

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2015 Nr. 36

A. TITEL

Verdrag tussen het Koninkrijk België, het Koninkrijk der Nederlanden en het Groothertogdom Luxemburg inzake de integratie van de beveiliging van het luchtruim tegen dreigingen die uitgaan van niet-militaire luchtvaartuigen (renegades); 's-Gravenhage, 4 maart 2015

B. TEKST

Agreement between the Kingdom of Belgium, the Kingdom of the Netherlands and the Grand Duchy of Luxembourg concerning the Integration of Air Security to Respond to Threats Posed by Non-Military (Renegade) Aircraft

The Kingdom of Belgium,

The Kingdom of the Netherlands

and

The Grand Duchy of Luxembourg,

Hereinafter referred to as "the Parties",

Considering the provisions of Article 51 of the Charter of the United Nations;

Considering the provisions of the North-Atlantic Treaty, signed in Washington on 4 April 1949;

Considering the provisions of the Agreement between Parties to the North-Atlantic Treaty, regarding the status of their forces, signed in London on 19 June 1951, hereinafter referred to as "NATO-SOFA", unless otherwise specified in this Agreement;

Considering the Convention on International Civil Aviation, signed in Chicago on 7 December 1944;

Considering the Council Framework Decision of 13 June 2002 on combatting terrorism (2002/475/JHA);

Considering the Declaration on Combatting Terrorism adopted by the Member States of the European Union at the European Summit in Brussels on 25 March 2004;

Considering the Operational Concept of the North Atlantic Treaty Organization to increase the Alliance's air defence posture in response to possible terrorist attacks (MCM-062-02);

Considering the Convention of 27 May 2005 between the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Republic of Austria on enhancing the cross-border cooperation, particularly in combatting terrorism, cross-border crime and illegal migration;

Considering Regulation (EC) nr. 549/2004 of the European Parliament and the Council of 10 March 2004 laying down the framework for the creation of the Single European Sky and Regulation (EC) nr. 1070/2009 of the European Parliament and the Council of 21 October 2009 amending Regulations (EC) 549/2004, (EC) nr. 551/2004 and (EC) nr. 552/2004 in order to improve the performance and sustainability of the European aviation system;

Considering the "Accord entre le Gouvernement de la République Française et le Gouvernement du Royaume de Belgique relative à la coopération en matière de Défense contre les menaces aériennes non militaires" of 6 July 2005;

Emphasising the strategic importance of the airspace for the safety and security of the territory of each Party and their surrounding region;

Prompted by the desire to define an appropriate legal framework for the integration of air security to respond to threats posed by non-military aircraft;

Have agreed as follows:

Article I

Definitions

For the purpose of this agreement the meaning of the terms used therein are as follows:

