

No. 11133

NETHERLANDS
and
FEDERAL REPUBLIC OF GERMANY

Treaty concerning the use of Netherlands territorial waters and ports by N.S. *Otto Hahn* (with interpretative exchange of letters dated on 18 February 1971). Signed at The Hague on 28 October 1968

Authentic texts: Dutch and German.

Registered by the Netherlands on 7 June 1971.

PAYS-BAS
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE

Accord relatif à l'utilisation des eaux territoriales et des ports néerlandais par le navire nucléaire *Otto Hahn* (avec échange de lettres interprétatif en date du 18 février 1971). Signé à La Haye le 28 octobre 1968

Textes authentiques: néerlandais et allemand.

Enregistré par les Pays-Bas le 7 juin 1971.

[TRANSLATION — TRADUCTION]

TREATY¹ BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE FEDERAL REPUBLIC OF GERMANY CONCERNING THE USE OF NETHERLANDS TERRITORIAL WATERS AND PORTS BY N.S. *OTTO HAHN*

The Kingdom of the Netherlands and the Federal Republic of Germany,
Desiring to promote for their mutual benefit the peaceful use of nuclear energy, including its application in respect of merchant shipping,

Have agreed as follows:

Article 1

(1) Entry into and use of Netherlands territorial waters and ports by the N.S. *Otto Hahn* (hereinafter referred to as “ the ship ”), at present owned by the “ Gesellschaft für Kernenergieverwertung in Schiffbau und Schifffahrt mbH, Hamburg ”, shall require the prior consent of the Government of the Kingdom of the Netherlands.

(2) The Government of the Federal Republic of Germany shall inform the Government of the Kingdom of the Netherlands of any change of ownership.

Article 2

Unless expressly stated otherwise in this Treaty, the use by the ship of Netherlands territorial waters and ports shall be subject to the principles and procedures laid down in chapter VIII of the International Convention for the Safety of Life at Sea, 1960,² and in annex C of the Final Act of the International Conference on Safety of Life at Sea, 1960.³

Article 3

The Government of the Kingdom of the Netherlands shall specify, at the request of the owner, the territorial waters and the port or ports which may

¹ Came into force on 18 March 1971, i.e. one month after the exchange of the instruments of ratification, which took place at Bonn on 18 February 1971, in accordance with article 27.

² United Nations, *Treaty Series*, vol. 536, p. 27.

³ *Ibid.*, p. 400.

be visited, and shall further specify the authorities which are competent in respect of the more detailed requirements concerning entry, stay and the special control referred to in chapter VIII, regulation 11, of the Convention for the Safety of Life at Sea.

Article 4

(1) To enable the Government of the Kingdom of the Netherlands to consider whether its consent should be given to the entry into and use of Netherlands territorial waters and ports by the ship, the owner shall submit a Safety Assessment, as provided for in chapter VIII, regulation 7, of the Convention for the Safety of Life at Sea and in the Recommendations in annex C to the Final Act of the International Conference on Safety of Life at Sea, 1960.

(2) The Government of the Kingdom of the Netherlands shall notify the Government of the Federal Republic of Germany, immediately upon receipt of the Safety Assessment and of the owner's request submitted in accordance with article 3, of the Netherlands territorial waters and ports which the ship may enter and use pursuant to this Treaty and to any further conditions on which agreement has to be reached.

Article 5

(1) The Government of the Kingdom of the Netherlands shall draw up together with the competent local authorities regulations for permitting the ship to use Netherlands territorial waters and ports.

(2) The master shall be responsible for controlling access to the ship. The master shall issue special rules concerning the visiting of the ship. They shall require the approval of the competent Netherlands authorities.

(3) The master shall be subject to local regulations in so far as these do not conflict with the Safety Assessment and the reactor operating instructions. The master shall also be required to follow the instructions of the local authorities in so far as these do not, in his opinion, endanger the safety of the reactor. If he is unable to follow the instructions of the local authorities, he must inform the appropriate governmental agency of the Kingdom of the Netherlands thereof immediately.

