

No. 20318

**FEDERAL REPUBLIC OF GERMANY
and
SWITZERLAND**

Treaty concerning the road between Lörrach and Weil am Rhein in Swiss territory (with map and annex). Signed at Berne on 25 April 1977

Authentic text: German.

Registered by the Federal Republic of Germany on 7 August 1981.

**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
SUISSE**

Traité relatif à la route entre Lörrach et Weil am Rhein en territoire suisse (avec plan et annexe). Signé à Berne le 25 avril 1977

Texte authentique : allemand.

Enregistré par la République fédérale d'Allemagne le 7 août 1981.

[TRANSLATION — TRADUCTION]

TREATY¹ BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND
THE SWISS CONFEDERATION CONCERNING THE ROAD BE-
TWEEN LÖRRACH AND WEIL AM RHEIN IN SWISS TERRITORY

The Federal Republic of Germany and the Swiss Confederation,

In pursuance of articles 34 and 36 of the Treaty of 27 July 1852 between the Grand Duchy of Baden and the Swiss Confederation concerning the continuation of Baden railways through Swiss territory,

Desiring to regulate the questions relating to the construction, maintenance and operation of a road between Lörrach and Weil am Rhein in Swiss territory,

Have agreed as follows:

SECTION I. ESTABLISHMENT OF THE ROAD

Article 1. PERMISSION, CONSTRUCTION, MAINTENANCE, OPERATION

(1) The Swiss Confederation shall permit the Federal Republic of Germany to construct, maintain and operate a public road between the town of Lörrach and the town of Weil am Rhein through Swiss territory. That part of the road which lies in Swiss territory shall hereinafter be referred to as “the connecting road”. The connecting road shall take on the nature of a public road upon being opened to traffic.

(2) The Swiss Confederation shall be authorized to supervise the process of construction of the connecting road for police purposes and with respect to the observance of agreements and plans.

(3) The connecting road shall be the property of the canton of Basel-Stadt. The traffic signs and traffic facilities shall, however, remain the property of the Federal Republic of Germany.

(4) The land required for the construction of the connecting road shall be made available by the canton of Basel-Stadt, which may, if necessary, acquire it through land transfer or expropriation. The Governing Council (*Regierungsrat*) of the canton of Basel-Stadt shall determine the type of acquisition applicable. In the case of land acquisition through expropriation, the Swiss Confederation shall transfer to the canton the right of expropriation within the meaning of article 3, paragraph 2, of the Swiss Federal Act of 20 June 1930 concerning expropriation. The expropriation proceeding shall be limited to the handling of the charges submitted (article 30, paragraph 1 (c), of the Expropriation Act). Appeals against the land transfer or the expropriation and applications aimed at bringing about a change of plans shall be excluded.

(5) The Federal Republic of Germany shall bear the costs of the road construction, including the costs of the acquisition of land and rights by the canton of Basel-Stadt.

¹ Came into force on 1 August 1980, i.e., the first day of the second month after the exchange of the instruments of ratification, which took place at Bonn on 10 June 1980, in accordance with article 24 (2).

(6) The Federal Republic of Germany undertakes to see to it that the connecting road is constructed, maintained and operated with the same care as that part of the road which passes through German territory.

Article 2. LAYOUT OF THE CONNECTING ROAD AND CONSTRUCTION PROJECT

(1) The layout and construction of the connecting road shall be governed by the November 1974 Conditional Project (*Auflageprojekt*) of the Road Construction Department of the Freiburg District Administration (*Regierungspräsidium*), approved by the Governing Council of the canton of Basel-Stadt on 16 December 1975, on the basis of article 34, paragraph 2, of the Treaty of 27 July 1852, with alterations made in October 1975, together with the conditions and stipulations contained in the approval decision.

