

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE FRENCH REPUBLIC AND THE KINGDOM OF BELGIUM CONCERNING IMPROVEMENT OF THE COMMON RIVER LYS BETWEEN DEULEMONT AND MENIN

The Government of the French Republic and
The Government of the Kingdom of Belgium,

Noting the alterations carried out jointly by the two countries on the common reach of the River Lys,

Desiring to improve still further the river connections between the two countries and protection against flooding,

Have agreed as follows:

Article 1. PURPOSE OF THE CONVENTION

Alterations on the common River Lys between Pont Rouge at Deulemont and Pont de Menin, hereinafter referred to as "the common River Lys", shall be carried out in order to permit navigation by ships or convoys of 1,350 tonnes and to facilitate the draining of flood waters.

Article 2. DESCRIPTION OF WORKS

1. The alterations on the common River Lys referred to in article 1 shall comprise:

- (a) Constructing while maintaining the level of the reaches, a dam with a new lock at Menin and demolishing the existing lock;
- (b) Rectifying the course of the river and the partial or total filling in of certain abandoned sections;
- (c) Widening and deepening the river to make it suitable for navigation by ships or convoys of 1,350 tonnes;
- (d) Building new bridges at Warneton and Halluin and raising the bridge at Wervicq;
- (e) Lining banks and consolidating embankments with due regard for the environment;
- (f) All definitive or temporary work necessitated by the above-mentioned alterations or which, in the opinion of both Contracting States, is likely to eliminate, limit or compensate for damage caused by the alterations.

2. The work referred to in paragraph 1 shall be carried out in accordance with the work specifications and general plan annexed to this Convention

¹ Came into force on 1 July 1983, i.e., the first day of the month following the date of receipt (22 June 1983) of the last of the notifications by which the Parties had informed each other of the completion of the required procedure, in accordance with article 14.

(annexes I and II'). These documents may be amended or supplemented only if so agreed by both the Belgian and the French ministers responsible for navigable waterways and on the advice of the Commission referred to in article 9.

Article 3. CARRYING OUT ALTERATIONS ON THE COMMON RIVER LYS

1. France shall take care of the acquisitions, works and operations described in annex III. Belgium shall take care of the other acquisitions, works and operations for implementing the Convention.

2. The Contracting States shall keep one another informed of the projects and tenders for the works each is to undertake. On the entry into force of the Convention, they shall inform one another of the timetables of works for which each is responsible and shall ensure that the works are co-ordinated.

3. Each Contracting State shall carry out the works for which it is responsible as well as all operations necessary for their completion in accordance with the provisions governing works of the same kind undertaken for the State in its territory. It shall make sure that the immovable property situated in its territory is handed over at the appropriate time to the other State for carrying out the works for which that other State is responsible.

4. The services responsible for carrying out the works shall confer before acceptance. At the appropriate time they shall exchange the definitive verification reports and transmit them to the Commission referred to in article 9.

5. The abandoned loops of the common River Lys shall be dealt with individually, but in principle in accordance with the general plan set out in annex II. By mutual consent the two Contracting States shall decide either to fill in the loops or to keep them supplied with water in which case providing a suitable flow for safety. Filling in shall not impair existing rights of access to the stretch of water concerned. Public or private installations built on the river (quays, landing stages, intakes, drainage collectors, etc.) shall be replaced by some appropriate structure or device.

6. The Contracting States shall endeavour to complete the works for which they are responsible within five years from the entry into force of the Convention.

7. Each Contracting State shall transmit to the other, at the end of each calendar year, the following year's programme of works for which it is responsible and an outline of the works planned for the next year thereafter.

Article 4. APPORTIONMENT OF THE COSTS OF CARRYING OUT THE WORKS

1. Each Contracting State shall bear the costs for the works which it supervises.

2. In each territory the costs referred to in paragraph 1 shall include the compensation which the public authorities are obliged to pay under the laws and regulations in force.

Article 5. SETTLEMENT OF CLAIMS

Any damage related to the works which is claimed and acknowledged prior to the report on completion of the work shall be the responsibility of the State whose local service was in charge: any damage related to the works which is claimed and

¹ For annex II, see insert in a pocket at the end of this volume.

acknowledged after the report on completion shall be the responsibility of the State in whose territory it occurred.

Article 6. MAINTENANCE AND SERVICING OF WORKS

1. France shall assume responsibility for, and the cost of, dredging the common River Lys upstream from the new Comines lock. Belgium shall likewise assume the responsibility and cost downstream.

2. Responsibility for, and the cost of maintaining, the banks of the common River Lys shall be assumed by France in respect of the south bank and by Belgium in respect of the north bank.