1. „Common Area of Interest (CAoI)“: the area consisting of the sovereign airspace of the Parties.
 2. „Third State Airspace (TSA)“: any airspace outside of the CAoI of a State not Party to this Treaty.
 3. „Air Incident“: Any abnormality in assigned NATO and national airspace requiring tactical actions, including the use of aircraft. Air incidents can be of a military and of a non-military nature. Air Incidents of a non-military nature encompass Renegade(s).
 4. „Renegade“: A civil air platform that is assessed as operating in such a manner as to raise suspicion that it might be used as a weapon to perpetrate a terrorist attack.
 5. „Assigned Aircraft (AAC)“: the military aircraft assigned to execute the obligations under this Agreement.
 6. „Assigned Aircraft (AAC) Rotation“: the rotational contribution with Assigned Aircraft by Parties.
 7. „Recognised Air Picture (RAP)“: an air threat analysis of the detected air movements of all aircraft within a particular airspace, with each aircraft being identified as friendly or hostile, and ideally containing additional information, such as type of aircraft, flight number and flight plan. The information may be drawn from a number of different sources, including military and civilian sensors, civilian air traffic control and allied nations or NATO.
 8. „Control and Reporting Centre (CRC)“: air defence centre that is responsible for the build-up of a RAP of all movements in its assigned airspace and that is the command and control authority of the AAC.
 9. „General Aviation Security Measures (GASM)“: the identification and classification of an aircraft, which is done by the national Control and Reporting Centres (CRC).
 10. „Active Aviation Security Measures (AASM)“: security measures executed by AAC or other military means of the Parties, including:
 - interrogation, which comprises the visual or electronic identification of an aircraft and the shadowing of an aircraft;
 - intervention, which comprises the forced flight path, prohibition of overflight and/or the imposed obligation on the suspect aircraft to land at a designated area;
 - use of warning burst with flares;
 - use of kinetic force, from warning burst with guns up to and including the use of lethal force.
- For the purposes of this Agreement, AASM over Luxembourg shall not include the use of lethal force.
11. „National Governmental Authority (NGA)“: national competent authority of a Party in respect of the national airspace in which the Renegade is present, responsible for implementing the necessary measures to maintain air security in accordance with the relevant national rules and regulations. Under this Agreement the respective NGA's are: for the Netherlands Minister of Security and Justice; for Belgium Minister of Defence; and for Luxembourg the Minister of Defence, or their respective successors.
 12. „NGA representative“: under this Agreement the respective NGA representatives are: for the Netherlands the Master Controller on duty of the national CRC; for Belgium the CRC Master Controller or Senior Duty Officer, which has a coordinating and reporting responsibility towards the Belgian NGA; and for Luxembourg the High Commissioner for National Protection Luxembourg („Haut-Commissaire à la Protection nationale“), or their respective successors. This Agreement, however, does not exclude the possibility of a future CRC-cooperation, which will be detailed in a separate Technical Arrangement CRC to be signed by Parties' Ministers of Defence.
 13. „Terrorist attack“: attack committed with such aim as to constitute a terrorist offense under the Council Framework Decision of 13 June 2002 on combatting terrorism (2002/475/JHA).
 14. „(Re)Transfer of Authority (TOA/RTOA)“: the activity by which the responsibilities and the air defence means are (re)transferred from NATO to the NGA (through the NGA representative) or vice versa.
 15. „Receiving State“: the State in whose national airspace the movements and/or AASM by AAC of the Sending State take place.
 16. „Sending State“: the State that executes AASM through national AAC within the airspace of the Receiving State. For the purposes of this Agreement, Luxembourg is not considered to be a Sending State.
 17. „TACON“: Tactical Control, meaning command authority over assigned or attached forces or commands, or military capability or forces made available for tasking, that is limited to the detailed direction and control of movements or manoeuvres within the operational area necessary to accomplish missions or tasks assigned.

Article II

Aim

This Agreement provides the legal framework necessary for the integration of air security in response to threats posed by Renegades and aims at improving the intervention capacities of the Parties with regard to Renegades through synergy of efforts and by pooling and sharing of resources.

Article III

Scope

1. This Agreement applies to all military means of the Parties that contribute to the execution of GASM and AASM and that are required to achieve an integrated air security that can confront threats posed by Renegades in Parties' CAol.
2. The application of this Agreement extends to the CAol.

Article IV

Exchange of information

The Parties shall exchange such information on the RAP as is necessary to prevent and respond to threats to air security in the CAol and as is necessary to enable the NGA to take the necessary or appropriate actions under this Agreement.

