

The Dutch "Iron Lady" versus the Belgian "Unknowing Man:" The Water-Treaties between the Netherlands and Belgium, 1975 -1995

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Dans les années 1990, les politiciens anversois et flamands, les autorités du port d'Anvers et les employeurs des fédérations, à la recherche d'un bouc émissaire, ont immédiatement blâmé les Hollandais du progrès extrêmement lent des négociations portant sur les travaux d'approfondissement du fleuve d'Escaut. Cet article démontre que cette conclusion a été tirée beaucoup trop rapidement, en effet, les problèmes internes de la communauté belge, ainsi que la composition déséquilibrée des termes de la négociation y auraient joué un rôle primordial.

In a interview with a leading newspaper in May 2005, Karel De Gucht, the Belgian foreign minister called the Dutch prime-minister "a bourgeois-like person who reminds me of Harry Potter." Within hours every Belgian politician called Karel De Gucht a disgrace for Belgian diplomacy and insisted that he apologise for his behaviour. In the port of Antwerp both port authorities and the employers' federations stressed the fact that good relations with the Dutch are vital for the port. They were referring to the finalisation of the ongoing negotiations on a further deepening of the river Scheldt, the maritime aorta of the port of Antwerp.

The river Scheldt has played an important role in the (young) history of Belgium and its relationship with the Netherlands, especially since the Belgian revolution in 1830 officially ended the United Kingdom of the Netherlands. The Dutch King Willem was not at all pleased with the Belgian independence. According to him the Belgian independence would bring an end to the fruitful economic interaction between the mercantile north (the Netherlands) with its strong colonial links and the more industrial south (Belgium).¹ Until 1839 King Willem tried by both military (e.g. the siege of Antwerp in August 1831) and diplomatic means to make the independence undone. In that year the Treaty of the 24 Articles or the Separation Treaty brought a definitive end to those ambitions but King Willem derived some satisfaction. The Separation Treaty of 1839 declared that Belgium had

¹ R. Coolsaet, *België en zijn buitenlandsepolitiek 1830 - 2000*, Leuven, 2001, 28.

to give up the city of Maastricht and the province of Limbourg to the Netherlands. On a more economic matter, the treaty required that Belgium pay a toll for every ship that sailed to Antwerp by the river Scheldt.

In the port of Antwerp this toll was a bitter pill to swallow. The port companies feared that this toll would hinder the further growth and development of the port. The Belgian government was not completely insensitive of this argument and decided that they would refund the toll to the - mostly - foreign shipping-companies. The continuous growth of the port made this commitment a millstone around the neck of the Belgian government. In 1856 the refunds mounted up to 1.5 million Belgian francs, about 1 per cent of the total Belgian federal budget. The Belgian government started looking for a diplomatic solution to this growing problem. The payment of 36 million Belgian francs - funded with the aid of many maritime nations - redeemed the river toll. Nonetheless, it was clear that the Scheldt would remain a continuous bone of contention between the young Belgian nation and the Netherlands for several reasons. First, the river itself - the only maritime access to the Antwerp port - for the greater part was in Dutch territory. Second, there was no sound legal framework for the river. Third, it quickly became apparent that the conflicting economic interests between the two countries and especially the competition between their two national ports Rotterdam and Antwerp made it very difficult to come to a common basic level of understanding where the Scheldt was concerned.

The vagueness of the treaty - perhaps deliberate? - on the question of the maintenance of the river was a special problem that quickly led to new tensions between the two countries. The first paragraph of article 9 of the Separation Treaty of 1839 stipulated that *"chaque état riverain se chargera de l'entretien des chemins de halage qui passent par son territoire et des travaux nécessaires pour la même étendue dans le lit de la rivière pour ne faire éprouver aucun obstacle à la navigation."* The almost informal tone of this agreement without strict commitments of timing and distribution of the maintenance costs led to divergent interpretations. Both parties made and still make use of the vagueness of the agreement to prove their case: Belgium for their demand for a further deepening of the river, the Netherlands for their obstruction to such a deepening. The discourse of the Belgian, Flemish and Antwerp politicians and lobbies is based on the right for maintenance and adjustment of the river that according to them follows logically from the Separation Treaty of 1839. Even now in the beginning of the 21st century, Belgian and Flemish politicians still refer to that treaty. It seems as if the Dutch are being unreasonable and are denying the Belgians the fundamental legal right to deepen the river only because of the competition between Antwerp and Rotterdam. By focussing on the negotiations between 1975 and 1995 that led to the dredging of the river to a minimum safe navigation depth of 11.9 m, this paper presents a more subtle analysis. Belgian internal discord, disagreements on the European rules of water-quality and cultural differences between both countries and the parties of

² Art. 9, par. 1 of the Separation Treaty of 1839 as cited in: F. Suykens, "The water treaties with Holland," *Tijdschrift van het Gemeentekrediet*, 1996, 4, 30.

negotiators have influenced the good relations to an extent comparable to the competition between the two national main-ports.