(2) In accordance with the approved project, the connecting road shall include no level crossings and shall cross the State frontier on the left bank of the river Wiese, cross that river after approximately 70 metres and then run along the Wiese to the Weilstrasse, being depressed and running into a tunnel approximately 120 metres before the Weilstrasse. The tunnel structure shall run under the Weilstrasse and shall pass under the natural terrain to that point of the State frontier in the Mühlematt at which the frontier forms an almost right angle. In the region of the State frontier, the road shall emerge from the tunnel on the German side in the Obere Mühlematten to the natural terrain. A skeleton plan which gives an overall view of the layout of the road is annexed to this Treaty.

(3) The Federal Republic of Germany shall be required to provide a closable entrance and exit on the connecting road, at its own expense, in order to enable Swiss officials and auxiliary personnel to proceed direct from Swiss territory to the connecting road. The requirements of frontier supervision must be satisfactorily taken into account.

(4) The Federal Republic of Germany shall without delay link the connecting road to Federal Route 3.

(5) In the construction, maintenance and operation of the connecting road, all necessary and reasonable measures shall be taken in order to ensure that the traffic on the roads and routes which are crossed or touched by it is not endangered and is interfered with as little as possible.

(6) The area occupied by the connecting road may be utilized at any time for the establishment of a public traffic artery which intersects the road otherwise than at a level crossing and for the construction of any other works, subject to the condition of assuming all the costs incurred thereby. The technical details shall be agreed upon, if necessary, between the competent authorities of the canton of Basel-Stadt and the competent German *Land* authorities. Traffic on the road and maintenance of the road may not be unreasonably interfered with thereby. The German authorities shall arrange the necessary temporary restrictions on traffic, including those made at the request of the Police Department of the canton of Basel-Stadt.

(7) The *Land* of Baden-Württemberg, represented by the Freiburg district administration, acting as the administration responsible for German federal long-distance roads, and the canton of Basel-Stadt, represented by the Construction Department, shall conclude an agreement for the regulation of technical details relating to the construction, operation and maintenance of the connecting road.

Article 3. IMPORT DUTIES, WORK PERMITS

(1) Goods (e.g., construction materials, fuel, machinery, equipment, tools, vehicles, goods for the planting of the road verge) shall be exempt in Switzerland from import duties and from any other taxes and charges to be levied in connection with the import of goods, if and so long as they are used for the construction, maintenance, renovation or operation (including winter service) of the connecting road or for the safety of traffic on the connecting road. This provision shall apply to goods which remain or are consumed on the connecting road only if they have been purchased on the open market in the Federal Republic of Germany. No deposit of security shall be required. The necessary control and safety measures shall, however, be reserved.

(2) Goods which are tax-exempt in accordance with paragraph (1) shall be exempt from economic import and export prohibitions and restrictions.

(3) In so far as they enter Swiss territory from German territory in order to carry out their work, persons responsible for the construction, maintenance or operation of the connecting road shall not require any work permit which may be required under Swiss law. In all other respects the provisions of this Treaty shall apply to them *mutatis mutandis*.

SECTION II. USE OF THE ROAD

Article 4. PERMISSIBLE TRAFFIC

(1) The Swiss Confederation shall permit transit traffic on the connecting road in accordance with the provisions of this Treaty; pedestrians shall constitute an exception.

(2) Deviation from the connecting road shall be prohibited. Persons may not be taken up or put down, and goods may not be loaded or unloaded. Voluntary stopping shall not be permitted. An exception shall be made in the case of emergencies and in the case of the obligation of the driver of a vehicle under German law to wait after a traffic accident.

(3) The connecting road may not be entered from Swiss territory. Article 2, paragraph (3), shall remain unaffected.

Article 5. PREFERENTIAL TREATMENT IN TRANSIT TRAFFIC

(1) In transit traffic, no customs duties or other import and export duties shall be levied, and no deposit of security shall be required. The same shall apply to objects which come to be situated in Swiss territory alongside the connecting road, provided that they are immediately returned to that road.

(2) Import, export and transit prohibitions or restrictions shall not apply in transit traffic, with the exception of those applicable to war materials.

(3) In transit traffic, Switzerland shall not levy either a motor-vehicle tax or a transport tax.

(4) Switzerland shall permit free of charge the transport of postal matter and the regular or occasional transport of persons on the connecting road.

