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Evaluating Environmental Mediation: Mediation in the Waste Management Programme of Neuss County, Germany. Results of a Participant Survey.

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Zusammenfassung

Zur Evaluation von Mediationsverfahren in der Umweltpolitik gibt es bisher kaum empirisch fundierte sozialwissenschaftliche Forschungsergebnisse. In vielen Fällen werden Mediationsverfahren aus der Rückschau und auf der Basis sehr allgemeiner Fragestellungen (Wurde eine Einigung erzielt?) bewertet. Das Wissenschaftszentrum Berlin für Sozialforschung (WZB) führt ein Forschungsprojekt zu Mediationsverfahren in der Umweltpolitik durch, dessen Hauptgegenstand eine Mediation zum Abfallwirtschaftskonzept des Kreises Neuss, Nordrhein-Westfalen, war. Im vorliegenden Papier werden einige Ergebnisse der sozialwissenschaftlichen Begleitforschung zusammengestellt, die es erlauben, den Erfolg dieses Verfahrens differenziert zu beurteilen. Im ersten Schritt wird der dem Mediationsverfahren zugrunde liegende Konflikt, das Verfahren und seine Ergebnisse dargestellt. Daran schließt sich eine Bewertung der Mediation an, wobei 18 zentrale verfahrens- und ergebnisorientierte Evaluationskriterien herangezogen werden. Die Analyse zeigt, daß die Evaluierung eines Mediationsverfahrens eine recht komplexe Angelegenheit ist und daß sich dies auch in den Bewertungen der Teilnehmer widerspiegelt.

Abstract

Little empirically based social scientific research has been carried out with the aim of evaluating mediation procedures. Generally, such procedures are evaluated retrospectively and on the basis of very general criteria (Was an agreement achieved?). The Social Science Research Centre Berlin (WZB) is conducting a research project into mediation procedures in the field of environmental protection, the central object of study being the mediation procedure undertaken to resolve the dispute over the waste management programme of Neuss County in Germany. This paper presents some results of the accompanying social scientific research, with the aim of evaluating the success of the mediation. It begins by describing the problems underlying the mediation procedure in Neuss, the procedure itself and the results achieved. There then follows an evaluation of this procedure, based on 18 key procedural and results-related criteria for evaluating the success of the mediation. The analysis shows that the evaluation of mediation procedures is a highly complex affair, and that this is reflected in the evaluations made by the participants themselves.

1. Introduction

Since 1990 the Social Science Research Centre Berlin (WZB) has been conducting an interdisciplinary research project into mediation procedures in the field of environmental protection. The study focuses on conflicts arising out of waste management programmes. The central object of study was the mediation procedure set up to resolve the dispute over the waste management programme of Neuss County. This is accompanied by a comparative analysis of mediation procedures elsewhere in Germany and abroad.

The main aim of the research project is to determine whether mediation procedures can be successfully implemented in Germany to resolve environment-related conflicts, and if so under what conditions. Prior to the project, findings of social scientific research into, and evaluation of mediation procedures were not available for Germany. Indeed, even in the English-speaking world, where such procedures have been more commonly used, systematic evaluations of mediation procedures involving environmental issues are largely unknown. The literature on mediation does include on the one hand discussion of the criteria for successful mediation (cf. Lee 1982, Susskind/Cruikshank 1987, Amy 1987), and on the other, enumeration of mediation procedures and calculation of success rates on the basis of two criteria (cf. Bingham 1986): (1) Was an agreement reached? (2) Was the agreement then actually implemented? Only in a very limited number of cases, however, have additional criteria—such as the possibility of cutting costs through mediation, rather than resorting to a judicial ruling on a conflict, or the fairness of the procedure—been considered (cf. Elliot 1994: 118, Goldberg/Sander/Rogers 1992: 148 ff.). No attempt has yet been made to apply systematically the diverse criteria of success proposed in the literature on mediation to individual—not to mention a number of actual—mediation procedures.

The first issue to be taken into account when evaluating mediation procedures is that the success criteria will differ according to the person performing the evaluation—participants, external observers, politicians, members of the legal profession or social scientists. Equally important are the objectives under consideration: the outcome and its impact on those immediately affected, the impact of the outcome on the environment, the effect of the procedure on local politics or the political climate, the effects on public acceptability or the transparency of a political decision, or the efficiency of the decision-

making process in terms of time and cost. Such objectives will be given different weight by different evaluators. Of immediate concern is the way the procedure is evaluated by those participating in it. Social scientists, however, will take into account additional, external criteria when evaluating the procedure. Based on its experiences in Neuss, the WZB team has drawn up a detailed—although not exhaustive—catalogue of possible success criteria¹. In the following, the most important of these criteria will be applied to the mediation procedure in Neuss.

2. The mediation procedure to resolve the dispute over the waste management programme of Neuss County

2.1. Background

The mediation procedure in Neuss, North-Rhine-Westphalia (NRW), was the first mediation procedure to be applied to a waste management programme in Germany. With its 429 000 inhabitants, Neuss is the tenth largest county² in Germany. The economic structure of the six cities and two rural municipalities in the county is heterogeneous, encompassing both rural-agrarian and highly industrialised areas. The county is the world's largest site for lignite power stations and has the highest energy-generation density and the largest lignite reserves in Europe. With a total annual waste volume of 666 000 tonnes, the waste management programme is of great significance in both economic and ecological terms.

The Neuss county council is responsible for disposing of domestic waste and is required by state law (§5a of the NRW waste law) to draw up a waste management programme and to update it regularly. The first waste management programme drawn up by the authority was in 1986; it was updated in 1991. It was this updated programme of 1991 that sparked off the conflict—one which had been brewing under the surface for some time—that was the subject of the mediation procedure. The county administration based its proposal on the premise that the waste volume of 666 000 tonnes per annum would remain constant over the years, as the planned measures to avoid waste would be offset by the expected demographic and economic growth trends. On the basis of this progno-

¹ This catalogue can be found in Fietkau/Weidner 1995: 56 f.

² County (*Kreis*) is the third administrative level in the German political system, after the Federal (*Bund*) and State (*Land*) levels.

sis, an additional waste dump and a domestic-waste incineration plant were planned. A report commissioned by the county administration had already narrowed the choice of potential sites for the incineration plant down to three.

These plans met with stiff resistance from environmental groups and the local population long before the waste management programme was adopted. The environmental groups doubted whether the waste management programme had exhausted every possibility of avoiding and recycling domestic and commercial waste, or that full use was being made of the various procedures to collect separately, sort, and recycle different types of reusable waste, and they believed it was possible to increase the extent to which commercial waste was avoided and recycled. Consequently, they saw no need for the construction of an incineration plant. The capacity, location, and impact on the environment and public health of the incineration plant formed the focal point of the subsequent conflict, and thus became the thorniest issues in the mediation procedure. Critique and resistance came primarily from the representatives of the Green Party on the county council, the local section of the environmental organisation BUND and from a “Citizens’ Action Group Against Waste Incineration”, the core of which consisted of residents living near the location favoured by local politicians and the county council.³

The conflict was typical of current environmental conflict in western democracies, which involve disputes both over fundamental values and over specific land use. On the one hand, the fundamental usefulness of a project is a matter of controversy; there is disagreement within society as to the relative value of alternative uses of the environment (or alternative technologies) and to their costs and benefits for humans and the environment as a whole. Such conflicts are highly politicised, and are often raised to the level of fundamental value conflicts. In general, however, they are implicitly conflicts about the distribution within society of risks and opportunities, costs and benefits. On the other hand, in the case of a concrete project its location also tends to be controversial: it is a question of so-called LULU’s (Locally Unwanted Land Uses). The uneven spatial distribution of costs and benefits leads to the free-rider and NIMBY (Not In My Backyard) syndromes. Why should a small number of people shoulder the burden of a plant from which many derive benefit? Conflicts which encompass both these aspects

³ A more detailed analysis of the conflict over the waste management plan can be found in Holzinger/Lackmann 1995.

are particularly stubborn and, apparently, extremely difficult to solve through standard political processes.

