

Title: Treaty between the Kingdom of the Netherlands and the Federal Republic of Germany concerning the course of the common frontier, the boundary waters, real property situated near the frontier, traffic crossing the frontier on land and via inland waters, and other frontier questions (Frontier Treaty)

Parties: Netherlands, Germany

Basin: Meuse, Rhine

Date: 4/8/1960

TREATY BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE FEDERAL REPUBLIC OF GERMANY CONCERNING THE COURSE OF THE COMMON FRONTIER, THE BOUNDARY WATERS, REAL PROPERTY SITUATED NEAR THE FRONTIER, TRAFFIC CROSSING THE FRONTIER ON LAND AND VIA INLAND WATERS, AND OTHER FRONTIER QUESTIONS (FRONTIER TREATY). SIGNED AT THE HAGUE, ON 8 APRIL 1960

The Kingdom of the Netherlands and the Federal Republic of Germany have, agreed on the following provisions:

CHAPTER I

COURSE OF THE FRONTIER

Article I

The course of the frontier between the Kingdom of the Netherlands and the Federal Republic of Germany shall be as specified in the Boundary Treaties between the Kingdom of Prussia and the Kingdom of the Netherlands signed at Aachen 26 June 1816 and at Cleves on 7 October 1816, in the Frontier Treaty between the Kingdom of Hanover and the Kingdom of the Netherlands signed at Meppen on 2 July 1824, and in the Agreements concluded for the purposes of implementing, revising and supplementing those Treaties, to the extent that such Treaties and Agreements were in force between the Kingdom of the Netherlands and the German Reich on 31 December 1937, and in the provisions derogating therefrom which are set out in annex A to this Treaty.

...

[Non-Water relevant text not included]

CHAPTER 4

BOUNDARY WATERS

Article 56

1. Boundary waters Within the meaning of this chapter are surface waters, including their banks, which cross or, in some of their sections, form the frontier the frontier between the Netherlands and Germany.
2. The provisions of this chapter shall not apply to the Rhine, the Ems, and the Dollard.
3. Corporations within the meaning of this chapter are the provinces, municipalities and associations of public law which have jurisdiction *ratione loci* in matters relating to the boundary waters in the territories of the Contracting Parties.

Article 57

The Contracting Parties agree to conduct regular consultations on all questions relating to the use and management of water resources in so far as they affect the boundary waters within the territory of the neighbouring State, with a view to solving such questions in a manner satisfactory to both Contracting Parties. Such consultations shall be held in the Permanent Boundary Waters Commission referred to in article 64 and its sub-commissions.

Article 58

1. The Contracting Parties undertake to give due regard, in the performance of, their tasks in the field of water management, to the neighbouring State's interests in the boundary waters. To that end, they agree to take or to support all measures required to establish and to maintain within the sections of the boundary waters situated in their respective territories such orderly conditions as will mutually safeguard their interests, and they shall neither take nor tolerate any measures causing substantial prejudice to the neighbouring State.

2. In performing the obligations undertaken in paragraph 1, the Contracting Parties shall in particular take or support, within an appropriate period of time, all measures required:

(a) To secure and maintain the adequate drainage of the boundary waters, to the extent required in the interest of the neighbouring State ;

(b) To prevent inundations and other damage resulting from the inadequate servicing of sluices and weirs ;

(c) To prevent such diversion of water as may cause substantial prejudice to the neighbouring State ;

(d) To prevent the excessive extraction of sand and other solid substances liable to cause substantial prejudice to the neighbouring State ;

(e) To prevent such excessive pollution of the boundary waters as may substantially impair the customary use of the waters by the neighbouring State.

3. In addition, the Contracting Parties shall endeavour, within the limits of their financial resources, to effect such improvements in the use and management of the boundary waters within their respective territories as will serve their mutual interests, and to participate financially, where such participation is equitable, in measures taken in respect of the boundary waters within the territory of the neighbouring State.

Article 59

1. For the purpose of implementing the provisions laid down in this chapter, the Contracting Parties agree to conclude such special agreements in respect of individual boundary waters as may be required. Agreements of this kind may also be concluded between the Kingdom of the Netherlands, on the one hand, and, subject to the approval of the Government of the Federal Republic of Germany, Lander Lower Saxony and North Rhine-Westphalia, on the other hand.

2. Agreements of the type designated in paragraph I may also be concluded, subject to the approval of the Governments of the Contracting Parties, by corporations.

3. Existing agreements, in so far as they concern boundary waters, shall continue in effect, until such time as they are amended or supplemented, even if they are at variance with the provisions of this chapter.