Article V

Operational provisions

1. In furtherance of this Agreement Belgium and the Netherlands shall monitor the movement in the CAol and protect the CAol through execution of GASM and AASM as described in Article 1 paragraph 9 and 10. For Luxembourg, the monitoring and protection of the CAol shall be assured by Belgium and the Netherlands according to the modalities laid down in the present Agreement and in the arrangement(s) specified in Article XI of this Agreement, hereinafter referred to as "technical arrangement(s)".
2. The AAC of Belgium and the Netherlands shall participate in turn in the AAC Rotation over the CAol.
3. In the event of a non-military Air Incident that is in or close to the Receiving State's airspace, the Sending State shall provide TOA and TACON over its AAC to the Receiving State.
4. The use of force by AAC against a Renegade is legitimate if:
 - a) the AAC is under TACON of the Receiving State; and
 - b) the AAC has received authorisation from the NGA of the Receiving State to use force against a Renegade in the CAol.Pursuant to Article 1, paragraph 10, no lethal force shall be used over Luxembourg airspace. Detailed arrangements with regard to the use of force by AAC shall be laid down in technical arrangements.
5. The provisions of the NATO SOFA apply to all aspects of the integration and cooperation as described in this Agreement, unless specifically stated otherwise in this Agreement.

Article VI

Support Services and exercises

1. For the purpose of implementing this Agreement, the Parties shall, within their means and capabilities, provide each other with support services. These support services, as well as the conditions for providing such services shall be stipulated in detail in technical arrangements, to be concluded by the respective Ministers of Defence.
2. The Parties undertake to conduct regular cross-border exercises to maintain the necessary level of readiness to contribute to AAC Rotation. Details shall be stipulated in technical arrangements to be concluded by the respective Ministers of Defence.

Article VII

Security-, safety- and environmental protection measures

Parties shall respect the relevant security-, safety- and environmental protection regulations and instructions in force in the Receiving State, particularly in respect of weapons, ammunition, and aircraft. The use of weapons and ammunition shall be governed by the Receiving State's law.

Article VIII

Financial provisions

Each Party shall bear its own costs incurred in connection with the implementation and the execution of this Agreement.

Article IX

Damages & Claims

1. Claims between the Parties in relation to compensation for damage (including the loss of use), injury or death, resulting from the execution of this Agreement shall be waived by the Parties in accordance with the relevant provisions of Article VIII of the NATO SOFA.

2. Third party claims that are the result of damage (including the loss of use), injury or death resulting from the execution of this Agreement shall be dealt with in accordance with applicable international and national laws and regulations. In order to compensate for damage, injury or death resulting from the execution of this Agreement, the Parties involved may indemnify third parties 'ex gratia' via an equal share of the total amount of damages between the Sending and the Receiving State, without prejudicial acknowledgment of responsibility. In such case the Party in whose airspace or territory the damage, injury or death occurred, may propose the amount to be paid of such 'ex gratia' compensation.

Article X

Investigation of aviation accidents and incidents

In the event of an aviation accident or incident occurring in the national airspace or on the national territory of one of the Parties, and an aircraft of another Party is involved, a flight safety investigation shall be conducted in conformity with:

- a) Annex XIII to the Convention on International Civil Aviation, signed in Chicago on 7 December 1944;
- b) The relevant NATO Standardisation Agreements (STANAGS), such as STANAG 3531.

Article XI

Technical arrangements

Technical arrangements may be concluded for this Agreement. The technical arrangements may be amended or supplemented by mutual consent.

Article XII

Dispute resolution

Disputes that may arise from the implementation, execution or interpretation of this Agreement shall be resolved exclusively through consultation between the Parties and shall not be referred to any national or international tribunal, or any other third party for settlement.

Article XIII

Amendment

Any Party may, at any time, request amendment of this Agreement by providing written notice to the other Parties. In the event of such a request being made, the Parties shall promptly enter into negotiations. Amendments shall enter into force according to the procedure described in Article XIV, paragraph 1.

Article XIV

Entry into force and termination

1. This Agreement shall enter into force on the first day of the second month after the date on which the Parties have notified the Depositary that they have completed the necessary domestic requirements for entry into force of this Agreement.

2. This Agreement shall remain in force unless terminated by the mutual written consent of the Parties or by any Party giving not less than 180 days' notice in writing to the Depositary of its intent to terminate. Notwith-

standing termination of this Agreement, all reimbursement obligations incurred pursuant to its terms shall remain binding on the responsible Party until satisfied.