2.2. The course of the mediation procedure

Initial contacts between the head of the Environment Department within the Neuss county administration and the WZB in Berlin were established in December 1990. The local authority expressed an interest in implementing a mediation procedure. In February 1991 the following agreement was reached. The authority was willing to participate in a mediation procedure pertaining to its waste management programme and to support the research interests of the WZB. The WZB was charged with determining the chances of putting such a procedure into practice, its organisational preparation, bearing the direct costs of the procedure, and naming and financing a mediator whose selection was to be confirmed by the potential participants in the procedure. After the most important of the groups affected by the waste management programme had been traced and a suitable mediator sought by members of the WZB team, the mediation project and the proposed mediator were presented to the public in July 1991 at a “Waste Forum Neuss”, an information and discussion event on the waste management programme organised by the county administration. Both the project and the mediator, Prof. Georges Fülgraff⁴, were formally accepted by those attending the event. Having performed this initiating function, the WZB withdrew into the role of scientific observer.

In October 1991 a mediation office was opened in Neuss, and between November 1991 and March 1992 the mediator conducted interviews with potential participants in the procedure. These preliminary interviews suffered from the fact that in September 1991 the county council had already passed the waste management programme, with the result that many groups saw the mediation procedure as “coming too late”. The WZB research team and the mediator had systematically approached all of the social and political organisations that were either directly affected by the waste management programme or who had asked for an opportunity to speak on the issue. Later, some of those approached declined to participate out of lack of interest; the local waste disposal indus-

⁴ The toxicologist Prof. Dr. Georges M. Fülgraff was President of the Federal Health Office (*Bundesgesundheitsamt*) from 1974 to 1980, State Secretary at the Federal Health Ministry from 1980 to 1982, and for six years was a member of the Council of Experts on Environmental Questions. He is currently speaker of the research project “Public Health” at the Technical University in Berlin.

try also did not participate, but this was the result of a decision taken by the mediator (see section 3.1 below). In the event, the following groups did participate in the mediation: the county administration, represented by the heads of the Environment Department and the Waste Office, the heads of the Environment or Waste Departments of the eight local authorities, the four political parties represented in the county council (SPD, CDU, FDP and Green Party), five citizens' action groups from the county (all opposed to the incineration plant), the county offices of the environmental organisation BUND, the German Nature Protection Association, the State Association of Nature and Environmental Groups (LNU), a local office of the German Child Protection Association, the office of the county trade union congress (DGB), the county craftsmen's guild, the chamber of commerce, and finally the Protestant and Catholic churches.

Between 28 March 1992 and 27 August 1993 nine mediation sessions were held with all participants present. The central activity of these meetings was to commission, present and discuss a total of seven expert reports: on the county waste management programme as a whole, on already present risks to public health, on present and subsequent emission levels, on noise levels and the suitability in terms of transport to the three potential locations for the plant, on the technology for treating non-recyclable waste (thermal or biological-mechanical processes) and on the potential for avoiding commercial waste. One meeting was devoted to an expert hearing on legal and technical issues relating to non-recyclable-waste treatment. An additional expert hearing covering a similar range of issues was also held specifically for the citizens' action and environmental groups, in order to inform them about these issues in detail. The selection of experts to be invited was done by consensus of all the participating groups. Supporters as well as opponents of the various waste disposal technologies and concepts were represented. In addition, three co-ordination meetings were held, involving fewer participants, on the commissioning of the reports, together with a number of informal meetings between various groups, both with and without the mediator.

At the ninth mediation session the county administration announced that it was to present a proposal to the county council for setting aside a site for the thermal waste treatment plant. An application was to be made for planning permission within the area development plan, whereby the precise technology to be used remained undecided. For some of the participants, at least, this came as something of a surprise, given that just

two weeks earlier there had been public speculation on possible “intermediate solutions”⁵. Decisive for this unexpected announcement by the county administration were two factors: First, the authority responsible for approving and licencing waste management plants (*Regierungspräsidium*) had put the county administrators under political pressure by (a) intimating that it would not approve a biological-mechanical treatment plant and (b) suggesting that if the County of Neuss did not come to a decision very soon over a waste management programme, the licensing authority itself would determine how best to guarantee waste disposal safety. Second, members of the county council pressured the county administrators to come to a decision quickly, because they wanted to have the whole issue of waste disposal resolved before the start of local election campaigning. The environmental groups, citizens’ action groups and the Green Party declared that they could not support such a proposal and stuck to their demand for biological-mechanical treatment of non-recyclable waste. The political parties (with the exception of the Green Party) took up no position: clearly they did not wish officially to endorse or reject the administrative proposal until it reached the level of the county parliament. Under these conditions the mediator saw no sense in continuing the mediation procedure, although he did declare his willingness to organise and attend further meetings should the need arise.

On 16 September 1993 the county administration’s proposal to reserve a site for the incineration plant and the updated waste management programme was accepted, with certain minor changes, by the county environment committee and subsequently passed by the county council on 29 September. Earlier, on 23 September, the citizens’ action groups and environmental organisations announced at a press conference that they would be fighting the plans for the waste incineration plant through legal action and political protest.

2.3. Results of the mediation procedure

The mediation procedure came to an end, as described above, without a consensus having been reached on either the location of the waste treatment plant or on the technology to be used. Thus in the course of the mediation procedure no solution was found for the

⁵ Press conference of the Head of the County Environment Department and the Chairman of the Environment Committee of the County Council, 6 July 1993; cf. *Neuss-Grevenbroicher Zeitung* (local newspaper), 7 July 1994.

main bone of contention—the choice between incineration or biological-mechanical treatment. At the same time, the setting aside of a site did not mark a point of no return: given that no decisions on capital spending were to be taken until 1995, the final result was still open to change due to technical and political developments. This point was emphasised by the mediator in a statement to the press to mark the end of the mediation procedure, formulated in agreement with the leading participants in the procedure:

Whereas in many areas some progress was made in reconciling the views of the participating administrations, organisations and institutions, the technical solution for non-recyclable waste treatment remained a source of contention. ... Opinions remained divided on this issue right to the end. Should the non-recyclable waste be incinerated, or should it be pre-treated biologically prior to being dumped? The county administration has announced that on 29.09.1993 it will apply to the county council to set aside the site in Neurath for an incineration plant. This does not mean, however, that a decision has been taken to actually build such a plant. No capital spending decision is to be taken until the end of 1995.

Despite the unresolved controversy over the question of waste incineration, it proved possible to achieve a consensus with regard to a number of other issues in the course of the mediation procedure. These include the explicit recognition of existing deficits in the avoidance and recycling of commercial waste, and the drawing up of a special report on this issue. In the area of domestic waste and quasi-domestic commercial waste a consensus was reached on the implementation of more comprehensive avoidance and recycling measures which went beyond the plans made in the waste management programme of 1991. It should be noted in this context that the waste management programme in the Neuss County is to be seen as relatively progressive compared with other local authority programmes: this was shown by a comparative analysis of forty waste management programmes in Germany⁶. In addition, improvements have been made to the data base on waste; waste flows can now be traced in far more complexity and detail. The county administration's projections for the volume of non-recyclable waste—an extremely controversial issue in the course of the mediation procedure—were revised substantially downwards, once during the procedure and again shortly after its termination.