Article 6. FRONTIER CLEARANCE

(1) In transit traffic, neither a frontier-crossing document nor a visa shall be required.

(2) No frontier clearance of transit traffic shall be carried out. Each Contracting State shall, however, have the right to carry out on the connecting road such control measures as are necessary to prevent violations of its frontier police regulations or customs regulations.

(3) The authorities of the Contracting States shall — by agreement, where necessary — make arrangements for the necessary supervisory and safety measures in order to prevent any abuse of the preferential treatment provided for in this Treaty.

Article 7. FRONTIER CROSSING AND TRANSIT RIGHTS FOR OFFICIALS

(1) German customs and police officials, officials of the road administration and auxiliary personnel shall be authorized to use the connecting road as a transit route; the authorization shall apply *inter alia* to such use in the performance of their duties with their service vehicles, including their service equipment.

(2) For German military personnel in uniform and for German uniformed and armed officials, the connecting road shall be deemed to be a transit route within the meaning of the Agreement of 5 February 1958 between the Contracting States concerning transit rights.

(3) Swiss customs and police officials, officials of the road administration and auxiliary personnel who must enter the connecting road in order to perform their duties shall be authorized to cross the frontier, with their service vehicles, including their service equipment, in order to return to Swiss territory by travelling through German territory either by way of the Weil-Ost approach road and the frontier crossing at the Weilstrasse or by way of the Hammerstrasse approach road and the frontier crossing point at the Lörracher Strasse. Where necessary, they shall also be authorized to travel to the Swiss segment of the connecting road by way of the aforementioned frontier crossing points and approach roads.

(4) The transport of persons in official custody in transit traffic through the territory of the other Contracting State shall not be permitted.

(5) Except as otherwise specified in this Treaty, articles 11 to 13 of the Agreement of 1 June 1961 between the Contracting States concerning the establishment of adjacent frontier clearance offices and concerning frontier clearance on board means of transport while in motion shall apply *mutatis mutandis*.

(6) Persons who have entered the territory of one Contracting State from the territory of the other Contracting State in violation of article 4, paragraph (2) or (3), shall be accepted back at any time by the last-mentioned Contracting State without formalities in accordance with the agreements concluded between the Contracting States.

SECTION III. APPLICATION OF GERMAN LAW; COMPETENCE

Article 8. FUNDAMENTAL PRINCIPLE

(1) German road-traffic regulations, including German regulations concerning motor-vehicle insurance, shall apply on the connecting road; in respect of the situations listed in the annex to this Treaty, German criminal law shall apply as well.

(2) Commercial transport of persons and goods on the connecting road shall be governed by the regulations in force in the Federal Republic of Germany. The same shall apply to traffic between the installations of an enterprise (*Werkverkehr*).

(3) In so far as German law is applicable in accordance with paragraphs (1) and (2) and no contrary provision is made in this Treaty, such law shall be applied by the German authorities in the same manner as in adjacent German territory.

(4) In arrangements for traffic measures which affect the connecting road, Swiss interests must be duly taken into consideration. If the effects produced are substantial, the German authorities shall communicate in good time with the Police Department of the canton of Basel-Stadt. Where delay may be dangerous, the measures may be taken at once; the Police Department of the canton of Basel-Stadt must be notified without delay.

Article 9. VIOLATIONS OF ROAD TRAFFIC REGULATIONS

(1) Violations of road traffic regulations on the connecting road shall be prosecuted and punished by German police officers, authorities and courts, provided that none of the accused persons has his habitual abode in Switzerland. The situations listed in the annex to this Treaty shall be assimilated to violations of traffic regulations.

(2) German officials shall be entitled in all cases to make an on-site determination of the situation, detain persons temporarily and secure any vehicles which have been used and objects which have been carried by the persons concerned. In respect of persons who have their habitual abode in Switzerland, however, detention, the taking of blood samples, the confiscation of vehicles and objects and the issuance of warnings shall not be permitted. If there exist conditions under which such measures might otherwise be taken, the persons, vehicles and objects concerned must be delivered to the Swiss authorities in accordance with the regulations of the Police Department of the canton of Basel-Stadt.