In January 1995 Flanders and the Netherlands signed the so called Water Treaties in which they agreed that Belgium had the right to deepen the river Scheldt to make it accessible for ships drawing 11.9m, regardless of the tide. A demand by Belgium to make the river more accessible by deepening it, was an original object when the negotiations began more than a quarter of a century before the actual signing in 1995.

In the 1960s the port of Antwerp experienced an explosive growth. Between 1955 and 1965 a 10-year plan had more than doubled the dock- and quay-capacity. At the same time the port was confronted with new technologies in shipping. Increased vessel size and technological improvements such as containers and specialized cargo handling became the mantra of the shipping- and transport-industry. In the 1960s the world fleet more than doubled from 172 to 338 million tdw. In the 1970s the tonnage of the world fleet doubled again as the sea-going trade grew in that same period from 1,080 to 2,480 tdw. New ships who coming into service differed fundamentally from the ships that had been used since the Second World War. The new ships were faster and had better propulsion and equipment. Those technological novelties and the explosion of sea-going trade also presented a challenge for the world's ports, port authorities and port companies. Ports reacted by investing in better and more capable handling-facilities. The bigger and faster ships made maritime access a more pressing issue than already was the case. The introduction of steam ships in the port of Antwerp around the turn of the century had focussed attention on the dangerous and difficult hydrology of the river Scheldt. In the 1920s the Red Star Line referred to the navigation restrictions when explaining why they moved their ships away from Antwerp, or threatened to do so.³ The new technological evolutions of the 1960s in the shipping-industry made access even more important. The Bath Turn, because of its specific and difficult conditions became a dangerous bottleneck. The Belgian administration came up with a drastic plan: the Bath Turn would be cut off and be replaced by a canal.

Since the Bath Turn was in Dutch territory, Belgium asked the Dutch in 1967 to start talks. The Dutch agreed but in return wanted to open negotiations on the improvement of the quality of water in the river Meuse and the guarantee of a certain flow of Meuse water at the Belgian - Dutch border during the dry-season. The 925 kilometre-long river Meuse is of great importance for inland navigation in Belgium and the Netherlands. It is also an important fresh-water reservoir for the Dutch. The river rises in the plateau of the Langres, northwest of the Vosges in France, where it is a small brook of no more than two or three metres width. It is in Belgium that the important tributaries Ourthe and Amblève flow into it, turning the Meuse into the broad majestic river that is so important for inland navigation. The river enters Dutch territory at Eijsden where it forms the natural border between Belgium and Holland all the way to Stevensweert. Eventually the Meuse flows into the

³ S. Hoste, R. Loyen, De maritieme toegangsweg van de haven van Antwerpen vanuit bedrijfshistorisch perspectief, *Neha-jaarboek*, 2002, 169.

Rhine near the Biesbosch. Throughout its entire course within Belgium, it lies in the south, in the Walloon part of the country, while Antwerp is in Flanders. Improving the Meuse water quality was the beginning of the so called Water Treaties that for more than twenty-five years would hang as a sword of Damocles over the Dutch-Belgian relations.

On the Belgian side the actual negotiations were dominated by a small group of civil servants who did not consult with their (political) superiors. As a result, the presentation of the final agreement in June 1975 came as a surprise to the Belgian government. It was clear that the Belgian negotiators did not have political backing and support and had played "*cavalier seul*." According to Belgian Foreign Minister Defraigne, the topic had hardly been discussed by the cabinet and was not an issue.⁴ Especially in the French-speaking part of Belgium, Wallonia reactions were emotional and openly hostile. The Water Treaties from the beginning was seen from entirely different perspectives within Wallonia and Flanders. In Wallonia the river was described in proprietorial terms by both politicians and the press. Newspapers headed "*On vole l'eau de la Wallonie*" or "*Anvers reçoit, la Wallonie paie*." Those headings perfectly reflected the feelings in Walloon political circles. Some projects that the Belgian negotiators had agreed to in order to get the Dutch to accept cutting off of the Bath Turn were unacceptable for the Walloons. Amongst other things, the Belgian negotiators had agreed to the construction of gigantic artificial lakes in the Ardennes in order to guarantee a minimum flow of 50 m³ per second at all times at the Belgian - Dutch border. The Walloon politicians felt that Wallonia had to pay for the better comfort of the Flemish region and economy. But in Flanders too, certain aspects of the agreement of June 1975 were unacceptable. During the following decade the Water Treaties were never officially off the negotiating table. It was not until 1985 however that a new official political initiative was started.