Besides these improvements, a number of positive results in terms of the “political climate” are to be noted: the way in which the procedure was run generated a very high

⁶ Cf. Lackmann/Dirks 1994.

degree of objectivity and professional skill, with an almost complete absence of personal discrimination. All participating groups were able to broaden their information base significantly. Administration was rendered more transparent for the public at large. Environmental and citizens' action groups obtained better access to the administration. The mediation intensified the links both between the environmental and citizens' action groups and between the various environmental administrations of the county.

Two years following the mediation procedure in Neuss, the county's waste disposal plan appeared as follows: As a result of avoidance measures undertaken and the effects of the German packaging directive, waste volumes declined to such an extent that the present disposal sites will be sufficient for far longer than had been assumed initially during planning in 1993. The county council therefore has no further plans for constructing a waste incineration plant. In January 1995, the county environment committee decided to examine the possibilities of working together with other local authorities. In 1996 the County of Neuss signed contracts with two neighbouring communities which offered Neuss incineration capacity.

3. Success criteria and the participants' rating of the procedure

The mediation procedure in Neuss was a success on at least some counts. At the same time, however, since no consensus could be achieved, it cannot be regarded as a "complete success". It is clear therefore that one cannot call a mediation a success based solely upon an agreement's having been reached and implemented. While this is certainly important, it is in no way the only criterion of success. Mediation procedures are tied to many wide-ranging expectations; they are supposed to guarantee win-win solutions, that is, provide welfare gains and, at the same time, ensure fair distribution (cf. Albin 1993, Susskind/Cruikshank 1987): they are supposed to guarantee extensive participation and raise the level of acceptance among the public of governmental decisions (cf. Johnson 1987, Ozawa 1993); a mediation procedure, in terms of procedural justice and efficiency, is supposed to be superior to conventional decision-making procedures by parliaments, administrations or courts of law (cf. Albin 1993, Susskind/Cruikshank 1987). From this set of basic expectations, therefore, evaluation criteria for rating individual procedures are derived. The following list of criteria (see table of procedural criteria and results-related criteria below) is not exhaustive. Nevertheless, the criteria used

here represent key measures of evaluation, because mediation procedures are almost invariably coupled with demands or expectations that these conditions be met; at the same time, the ability to meet such expectations is the characteristic from which mediation procedures derive their potential superiority over conventional conflict resolution procedures.

The expectations or criteria referred to above are related in part to the results of a mediation and in part to the process of mediation itself. As in procedural justice research, it is also useful here to distinguish between process-related and results-related criteria. The criterion of procedural justice is based upon equality, neutrality and stability of rules. Even when the outcome of a procedure is at the expense of one of the participants or groups of persons affected, those individuals should still be treated justly and fairly throughout the process. The outcome of a just procedure has a high claim to legitimacy and, correspondingly, it should enjoy a high degree of public acceptance as well. The basic claim underlying procedural justice research is that a fair procedure can at least in part compensate for dissatisfaction with the outcome (cf. Lind/Tyler 1988, Röhl 1993). For the Neuss mediation, therefore, the question can be raised whether the fact that the result was not a consensual agreement led to an overall negative judgement; and whether, despite the absence of a consensus, the level of acceptance of its outcome was nevertheless increased as a result of the nature of the procedure itself.

Nine procedural and nine results-related criteria will be used to evaluate the Neuss mediation procedure in the following sections.

Procedural criteria

1. *All the relevant actors participated fully in the procedure.*
2. *A consensus on the mediator was reached.*
3. *Individual participants or groups did not abandon the procedure prior to its conclusion.*
4. *The procedural rules were adhered to or changed by consensus.*
5. *Those participating in the mediation procedure rated the way in which it was conducted positively.*
6. *Participants in the procedure rated the mediator positively.*
7. *Debate was conducted openly; there was no resort to tricks.*
8. *Those participating in the procedure retained credibility with their respective organisations/constituencies.*
9. *Consensus was reached on ending the procedure.*

Results-related criteria

1. *Participants in the mediation procedure were able to extend their knowledge of the issue and their knowledge of local politics.*
2. *The participants' increased awareness of the issues has meant a change in their perspectives on the problem.*
3. *Social relations between the participants have improved due to the procedure.*
4. *A compromise was reached with which most/all of the participants could agree.*
5. *The compromise dealt with most/all of the relevant aspects of the problem.*
6. *The results of the mediation were supported by the organisations represented by those participating in the procedure.*
7. *The procedure shortened the time required to resolve the problem.*
8. *The monetary costs of planning were lower as a result of the mediation.*
9. *The participants in the mediation would, under similar circumstances, attend a similar procedure in the future.*

The evaluation of the Neuss mediation is based mainly on the views of participants themselves, supplemented by assessments from the scientific observers. Generally, the success of a mediation can (and must) be judged from an external perspective. The outcome of a mediation should also measure up to this evaluation in terms of its ecological desirability, economic efficiency and distributional effects. Considering the fact, however, that the outcome of the Neuss mediation (to construct a waste incineration plant within the county) was not in accord with the resulting final political decision (to de-

cline to incinerate waste inside Neuss County in favour of co-operating with neighbouring communities), we can dispense with such a comprehensive evaluation of the procedure and focus instead on its acceptance and the acceptance of its outcome by the participants.

The participants' views were established by means of written questionnaires accompanying the procedure, a written questionnaire at its conclusion and three rounds of qualitative interviews, one during the mediation (April 1993), and two after its completion (April and November 1994). The following is based largely on data derived from the concluding questionnaire and the last two rounds of interviews.

3.1. Procedural criteria

(1) *All the relevant actors participated fully in the procedure.*

This criterion was considered to have been met—by and large. In the round of interviews held after the fifth mediation session in April 1993, i.e. after the participants had already had a “taste” of the procedure, the representatives of all the participating organisations were asked whether, in their opinion, all the important groups were represented within the mediation procedure. This question generally caused some racking of brains among those interviewed: in most cases the verdict was that no important group was missing; some respondents mentioned “young people”, or “the trade sector”. The retail trade association had been invited, as it was among those considered to have a potential interest in the matter, but had failed to turn up. More important from the viewpoint of the scientific observers was that the waste disposal industry was not represented. This was a decision taken by the mediator, as the waste disposal industry lacked a local association, and it was not possible to invite all, nor, with a view to fair competition, merely some of the waste disposal firms operating in the county.⁷ Most interviewees appeared surprised when this was pointed out. Some were of the opinion that they would have liked to have had the chance to negotiate with such firms during the mediation; one of the political parties expressed its complete objection to their presence, arguing that the aim of the mediation procedure was for citizens to negotiate with the *political decision-makers*. The majority did not attach great importance to the absence of the waste dis-

⁷ For a more detailed discussion see Holzinger/Weidner 1997, p. 41 f.

posal sector: the largest company operating in the county and potential operator of a waste treatment plant was in any case, it was claimed, being kept up to date on events within the mediation procedure and indeed was “indirectly represented” by local councils running joint waste disposal companies with the firm, or by employees of the corporate group which officially represented other organisations in the mediation. Questioned by us, the waste disposal firm was, incidentally, the only interviewee to take the view that the “significant parties” were not represented at the mediation procedure; the interviewee refused to be more specific, but appears to have referred to important politicians at county and state level.⁸

(2) A consensus was reached on the mediator.

