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JOINT COMMISSIONS UNDER REGIONAL BOUNDARY WATERS TREATIES BETWEEN THE KINGDOM OF THE NETHERLANDS AND NEIGHBOURING COUNTRIES

A brief survey

by

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There are various regional boundary waters treaties, both plurilateral and bilateral, to which the Kingdom of the Netherlands and neighbouring countries are parties. Most of these treaties establish a Joint Commission. The Joint Commissions established by the plurilateral treaties are to be considered as international (intergovernmental) organizations. They meet the criteria the Dutch Government has applied therefor. Consequently, Article 92 of the Constitution of the Kingdom of the Netherlands is applicable. The Joint Commissions established by the bilateral treaties in question do not meet these criteria.

The treaties were concluded in French, German and/or Dutch; an English translation is in some cases available in the UN Treaties Series.

The following is a brief survey of the said Commissions and the treaties by which they have been established; see also the treaty database at www.minbuza.nl/treaties.

**Plurilateral treaties**

1. The Mannheim Convention of 17 October 1868 re-established the Central Commission for the Navigation of the Rhine, which was set up in 1815 by the Vienna Congress. The earlier Convention on the subject, concluded on 31 March 1831 at Mainz, was superseded by the Mannheim Convention. From the beginning, the Commission had legislative and judicial powers. It has made

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1. A form of co-operation between states, governed by international law, established by treaty, with common objectives, and with one or more organs.

2. "Legislative, executive and judicial powers may be conferred on international institutions by or pursuant to a treaty, subject, where necessary, to the provisions of Article 91, paragraph 3."


many regulations, which generally have to be transformed into national law. Members are: Belgium, France, Germany, the Netherlands and Switzerland.

The Mannheim Convention was amended in 1898, 1922 and 1963 and supplemented in 1969/2006\(^5\), as well as by — in the course of the years — seven Additional Protocols\(^6\) on various matters. The amending Convention of 20 November 1963\(^7\) contains additional rules on the competences and the procedures of the Central Commission. Recently, the Central Commission has entered into co-operation with the European Commission in Brussels.

2. The purpose of the Convention of 29 April 1963\(^8\) between France, Germany, Luxembourg, the Netherlands and Switzerland was to establish the International Commission for the Protection of the Rhine Against Pollution.

The Commission was to undertake research and prepare measures to be adopted by the governments. An Additional Agreement was concluded on 3 December 1976\(^9\) in order to enable the EEC to become a party to the Convention, and thus a member of the International Commission. The Convention and the Agreement have terminated on 1 January 2003 (see below).

The International Commission was made competent for monitoring under the Conventions of 3 December 1976\(^10\) concerning the protection of the Rhine against chemical pollution and concerning pollution by chlorides. Proposals of the Commission to bring other pollutants under the former Convention\(^11\) did not take effect owing to a lack of ratifications.

3. On 12 April 1999, the Convention on the Protection of the Rhine\(^12\) was concluded between France, Germany, Luxembourg, the Netherlands, Switzerland and the European Community. This Convention is the successor of the Convention of 29 April 1963, and takes over its Commission as the International Commission for the Protection of the Rhine. The Commission has legal personality and a secretariat established at Coblence. The purpose of this Convention is, inter alia, the sustainable development of the ecosystem of the Rhine (quality of its water, biodiversity, protection of animal life and plants), measures against pollution, safeguarding the use of its water for drinking.

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5. See Trb. 2007, no. 33 for references. A consolidated text is not available as yet.
8. Trb. 1963, no. 104; UNTS no. 994.
9. Trb. 1977, no. 31; UNTS no. 1124.
10. Trb. 1977, nos 32 and 33; UNTS nos 1124 and 1404.
4. More treaties have been concluded between the Rhine river states on specific matters, e.g. the Agreement concerning the Social Security of Rhine Boatmen of 30 November 1979, superseding two previous agreements, all concluded in the framework of the International Labour Organisation.

5. On 3 December 2002, two important agreements were signed concerning the Meuse and the Scheldt rivers. Parties are Belgium, France, Germany, Luxembourg and the Netherlands. The purpose of these agreements is sustainable water management in the river regions. Under both agreements an International Commission has been set up. They have been given the competence to implement the agreements, and they co-ordinate the implementation of the European Union Directive on Water Policy of 23 October 2000. There are secretariats in respectively Liège and Antwerp.

Both agreements replace previous agreements for the protection of the Meuse and Scheldt rivers which were concluded on 26 April 1994. Under both agreements an International Commission for the Protection of the River Against Pollution was set up. These Commissions were to monitor and to evaluate the co-operation of the parties on the improvement of water quality.

**Bilateral treaties with Germany**

1. Several treaties between the Kingdom of the Netherlands and the Federal Republic of Germany were signed on 8 April 1960 in order to settle outstanding issues after the war, the most important being the General Treaty between the Kingdom of the Netherlands and the Federal Republic of Germany for the settlement of frontier matters and other problems outstanding between the two countries, with an annex, the Treaty between the Kingdom of the Netherlands and the Federal Republic of Germany concerning the course of the common frontier, the boundary waters, real property situated near the frontier, traffic crossing the frontier on land and via inland waters, and other frontier matters. The latter treaty (Frontier Treaty) establishes a Frontier Commission, for the purpose of definition, inspection and correction. It also establishes a Permanent Netherlands-German Boundary Waters Commission. Its functions are the implementation of the Chapter on boundary water issues (drainage, pollution, advice). This Chapter is not applicable to the Rhine, the Ems or the Dollard rivers.