Article 60

1. If it is intended to carry into effect, within the territory of one of the Contracting Parties, any measures which may substantially affect the use and management of water resources in the territory of the other Contracting Party, or to allow, such measures to be carried into effect, the Permanent Boundary Waters Commission shall be notified thereof as soon as possible.

2. The Contracting Parties shall notify each other of the authorities or corporations within its territory which are competent to make the notification referred to in paragraph 1.

Article 61

Each of the Contracting Parties may within a reasonable period of time present to the Permanent Boundary Waters Commission its objections to any measures, whether proposed or already under way, or to any cases of nonperformance of an obligation on the part of the other Contracting Party which are liable to cause, or have already caused, substantial damage ; such objections must be founded on the fact or the expectation of a violation of obligations entered into.

Article 62

1. Each of the Contracting Parties shall be obligated, pending the conclusion of the deliberations of the Permanent Boundary Waters Commission or, as the case may be, of the deliberations between the two Governments, to suspend the execution of any measures planned by it to which objections have been raised by the other Party, unless the other Contracting Party consents to some other arrangement.

2. Paragraph I shall not apply if a Party to this Treaty cannot suspend the execution of the measures objected to without seriously endangering its interests. The rights of the other Contracting Party shall not be affected thereby.

Article 63

1. If one of the Contracting Parties, notwithstanding the objections raised by the other Party under the terms of article 61, acts in violation of its obligations under this chapter or arising under any of the special agreements to be concluded as provided in article 59, thereby causing damage within the territory of the other Contracting Party, it shall be liable for damages.

2. Liability for damages shall arise in respect only of such damage as was sustained after the objections were raised.

Article 64

For the purpose of promoting good-neighbourly co-operation in matters relating to boundary waters, the Contracting Parties establish a Permanent Netherlands-German Boundary Waters Commission.

Article 65

1. Each Government shall appoint three expert members of the Commission,, each group including one chairman, and their deputies. The first members of the Commission shall be appointed within a period of three months following the entry into force of this Treaty.
2. The Commission shall meet at least once every year and may, either at its discretion or upon the proposal of one of the two chairmen, hold additional meetings. The meetings shall be held in the two States alternately. Additional experts may be invited to attend the meetings of the Commission.
3. The two chairmen may communicate direct with each other on questions relating to the boundary waters.
4. The Commission may adopt rules of procedure to govern the conduct of its business.

Article 66

1. It shall be the function of the Commission to deliberate jointly on all questions which may arise in the application of the provisions of this chapter and thereby to promote the implementation of the provisions of this chapter through mutual information and exchange of experience.
2. The Commission shall receive the notifications provided for in article 60, paragraph 1.
3. It shall consider suggestions, complaints and objections under article 61. It shall direct its efforts towards bringing about the amicable settlement of disputes by the Parties concerned.
4. It shall consider forthwith how far existing agreements relating to matters within its jurisdiction are in need of amendment or supplementation and shall make recommendations for the modification of existing and the conclusion of new agreements.
5. It shall discuss the question of contributions by one Contracting Party towards the costs of measures carried out by the other Party.
6. It shall be authorized to inspect boundary waters. It shall, through the intermediary of its chairmen, receive from the authorities of both Contracting Parties such information as it may require in the exercise of its powers and the discharge of its functions.
7. It shall be authorized, within its terms of reference, to make recommendations to Governments and corporations.
8. It shall, in particular, seek to formulate recommendations in cases in which objections are submitted by the Contracting Parties in accordance with the provisions of article 61.

Article 67

1. If, in a case covered by article 66, paragraph 8, the commission fails to reach agreement on a recommendation, the two Governments shall endeavour to come to an agreement.
2. If such attempt fail, or if the Governments are unable to reach an agreement despite a recommendation of the Commission, either Government may bring the matter before the arbitral tribunal.

Article 68

1. The Commission shall decide to establish sub-commissions for individual boundary waters if the need therefor arises; the members of the sub-commission shall be appointed on a basis of parity.
2. The sub-commissions shall include representatives of the local authorities and corporations.
3. The sub-commissions shall, within their respective jurisdictions, exercise the same functions as the Commission; they shall report to the latter on their activities. The right to receive and to consider objections and the right of recommendation shall

Article 69

An arbitral tribunal having jurisdiction, to the exclusion of all other contractual provisions for the settlement of disputes, shall be established for the settlement of all disputes between the Contracting Parties which involve the interpretation or application of the provisions of this chapter and of the special agreements to be concluded pursuant to article 59.