No objections were raised to the mediator proposed by the WZB at the “Waste Forum Neuss” or during the ensuing preliminary discussions with the mediator. The mediator was formally accepted by the participants at the first mediation session. And even subsequently, there was only one participating group that criticised the selection of the mediator: the county council group of the Green Party, who argued that his social status was too high in relation to that of the participating citizens; nor, it was claimed, had he been neutral at a substantive level.⁹ This was not the view taken by the majority of participants, however, as will be shown below.

(3) Individual participants or groups did not abandon the procedure prior to its conclusion.

This criterion, too, was met without exception. No participating organisation explicitly left the procedure as a result of disagreement, or dissatisfaction with the procedure. The representatives of one citizen’s action group (the *Umweltkreis Kaarst-Neuss*) refrained from further direct participation after a number of the meetings, as the group had joined the local BUND association, and felt that it was adequately represented by BUND in the mediation. A number of organisations (e.g. from local communities not affected by decisions on the location, and the LNU) failed to send representatives after an initial

⁸ A detailed description of the concept of participation used in the Neuss mediation and of the role of the waste disposal industry is given in Holzinger/Lackmann 1995, p. 31 ff. and Holzinger/Weidner 1997, p.41 f.

⁹ Kurt Christian/Jutta Sapotnik: Mediation auf dem Prüfstand. Das Mediationsverfahren im Kreis Neuss, in *Wechselwirkung* (1993), vol. 94: 37 ff.

period due to either lack of interest or time.¹⁰ Since these groups were marginal in the sense that they did not have an important role in the conflict, it is reasonable to assume that their withdrawal from the procedure did not effect significantly the further course of debate or the outcome.

(4) *The procedural rules were adhered to or changed by consensus.*

The procedural rules for the mediation procedure in Neuss were limited to a small number of very general stipulations, decided upon beforehand:¹¹ participants were to attempt to tackle the relevant problems in a co-operative way, and not merely to exchange positions and ideas; discussion was to be conducted “fairly” and without personal attacks; statements made by individual participants were not to be quoted or otherwise used without their permission, but each participant should be allowed to comment in public on the results of the meetings; word-for-word minutes were not to be kept, but the results obtained were to be recorded. Representatives of the press were excluded from participating in the meetings, in order to enable participants to act outside the glare of publicity. Despite—or perhaps because of—the small number of vague and widely interpretable rules, virtually no procedural disagreements came to light. These open, and therefore flexible procedural rules were never discussed and thus never changed. The rules governing the “fair treatment” of other participants were adhered to completely. Only in some isolated cases did internal matters relating to other participants escape beyond the walls of the meetings: these cases were discussed within the mediation procedure, and were all swiftly cleared up. Generally, details of the procedure were kept within the four walls of the meetings. Indeed, the agreement was over-zealously adhered to by some groups, who failed to make use of the opportunity to comment publicly on the results of meetings. This was a criticism raised by local journalists, also interviewed by the WZB team. In fact, a mediation procedure that excludes the public in this way is open to the accusation that it fails to meet its own standard of making political decision making more transparent. Exclusion of the press contradicts the usual standards of western democracies; the press cannot fulfil its legitimate democratic function as the so-called “fourth power”. Most of the participants, however, saw no problems with the

¹⁰ These were the reasons given by the groups affected at the interviews held in April 1993. The results of the qualitative survey are presented in Holzinger/Weidner 1997.

¹¹ The precise wording of the procedural agreement can be found in Fietkau/Weidner 1995: 30.

absence of the press. Only at the end of the mediation did a few interviewees voice the opinion that even though the press had been excluded, they should have nevertheless been regularly informed of what was going on.

(5) *Those participating in the mediation procedure rated the way in which it was conducted positively.*

In the concluding survey,¹² conducted after the termination of the mediation procedure participants were asked to assess particular aspects of the procedure. Table 1 shows the distribution of the responses. By and large, participants expressed satisfaction with the form the mediation took. Between 60% and 80% were of the opinion that the frequency and duration of the meetings, the circle of participants, the structure and organisation of the procedure, the availability of the mediator and the support provided by the mediation office were *just right*.

¹² The concluding questionnaire was completed by 45 of the 52 regular participants in the mediation procedure who received a questionnaire (response rate: 87%). Most of the following tables are based on this concluding survey. Full details of the questions, the survey instruments used and the results can be found in Fietkau 1991, Pfingsten/Fietkau 1992 and Pfingsten/Fietkau 1995.

Table 1: Conduct of the Mediation Procedure

“In my opinion the following aspects of the conduct of the mediation procedure were ...”

	<i>“excessive”</i>	<i>“just right”</i>	<i>“unsatisfactory”</i>
Frequency of meetings (n = 43)	9%	79%	12%
Duration of meetings (n = 43)	21%	72%	7%
Number of participants (n = 43)	33%	67%	0%
Availability of mediator (n = 44)	2%	64%	34%
Structure of procedure (n = 41)	7%	63%	29%
Consultation on conduct and structure of procedure (n = 42)	2%	60%	38%
Support from mediation office (n = 41)	0%	68%	32%
Agreements on further co- operation after completion (n=40)	5%	35%	60%

	<i>“too early”</i>	<i>“just right”</i>	<i>“too late”</i>
Start of mediation procedure (n = 44)	0%	32%	68%
End of mediation procedure (n = 43)	47%	42%	12%

Only with regard to the agreements on continued co-operation after the mediation procedure had been wound up did a majority (60%) of participants consider the outcome *unsatisfactory*. A similar picture emerged in the round of interviews held in April 1994, i.e. more than six months after the end of the mediation, in which a number of interviewees stated their view that agreements should have been reached during the course of the mediation on continued contact between participants.

The start and end of the mediation procedure, however, were rated far less positively. As has already been mentioned, prior to the opening of the mediation a number of

groups were of the opinion that it had already come too late, a view which, it seems, was sustained throughout: 68% felt that the procedure had begun *too late*, just 32% that the time of commencement was *just right*. Opinion regarding the termination of the procedure is fairly evenly divided, with just less than half (47%) taking the view that the end came *too early*, while 42% thought that the time was *just right*. The overall view taken of the way the procedure was organised was guardedly positive: on a five-point scale 39% of respondents were more or less in agreement with the statement *All in all I am satisfied with the conduct of the mediation procedure*, 23% were more or less in disagreement, with 38% in the middle.

(6) Participants in the procedure rate the mediator positively.

Evaluations of the mediator were collected both in the parallel survey (which accompanied each meeting after the initial one) and in the concluding survey. The following is restricted solely to the results of the final survey, which reflect views at a point in time at which it was apparent that the concrete result of the mediation would by no means be in line with the interests of all participants. Even so, the assessment of the mediator is—as it had been throughout the parallel surveys—overwhelmingly positive. In other words, the blame for the non-consensual outcome is not laid at the door of the mediator.