(3) Persons who have been temporarily detained or in respect of whom the taking of a blood sample has been ordered, as well as secured or confiscated objects, may be brought into the Federal Republic of Germany, subject to the provisions of paragraph (2).

(4) In so far as, in accordance with paragraph (1), German authorities and courts are not competent for the prosecution and punishment of violations, the Swiss authorities and courts shall be responsible for such prosecution and punishment. The punishment and administrative-law consequences in such cases shall be governed by Swiss law.

Article 10. LAWS GOVERNING PROCEDURE

(1) German officials shall, in the performance of their duties on the connecting road in accordance with article 9, apply German procedural regulations, including the regulations relating to the issuance of a warning.

(2) Official actions of German courts may be undertaken on the connecting road only with the consent of the Department of Justice of the canton of Basel-Stadt.

(3) German officials may not enter Swiss territory adjacent to the road except to the extent necessary for the purpose of rendering assistance in cases of accident, saving cargoes and vehicles and safeguarding marks after traffic accidents. Such actions shall be regarded for legal purposes as if they had been carried out on the connecting road. Other measures, specifically including hot pursuit, shall be precluded.

Article 11. CO-OPERATION BETWEEN THE OFFICIALS OF THE CONTRACTING STATES

The officials and offices of the Contracting States shall, in so far as possible, support each other in preventing persons from leaving or entering the connecting road without authorization and in preventing goods or other items of property from being brought without authorization from one Contracting State to the other by way of the road. They shall support each other in investigations relating to the whereabouts of goods and means of transport and in the determination of violations of article 3, paragraph (1), shall help each other to safeguard marks and items of evidence and shall provide each other with the information necessary therefor.

Article 12. PROTECTION AND ASSISTANCE; PUNISHABLE ACTS COMMITTED BY AND AGAINST GERMAN OFFICIALS

(1) The Swiss authorities shall afford to German officials in the performance of their duties on the connecting road the same protection and assistance as to their own corresponding officials, in particular, the Swiss criminal-law provisions for the protection of officials and official action shall also be applied in the case of punishable acts committed against German officials.

(2) Any punishable acts committed by German officials in the performance of their duties on the connecting road shall be notified to the office to which they are subordinate. In the event of an arrest or temporary detention, the notification must be made immediately.

(3) Where a German official, in the performance of his duties on the connecting road, has committed a punishable act which is not mentioned in the list annexed to this Treaty, or where a German who has his habitual abode in the Federal Republic of Germany has committed such an act against a German official engaged in the performance of his duties on the connecting road, the competent authorities of the canton of Basel-Stadt may waive the application of Swiss criminal procedure. In such a case, extradition from Switzerland by reason of such an act shall be permitted.

SECTION IV. LIABILITY CLAIMS

Article 13. COMPETENT COURTS

(1) For claims arising out of damage cases which occur on the connecting road, the competent courts shall, subject to the provision of paragraphs (2) and (3) below, be the German courts which would be competent if the damage case had occurred in adjacent German territory.

(2) If the person entitled to compensation and the person liable to pay compensation, or one of the two, has his habitual abode in Switzerland, the competent courts shall be those of the canton of Basel-Stadt. Arrangements between the parties which deviate from this provision shall be permitted.

(3) Where a damage case which occurs on the connecting road involves a vehicle whose owner is the Federal Republic of Germany, a *Land* or one of their special funds and where, in accordance with the preceding provisions, a Swiss court is competent, claims arising out of such damage case shall be subject to Swiss jurisdiction and enforcements.

(4) Claims arising out of damage cases which occur on the connecting road shall be judged in accordance with the law of the Contracting State in which the court is established. This provision shall not apply to the cases referred to in article 15, paragraph (2). Article 14, paragraph (1), shall remain unaffected.

