinds of different proposals from the broader region. The first committee was entirely an administrative committee; the other two were composed of both public servants and experts. All three chairs, coming from different backgrounds, were competent, and well informed about the issues at hand. The formal framework within which the committees had to work were more or less similar: the treaties with the Flemish region and the European Birds and Habitats directives.

The public discussion focused increasingly on more and more concrete measures and, in the end, in particular on the Duchess Hedwigepolder. The first committee spoke about 'ontpoldering' in general, the second committee focused only on measures in the central region of Zeeland, and the third committee was explicitly asked to carry out alternatives to the Duchess Hedwigepolder. The space to suggest alternative options outside the Hedwigepolder diminishes with every new successive committee. Interestingly however, is that the public and political debate about the issue became more and more politicized and conflictual. During the first committee the issue was less pronounced but at the time the second committee was appointed there was already much more unrest and protests, and during the third committee the regional resistance was massif and severe (figure 4).
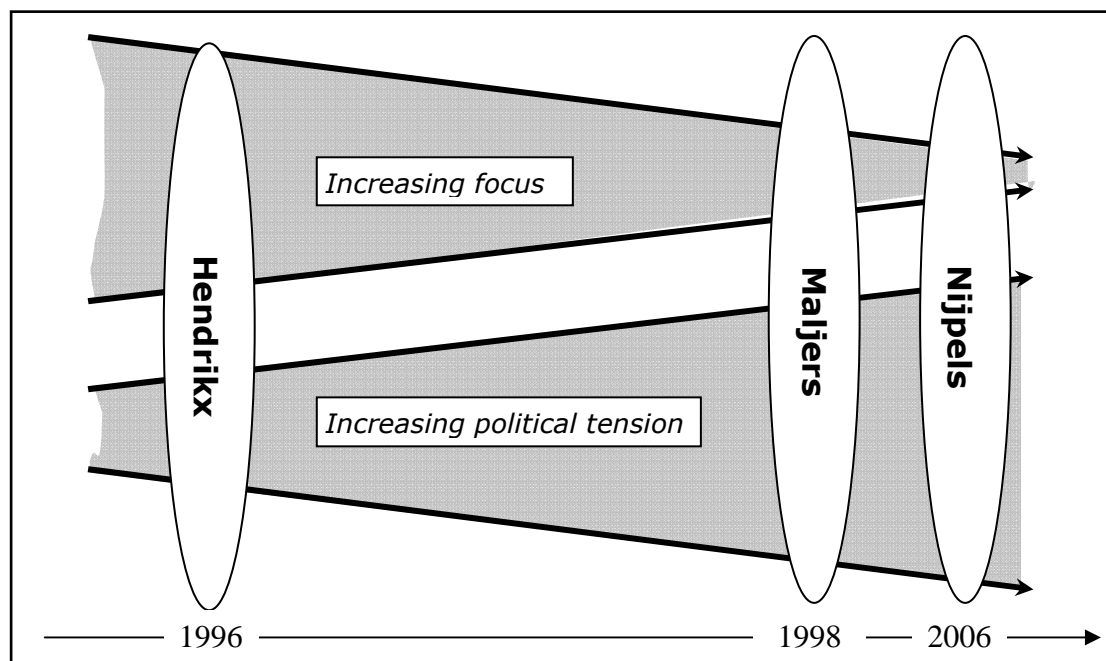
FIGURE 4 The policy process on deepening of the Western Scheldt is characterized by increasing political tension and increasing focus of the task of the three committees

The conclusions of the three committees have been, again, rather similar: restoration of the natural conditions of the estuary is needed and should be executed within the direct vicinity of the Western Scheldt but not in the Western Scheldt or in any other area, and the Duchess Hedwigepolder is the most appropriate location to do this.

Were the committees successful in reaching a break-through? That is, did they reach a decision about 'ontpoldering' or not? The Committee Hendrikx (1996) and the Committee Nijpels (2008; at last) reach a break through but the Committee Maljers (2006) did not. The Committee Hendrikx succeeded in that the European compulsory compensation was accepted and realized. This success was not based on a thorough analysis of the substantive measures: a justification of the measures is hardly to be found in their report. The locations were based on suggestions made by municipalities and water boards and with particular reference to the consultation with the organizations representing their interests; that is, in the end, a compromise enrolled. Yet another break through, partly based on their opinion, was that parties started in 1998 with the drawing up of a long term vision which ultimately leaded to the treaty on the third deepening including the nature measures.

The Committee Maljers did not reach a break through (in the regional political arena) and could in fact not be successful because of the juridical and political context: the European obligations limited the options[9] and at the same time all the political parties took a stand against 'ontpoldering' because of the new elections of the provincial government. Soon after the report was published it turned out that the only alternative location for nature measures put forward by the Committee Maljers had no regional support.

The Committee Nijpels had to deal with the same European legal framework and made a clear analysis of this. More than a year after its report the committee reached a break through by the decision to the 'ontpoldering' of the Duchess Hedwigepolder. The trigger in the political break through was actually a provisional ruling of the Council of State saying that the deepening has to stop because of uncertainties about the effects on the ecological state of the Western Scheldt. This juridical blockade resulted in a diplomatic riot with Flanders and the implementation of the long before (2005) taken political decisions had to be executed.

One could argue that in the course of twelve years the minds to find a solution had gradually matured; at least in the national political arena. The Committee Hendrikx carefully advised to develop a vision for 'the increase of the surface of the estuary' and 'move the dikes' and to search for the need measures to be taken in the Duchess Hedwigepolder. The Committee Nijpels concluded straight on that in the end 'ontpoldering' of the Duchess Hedwigepolder is the only conceivable and appropriate solution.