Table 2: Evaluation of the Mediator—Behaviour
(responses range from 1, *agree strongly*, to 5, *disagree strongly*)

<i>“The mediator ...”</i>	(1)	(2)	(3)	(4)	(5)
organised the procedure well (n = 44, M = 2.1, s = .8)*	16%	64%	14%	7%	0%
sought a balance between differing points of view (n = 44, M = 2.4, s = .8)	7%	61%	21%	9%	2%
sought to obtain solutions swiftly (n = 44, M = 2.2, s = .9)	16%	57%	16%	11%	0%
involved all participants (n = 44, M = 2.6, s = 1.0)	11%	46%	21%	21%	2%
retained an overall view (n = 44, M = 2.0, s = .8)	25%	57%	14%	4%	0%
brought in his own ideas (n = 44, M = 2.6, s = 1.0)	11%	41%	27%	21%	0%
provided for a good atmosphere (n = 44, M = 2.3, s = .9)	16%	46%	30%	9%	0%
summarised well (n = 44, M = 1.9, s = .8)	30%	57%	11%	0%	2%
focused the discussion on the most important points (n = 44, M = 2.1, s = .9)	23%	55%	16%	5%	2%

*n = number of answers, M = median, s = standard deviation

Table 3: Evaluation of the Mediator—Characteristics
(responses range from 1, *agree strongly*, to 5, *disagree strongly*)

<i>“The mediator was ...”</i>	(1)	(2)	(3)	(4)	(5)
a guiding hand (n = 45, M = 2.2, s = .8)*	13%	62%	16%	9%	0%
well-prepared (n = 45, M = 2.0, s = .8)	24%	56%	13%	7%	0%
pushy (n = 45, M = 2.7, s = 1.2)	20%	29%	18%	29%	4%
competent (n = 45, M = 2.0, s = .8)	24%	58%	13%	4%	0%
patient (n = 45, M = 3.0, s = 1.0)	7%	29%	33%	24%	7%
self-assured (n = 45, M = 2.0, s = .7)	27%	56%	16%	2%	0%
neutral (n = 45, M = 2.3, s = 1.1)	27%	31%	31%	7%	4%
fair (n = 45, M = 2.1, s = .9)	24%	51%	16%	9%	0%
All in all I was satisfied with the mediator (n = 45, M = 2.3, s = 1.0)	18%	51%	20%	7%	4%

*n = number of answers, M = median, s = standard deviation

Although the mediator tended not to get an “A” grade on the five-point scale, he did consistently obtain a “B”. Evaluations were best regarding the quintessential abilities of a “chairperson” (he *sought to obtain solutions swiftly, reconciled different points of view well, retained an overall view, focused the discussion on the most important points*, etc.). His results were not quite so good with regard to “social” and “atmospheric” skills (*involved all participants, provided for a good atmosphere*). He was seen as a *guiding hand* and as *self-assured, well-prepared* and *competent*, also as *fair*, but much less as *patient*—although even here there was a slight majority for those considering him to have been patient to some extent. The responses to the question of the mediator’s neutrality show an almost exactly even distribution across the first three points of the scale. In total 58% saw him as neutral, with just 11% opposed to this view. As far as the overall rating is concerned, 69% of respondents agreed with the statement *All in all I was satisfied with the mediator*; 11% did not.

(7) Debate was conducted openly; there was no resort to tricks.

From the perspective of the social scientific observers, this question can be readily answered in the affirmative, and this view was confirmed by the participants themselves. In the round of interviews held in April 1993—at which time the participants were starting to grapple with the issues of the technology to be used to deal with non-recyclable waste—the interviewees described, with one or two exceptions, the atmosphere and the way of dealing with one another as quite good. Only two instances were mentioned in which groups participating in the mediation procedure felt that they had been “steamrolled” by other groups or the mediator. The first involved the choice of an institute, considered by the environmental groups to be in favour of waste incineration, to draw up an expert report. The second revolved around the invitation of an expert who, with reservations and unexpectedly, expressed support for biological-mechanical treatment, which, in the opinion of the county administration, had a negative impact on the “balance” of the hearing. Thus a “balance” was achieved to a certain extent even with regard to the two instances in which participants did not feel quite fairly treated.

The form of debate was also evaluated on the basis of a number of items in the parallel surveys, with the help of a five-point scale from *1, agree strongly*, to *5, disagree strongly*. In the following, the figures given are the percentage sum of scale-points *1* and *2*—i.e. those who felt that the statement was more or less correct—at the various times measured (second to ninth meetings)¹³.

In the course of the mediation the proportion of respondents who saw the others primarily as opponents varied between 6% and 15%. Almost the same low percentages (between 6% and 16%) saw the meeting in question as confrontational. Moreover, the proportion of respondents of the opinion that they could not be open in their argumentation fluctuated only between 0% and 14%. On the other hand, between 42% and 77% took the view that the others were prepared to co-operate in a constructive way; in the last meeting, however, as it became clear that no agreement would be reached on the central issue, the figure fell to 24%. Generally around 30%—and in the fourth meeting, at which consensus was reached on waste avoidance and recycling measures and the fig-

¹³ Additional results of the evaluation of the procedure within the parallel surveys can be found in Pfingsten/Fietkau 1995.

ures for the volume of non-recyclable waste were revised downwards, as many as 77%—thought that an understanding was being reached between participants.

Table 4: The Form of Debate in the Mediation Procedure
(percentage of *agree/agree strongly* answers given in the second, *t1*, to ninth, *t8*, meetings)

	Meetings							
	t1	t2	t3	t4	t5	t6	t7	t8
Most of the other participants are more or less opposed to my interests.	15	14	8	23	11	12	14	6
The meeting is confrontational.	15	9	16	8	5	12	14	6
If I am to achieve my aims here, I can only rarely be open in my line of argument.	8	14	0	8	0	4	10	12
It is clear from the discussion that most of those here are prepared to co-operate constructively.	43	50	50	77	42	62	64	24
An understanding is being reached between participants in the course of the meeting.	33	21	33	77	21	29	37	24

(8) Those participating in the procedure retained credibility with their respective organisations.

Again, this was considered, by and large, to be the case. The provision of information from the mediation procedure back to participants' respective organisations does not appear to have raised problems in most cases, although it proved less successful with some groups than others: 20% of those questioned agreed with the statement Non-participating persons from my group felt inadequately informed about the proceedings of the mediation. As many as 57% of respondents, on the other hand, said that this was not true of their particular group. Interviews and contextual information indicate that members of one political party in the county council, in particular, complained of an inadequate flow of information from the mediation rounds, and, indeed, occasionally expressed doubts about the legitimacy of the mediation itself. In a few cases there appears to have been some conflicts concerning substantive concessions, the strategic approach and continued participation in the mediation procedure. According to the data drawn together in table 5, however, most organisations experienced either infrequent internal conflict or none at all.

Table 5: Conflict between Participants and their Respective Organisations (responses range from 1, frequently, to 5, never)

“Within my group conflicts arose concerning ...”

	(1)	(2)	(3)	(4)	(5)
substantive concessions (n = 43, M = 3.6, s = 1.2)*	5%	14%	28%	26%	28%
the strategic approach (n = 43, M = 3.5, s = 1.1)	2%	19%	26%	30%	23%
continued participation/withdrawal from the procedure (n = 44, M = 3.3, s = 1.4)	14%	14%	23%	23%	27%

*n = number of answers, M = median, s = standard deviation

(9) Consensus was reached on ending the procedure.