Article 14. CLAIMS IN THE CASE OF DAMAGE CAUSED BY UNINSURED OR UNDETERMINED MOTOR VEHICLES OR BICYCLES

(1) Persons entitled to compensation who have their habitual abode elsewhere than in Switzerland may, contrary to the provisions of the Treaty of 30 May 1969 between the Contracting States concerning the coverage of damage in the case of traffic accidents, make claims in respect of the damage caused them by an uninsured, improperly insured or undetermined motor vehicle as a result of a damage case occurring on the connecting road only against the German Compensation Fund for Damage Arising out of Motor-Vehicle Accidents (*Entschädigungsfonds für Schäden aus Kraftfahrzeugunfällen*). Such claims shall be judged in accordance with German law.

(2) Where a claim is made against the Swiss Federal coverage system (*Bundesdeckung*) by reason of a damage case occurring on the connecting road, the said system shall be entitled to make a claim against the German Compensation Fund for Damage Arising out of Motor-Vehicle Accidents if it cannot obtain compensation for its expenditures in any other manner.

(3) In the event of damage caused by bicycles which are not insured in Switzerland or have not been determined, or by vehicles assimilated to them under Swiss law, persons who have their habitual abode elsewhere than in Switzerland shall not be entitled to claim damage compensation from the collective liability insurance system existing in the canton of Basel-Stadt or from the Confederation.

Article 15. OFFICIAL LIABILITY

(1) Claims in respect of official liability for damage caused by German officials in the performance of their duties on the connecting road shall be governed by German law and German jurisdiction as if the damaging act or omission had occurred in adjacent German territory. The same shall apply to violations of the Road Construction Administration's obligation to safeguard traffic.

(2) Where the person suffering damage has his habitual abode in Switzerland, the claim for compensation may be made before the courts of the canton of Basel-Stadt.

(3) Paragraphs (1) and (2) shall also apply when the damage has been suffered by a Contracting State or by another juridical person under public law.

(4) Article 13, paragraph (3), shall apply *mutatis mutandis*.

Article 16. EXEMPTION FROM LIABILITY

(1) The Federal Republic of Germany shall hold the canton of Basel-Stadt harmless in respect of all obligations arising out of liability for damage which is related to the construction, existence, operation or maintenance of the connecting road, provided that it is not covered by a public-liability insurance policy of the canton of Basel-Stadt. The competent Swiss authority shall notify the competent German authority in writing without delay of any claim for damage compensation brought against the canton of Basel-Stadt for which an obligation of the Federal Republic of Germany *vis-à-vis* the canton of Basel-Stadt to hold the latter harmless in accordance with the preceding sentence may come into consideration. The canton of Basel-Stadt shall recognize such claims only after, and shall agree to a settlement thereof only after, it has obtained the consent of the competent German authority. Each Contracting State shall identify its competent authorities to the other Contracting State.

(2) The Federal Republic of Germany shall be subrogated to debt-claims which are made against third parties by the canton of Basel-Stadt within the meaning of paragraph (1), first sentence, and which arise out of the construction, existence, operation or maintenance of the connecting road.

(3) The Federal Republic of Germany shall, in particular, guarantee the satisfaction of damage compensation claims arising out of damage caused to surface or underground waters by oil spills or similar events.

Article 17. OFFICE COMPETENT TO RECEIVE SERVICE OF DOCUMENTS

Service of documents and delivery of communications in connections with claims that may be brought against the Federal Republic of Germany or against one of its *Länder* on the basis of this Treaty before the courts competent for the canton of Basel-Stadt must be addressed to the competent foreign mission of the Federal Republic of Germany in Switzerland (office competent to receive service of documents).

SECTION V. FINAL PROVISIONS

Article 18. MIXED COMMISSION

(1) The Contracting Parties shall create a German-Swiss Mixed Commission, whose tasks shall be:

- (a) To deal with questions which arise in connection with the implementation of this Treaty and of the technical agreement;
- (b) To submit recommendations to the two Governments, including recommendations concerning any amendments to this Treaty and to the technical agreement;
- (c) To recommend suitable measures to the competent authorities with a view to the elimination of difficulties.

(2) The Commission shall consist of five German and five Swiss members, who may be accompanied by specialists. The Government of each Contracting State shall designate a member of its delegation as chairman of the delegation. Each delegation chairman may, by a request made to the chairman of the other delegation, convene the Commission for a meeting, which shall, at his desire, be held not later than one month after receipt of the said request.