3. Belgium shall assume responsibility for maintaining and operating the lock to be built at Menin. France shall make a financial contribution to Belgium three months after the lock enters into service, calculated in accordance with the formula in annex IV.

4. Belgium shall assume responsibility for, and the cost of, maintaining the new Warneton and Wervicq bridges, France shall assume responsibility for, and the cost of, maintaining Comines bridge.

Article 7. CUSTOMS AND TAX QUESTIONS

1. Each of the Contracting States shall admit temporarily free of import duties such equipment, tools and spare parts as have originated in the other State or which are in free circulation there, to the extent that they may be required for constructing or maintaining the works.

The competent tax and customs administrations shall confer and render each other such assistance as may be required for implementing their national legislation and regulations.

The officials of these administrations may move freely on the sites referred to in article 2 of this Convention and carry out there the measures laid down in the legislation and regulations of their respective countries.

2. Notwithstanding the provisions of article 4, paragraph 4, subparagraph (g), of the Convention between Belgium and France for the Avoidance of Double Taxation and the Establishment of Rules of Reciprocal Administrative and Legal Assistance with respect to Taxes on Income of 10 March 1964,¹ the part of the building site which is established by an entrepreneur residing in one of the Contracting States and is situated in the territory of the other State shall not be deemed to be a permanent establishment within the meaning of the aforementioned Convention.

Furthermore, in application of the provisions of article 11 of the said Convention, the wages paid to workers on the sites shall be taxable only in the State of which the recipient is a resident within the meaning of article 1 of the aforementioned Convention.

Difficulties to which implementation of this paragraph might give rise shall be resolved under the said Convention.

¹ United Nations, *Treaty Series*, vol. 557, p. 13.

Should the said Convention of 10 March 1964 be amended or superseded by a new Convention, reference to the aforementioned Convention shall be deemed to relate to the new Convention.

3. The Contracting States shall place no obstacle and shall levy no tax on transfers of funds between the two States resulting from the provisions of this Convention.

4. The Contracting States shall confer, should the need arise, on the implementation of any measure of a general nature taken by one of them that would lead to changing their respective situations with regard to the implementation of this article. Such a measure might be the introduction by one of them of duties and taxes which did not exist on the date of signature of this Convention.

Article 8. RIGHTS OF ACCESS

1. Members of the Commission established under article 9, as well as the officials of each Contracting State and the persons participating in the works described in articles 2 and 6 shall, in order to fulfil their duties, have the right to cross the border and remain at the sites and structures situated in Belgian or French territory so long as they are in possession of entry documents valid for that purpose. In performing their duties they shall also carry a document indicating their status and produce it on demand.

2. The Contracting State shall at any time, assume responsibility for persons who may have entered the territory of the other State in violation of this Convention.

Article 9. IMPLEMENTATION OF THE CONVENTION

1. A Franco-Belgian Commission shall be established to monitor the work and ensure that this Convention is properly implemented.

2. The Commission shall be composed of representatives of the Ministers for Foreign Affairs and the ministers in charge of navigable waterways. Each delegation shall consist of at least three and not more than five members. They may, should the need arise, be assisted by experts.

3. The Commission shall meet at the request of one of the delegations and at least once a year. The heads of delegation shall alternate as chairman for periods of one year. Its decisions on all matters falling within its competence shall be by consensus.

The Commission shall establish its rules of procedure and submit them for the approval of the Contracting States.

4. The Commission shall:

- (a) Give advice every year on the timetable and work programme;
- (b) Give its advice on work projects and ensure that they are carried out in accordance with the projects on which it has decided.
- (c) Monitor administrative procedures and ensure that decisions are co-ordinated;
- (d) Ensure co-ordination of maintenance operations;
- (e) Consider the various questions that may arise from implementation of this Convention, and in particular give its advice on any amendments or additions

that may have to be made, in accordance with article 2, paragraph 2, and annexes I and II of this Convention;

- (f) Give advice, if necessary, on the interpretation and implementation of this Convention;
- (g) Propose measures for protecting the public and private interests referred to in article 10.

Article 10. INTERESTS OF ADJACENT LANDOWNERS

1. The Contracting States shall take all appropriate action to protect the public and private interests concerned and in particular to ensure so far as possible, that access to the new reach of the common River Lys is given to adjacent landowners at their request.

2. If frontier alterations subsequently prove necessary, the Contracting States shall confer with a view to concluding an agreement to that effect, and to that end they may take the advice of the Commission established under article 9.