The question of whether the procedure was terminated on a consensual basis is rather more difficult to answer. The mediator's statement that he saw no further point in continuing the mediation procedure was not met by protest on the part of any of the participating organisations. Instead, concluding statements were issued by all parties, justifying once again their respective stances on the question of incineration, and expressing, in retrospect, a positive view of the mediation procedure. Those organisations that were in agreement with the decision taken by the county administration certainly had little occasion to argue for a continuation of proceedings. But what about the opponents of waste incineration, the environmental and citizen's action groups? They had been surprised by the county administration's giving notice that it now intended to set aside a site for an incineration plant. Yet they either shared the view of the mediator that there was now no basis for further negotiations, or possibly even experienced some relief at the fact that they were not being forced to accept a compromise solution which would have fallen short of an unequivocal "no" to waste incineration, a compromise that would have been hard to sell to their respective organisations. If the basic position of an environmental organisation is not to agree to an incineration plant under any circumstances, it is clearly very difficult for their representatives at the sittings of the mediation procedure to allow themselves to be bound by compromises in this respect. Similar considerations apply to citizen's action groups, which have to justify decisions reached on the choice of location in front of their neighbours. During the interviews held after the pro-

cedure had been terminated there were signs that some representatives of the environmental groups had indeed found themselves in such a dilemma. Perhaps they would have nonetheless entered into a compromise if the county administration and the political parties had also been willing to do so. This dilemma may explain the lack of protest at the termination of the mediation procedure, despite the fact, as we have seen, that 47% of the participants in the concluding survey were of the opinion that the mediation had been terminated too early.

3.2. Results-related criteria

(1) *Participants in the mediation procedure were able to extend their knowledge of the issue and of local politics.*

This was certainly the case, and was seen as such by the majority of participants. The statement *I obtained information in the mediation procedure with which I would not otherwise have come into contact* was accepted by 58% of participants in the final survey; just 11% rejected the statement, while the remaining 29% were undecided. The following table describes the areas in which participants in the mediation felt they had learnt something, and the amount they felt they had learnt.

Table 6: Learning Benefits of the Procedure
(responses range from 1, *agree strongly*, to 5, *disagree strongly*)

“In the course of the mediation procedure I have acquired a significant level of additional knowledge in the following areas.”

	(1)	(2)	(3)	(4)	(5)
law (n = 42, M = 2.7, s = 1.3)*	17%	33%	24%	14%	12%
technology (n = 45, M = 2.4, s = 1.0)	22%	36%	27%	16%	0%
the waste management situation in the county (n = 44, M = 2.6, s = 1.3)	25%	23%	27%	16%	9%

*n = number of answers, M = median, s = standard deviation

In all cases around 50% of respondents indicated that they had acquired additional legal and technical knowledge, and information relating to waste and waste management in

the county. The learning effect was greatest with regard to technical knowledge (where no respondent reported having learnt nothing), and least pronounced with regard to county waste management. It should be noted however that the discussion of waste disposal technologies in the mediation procedure was highly specialised, and thus even experts from disposal firms and city administrations encountered new elements, whereas civil servants and members of the county environment committee (who together accounted for more than a third of those questioned) probably had such a high initial level of knowledge with regard to waste and waste management in the county that they did not rate the learning effect so highly.

(2) The participants' increased awareness of the issues has meant a change in their perspectives on the problem.

Participants in the mediation procedure have clearly acquired additional knowledge. Yet this appears to have exerted only a limited impact on their view of the problem or on their attitude towards waste incineration: only a very few respondents reported that their view had changed in the course of the mediation. Respondents were asked to rate the statement *I have changed my view on a number of important substantive issues as a result of the mediation procedure* on a five-point scale from 1, *agree strongly* to 5, *disagree strongly*: Only 9% agreed completely with the statement (1), while 20% accepted it to some extent (2), 29% each considered the statement either more (5) or less (4) incorrect, with 13% placing their cross on the median scale mark (3). This means that despite their greater knowledge of the major issues, almost 60% of those questioned had not changed their perception of them.

(3) Social relations between the participants have improved due to the procedure

The academic observers' view is that the atmosphere between the conflicting parties improved markedly in the course of the mediation procedure, when compared to the period prior to the procedure. As has already been mentioned, interpersonal dealings in the mediation procedure were characterised by fairness and objectivity, nor were there significant confrontational exchanges in public while the procedure was in progress. Indeed, the climate in which the negotiations were held received considerable praise during the interviews held in April 1993. Immediately after termination of the mediation procedure, however, major conflict broke out between the parties once more in the press

and on local television. Once it was clear that no consensus could be reached on the question of waste incineration, the citizens' action groups, in particular, reverted to more vociferous protest. The tone of the subsequent conflict can, however, be at least partly put down to the immanence of major election campaigns, with European, Federal and local elections all taking place in 1994.¹⁴

The concluding questionnaire was sent to participants following the onset of renewed public argument, and thus reflects the way in which the social and tonal aspects of the procedure were evaluated by participants a posteriori.¹⁵ Many saw the opportunity of establishing contacts provided by the mediation procedure as positive: 53% of participants were of the opinion that they had *established contacts in the mediation procedure that would be useful for their on-going work in the environmental field*; 20% did not consider this to be true. Rather more ambiguous and less positive is the level of trust in other groups: only 29% of respondents reported that they had gained greater trust in other groups through the mediation procedure, no deepening of trust was reported by 38%, while as many as 33% were undecided on the issue. Table 7 brings together a number of other views on the impact exerted by the mediation procedure on the social relations among the participants.

¹⁴ For further details on this point cf. Fietkau/Weidner 1995: 49 ff.

¹⁵ In table 4 above a number of evaluations pertaining to "atmosphere" are reproduced from the parallel questionnaires.

Table 7: Effects of the Procedure
(responses range from 1, *agree strongly*, to 5, *disagree strongly*)

“In my opinion effects of the mediation procedure included ...”

	(1)	(2)	(3)	(4)	(5)
improved political climate in the County of Neuss (n = 45, M = 3.8, s = 1.1)*	4%	9%	22%	31%	33%
identification of new possibilities for a solution (n = 45, M = 3.0, s = 1.2)	11%	24%	22%	33%	9%
a balancing of interests (n = 45, M = 3.6, s = 1.2)	2%	18%	24%	24%	31%
a clearing up of misunderstandings (n = 45, M = 3.1, s = 1.1)	4%	29%	36%	18%	13%
improved relations between participants (n = 45, M = 3.0, s = 1.2)	9%	29%	29%	18%	16%
a sound data base for waste management planning (n = 45, M = 2.4, s = 1.1)	18%	44%	18%	16%	4%

*n = number of answers, M = median, s = standard deviation

Although 38% take the view that relationships between the participants had improved, 34% do not believe this to be the case, with 29% undecided. And only 33% believe that misunderstandings were cleared up. Indeed, just 20% thought that a balance of interests had been achieved, with 55% opposed to this view. Scarcely anyone registered an improvement in the political climate in the County of Neuss: 66% are of the opinion that the mediation procedure had not generated this effect. Clearly, though, the political climate in a county can be at best marginally improved by such a procedure; the mediation procedure on the county waste management plan is merely one small element in the complex of factors influencing the political climate of a county.

(4) A compromise was reached with which most/all participants could agree

No generally acceptable compromise was reached with regard to the main bone of contention, the construction and location of a waste incineration plant. In terms of the number of participant organisations, however, it must be said that the majority were in favour of the decision taken—to set aside a site for a thermal non-recyclable-waste treatment plant at Grevenbroich-Neurath. This, at least, is the implication of the concluding

statements made by participants and the voting behaviour by the political parties in the ensuing meetings of the environment committee and the county council. Opposed to the decision at the last mediation session were the Green Party, the three environment groups and the three citizen's action groups present. The remaining political parties, the city authorities and the representatives of business either welcomed the decision or refrained from making a statement.