Beginning in 1980, the unitarian state of Belgium was slowly turning into a federal country where the regions, Flanders and Wallonia, would benefit from important transfers of responsibilities in the areas of public infrastructure, education and culture. These transfers were implemented through state reforms of 1980, 1988 and 1993. This changing power relationship complicated the development of a Belgian negotiating position with Holland.

On 7 October 1985, the Belgian Foreign Minister Leo Tindemans signed a declaration of intent proposed to him by his Dutch colleague, Hans Van den Broek.⁵ In this declaration both parties promised and agreed that they would try to re-activate the Water Treaties. However the Water Treaties of 1985 were no longer the Water Treaties of 1975 and differed on many points, including the Bath Turn. In the second half of the 1970s it had become clear that this project was very expensive, had many risks and was not the best solution for the (remaining) limited maritime access of Antwerp. A report by the Belgian administration stated that: "the Bath-project is an extremely expensive project with limited

⁴ "au niveau du gouvernement, on n'a guère abordé le fond de la question," *Le Soir*, 12 September 1975.

⁵ *Archives of the Administrate Watenvegen en Zeewezen*, RN 534.2.5., Bilateraal ministerieel overleg 1986, Declaration of Intent, 7 October 1985.

objectives. The 48' - 43' program is much more ambitious and also much cheaper."⁶ (This was a proposal which would increase the navigational depth of the Scheldt to 48 feet at high tide, and 43 feet at low tide.) Amongst engineers and technicians the 48' - 43' program, which would deepen the river Scheldt all along its course, enjoyed much more support than the Bath Turn project. They believed this would be both safer and cheaper, and would substantially improve the maritime access of Antwerp. A study in 1984 concluded that the 48' - 43' program could be carried out without any harm to the ecological value of the river and without hindering the safety of navigation.⁷ After the publication of this note, the Netherlands agreed that the 48' - 43' program would replace the Bath Turn-project. Although the study on the new program did not lead to a political breakthrough in the negotiations, it did put the Water Treaties on the table again without it getting priority from the politicians.

In March 1987 an official commission was appointed to work out a political agreement on the Water Treaties. Bickering between Flanders and Wallonia meant that this commission was stillborn. Wallonia was not represented in the commission, although the quality of water had become a regional responsibility in 1980, and they saw in this another devious move by Flanders. It took until 1989 to install a new Belgian-Dutch commission with representation from the regions. It was soon evident that a quick breakthrough could not be expected because of the discord or the unwillingness to come to a solution on the quality of the Meuse-water. The Walloon region - to great indignation by both Flanders and the Netherlands - held a very minimalist view on the water-quality and was unwilling to give in on that point. Wallonia wanted to come to "*ww seuil d'obligations aussi bas que possible*."* Flanders and the Netherlands wanted to come to a integrated approach on water-quality from source to estuary. The final objective had to be to keep the water as clean as possible. Wallonia on the other hand wanted to know why the Dutch wanted clear water and exactly how clear this water had to be. The chairman of the Dutch delegation, former prime minister Barend Biesheuvel, reacted furiously. "There is no way that the Dutch delegation will enter this endless discussion. The river has to be clean, not half clean or a little clean but as clean as possible!"

The Belgian state reform of 1993 finalised the transfer of responsibilities between the federal government and the regions for such responsibilities as public infrastructure, education, public health, environment and culture. On each of these, the regions were now able to enter into negotiations with other states without having to deal with the federal

⁶ *Archives of the Administratie Watenvegen en Zeewezen*, RN 544.4, Afsnijding van Bocht van Bath, internal note by director-general Johan Demoen, 1984.

⁷ *Archives of the Administratie Watenvegen en Zeewezen*, RN 222.4 Dossier overeenkomst met Nederland verdieping van de Westerschelde, Technical Scheldt Commission, ,note on deepening of river Scheldt, program 48'-43', 15 June 1984.

⁸ *Personal archives Johan Demoen*, Notes of the Belgian delegation, meeting of 8 February 1990.

⁹ *Archives of the Administratie Watenvegen en Zeewezen*, HW 112, Letter from Barend Biesheuvel to the head of the Belgian delegation Poppe, 8 January 1991.

government. Until 1993 responsibilities such as public infrastructure had already been transferred in practice, although the negotiations were not yet finalized. For the actual signing of any treaty, the regions had to deal with the federal government which as the sovereign authority was the only government that could sign an international treaty. The 1993 state reform ended that: Flanders could now start negotiations with other states without having to deal with either the Walloons or the Belgian federal government. For the water treaties, this was an extremely important change. Flanders was now able to enter into negotiations with the Dutch without the Walloons being able to slow down the process.

