THE IRON RHINE CASE
AND THE ART OF TREATY INTERPRETATION
The Application of Nineteenth Century Obligations
in the Twenty-first Century

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The Iron Rhine is a railway linking the port of Antwerp to the Rhine basin in
Germany across Dutch territory. Belgium acquired the right of transit over Dutch
territory in a treaty from 1839 and requested a reactivation of the railway in
1998. As they failed to come to an understanding in negotiations, the Nether-
lands and Belgium decided to submit the case to arbitration. The Arbitral
Tribunal they set up in 2003 under the auspices of the Permanent Court of
Arbitration in The Hague faced the problem of the application of a nineteenth-
century treaty in the twenty-first century.¹ The way in which the Tribunal dealt
with this problem is the subject of this contribution.

1 THE IRON RHINE: ITS HISTORY AND ITS LEGAL FATE

At the Congress of Vienna of 1815, Great Britain, Prussia, Austria and Russia
decided to unite the region known before the Napoleonic era as the Austrian

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The opinions in this essay are solely the author’s and do not necessarily represent those
of the Kingdom of the Netherlands.

¹ Arbitration Regarding the Iron Rhine (“IJzeren Rijn”) Railway (Belgium/Netherlands),
Award of 24 May 2005. The Award as well as the Rules of Procedure and the pleadings
(Memorial, Counter-Memorial, Reply and Rejoinder) are available at http://www.pca-
cpa.org.
Netherlands and the former principality of Liège with the former Republic of the United Provinces to form the United Kingdom of the Netherlands. The union failed. On 25 August 1830 the population of Brussels rose in revolt against what it considered the dominance of the north and on 17 October 1830 the four Powers and France announced the convention of what became known as the London Conference. The aim of the Conference was to maintain stability and peace in Europe by orchestrating the separation of the Netherlands and Belgium. On 19 April 1839, the Netherlands and Belgium concluded the Treaty between the Kingdom of the Netherlands and the Kingdom of Belgium relative to the Separation of their Respective Territories (the Treaty of Separation). The delay of eight years in the conclusion of the Treaty was due to the persistent refusal of King William I of the Netherlands to ratify it.

The Treaty of Separation grants Belgium the right of transit on the rivers Scheldt and Maas (Article IX), the use of cross-border canals (Article X) and the right of passage through the Dutch towns Maastricht and Sittard (Article XI). Article XII allows for an extension on Dutch territory of a new road to be constructed or a new canal to be dug on Belgian territory. In 1873 the Netherlands and Belgium implemented Article XII and entered into the Iron Rhine Treaty, which permitted the construction of a railway line – instead of a road or canal – and which specified the present route of what became to be known as the “IJzeren Rijn” (Iron Rhine). The railway links the port of Antwerp to the Rhine basin in Germany and was completed in 1879. On Dutch territory it runs through the municipalities of Budel, Weert and Roermond.

Until 1897 the concession for the exploration and maintenance of the Iron Rhine was in Belgian hands. In that year, the Netherlands and Belgium concluded the Railway Convention, in which the Netherlands purchased the land and other immovable property of the Iron Rhine. The Netherlands rendered a concession for the maintenance and exploitation of the Iron Rhine to a Dutch railway company.

The Iron Rhine was used intensively between 1879 and 1914. After World War I, however, international use declined sharply, as Belgium had access to an alternative route, the Hasselt-Montzen-Aken line. The use of the railway

2 88 CTS (1838-1839) at 427.
3 Convention between Belgium and the Netherlands relative to the Payment of the Belgian Debt, the Abolition of the Surtax on Netherlands Spirits, and the Passing of a Railway Line from Antwerp to Germany across Limburg of 13 January 1873, 145 CTS (1872-1873) at 447.
4 Railway Agreement between Belgium and the Netherlands of 23 April 1897, 184 CTS (1896-1897) at 374.