(4) The master shall immediately inform the local authorities of any occurrence which prolongs the ship's lay-time beyond the agreed period.

Article 6

During such time as the ship is in Netherlands territorial waters or ports, the competent Netherlands authorities shall have normal access to the ship. They shall also have access to its engine logs and the reactor operating instructions in order to determine whether the ship has been and is being operated in accordance with the instructions, as well as for the purpose of the special control referred to in chapter VIII, regulation 11, of the Convention for the Safety of Life at Sea.

Article 7

The owner of the ship shall take all necessary precautions to prevent the discharge of radioactive products or waste while the ship is in Netherlands territorial waters or ports, unless the competent Netherlands authorities have previously given their express consent concerning the discharge of radioactive products or waste.

Article 8

(1) Only such persons as have been expressly authorized by the competent Netherlands authorities to perform such services shall carry out maintenance, repairs or servicing of the nuclear power plant in Netherlands territorial waters or ports.

(2) The competent Netherlands authorities must be informed of all such maintenance, repairs and servicing of the nuclear power plant to be carried out in Netherlands territorial waters or ports. Repairs which prolong the ship's lay-over beyond the agreed period or which affect the ship's capability to sail under its own power may not be undertaken except with the consent of the competent Netherlands authorities.

Article 9

In the event of any accident likely to lead to an environmental hazard while the ship is in or approaching Netherlands territorial waters or ports, the master shall immediately submit a report to the competent Netherlands authorities in accordance with chapter VIII, Regulation 12, of the Convention for the Safety of Life at Sea.

Article 10

(1) Where, in the opinion of the competent Netherlands authorities, a direct threat exists to the environment while the ship is in or approaching Netherlands territorial waters or ports, the master must follow the instructions of those authorities.

(2) If he is unable to follow the instructions of those authorities for reasons of safety, he must immediately inform the competent governmental agency of the Kingdom of the Netherlands thereof. This agency may then bar the ship from further use of Netherlands territorial waters or ports.

Article 11

(1) In the event that the ship is beached, runs aground or sinks in Netherlands territorial waters or ports, the competent Netherlands authorities may, at the expense of the owner, take any such action as they may deem necessary to avert a threat of nuclear damage if and in so far as such action authorized by the Netherlands authorities is not taken by the owner or by the Government of the Federal Republic of Germany.

(2) The Government of the Federal Republic of Germany shall, in agreement with the Government of the Kingdom of the Netherlands, provide all possible aid in the form of personnel and material assistance in such cases.

(3) The rights of the Netherlands authorities concerning the removal of hazards to shipping and of wrecks shall be unaffected.

Article 12

In cases not provided for in this Treaty, the Government of the Kingdom of the Netherlands shall, after consultation with the master, take measures to guarantee the safety of the ship and its surroundings.

Article 13

In articles 14 to 21 of this Treaty the terms “ nuclear damage ”, “ nuclear incident ”, “ nuclear fuel ” and “ radioactive products or waste ” shall have the same meaning as in the Convention on the Liability of Operators of Nuclear Ships, concluded at Brussels on 25 May 1962 and hereinafter referred to as “ the Convention ”.

Article 14

(1) Liability for nuclear damage caused by a nuclear incident attributable to the ship's nuclear fuels or to radioactive products or waste produced aboard shall be determined in accordance with articles II, III, paragraph 1, IV and VIII, of the Convention and with the following articles of the present Treaty, subject to the proviso that the liability referred to in article III, paragraph 1, of the Convention shall not exceed DM 400 million (four hundred million).

(2) For the purposes of this Treaty, the owner shall be deemed to be the operator of the ship within the meaning of the Convention.

Article 15

(1) Claims for damages under article 14 of this Treaty shall be extinguished if no action is brought within 10 years from the date of the nuclear incident

(2) Where nuclear damage is caused by nuclear fuels, radioactive products or waste which have been stolen, lost, jettisoned or abandoned, the period established under paragraph 1 of this article shall be computed from the date of the nuclear incident causing the nuclear damage but the period shall in no case exceed a period of 20 years from the date of the theft, loss, jettison or abandonment.