In both the Netherlands and Flanders more and more people became convinced that they had to try to come to an agreement without Wallonia. The Dutch had experienced in the Dutch-Belgian delegation that Flanders was willing to collaborate on the topic of an integrated water-policy but was unable to overcome the Walloon opposition within the Belgian delegation. In Flanders too the general feeling was that the 48' - 43' program was not a real obstacle for the Dutch delegation as long as they got guarantees on the water-quality, guarantees that Flanders was willing to give. Using the 1993 phase of state reform, Flanders started formal negotiations with the Dutch, without Walloon interference, on the 48' - 43' program to deepen the river Scheldt. It took only one meeting between the Flemish prime minister Luc Van den Brande and the Dutch prime minister Ruud Lubbers to agree that the 48' - 43' program would be removed from the Meuse water-quality discussion. In Flanders, this was presented as an enormous victory. However, the official communication after the meeting stated that on both issues a "joint decision" had to be made.¹⁰ Van den Brande also agreed to the linkage of the 48' - 43' program and the construction of a high speed connection between Paris - Brussels and Amsterdam. In fact Flanders was trading one for another. How unfortunate this would be, became clear in March 1994 when the Dutch minister for transport refused to sign the official agreement on the water treaties because Flanders refused to give in to the Dutch demand for a high speed line next to the E 19 motorway. Eventually Flanders gave in and accepted the enormous additional costs. The Netherlands and Flanders signed the Water treaties in January 1995. Finally after more than twenty years of negotiating, Flanders and the port of Antwerp got their deepening of the river Scheldt.

During the interwar years some journalists and academics had written about the competition between the ports of Rotterdam, Hamburg, Le Havre and Antwerp. It was however the head of the Rotterdam port authority who summarized this competition best, stating that "there are no rivalries so intense as seaport rivalries."¹¹ This was and is definitely the case for the northern ports such as Antwerp, Rotterdam, Hamburg and Le Havre. Those ports more or less share the same hinterland and thus are going after the same customers. For the industrial heart of Western Europe, the Ruhr-region, shipping via Antwerp, Hamburg or Rotterdam is about the same where distance is concerned. Because

¹⁰ *Proceedings of the Flemish council*, session 1992 - 1993, Meeting of 24 June 1993, 2441.

¹¹ J.P. Backx, *De haven van Rotterdam. Een onderzoek naar de oorzaken van haar economische betekenis in vergelijking met die van Hamburg en Antwerpen*, Rotterdam, 1929.

of this almost negligible difference in distance, those ports have focussed on other assets to convince the shipping-industry to choose the own port as loading-port. Next to obvious aspects as infra- and superstructure, factors as handling-tariffs; pilotage-tariffs; labour-organisation; labour-relations and the presence of cargo (the cargo-generating effect) played and play their role. Port-authorities and port-companies can try to improve their competitiveness by lowering certain tariffs, investing in new infra- and superstructure etc. Maritime access however is one aspect of that competition that is much more difficult for a port-authority or port-company to influence. Some ports profit from a natural ease of entrance that enables them to welcome the largest ships; other ports find themselves handicapped by a less favourable access which means a longer transit time and hence higher costs. Access is an important consideration when analysing the competition between Antwerp and Rotterdam. The river Scheldt actually is both an asset and an obstacle for Antwerp. On the one hand, its inland location offers an important advantage: it extends the sea-transport and thereby limits the more expensive transport over land. On the other hand water flow and limited navigational depth in the river are hindrances for the port. Because of depth restrictions in the Scheldt, deep draught ships had to wait for a high tide to enter Antwerp. This limitation was a topic of constant concern of both port authority and port companies. It became more and more of an issue from the beginning of the 1980s. Some major shipping-lines expressed their concern to the Antwerp port authority and stated either that they would no longer come to Antwerp or they would reposition some of their loops to other ports, if nothing was done to improve the access. By the end of the 1980s and the early 1990s, some major shipping-companies actually did leave Antwerp and reorientated all their loops to Rotterdam. Ease of navigation was now affecting the competitiveness of the port of Antwerp. More specifically, the ability to sail without having to wait for the tide became essential for the container-ships that were becoming more and more numerous in international sea-trade. Because of their high cost, those ships needed to limit the turn-around time in the port to a minimum in order to keep the ship operational as much as possible. Waiting for the tide became too time (and money) consuming and was no longer an option for those container-ships.