14. Trb. 2003, nos 75 and 76.
15. OJEC L 327 of 2000.
17. Trb. 1960, nos 67 and 68; UNTS no. 508.
2. Another annex to the General Treaty is the Treaty between the Kingdom of the Netherlands and the Federal Republic of Germany concerning arrangements for co-operation in the Ems estuary (Ems-Dollard Treaty).\textsuperscript{18} This treaty provides for a Permanent Netherlands-German Ems Commission. Its purpose is technical advising and inspection.

3. On 22 August 1996, an important Protocol, additional to the Ems-Dollard Treaty\textsuperscript{19}, was concluded in order to regulate co-operation in the field of environment in the Ems estuary. Its aim is the preservation and improvement of water control and quality, and the protection of ecological functions.

The tasks of the Permanent Netherlands-German Boundary Waters Commission were extended under the Protocol.

4. In the course of the years, more than 30 implementing agreements\textsuperscript{20} have been concluded between the two countries or between their authorities in the framework of the Frontier Treaty, \textit{e.g.} on boundary brooks, pumping-stations, bridges, etc.

\textbf{Bilateral treaties with Belgium}

1. The first of several treaties between the Kingdom of the Netherlands and the Kingdom of Belgium was the Treaty of 19 April 1839 concerning the territories of the two states.\textsuperscript{21} A Permanent Commission on Navigation was established. Under this Commission, other Commissions were established.

2. As a sequel to the 1839 Treaty, several agreements were concluded on waterways common to the two countries and on matters related to those waterways, \textit{e.g.} on canals and pilotage charges.\textsuperscript{22} These agreements mainly concern the navigation on the Scheldt and Meuse rivers, and have been supplemented and amended many times. Under these agreements, both governments appointed Commissioners who would meet regularly and were competent for the implementation of the technical and financial rules, laid down for the first time in a Treaty of 20 May 1843, with Regulations for, \textit{inter alia}, the Scheldt river and the Meuse river.\textsuperscript{23} The Commissioners for the Scheldt river still meet for this purpose. The subject matter of the agreements concerned, however, has in the course of

\textsuperscript{18} Trb. 1960, no. 69; UNTS nos 508 and 509.
\textsuperscript{19} Trb. 1996, no. 258.
\textsuperscript{20} See Trb. 1997, no. 92 for references.
\textsuperscript{21} Stb. 1839, no. 26.
\textsuperscript{22} See Trb. 2001, no. 182 for references.
\textsuperscript{23} Stb. 1843, no. 45.
the years become the competence of the Flemish Region of Belgium. Only parts of these agreements remain applicable; see below.

**Bilateral treaties with the Flemish Region**

On 21 December 2005, four important treaties were concluded between the Kingdom of the Netherlands and the Flemish Region, concerning:
1. the termination of the mutual linking of the tariffs for pilotage charges;
2. the common nautical administration in the Scheldt region;
3. the co-operation in the field of policy and administration in the Scheldt estuary;
4. the implementation of the development plan 2010 for the Scheldt estuary.\(^{24}\)

Most of these treaties build on and modify the Treaty of 19 April 1839 with Belgium as well as the subsequent treaties with Belgium on common waters.\(^ {25}\) The treaty referred to under 1 entered into force on 30 September 2008;\(^ {26}\) the three other treaties entered into force on 1 October 2008.

The treaty under 2 re-establishes the Permanent Commission Supervising the Navigation on the Scheldt River, instituted under the Treaty of 1839. The two Belgian Commissioners are replaced by two Flemish Commissioners. The two Dutch Commissioners are re-instated. The treaty also establishes a Joint Nautical Authority, composed of one high official of either party. A secretariat is also set up for both institutions.

The treaty under 3 is not really linked to the Treaty of 1839. Its purpose is co-operation between the Netherlands and Flanders in order to realize common policies and a common administration in the Scheldt estuary with a view to a multifunctional and sustainable water system. Specific objectives are protection against floods, better accessibility of the ports, and a healthy ecosystem.

The treaty sets up a new and major joint Commission, the Flemish-Dutch Scheldt Commission. This Commission consists of a Sub-commission for Policy, a Sub-commission for Administration, and an Executive Secretariat. The functions of the Commission are:
- prepare, decide on and implement plans, programmes and projects;
- set up and supervise joint physical monitoring and scientific research;
- develop initiatives in other fields, e.g. agriculture, tourism and fisheries.

Governments are represented by the competent ministers in the Sub-commission for Policy. In both Sub-commissions, decisions are taken by consensus.

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26. The measures mentioned in Articles 1, 2 and 3 enter into force on 1 January 2009.
On the Flemish side, this treaty was not only signed by the Flemish Region, but also by the Flemish Community, in view of its scope.\textsuperscript{27}

The treaty under 4 only refers to the Technical Commission for the Scheldt river, established by the competent ministers of Belgium, Luxembourg and the Netherlands in 1948. This Commission is incorporated in the new Flemish-Dutch Scheldt Commission.\textsuperscript{28}

\textit{Concluding remarks}

A significant number of treaties relating to boundary waters has been concluded between the Netherlands and its neighbouring countries in the course of the years. And it is remarkable that there appears to have been a frequent need for amending or supplementing them, or for replacing them. As a matter of fact, the life span of these treaties is relatively short, in any event shorter than that of the average treaty on different subjects.

It is also clear that the functions and competences of the Joint Commissions under the treaties have developed over the years. Subjects shift from frontier and navigation matters to pollution, and finally to all matters relating to the use and quality of water.

All this has produced a very complicated regime and presents a somewhat confusing picture. It is undoubtedly difficult for the implementing officials, and for the citizens, to know precisely which rule or decision is applicable in a given situation. New treaties should as clearly as possible determine which previous treaties or provisions are superseded by them.

\textsuperscript{27} For the implementation of this treaty, all competences had not yet been transferred from the Flemish Community to the Flemish Region.

\textsuperscript{28} Under this treaty, inundation of a polder on the Dutch-Belgian border is provided for.