However, if the responses made by participants in the concluding questionnaire are analysed, no clear majority can be found in favour of the decision. The most readily apparent pattern is one of polarisation. Participants were asked whether they considered the decision in favour of thermal treatment (incineration) and the choice of location *understandable*, *justified in objective terms*, and *satisfactory* (tables 8 and 9). Thus while 53% of respondents found the decision in favour of incineration understandable and 47% considered it justified in objective terms, 40% did not even find it understandable, and 49% considered it unjustified. And in terms of being satisfactory—probably the most important criterion in this context—just 35% considered it to be so, whereas 49% were dissatisfied. Similar patterns emerge with regard to the choice of location: More than 50% found the choice of location understandable, just 42% saw it as justified in objective terms, while the solution was satisfactory for just 35%, with as many as 58% expressing dissatisfaction. Thus if the analysis is based not on the organisations, but rather on the individuals participating in the survey, it cannot even be claimed that *most* of the participants were in favour of the decision. This poses a fundamental question about the appropriate measure of success: should it be based on the degree of satisfaction expressed by the individuals participating in the mediation, should the participating organisations be counted, or the membership of the organisations represented?

Table 8: Satisfaction with the Decision
(responses range from 1, *agree strongly*, to 5, *disagree strongly*)

“I consider the decision in favour of thermal (as opposed to biological-mechanical) waste treatment.”

	(1)	(2)	(3)	(4)	(5)
understandable (n = 45, M = 2.9, s = 1.6)*	24%	29%	7%	13%	27%
justified in objective terms (n = 45, M = 3.2, s = 1.6)	18%	29%	4%	11%	38%
satisfactory (n = 45, M = 3.4, s = 1.5)	13%	22%	16%	7%	42%

*n = number of answers, M = median, s = standard deviation

Table 9: Satisfaction with the Choice of Location
(responses range from 1, *agree strongly*, to 5, *disagree strongly*)

“I consider the choice of location to be set aside for an incineration plant.”

	(1)	(2)	(3)	(4)	(5)
understandable (n = 45, M = 2.7, s = 1.4)*	22%	31%	18%	9%	20%
justified in objective terms (n = 45, M = 3.1, s = 1.5)	18%	24%	16%	13%	29%
satisfactory (n = 45, M = 3.5, s = 1.6)	13%	22%	7%	16%	42%

*n = number of answers, M = median, s = standard deviation

The fact that it proved possible to reach a number of decisions with consensus, relating to waste avoidance and recycling, is also reflected in the participant evaluations expressed in the concluding questionnaire. 55% of respondents took the view that the mediation procedure had helped to improve the waste management programme in the field of waste avoidance, while 25% did not accept this. In the field of recycling 48% identified an improvement, 26% did not. An improvement with regard to waste disposal (and here we are back at the question of the non-recyclable waste treatment plant), on the

other hand, was thought by just 41% to have been achieved, whereas 42% rejected this statement (table 10).

(5) *The compromise deals with most/all of the relevant aspects of the problem.*

The question as to whether this criterion has been met must be answered in the negative. Although consensual solutions were found for a number of relevant aspects of the problem (in the areas of avoidance and recycling), no compromise was reached with regard to the central element of the conflict (incineration plant versus biological-mechanical plant).

Table 10: Improvements in the Waste Management Programme
(responses range from 1, agree strongly, to 5, disagree strongly)

“The mediation procedure has helped in substantive terms to improve the waste management programme in the following areas.”

	(1)	(2)	(3)	(4)	(5)
avoidance (n = 44, M = 2.6, s = 1.3)*	23%	32%	21%	16%	9%
recycling (n = 44, M = 2.7, s = 1.1)	16%	32%	27%	21%	5%
disposal (n = 44, M = 3.1, s = 1.4)	14%	27%	18%	21%	21%

*n = number of answers, M = median, s = standard deviation

(6) *The results of the mediation are supported by the organisations represented by those participating in the procedure.*

To the extent that the results of the procedure are supported by the participating representatives, they also receive the support of their own organisations. Given that no compromise could be reached regarding the main bone of contention, and that participants remained very close to their initial positions, it is clear that no split appeared between organisation and representatives. As has already been alluded to above, however, the possibility of such a split may well have restricted the willingness of participants to negotiate, or, at least, have induced them to accept a non-consensual end to the mediation

procedure. This is true both of the environmental organisations, who would have faced opposition from their state or national associations, or from the local membership, if they had accepted thermal treatment (perhaps a smaller-scale plant or one subject to more stringent emission limits), but also of the administration and county politicians, who, if they had agreed to a biological-mechanical plant—which cannot be considered for approval in the Federal Republic of Germany according to the *Technische Anleitung Siedlungsabfälle* (Technical Guidelines on Municipal Waste)—would have faced a legal battle with the body responsible for granting operating approval.

(7) *The procedure shortened the time required to resolve the problem.*

The time spent on this problem has certainly not been reduced by the mediation procedure. Given that no agreement had been reached on the incineration plant there would have been virtually no chance—assuming that the decision reached by the county council had in fact been implemented—of avoiding lengthy legal battles with local residents. Equally however, the problem-solving stage in Neuss was not extended as a result of the mediation. This is because the administration stated at the time that no capital spending decisions were to be taken before 1995. Thus the mediation did not lead to any delay in this respect. In fact it turned out that time was not quite as pressing as it appeared at the start of the mediation procedure; the county's capacity to dispose of its waste will be sufficient for some time to come, and as mentioned above, the county council has meanwhile abandoned its plan to build a waste incineration plant.

(8) *The monetary costs of planning are lower as a result of the mediation.*

This is almost certainly not the case either. Any mediation procedure incurs additional costs. The mediator must be paid, the meetings organised and held (food and drink, hiring of premises) and, more importantly, additional expert reports are usually commissioned and experts questioned. In the case of the procedure in Neuss, some of the costs were borne by the WZB's project budget (and thus indirectly by the Federal Ministry for Research and Technology); the costs of the additional expert reports were met by the county administration. On top of this come the costs in time borne by those attending the mediation sessions. Compared with the capital cost of a waste incineration plant (the amount in dispute, so to speak), however, all these costs are virtually negligible. Against the costs of a mediation must be set the savings resulting from a swifter and more effi-

cient planning and construction of the incineration plant. Such savings, however, were in any case unlikely: if the plant had actually been built, legal objections—along the avenues provided for in German law—and the consequent delays would have been to be expected. Since the plant is now not to be built, and since this is not due to the mediation procedure, there is clearly no question of money having been saved as a result of the procedure.

(9) *The participants in the mediation would, under similar circumstances, attend a similar procedure in future.*

The question of whether they would attend a similar procedure in future was put directly to participants in the concluding survey. On the five-point scale from 1, *agree strongly*, to 5, *disagree strongly*, the results were: 38% (1), 20% (2), 11% (3), 13% (4) and 18% (5). It is apparent that there is very considerable willingness to participate in such a procedure in future. Moreover, 43% said they would recommend to other communities to undertake a similar procedure in such a situation, while 36% would not do so.