Containers and container-ships first appeared in European ports at the end of the 1960s: Antwerp and Rotterdam both welcomed the first container-ship in 1966. In Rotterdam the container-ships became part of the normal operations more quickly than in Antwerp. In 1966 Rotterdam handled some 60,000 TEU, Antwerp around 43,000. By 1971 Rotterdam already handled one million TEU, a level that Antwerp would only reach in 1978. In 1980 Rotterdam recorded a total container throughput of two million TEU, a level that Antwerp would only reach in 1993. In the 1970s the port of Rotterdam recorded an average market share in total container throughput of the Hamburg Le Havre range of 40 per cent. This share decreased to around 30 per cent by 2000. Antwerp had an average market share

of 10 to 15 per cent and surpassed 20 per cent in 2000.¹² In 1980 container-ships recorded 2114 per cent of the total ship movements in the port of Antwerp. Because of the increasing size of those ships, more of them had to wait for the tide. The Antwerp port authority and port federations now increased their lobbying efforts and pushed for the 48' - 43' program which became absolutely vital for the port. A further deepening of the Scheldt not only was important for those container-ships but also for the bulk-carriers. Bulk-carriers between 125,000 to 150,000 tdw could only sail to Antwerp after first sailing to Rotterdam and there unloading part of the cargo. With further deepening of the river, those bulk-carriers could enter the port of Antwerp without first sailing to Rotterdam, or so the Antwerp port authority hoped.

For Rotterdam the limitations of Antwerp were a clear advantage. With the Nieuwe Waterweg canal from the North Sea to Rotterdam, that port could offer potential clients almost unlimited maritime access and was able to welcome the largest bulk-carriers and container-ships. Consequently, Rotterdam had no interest in a deeper Scheldt that would benefit their main competitor. The port of Rotterdam and especially their port authority had been very successful in making the Dutch government understand that a deepening of the river Scheldt would damage the national main-port Rotterdam. Belgian negotiators felt that the potential impact on the competitive position of Rotterdam was the leitmotiv for the Dutch reticence towards a deepening of the Scheldt.¹³ Belgium has never been able to counter this Dutch reserve. The efforts by the Belgian delegation to join forces over the border with the ports of Terneuzen and Vlissingen did not lead to the effect hoped for. The Dutch delegation stated that the depth of water that both ports could offer was more than enough and that the Sealand ports had no interest in a deeper Scheldt.

The Dutch delegation and Dutch politicians also made maximum use (or mis-use) of the ambiguous formulation of the statute of the river Scheldt in the Separation Treaty of 1839. That treaty said that each country was responsible for the maintenance of the river on their own territory and that the river had to be kept in a condition that would not harm navigation on the river. The Netherlands were very reluctant to make any changes to this treaty and said that the treaty only obliged them to keep the river in a condition as it was in... 1839. The Dutch meant that any major intervention had to be the object of a new treaty and new negotiations. Belgium on the other hand believed that the Separation Treaty was very clear and already foresaw the possibility of those major interventions that were the logical consequence of the evolution of navigation. This different interpretation of the Separation Treaty drove both parties apart. Belgium however definitely did not play hard ball. In official statements Belgium kept repeating that according to them negotiations were not necessary and that a deepening of the Scheldt could be done based on the Separation Treaty. In practice however Belgium accepted the limitations that were attached to this

¹² T. Notteboom, "Thirty-five years of containerization in Antwerp and Rotterdam: structural changes in the container handling market," in: R. Loyen, E. Buyst, G. Devos, *Struggling for leadership: Antwerp - Rotterdam port competition between 1870 - 2000*, New York, 2002, 118.

¹³ *Personal archives Johan Demoen*, Reports of the Belgian consulate-general in Rotterdam, 28 September 1987.

treaty by the Dutch. An arbitration by the International Court of Justice or any other international arbitration procedure was never a real option despite the repeated requests by Antwerp politicians or the Antwerp port authority.¹⁴

The Water Treaties not only suffered from Dutch opposition. The Belgian internal tensions, more specifically Flanders versus the Walloon region and the unwillingness or inability of the federal government to overcome them, was a constant problem over the more than twenty years it took to reach an agreement. The Walloon region saw the Water Treaties as a dossier that was important to Flanders only and in which they had no interest. The federal Belgian government has never succeeded in convincing the Walloons that they too had an interest in a deeper Scheldt. The strict demands by the Dutch for new standards of the Meuse water-quality only confirmed the Walloons in their belief that they had to pay for the benefit of the Dutch and the Flemish.