(3) Provided that the period specified in paragraphs 1 and 2 shall not be exceeded, there shall apply to claims for damages under article 14 of this Treaty a period of extinction or prescription of three years from the date on which the person who claims to have suffered nuclear damage had knowledge or ought reasonably to have had knowledge of the damage and of the person responsible therefor.

Article 16

In so far as the social legislation of the Netherlands provides for compensation for nuclear damage, the authorities which have to make such payments shall be subrogated to the rights of the beneficiaries under article 14 of this Treaty. For this purpose the value of periodic payments shall be capitalized.

Article 17

The Federal Republic of Germany shall guarantee full payment of all valid claims for compensation in respect of nuclear damage made against the

owner under this Treaty by making available the necessary funds to a maximum of DM 400 million (four hundred million). The amount so provided shall be utilized only when the funds available from insurance or other financial security sources are insufficient to meet the claims.

Article 18

(1) Claims in respect of damage as described in article 14 or for compensation arising out of article 11 of this Treaty may be brought only before The Hague district court (*arrondissementsrechtbank*).

(2) The Federal Republic of Germany shall have the right to appear as a party in any proceedings brought against the owner of the ship.

(3) The provisions of national laws or of international conventions concerning the limited liability of the operator shall not apply to claims arising out of article 11, paragraph 1, and article 14 of this Treaty.

Article 19

The provisions of the Treaty between the Kingdom of the Netherlands and the Federal Republic of Germany concerning the reciprocal recognition and enforcement of judicial decisions and other executory instruments in civil and commercial matters of 30 August 1962¹ shall apply in respect of the recognition and enforcement of the decisions of Netherlands courts rendered in actions of the kind described in article 18, paragraph 1. Only such decisions as have become final shall, however, be recognized and enforced.

Article 20

Articles 14 to 19 inclusive of this Treaty shall apply to nuclear damage occurring within Netherlands territory if the nuclear incident occurred

- (a) within Netherlands territory or
- (b) outside Netherlands territory on a voyage to or from a Netherlands port or to or from Netherlands territorial waters.

¹ United Nations, *Treaty Series*, vol. 547, p. 173.

Article 21

Articles 14 to 19 of this Treaty shall also apply to nuclear damage which

- (a) occurs within Netherlands territory or which is suffered by a Netherlands national within the Ems estuary as defined in article 7 of the Treaty concerning arrangements for co-operation in the Ems estuary in a spirit of good-neighbourliness (Ems-Dollard Treaty), concluded on 8 April 1960,¹ where such damage is caused by a nuclear event occurring within the Ems estuary as defined in article 7 of the Ems-Dollard Treaty, or
- (b) is suffered by a Netherlands national within the Ems estuary as defined in article 7 of the Ems-Dollard Treaty, where such damage is caused by a nuclear event as described in article 20.

Article 22

In accordance with article 48 of the Ems-Dollard Treaty, the Government of the Federal Republic of Germany shall ensure that the owner of the ship duly advises the competent Netherlands authorities of arrival at and departure from the port of Emden.

Article 23

If, as the result of the entry into force of a multilateral international Convention or of the national legislation of one of the Contracting Parties, matters are settled which are covered in this Treaty, the Contracting Parties shall duly initiate negotiations for the revision of the Treaty.

Article 24

(1) Disputes concerning the interpretation or application of this Treaty shall, as far as possible, be settled by the Governments of the two Contracting Parties.

(2) Where a dispute cannot be settled in this manner, it shall at the request of one of the Contracting Parties be submitted to a court of arbitration.

¹ United Nations, *Treaty Series*, vol. 509, p. 2.