Article 70

1. The arbitral tribunal shall be composed of a permanent umpire and two arbitrators appointed for each individual case. If the umpire ceases to discharge his functions or is prevented from discharging them, they shall be performed by a deputy.
2. Neither the umpire nor his deputy shall be a national of either Contracting Party. They shall not be persons having their ordinary residence in the territory of either Contracting Party or persons in the service of such Party.
3. The Governments of the Contracting Parties shall appoint the umpire and his deputy by mutual agreement, choosing them from among persons who possess the qualifications required in their respective countries for appointment to judicial offices or are otherwise qualified to discharge these functions by virtue of their special competence as jurisconsults.
4. The terms of office of the umpire and his deputy shall be five years, save in the case of the first deputy umpire to be appointed after the entry into force of this Treaty, who shall be so appointed for a term of six years. Thereafter, the terms of office shall be deemed extended successively by five-year periods unless the Government of one of the Contracting Parties notifies the Government of the other Party before the expiration of such term of office of its wish for the appointment of another umpire or deputy umpire.
5. If no agreement is reached by the Governments on the choice of an umpire or his deputy within three months after the entry into force of this Treaty, the President of the International Court of justice at The Hague may be requested by the two Governments jointly, or by one of them, to appoint an umpire or his deputy. If the President is prevented from acting or if he is a national of one of the Contracting Parties, the appointment shall be made by the Vice-President, and if the latter is also prevented or is a national of one of the Contracting Parties, the appointment shall be made by the senior member of the International Court of justice not prevented from acting who is not a national of either Contracting Party. The same method shall be applied if, after the expiration of the terms of office, no agreement is reached by the Governments on the appointment of a new umpire or deputy umpire.

6. If, before the expiration of their terms of office, the umpire or his deputy cease to fulfil the conditions laid down in paragraph 2 above, or in the case of their separation for some other reason, a successor, who shall be a person fulfilling the conditions laid down in paragraphs 2 and 3, shall be appointed for the unexpired portion of the term. The appointment procedure shall be subject *mutatis mulandis* to paragraph 5 ; any extension of the successor's term of office shall be governed by the second sentence of paragraph 4.

7. As soon as the umpire addresses to the Governments the communication provided for in article 71, paragraph 3, each of the Governments shall appoint an arbitrator. If a Government fails to appoint an arbitrator within one month after the date of the communication provided for in article 71, paragraph 3, the other Government may request the President of the International Court of justice to appoint an arbitrator for the vacant seat. The second sentence of paragraph 5 shall apply *mutatis mutandis*.

5. In the event of an arbitrator's separation from the arbitral tribunal, the vacancy shall be filled by the application *mutatis mutandis* of the procedure laid down in paragraph 7.

9. The arbitral tribunal shall itself determine the place of its meetings. It shall be assisted by two secretaries; each Government shall appoint one of these secretaries.

Article 71

1. If the Government of one of the Contracting Parties wishes to refer a dispute to the arbitral tribunal for adjudication, it shall submit to the umpire a statement of claim, at the same time sending a copy of such statement to the other Contracting Party.

2. If the Governments of the two Contracting Parties, availing themselves of the provisions of article 69, wish to refer a dispute to the arbitral tribunal by mutual agreement, they shall file with the umpire an arbitration agreement (compromis) in which they have formulated the point at issue.

3. The umpire shall first discuss the difference with the two Governments with a view to bringing about a settlement. If he considers his efforts to have failed he shall inform the two Governments accordingly.

Article 72

1. In deciding upon a case, the arbitral tribunal shall apply the provisions of this chapter and of the special agreements to be concluded pursuant to article 59, and the general principles of international law.

2. The procedure before the arbitral tribunal shall be governed by the provisions of articles 63 to 82 of the Hague Convention for the Pacific Settlement of International Disputes of 18 October 1907,' to the extent to which they are applicable.

3. In urgent cases, the umpire may, upon the motion of one of the two Governments, order interim measures to be taken even before the appointment of the arbitrators. Upon the motion of one of the two Governments, the arbitral tribunal shall decide whether the interim measure ordered by the umpire shall be revoked. The arbitral tribunal shall be authorized to order interim measures to be taken after hearing the Parties.

Article 73

The costs of the office of umpire of the arbitral tribunal and of his deputy shall be borne in equal shares by the two Contracting Parties. Each Party shall be responsible for the costs of the office of the arbitrator appointed by it and of the secretary appointed by it, as well as the costs of its representation before the arbitral tribunal. All other expenses involved in the functioning of the arbitral tribunal shall be borne by the Contracting Parties in equal shares.

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