The conservative attitude of the Walloons with regard to the quality of water is a striking constant in the whole process of the Water Treaties. In the draft agreements of June 1975, Belgium and the Netherlands agreed that over a period of twenty-five years the quality of the Meuse-water would have to improve drastically and would have to meet a set of twenty-five parameters. The final aim of this was to come to a cross-border system of parameters for water-quality. As mentioned above, the reactions in the Walloon region were very emotional. It seemed as if the bare existence of the Walloon region was under fire. The chairman of the regionalist "*Rassemblement Wallon*" declared: "*les ministres wallons présents et à venir qui donneraient leur aval à ce traité seraient déclarés 'Traîtres à la Wallonie.'*"¹⁵ Especially the fact that the Dutch would tell the Walloon region which parameters they would have to meet with "their" Meuse-water was not appreciated. "*La Meuse sous tutelle Hollandaise*" a leading Walloon newspaper headed.¹⁶ The Walloon region had always considered the river Meuse as their own private playground where they decided themselves what they would do. The draft agreements now meant an end to this. The water was seen as their only natural resource and the Walloon region was not planning on giving up that resource without a fight. As the representative of the Walloon region in the Belgian delegation said: "*notre seule richesse c'est l'eau.*" The Walloon opposition should however not only be seen in this proprietary context. The different function of the Meuse-water for the Walloon region and the Netherlands made it even more difficult to come to an agreement. In Belgium drinking-water is drawn from ground-water. The Dutch, however, depend on surface water from rivers and lakes for their drinking-water, and consequently want it to be as clean as possible: cleaner surface water reduces the necessary investments in water purification. The Dutch wanted the Meuse-water to meet standards fit for human consumption and hence the most strict parameters, the parameters for salmonoids. The quality standards for the Meuse-water were more strict than those for the Scheldt-water because the Scheldt is contaminated by sea-water which renders it unfit for human

¹⁴ *Proceedings of the Flemish Council*, Session 1993 - 1994, Meeting of 20 April 1994, 1606 - 1607.

¹⁵ *La Libre Belgique*, 13 September 1975.

¹⁶ *Le Soir*, 26 July 1975.

consumption. Because Belgium does not use surface-water, the direct return of clean surface-water for Belgium consequently is less obvious. For the Walloon region the parameters for cypriniformes were more than enough. For their defence the Walloons argued that if they had to meet the parameters for salmonoids, their industries would be handicapped: *"nous disons depuis de très nombreuses années que l'obligation d'assurer une pureté extrême aux eaux de la Meuse et des affluents fait peser une hypothèque considérable sur l'industrie wallonne et que son caractère compétitif en est gravement compromis."*¹⁷ Any effort by the Belgian and Dutch delegation to reach a compromise confronted Walloon stubbornness. One example of such a compromise was a study by a Walloon professor in law who had to examine whether the Dutch demands would in fact hinder the Walloon economy. This Professor Ergec came to the following conclusion: *"Il ressort de tout ce qui précède que le projet de traité ne paraît pas procurer de moyens juridiques supplémentairesle projet de traité n 'introduit pas de nouvelles obligations juridiquement contraignantes."*¹⁸

The Dutch became extremely annoyed by what they considered to be pure obstinacy. From the beginning of the 1990s the Dutch suspended all efforts to come to an agreement with the Walloon region on the quality of the Meuse-water and concentrated on an international level. By making multilateral agreements they hoped to isolate the Walloon region and force them to sign an agreement on the Meuse-water. This strategy proved to be successful. At the invitation of the Netherlands, Flanders, the Walloon region, Luxemburg, France and Germany - i.e. the whole basin and not only the main river - met on 9 & 10 June 1993 to try to come to an integrated policy on the quality of river water. It was striking to see how fast the Walloon region now agreed with such an integrated approach. They even agreed to the formation of an International Meuse Commission, which until then was seen as an unacceptable intrusion to the Walloon sovereignty. Especially the position of the French seems to have moved the Walloon region in this new direction. The Walloons had thought that France would be a natural ally; in reality they were supporting the Dutch. (This probably followed bilateral negotiations between France and the Netherlands.) Once they saw that they were totally isolated the Walloons dropped their resistance and agreed to comply with the parameters for salmonoids.

In the last quarter of the 20th century Belgium was transformed into a federal state with regions and communities that took over an important package of responsibilities from the federal government. This reform of the state and the consequent transitional stages led to considerable misunderstanding and uncertainty within both the Dutch and the Belgian delegation of who was the responsible authority for the different topics that were being discussed. The uncertainty of this transition to a federal state led to a lot of impatience among the Dutch delegation who repeatedly asked the Belgians "to get their act together."

The first phase of the state reform in 1980 was mostly symbolic. The 1988 and 1993

¹⁷ *Proceedings of Belgian Parliament, Session 1975 - 1976, Meeting of 4 12 1975, 851.*

¹⁸ *Archives of the Administratie Watenvegen en Zeewezen, Notes of the Belgian delegation, Final report by Prof. Ergec on the implementation of the Water Treaties, 1 March 1993, 14 - 15.*

reforms had a real impact. In 1988 the federal ministry of Public Works was split up in two regional branches, each fully authorized for the public works in their regions. The 1993 reform transferred to the regions the authority to enter into international treaties on matters within their jurisdiction.