Article 11. SETTLEMENT OF DISPUTES BY NEGOTIATION

Disputes concerning the interpretation or implementation of this Convention must, so far as possible, be settled by negotiation between the Contracting States. To that end, each may request the advice of the Commission referred to in article 9.

Article 12. SETTLEMENT OF DISPUTES BY ARBITRATION

1. Any dispute concerning the interpretation or implementation of this Convention which could not be settled by negotiation between the Contracting States shall be submitted to an arbitration tribunal at the request of one of the Contracting States in accordance with the procedure laid down in annex V of this Convention.

2. The awards of the arbitration tribunal shall be binding on the Contracting States.

Article 13. ANNEXES

Annexes I to V of this Convention shall form an integral part thereof.

Article 14

Each of the Contracting States shall notify the other that the procedures required in its territory for the entry into force of this Convention have been completed.

The Convention shall enter into force on the first day of the month following the date on which the last of the two notifications was received.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have affixed their signatures to this Convention.

DONE at Brussels, on 3 February 1982, in duplicate, in the French and Dutch languages, both texts being equally authentic.

For the French Government:

[Signed]

R. VAURS
Ambassador of France

For the Belgian Government:

[Signed]

L. TINDEMANS
Minister of Foreign Affairs

ANNEX I

DESCRIPTION OF WORKS REFERRED TO IN ARTICLE 2, PARAGRAPH 1

(a) *Menin dam-lock complex*

The new Menin dam shall have two openings, 12.5 m wide and at least 4.5 m deep, below the normal level of upstream navigation.

The new Menin lock shall have the same specifications as those of the new Comines lock, i.e.:

- Useful length of 185 m;
- Useful width of 12.5 m;
- A depth of 4.5 m below the normal level of downstream navigation.

It shall have a communicating lock gate.

(b) *Rectifying the course of the common Lys River**Course*

The course of the common Lys River shall be altered in accordance with the plan annexed to the Convention (annex II).

The bends shall have a radius of 1,200 m, except at the mouth of the Deûle where in transition they shall have radiuses of 800 m and 1,100 m, and at Comines bridge where, over a short distance, there shall be a bend with a radius of 800 m. These radiuses (*R*) shall be measured from the axis of the river.

Extra widths of $\frac{80^2}{2 \times R}$ shall be adopted.

Dumping zones

Each of the Contracting States shall take in on its territory 50 per cent of the total volume of excavated material.

In order to make the best use of the dumping zones in the two States, after completion of the work and in accordance with the instructions in the town-planning and land-use documents, these zones shall be topped off as follows:

- On the river side, the dump shall be no higher than 2.5 m above the normal navigation level of the reach in question;
- On the other side it shall be no higher than 2.5 m above the level of the natural terrain;
- There shall be an overall slope of 1 to 2 per cent towards the river or inwards from the dump, the line of slope being roughly perpendicular to the axis of the new course of the common Lys River.

(c) *Widening and deepening the river**I. Longitudinal profile*

The new lock and dam at Menin-Halluin shall be built and the existing water level maintained, except immediately downstream from the new Comines lock where the normal navigation level shall be 9.59 m (F.D.L.) or 11.83 m (S.D.L.) over 930 m up to the former lock, and downstream from the lock being built at Menin-Halluin where the normal navigation level of the Menin-Harelbeke reach (7.94 m) (F.D.L.) or 10.18 m (S.D.L.) shall be ensured up to the end of the common section of the River Lys.

The bottom of the common River Lys shall be at least 3.5 m. below the normal navigation level in all places so as to permit the safe passage of vessels with a draught of 2.5 m.

II. *Cross section*

(1) Houplines-Comines reach downstream from Deulemont

- Trapezoidal section, bottom width at 3.5 m below the normal navigation level: 28 m;
- Rectangular section, width wall to wall: 33 m;

(2) Comines-Menin/Halluin reach

- Trapezoidal section, bottom width at 3.93 m below the normal navigation level: 26 m;
- Rectangular section, width wall to wall: 33 m;

(3) Menin/Halluin-Harelbeke reach upstream from Menin bridge

- Trapezoidal section, bottom width at 3.50 m below the normal navigation level: 28 m.

III. *Protection of banks*

The protection of banks and types of defence shall be determined depending on the nature of the terrain.

(d) *Warneton, Halluin and Wervicq bridges*

The Warneton and Halluin bridges shall be built with the following specifications:

- Navigable opening: 33 m;
- Headroom: 6.50 m above the normal navigation level;
- Service roads on each bank: 5 m wide and 4.50 m headroom.

Wervicq bridge shall have the same specifications.