Article 19. DISPUTES

Disputes concerning the interpretation or application of this Treaty and of the technical agreement referred to in article 2, paragraph (7), must be settled by the competent authorities of the Contracting States.

Article 20. ARBITRATION CLAUSE

(1) Where a dispute concerning the interpretation or application of this Treaty cannot be settled otherwise, it shall, at the request of a Contracting State, be submitted to an arbitral tribunal.

(2) The arbitral tribunal shall be established on a case-by-case basis, each Contracting State appointing one member and the two members agreeing on a national of a third State as the umpire, who shall be appointed by the Governments of the Contracting States. The members shall be appointed within two months, and the umpire within three months, after one Contracting State has informed the other that it wishes to submit the dispute to an arbitral tribunal.

(3) If the time-limits referred to in paragraph (2) above are not met, then in the absence of any other arrangement, either Contracting State may request the President of the European Court of Human Rights to make the necessary appointments. If the President is a German or Swiss national or is otherwise disqualified, the Vice-President shall make the appointments. If the Vice-President is also a German or Swiss national or is also disqualified, the appointment shall be made by the next senior member of the Court who is neither a German nor a Swiss national.

(4) The arbitral tribunal shall render its decisions by majority vote, on the basis of the treaties in force between the Contracting States and of general international law. Its decision shall be binding. Each Contracting State shall bear the costs of the arbitrator it has designated and of its representation in the proceeding before the arbitral tribunal; the umpire's costs and other costs shall be appointed equally between the Contracting States. In all other respect, the arbitral tribunal shall regulate its own procedure.

(5) The courts of the two Contracting States shall provide the arbitral tribunal, at the latter's request, with legal assistance in respect of the summoning of witnesses and experts and the taking of testimony from them, applying appropriately the arrangements in force at the time between the Contracting States concerning legal assistance in civil and commercial matters.

Article 21. ANNEX TO THE TREATY

The annexed list of violations of road traffic regulations shall constitute an integral part of this Treaty.

Article 22. DURATION AND AMENDMENT OF THE TREATY

(1) This Treaty is concluded for an indefinite period. It may be suspended or amended only by agreement between the Contracting States.

(2) Where serious difficulties arise in connection with the implementation of the Treaty or where the circumstances existing at the time of its conclusion are substantially changed, the Contracting States shall, at the request of either Contracting State, enter into negotiations concerning an appropriate revision.

Article 23. BERLIN CLAUSE

This Treaty shall also apply to *Land-Berlin*, provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Swiss Federal Council within three months after the entry into force of this Treaty.

Article 24. RATIFICATION; ENTRY INTO FORCE

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

(2) This Treaty shall enter into force on the first day of the second calendar month after the exchange of the instruments of ratification.

Article 25. REPLACEMENT OF PREVIOUS PROVISIONS

This Treaty shall replace those provisions of the Treaty of 27 July 1852 between the Grand Duchy of Baden and the Swiss Confederation concerning the continuation of Baden Railways through Swiss territory which relate to the construction, maintenance and operation of the connecting road between Lörrach and Weil am Rhein.