This transitional process on the field led to a lot of inefficiencies and comical situations. The partial transfer of responsibility for air- and water-pollution in 1980 meant that the regions were in charge of supervision of compliance with certain rules that were still being discussed and established on the national, federal level. In 1988 the regions could themselves decide which set of rules had to be complied with by the industries on their territory. The difference in approach on water-quality meant that the rules in Flanders were much more rigid and strict than in the Walloon region. Because of these reforms, Belgium literally now became Mesopotamia with a two-track policy on air- and water-pollution. The transfer of authority to the regions did not dispel the Walloon distrust towards the Dutch and especially towards Europe. The fact that the Walloon region at least had to comply with European rules was a source of continuing resentment in Wallonia. The Walloons wanted to decide for themselves what they wanted to do with "their" Meuse-water: "*nous voulons disposer de l'eau dans notre region. Nous la livrerons contre de justes contreparties.*"TM In practice, it showed how the transitional approach of the state reform was unworkable. At the level of the European Community, until 1993 Belgium signed the treaties. The federal government however did not transfer any authority to the regions to force compliance with those European rules or the treaties they just signed. This undoubtedly caused a lot of frustrations among both the Dutch and the Flemish and a lot of time was lost trying to convince the Walloon region to comply with European rules. The only risk for the Walloon region was a possible conviction by the European Court in Strasbourg. As a Walloon representative in the Belgian delegation stated: "this would be a moral defeat, but no more than that."²⁰ The Netherlands followed this spectacle from the side-lines and repeatedly expressed their disbelief with the way things were being handled in Belgium. The fragmented competencies made it difficult for the Dutch to identify their negotiation partner. Who was in charge in Belgium for the water-quality? The Dutch situation was straight forward. In one of his many reports to the Brussels office of the ministry of Foreign Affairs, the Belgian consul-general in Rotterdam stated that the Dutch found it impractical that one Dutch minister had to meet with three or more Belgian ministers to discuss the Water-treaties.²¹ The Dutch and the Antwerp port authority and employers' federations also accused the Belgian federal government of not making more efforts to force a political break-through. They believed that the Belgian federal government found it a bit too easy to blame it all on the state reform.

Next to different intrinsic accents, the Water Treaties reveal a particular example of cultural differences between Belgium and the Netherlands. When reviewing the many

¹⁹ *Proceedings of the Belgian Parliament*. Session 1975 - 1976, Meeting of 4 December 1975, 852.

²⁰ *Personal archives of Johan Demoen*, Notes of the Belgian delegation, Meeting of 21 December 1992, 2.

²¹ *Personal archives of Johan Demoen*, Reports of the Belgian consul-general in Rotterdam, 4 October 1988.

formal and informal reports and notes, one can only conclude that despite, or thanks to, our common history, the Dutch and the Belgians "are one, but not the same." The more chaotic and pragmatic Belgian approach towards the actual negotiations made the Belgians a too easy prey for the more objective Dutch negotiators. The Dutch delegation, consisting mainly of civil servants, received specific instructions from the Dutch competent minister himself and did not have much margin for negotiations: their position or stand point was not debatable. "Once the Dutch have come to a stand point, that stand point is there to stay. '*Je maintiendrai*' perfectly reflects how the Dutch feel, think and act consequently."²²

During the different phases of negotiations it showed that the Dutch delegation had talked through every aspect of the dossiers that lay on the table, where as the Belgians often were not - or not enough - prepared for the negotiations. What is more, the Belgian delegation in most cases was divided in two camps. Within the Belgian delegation it was extremely difficult to conciliate the Flemish and the Walloon stand point or come to a consensus. If the head of the delegation did succeed in reaching such a consensus, generally it did not satisfy either camp. When the Belgian delegation started to fight out their disagreements in front of the Dutch delegation it became all too easy for the Dutch to gain an advantage from this discord. The Dutch just sat in an easy chair waiting for the Belgians to start quarrelling. On many occasions the Belgians could only conclude that once again the Dutch had succeeded in stimulating and making advantage of this discord.