The legitimacy of the three committees as normatively judged by the involved actors is scored in Table 2[10]. The impact of the committees on the policy process is also given in the last row.

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[9] In 2006 by several (European) court decisions the obligations of the Habitats directive were significantly brighter then at the time of the Committee Hendrikx (1996) and it seemed clear that a notice of default by the EC as started in 1996 about the nature measures and which ended up in 2005 with a fizzle out, could happen again.

[10] The method as used is also presented by Edelenbos, Klok and van Tatenhove (2007). The score in the cells in the table for the three committees is the total weighed score of the judgement by the 5 most important actors (officials, politicians, the two advocacy coalitions, experts (ecologists and lawyers) and municipalities) on the different criteria for the legitimacy of the committees. The data for their judgement were collected by interviews and several kinds of documents.

The two advocacy coalitions have opposing views on most criteria; experts (with a few exceptions) are in favour of the committees' advices and other gremia as municipalities are against. Officials in the end were in favour of decided policies but with amendments and a large majority of elected politicians were against the opinions and

Criteria for legitimacy related to the phase policy process	Hendrikx 1996	Maljers 2006	Nijpels 2008
1. Reasons and motifs for the appointment of the committee	high	high	high
2. Participatory way of working and functioning of the committee	high	middle	low
3. Receipt and implementation of the committees advice	High	low	low
Impact of the committee	Break through	Stagnation	Break through

TABLE 2 Legitimacy of committees in the Western Scheldt policy controversy and its impact

The committees were appointed, because of the dilemma between resistance to restore nature on agricultural land and European regulations to meet certain ecological criteria. Previous views or policy studies did not lead to an encompassing solution to both deepen the Western Scheldt and to restore nature. Hence, the appointment of 'independent' committees to achieve a break through seemed to be a politically legitimate choice. Only the nature coalition was not in favour of appointing a committee because they wanted to execute measures that were already decided upon.

The response by (national, regional) governmental officials was not directly to 'reform' the policy, that meant to renegotiate the approved treaties, but try to execute made decisions and incorporate more interests as agriculture or recreation. There is no doubt to the (informal) intentions of the initiators or to the committees themselves to find a solution.

All three committees spoke with a lot of people and organizations. In case of the committee Hendrikx the advice had a high level of legitimacy because it was based on broad consultation in the region that a compromise enrolled. In the other two cases stakeholders had the chance to inform the committees on their opinion but they did not have a say in the final report. The conclusions of these two committees were a disappointment to one half of the stakeholders. The advice by the Committee Maljers for alternatives gained no support. The report of the Committee Nijpels took one turbulent year to reach a final decision. Because Nijpels came up with the advice to 'ontpolderling' the committees' legitimacy became highly questioned and even its feedback legitimacy became rather low: they did not stick to their task, did not fully hear the stakeholders, did not investigate the right alternatives etc. The agriculture coalition rejected the conclusions and strived for changing the policy by promoting alternatives and lobbying for them in parliament. After a hearing and several debates the Second Chamber in December 2009 agreed upon the Minister saying that she could only execute the decided policy but would take into account economic interests as recreation and on her turn tried to blame Europe for the strict interpretations of the directives. But also the Senate in June 2010 debated about the report of the Committee Nijpels and they had expected that, as the Minister had said she will do '200%' her best, other alternatives had to be decided upon. The Senate even went to blame the Minister that 'she had done to less'. She defended herself with the same arguments as in the Second Chamber but the Senate took the decision that eventually asked to change the policy once again but the Minister refused to execute this decision (the cabinet was failed already).

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wanted to change policy. Because of these opposing views in fact the negative judgement of the politicians on most criteria defines the legitimacy as given in the cells.

10. Conclusions

Ad-hoc political advisory committees are a rather common phenomenon in Dutch policy processes. Committees appear in processes on unstructured problems as in the field of the Ministry LNV like the deepening of the Western Scheldt, North Sea fisheries and Waddensea policies. In policy studies little attention has been paid to these committees. Characteristic for these committees are the less formal rules on their working process, their contested legitimacy and their sometimes relatively hugh impact on the policy process.

Four types of committees can be distinguished based on the direction of time and their substantial focus. This paper focuses on committees as an intervention in policy processes to 'solve' an unstructured policy problem. If a committee is appointed three phases can be seen in the policy process. For the impact of committees the 'stagnation – committee – break through' hypothesis is formulated: the committee can be seen as an entrepreneur reaching a break through in the implementation phase in comparison with the stagnation in the formation phase. The legitimacy of committees is supposed to be a vital condition for reaching a break through and thus the case study concentrates on this aspect.

Based on the concepts of legitimacy by both Scharpf and Beetham criteria for the legitimacy of committees are formulated. The concept of legitimacy turns out to be more-fold and so there is no clear line between legitimate committees and non-legitimate committees. The legitimacy of committees thus is not as simple as Duyvendak et al. (2005) and Schulz et al. (2006) state. The first perspective holds as the most relevant criteria the input-legitimacy and the second perspective the output-legitimacy.

The case study concentrates on the deepening of the Western Scheldt, an estuary crossing the border between Belgium and The Netherlands. The policy process on the deepening is a long-during political issue with stagnation because of the nature measures at the cost of agricultural land. Three successive political advisory committees played a role in this process. These three committees show slightly different practices in their task, composition and working process. Over time the committee focused more on concrete alternatives and this was accompanied with an increasing political tension. In essence their conclusions were the same on the need of the measures to restore the natural integrity of the estuary by adding space to the estuary by de-embankments of polders. The first and the third committee reached a break through. But this was due to their perceived (high) legitimacy as this becomes more contested over time. In spite of the overall rather low legitimacy the Committee Nijpels at the end reach a break through. Thus high legitimacy is not the one and only vital condition for the decisive impact of committees.

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