(e) *Basins*

Subject to implementation of article 10, two basins permitting access for ships of 1,350 tonnes shall be constructed on the existing sections of the common River Lys at Bousbecque and at Wervicq-Sud at right angles to the existing port installations.

[ANNEX II]

GENERAL PLAN

[See insert in a pocket at the end of this volume.]

ANNEX III

ACQUISITIONS, WORKS AND OPERATIONS TO BE CARRIED OUT BY FRANCE UNDER ARTICLE 3, PARAGRAPH 1, OF THE CONVENTION

1. Acquisitions of immovable property for all operations in French territory.

These acquisitions shall include those which are necessary for building Wervicq bridge.

France shall also settle matters of compensation and damage connected with acquisitions of land and the anticipated implications thereof.

2. Works of art: Warneton bridge, the bridge over Halluin cut-off.

3. Works for protecting banks and embankments situated upstream from Comines lock and its appurtenances.

4. Wervicq cut-off situated in French territory and Halluin cut-off.

5. Alteration of the French bank of the common River Lys serving the adjoining landowners of Wervicq-Sud.

ANNEX IV

SHARING OF THE COSTS OF MAINTAINING AND OPERATING MENIN LOCK
AS REFERRED TO IN ARTICLE 6, PARAGRAPH 3, OF THE CONVENTION

1. The costs of maintaining and operating the lock to be built at Menin, calculated as initial capital on the date of entry into service of the lock, are reckoned, as on 1 June 1978, including VAT, to be: 4 M French francs (FF) or 29.9 M Belgian francs (BF) at the exchange rate of 1 French franc = 7.45 Belgian francs.

2. Three months after the entry into service of the lock, France shall pay Belgium one half of the sum estimated above, updated using the following formula:

$$P = KP_0$$

$$K = 0.75 \frac{S}{S_0} + 0.10 \frac{G}{G_0} + 0.15 \frac{I}{I_0}$$

P = Updated sum to be paid

K = Updating factor

P₀ = 2 M FF or 14.9 M BF

S = Gross annual salary, as on the date of entry into service of the lock, of a head lock-keeper with 15 years' service, scale 443

S₀ = The same salary as on 1 July 1978: 346,600 BF per annum

G = Reference price of gas oil TP No. 550 on the date of entry into service of the lock

G₀ = Same reference price as on 1 July 1978: 4.84 BF/l

I = Value of the conventional and contractual monthly index calculated by the Industry Department of the Ministry of Economic Affairs on the basis of an annual consumption of the major equipment and materials by the construction industry on the domestic market.

I₀ = The same index as on 1 July 1978: 2,061

ANNEX V

ARBITRATION

1. Unless otherwise provided by the parties to the dispute, the arbitration procedure shall be conducted in accordance with the provisions of this annex.

2. The arbitration tribunal shall be composed of three members; each party to the dispute shall appoint one arbitrator, and the two arbitrators thus appointed shall nominate the third arbitrator who shall serve as chairman of the tribunal. The chairman shall not be a national of either party; he shall not have his normal residence in the territory of one of the parties or be in the service of one of them or be connected with, or have been in any way connected with, the interests involved.

3. If, two months after the appointment of the second arbitrator, the chairman of the tribunal has not been nominated, the Secretary-General of the Permanent Court of Arbitration shall appoint the chairman at the request of the earlier petitioner within a further period of two months.

4. If, within two months following receipt of the request mentioned in article 12 of the Convention, one of the parties to the dispute has not made the appointment of a member of the tribunal that is incumbent upon it, the other party may refer the matter to the

Secretary-General of the Permanent Court of Arbitration who shall appoint the chairman of the arbitration tribunal within a further period of two months. Once he has been appointed, the chairman of the arbitration tribunal shall request the party that has not appointed an arbitrator to do so within two months. Once the period of two months has elapsed, he shall refer the matter to the Secretary-General of the Permanent Court of Arbitration who shall make the appointment within a further period of two months.

5. The above provisions shall apply, according to the circumstances, to filling vacancies on the tribunal.

6. The arbitration tribunal shall reach its decisions in accordance with the rules of international law, particularly the provisions of this Convention.

7. Where both procedural and substantive matters are concerned, the arbitration tribunal shall reach its decisions by a majority of the votes of its members, and the absence of or an abstention by one of the members appointed by the parties shall not prevent the tribunal from giving a ruling. In the event of a tie, the vote of the chairman shall be decisive.

8. Each party shall bear the costs relating to the arbitrator appointed by it, and the two parties shall bear an equal share of all other costs.

9. Subject to the provisions of this annex the arbitration tribunal shall determine its own procedure.