The lack of aggressiveness and daring shown by the Belgian negotiators was without doubt the most serious handicap to a successful and rapid completion of the negotiations. In an attempt to come to an agreement with the Dutch the Belgians took a rather soft line and let play the "*do ut des*" principle. The Dutch delegation however took a much harder line and succeeded in limiting the "*do ut des*" - principle to the "*do*" part from the stand point of the Belgians. As a consequence of this, the Belgians had to conclude that they had given in, while the Dutch stood by their starting point. In an internal note of the Belgian Foreign Ministry it was stated that the Belgians "had every interest in negotiating more like the Dutch. '*Nous maintiendrons également.*'" At the end of many years of negotiations we can only conclude that the one-sided Belgian courtesy with regard to the Meuse and the Scheldt has brought Belgium absolutely nothing. This leads to the only possible conclusion that when negotiating with the Dutch politeness is not enough.²³ The Belgian government however did not show much decisiveness where the Water Treaties were concerned. It is indeed striking to see that the consecutive Belgian governments - despite the evident economic impact of the port of Antwerp for the national economy - did not act in a more vigorous way to try to come to a solution. Chasms within Belgium were a major factor, but also with the lack of interest within the Flanders, excepting only Antwerp, was also significant. Despite the joint efforts of all Antwerp MPs to get "their" water treaties back on the political agenda, one must conclude that Antwerp never succeeded

²² *Personal archives of Johan Demoen*, Reports of the Belgian consul-general in Rotterdam, 24 February 1987.

²³ *Personal archives of Johan Demoen*, Internal note Belgian Ministry of Foreign Affairs, s.d.

in convincing national politics of the importance of a deepening of the river Scheldt. Non-Antwerp politicians saw the water treaties as a local dossier that was not important for the whole country or even all Flanders. Notwithstanding the many emotional appeals for support, the Antwerp MPs were not successful in convincing the other Flemish MPs that they too had an interest. In the beginning the Antwerp port authority and the employers' federations showed some understanding for the Walloon opposition. When it was evident that the Walloon region was not willing to come to an agreement with the Dutch no matter the content of such an agreement, the tone of the reactions became more harsh. The Antwerp MPs had lively interpellations in the Belgian Parliament. "A final agreement on the Water Treaties, the key to a solution for all problems, is being blocked by Wallonia for years now."²⁴ "Just mentioning the Water Treaties is enough to get the Walloons annoyed."²⁵ Those interpellations had no effect. Every interjection - heavily supported by the Antwerp port authority and the employers' federations - was followed by a deafening silence or an idle communiqué. When reviewing all the political initiatives - and their failure - one can only conclude that the political power and impact of "Antwerp" - the city, the province, its port - was very limited.

In the 1980s and 1990s the Antwerp port authority, employers' federations and Flemish politicians almost automatically pointed at the Dutch when asked who was to blame for the very slow progress that was made with the Water Treaties. This paper shows that this was a too easy and incorrect way of putting things. Yes indeed, the Dutch have been very tough negotiators and have asked - and got - hard guarantees and compensations for the deepening of the river Scheldt that was to improve the competitive position of Antwerp. The intense competition between their own national main-port Rotterdam and the port of Antwerp lay without doubt at the basis of this firm position. The Dutch delegation had no interest in improving the competitive position of Antwerp and abused the vagueness of the Separation Treaty of 1839 to support their hardline-position. However, the paper has shown that where cleverness was concerned, the Belgian delegation was no match for the Dutch delegation. For most of the problems, the Belgian had only itself to blame. First, the belief by the Belgians that the Dutch would go along with the "give and take" principle that lies at the basis of every round of negotiations, quickly proved to be very naive. The Dutch entered negotiations with a standpoint that was not negotiable. Second, the fact that the Belgians had everything to ask and very little to offer helped the Dutch to maintain their position. The unbalanced composition of the negotiating package proved from the beginning to be an obstacle that was difficult to overcome. The eventual political breakthrough only came when the Belgians finally got something (the high speed train) to offer to the Dutch. Third, Belgian internal conflicts played an important role. In Wallonia, the water-treaties were seen as an "Antwerp" dossier in which the Walloons had no interest. The Antwerp politicians and port authority did not find an answer to this. This played a role in the

²⁴ *Proceedings of the Belgian parliament*, Session 1983 - 1984, Meeting of 24 May 1984, 2996.

²⁵ *Proceedings of the Belgian parliament*, Session 1985 - 1986, Meeting of 2 June 1986, 1194.

position towards the Dutch but also for the internal Belgian positioning. The diverging interests led to an continuation of feeble negotiating positions that further weakened the hand of Belgium in the talks. The internal conflicts within the Belgian delegation were even used by the Dutch to improve their negotiating position. So, when looking for a scapegoat the Belgians should not look at the Dutch but blame themselves: if they only showed a little bit more audacity and some Dutch business sense they would have been able to create a breakthrough. As the Belgian consul general in Rotterdam stated: if only the Belgians had negotiated more like the Dutch.