Article XV

Depositary

1. The Kingdom of the Netherlands shall be the Depositary of this Agreement.
2. The Depositary shall register this Agreement with the United Nations in accordance with Article 102 of the Charter of the United Nations.

Article XVI

Applicability of the Agreement as regards the Kingdom of the Netherlands

1. As regards the Kingdom of the Netherlands, any measures or actions taken under this Agreement by the AAC in its national airspace and under its national authority shall be governed by the rules that apply to the national armed forces in the event of military assistance to the police for criminal law enforcement.
2. As regards the Kingdom of the Netherlands, this Agreement shall apply to the European part of the Kingdom of the Netherlands.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE, at The Hague on 4 March 2015 in triplicate, in the English language,

For the Kingdom of Belgium

VANDEPUT

For the Kingdom of the Netherlands

HENNIS-PLASSCHAERT

For the Grand Duchy of Luxembourg

LORENZ

D. PARLEMENT

Het Verdrag heeft ingevolge artikel 91 van de Grondwet de goedkeuring van de Staten-Generaal, alvorens het Koninkrijk aan het Verdrag kan worden gebonden.

E. PARTIJGEGEVENS

Kennisgeving van gebondenheid is voorzien in artikel XIV.

Partij	Ondertekening	Voorlopige toepassing	Ratificatie	Type*	In werking	Opzegging	Buiten werking
België	04-03-2015						
Luxemburg	04-03-2015						
Nederlanden, het Koninkrijk der	04-03-2015						

* O=Ondertekening zonder voorbehoud of vereiste van ratificatie, R=Bekrachtiging, aanvaarding, goedkeuring of kennisgeving, T=Toetreding, VG=Voortgezette gebondenheid, NB=Niet bekend

G. INWERKINGTREDING

De bepalingen van het Verdrag zullen ingevolge artikel XIV, eerste lid, in werking treden op de eerste dag van de tweede maand volgend op de datum waarop de partijen de depositaris ervan op de hoogte hebben gebracht dat zij de noodzakelijke nationale vereisten voor inwerkingtreding van dit Verdrag hebben afgerond.

J. VERWIJZINGEN

- Titel : Verdrag inzake de internationale burgerluchtvaart;
Chicago, 7 december 1944
- Tekst : *Stb.* 1947, 165 (Engels en vertaling)
- Laatste *Trb.* : *Trb.* 2012, 126
- Titel : Handvest van de Verenigde Naties;
San Francisco, 26 juni 1945
- Tekst : *Trb.* 1979, 37 (Engels, geconsolideerd)
Trb. 1987, 113 (vertaling, geconsolideerd)
- Laatste *Trb.* : *Trb.* 2014, 112
- Titel : Noord-Atlantisch Verdrag;
Washington, 4 april 1949
- Tekst : *Stb.* 1949, 355 (Engels, Frans en vertaling)
- Laatste *Trb.* : *Trb.* 2009, 85
- Titel : Verdrag tussen de Staten die partij zijn bij het Noord-Atlantisch Verdrag, nopens de rechtspositie van hun krijgsmachten;
Londen, 19 juni 1951
- Tekst : *Trb.* 1951, 114 (Engels en Frans)
Trb. 1953, 10 (vertaling)
- Laatste *Trb.* : *Trb.* 2001, 28
- Titel : Verdrag tussen het Koninkrijk België, de Bondsrepubliek Duitsland, het Koninkrijk Spanje, de Republiek Frankrijk, het Groothertogdom Luxemburg, het Koninkrijk der Nederlanden en de Republiek Oostenrijk inzake de intensivering van de grensoverschrijdende samenwerking, in het bijzonder ter bestrijding van het terrorisme, de grensoverschrijdende criminaliteit en de illegale migratie;
Prüm, 27 mei 2005
- Tekst : *Trb.* 2005, 197 (Nederlands)
- Laatste *Trb.* : *Trb.* 2008, 188

Uitgegeven de vierde maart 2015.

De Minister van Buitenlandse Zaken,

A.G. KOENDERS