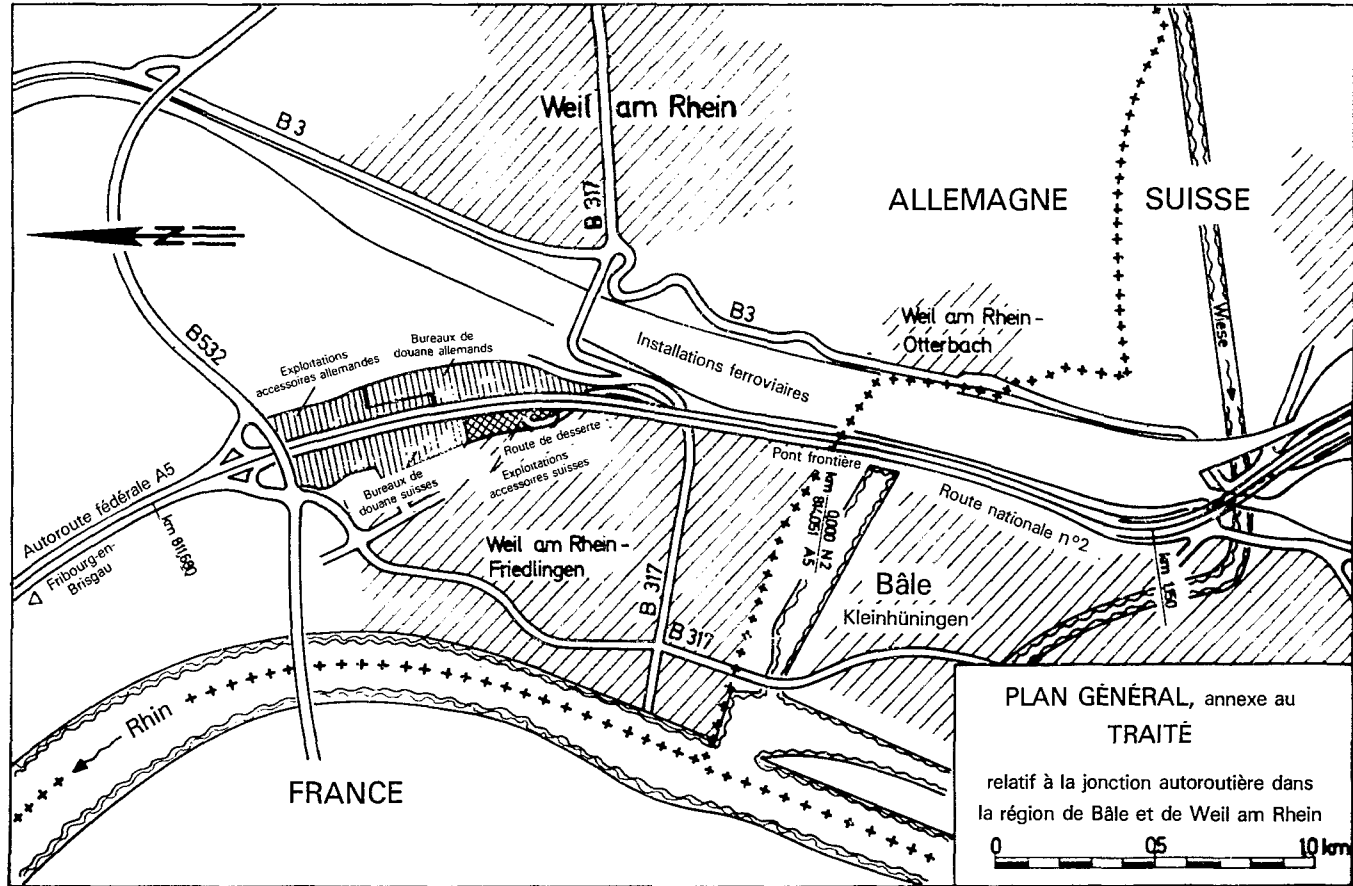
DONE at Berne on 25 April 1977, in duplicate in the German language.

For the Federal Republic of Germany:

KURT LAQUEUR

For the Swiss Confederation:

DIEZ



ANNEX

LIST OF ACTS ASSIMILATED TO VIOLATIONS OF ROAD TRAFFIC REGULATIONS
(article 9, paragraph (1))

1. Negligent homicide or negligent bodily injury in road traffic.
 2. "Leaving the scene of an accident" (Unfallflucht), i.e., violation of the obligations incumbent on the driver of a vehicle after a traffic accident.
 3. Unauthorized use of a motor vehicle or a bicycle (misappropriation of a motor vehicle or a bicycle for use).
 4. Resistance or duress directed against German authorities or officials in connection with their official or service actions.
 5. Dangerous interference with road traffic or endangerment of road traffic in any other manner.
 6. The infliction of property damage and the damaging of public property in connection with the connecting road or with traffic on it.
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