(3) The court of arbitration shall be constituted as necessary; each Contracting Party shall appoint one member, and both members shall agree upon the designation, as umpire, of a national of a third State who shall be appointed by the Governments of the two Contracting Parties. The members shall be appointed within two months and the umpire within three months of the date on which one Contracting Party informs the other that it wishes to submit the dispute to a court of arbitration.

(4) If the periods laid down in paragraph 3 are exceeded, either Contracting Party may, in the absence of any other agreement, request the President of the Court of Justice of the European Communities to make the necessary appointments. If the President is a national of one of the two Contracting Parties or if he is otherwise incapacitated, the appointments shall be made by his deputy. If his deputy is also a national of one of the two Contracting States or if he is also incapacitated, the appointments shall be made by the next most senior member of the Court of Justice who is not a national of either of the two Contracting Parties.

(5) Decisions of the court of arbitration shall be adopted by simple majority. Its decisions shall be binding. Each Contracting Party shall bear the expenses of its member and of its representation in proceedings before the court of arbitration; the umpire's expenses and all other costs shall be divided equally between the two Contracting Parties. The court of arbitration may decide upon an alternative division of costs. In other matters the court of arbitration shall be master of its own procedure.

Article 25

This Treaty shall also apply to *Land Berlin*, unless a declaration to the contrary is made by the Government of the Federal Republic of Germany to the Government of the Kingdom of the Netherlands within three months after the entry into force of the Treaty.

Article 26

This Treaty shall apply, in respect of the Kingdom of the Netherlands, only to that part of the Kingdom which is situated in Europe.

Article 27

(1) This Treaty shall be ratified; the instruments of ratification shall be exchanged at Bonn as soon as possible.

(2) This Treaty shall enter into force one month after the exchange of the instruments of ratification.

Article 28

This Treaty may be denounced upon six months' notice.

IN WITNESS WHEREOF the Plenipotentiaries have signed this Treaty.

DONE at The Hague on 28 October 1968 in two original copies, each in the Dutch and German languages, both texts being equally authentic.

For the Kingdom of the Netherlands:

J. LUNS

For the Federal Republic of Germany:

HANS ARNOLD

INTERPRETATIVE EXCHANGE OF LETTERS

I

EMBASSY OF THE KINGDOM OF THE NETHERLANDS

Bonn, 18 February 1971

Sir,

With reference to today's exchange of the instruments of ratification of the Treaty between the Kingdom of the Netherlands and the Federal Republic of Germany concerning the Use of Netherlands Territorial Waters and Ports by N.S. *Otto Hahn*, signed at The Hague on 28 October 1968, I have the honour to inform you of the following:

In the opinion of the Government of the Kingdom of the Netherlands, the reference in articles 13 and 14 of the above-mentioned Treaty of 28 October 1968 to the Convention on the Liability of Operators of Nuclear Ships, concluded on 25 May 1962 at Brussels, applies to the version of that Convention which was opened for signature at Brussels on 25 May 1962.

I should be grateful if you would inform me whether the Government of the Federal Republic of Germany shares this opinion.

Accept, Sir, etc.

J. G. DE BEUS
Her Majesty's Ambassador

His Excellency the Minister for Foreign Affairs
of the Federal Republic of Germany
Bonn

II

THE FEDERAL MINISTER FOR FOREIGN AFFAIRS

Bonn, 18 February 1971

Sir,

With reference to today's exchange of the instruments of ratification of the Treaty between the Federal Republic of Germany and the Kingdom of the Netherlands concerning the Use of Netherlands Territorial Waters and Ports by N.S. *Otto Hahn*, signed at The Hague on 28 October 1968, I have the honour to acknowledge receipt of your note of 18 February 1971, which in translation reads as follows:

[*See letter I*]

I have the honour to inform Your Excellency that the Government of the Federal Republic of Germany shares the above opinion of the Netherlands Government.

Accept, Sir, etc.

per pro the Federal Minister for Foreign Affairs:

FRANK

His Excellency the Royal Netherlands Ambassador
Dr. J. G. De Beus
Bonn