4. Conclusion

In addition to evaluating single aspects, participants were also asked about their overall view of the mediation procedure. The overall satisfaction of the participants with the result of the mediation is somewhat muted: While just 26% supported the statement, *All in all I am satisfied with the outcome of the mediation*, 51% did not accept this view, with 22% undecided. Compared to the situation without a mediation procedure, on the other hand, support for the mediation is fairly high (cf. table 11). 80% of those questioned thought that a more transparent decision-making process would have been unlikely without a mediation procedure; 77% consider that a more consensual result would have been unlikely; as many as 55% think a qualitatively better result unlikely; 56% of participants believe that it is equally likely that the result would have been more favourable for their group without as with the mediation procedure, while the remaining 44% actually consider a more favourable result for their group to have been unlikely in the absence of mediation.

Table 11: Expected Result in the Absence of Mediation

“What do you think would have happened in the absence of the mediation procedure?”

“Without a mediation procedure the following results would have been ...”

	<i>“likely”</i>	<i>“equally likely”</i>	<i>“unlikely”</i>
a more transparent decision process (n = 44)	0%	21%	80%
a qualitatively better result (n = 44)	2%	43%	55%
a more consensual result (n = 44)	0%	23%	77%
a more favourable result for my group (n = 43)	0%	56%	44%

In the final analysis, was the mediation procedure on the waste management programme in the County of Neuss a success or a failure? The answer remains a “definite maybe”. A central aim of the procedure was not achieved: in the case of the main topic of debate no agreement was reached on whether a thermal or a biological-mechanical non-recyclable-waste treatment plant should be built. Yet these are not sufficient grounds to declare the mediation procedure a failure as a whole. The procedure itself was seen as decidedly positive both by the observers from the WZB team and by participants themselves. In addition, a number of substantive results were achieved in the areas of waste data, waste volumes, avoidance, and recycling, and—during the mediation procedure—improvements were registered at the political and tonal levels.

Nor are the evaluations from the participants themselves unambiguous. Some aspects—the mediator, the implementation of the procedure or the information generated, for instance—were seen in a positive light, others—such as the choice of technology and location—more negatively. In most cases the responses were distributed relatively evenly across the scales; nonetheless, in some cases, for example the choice of technology and location, there is clear polarisation. The assessment from the participants was by no means a unanimous one—positive or negative. On the one hand, the judgement on the

outcome was determined by the positions held by each participant in question—which is not surprising—but on the other hand, participants indeed proved able to differentiate between various aspects of the procedure. The fact that no consensus was achieved did not lead to an overall negative judgement of the procedure. At the same time, acceptance of the outcome of the mediation did not increase significantly, because those parties dissatisfied with the result shifted their resistance to other political levels. Therefore, the assumption based on procedural justice theory that a fair and just procedure can compensate for dissatisfaction with the result of that procedure was not really confirmed in Neuss. As it were, the procedure (in comparison to other alternatives) was generally rated positively; however, just procedure and just outcome were obviously seen by the participants as two utterly separate dimensions, so that the one could not make up for the deficits of the other.

References

- Albin, C. (1993): “The Role of Fairness in Negotiation”, in: *Negotiation Journal*, 9, 223-244.
- Amy, D. (1987): *The Politics of Environmental Mediation*, New York: Columbia University Press.
- Bingham, G. (1986): *Resolving Environmental Disputes. A Decade of Experience*, Washington: The Conservation Foundation.
- Elliott, M. (1994): “The Use of Mediation to Resolve Environmental Disputes: Growth, Experiences, and Institutional Transformation in the United States”, in: *Mediation als politischer und sozialer Prozess, Loccumer Protokolle 73/93*, edited by A. Dally, H. Weidner and H.-J. Fietkau, Loccum: Evangelische Akademie, pp. 113-126.
- Fietkau, H.-J. (1991): Psychologische Ansätze zu Mediationsverfahren im Umweltschutz. Schriften zu Mediationsverfahren im Umweltschutz Nr. 1, WZB-Discussion paper FS II 91-302, Berlin: Wissenschaftszentrum für Sozialforschung.
- Fietkau, H.-J.; Weidner, H. (1994): Environmental Mediation: The Mediation Procedure on the Waste Management Plan in the District of Neuss, North Rhine-Westphalia. Initial Results of the Companion Social Science Research. Schriften zu Mediationsverfahren im Umweltschutz Nr. 6, WZB-Discussion paper FS II 94-322, Berlin: Wissenschaftszentrum für Sozialforschung.
- Goldberg, S. B.; Sander, F. E.; Rogers, N. H. (1992): *Dispute Resolution. Negotiation, Mediation and Other Processes*, Boston/Toronto/London: Little Brown and Company.
- Holzinger, K.; Lackmann, B. (1995): Das Neusser Mediationsverfahren: Ausgangssituation, Konfliktbeteiligte, Verfahrensverlauf und Sachergebnisse. Schriften zu Mediationsverfahren im Umweltschutz Nr. 14, WZB-Discussion paper FS II 95-307, Berlin: Wissenschaftszentrum für Sozialforschung.

- Holzinger, K.; Weidner, H. (1997): Das Neusser Mediationsverfahren im politischen Umfeld. Befragungsergebnisse und -methodik. Schriften zu Mediationsverfahren im Umweltschutz Nr. 17, WZB-Discussion paper FS II 97-303, Berlin: Wissenschaftszentrum für Sozialforschung.
- Johnson, B. (1987): "Public Concerns and the Public Role in Siting Nuclear and Chemical Waste Facilities", in: *Environmental Management*, 11, 571-586.
- Lackmann, B., Dirks, H. E. (1994): Abfallwirtschaftliche Maßnahmen in der kommunalen Praxis im Vergleich. Schriften zu Mediationsverfahren im Umweltschutz Nr. 7, WZB-Discussion paper FS II 94-324, Berlin: Wissenschaftszentrum für Sozialforschung.
- Lee, K. N. (1982): "Defining Success in Environmental Dispute Resolution", in: *Resolve*, spring, 1-16.
- Lind, E. A.; Tyler, T. R. (1988). *The Social Psychology of Procedural Justice*, New York: Plenum Press.
- Ozawa, C. P. (1993): "Improving Citizen Participation in Environmental Decision-Making—The Use of Transformative Mediator Techniques", in: *Environment and Planning*, 11, 103-117.
- Pfingsten, K.; Fietkau, H.-J. (1995): Das Neusser Mediationsverfahren aus Sicht der Beteiligten, Ergebnisdarstellung der schriftlichen Befragung. Schriften zu Mediationsverfahren im Umweltschutz Nr. 9, WZB-Discussion paper FS II 95-302, Berlin: Wissenschaftszentrum für Sozialforschung.
- Pfingsten, K.; Fietkau, H.-J. (1992): Mediationsverfahren: Leitgedanken und methodische Erfassungsmöglichkeiten. Schriften zu Mediationsverfahren im Umweltschutz Nr. 2, WZB-Discussion paper FS II 92-305, Berlin: Wissenschaftszentrum für Sozialforschung.
- Röhl, K. F. (1993): "Verfahrensgerechtigkeit (Procedural Justice): Einführung in den Themenbereich und Überblick", in: *Zeitschrift für Rechtssoziologie*, 14, 1-34.
- Susskind, L.; Cruikshank, J. (1987): *Breaking the Impasse. Consensual Approaches to Resolving Public Disputes*, New York: Basic Books.
- Weidner, H. (1993): Mediation as a Policy Instrument for Resolving Environmental Disputes—With Special References to Germany. Schriften zu Mediationsverfahren im Umweltschutz Nr. 3, WZB-Discussion paper FS II 92-305, Berlin: Wissenschaftszentrum für Sozialforschung.