

Agreement between Finland and Sweden Concerning Frontier Waters

Done at Helsinki, 15 December 1971; in force 1 January 1972

With a view to ensuring that frontier watercourses are used in the manner most in keeping with the interests of the two States and their frontier areas, the Government of Finland and the Government of Sweden have concluded the following Agreement regulating certain matters relating to water rights and fishing rights in connexion with the said watercourses.

Chapter 1: GENERAL PROVISIONS

Article 1

The Agreement shall be applicable to the following waters:

—The Rivers Kōnkämä and Muonio and the portion of the River Tome and the lakes through which the State frontier between Finland and Sweden runs " frontier rivers";

—The special effluents formed by the various branches at the mouth of the River Tome;

—The part of the Gulf of Bothnia lying between the Finnish and Swedish parishes of Lower Tome.

The provisions of the Agreement relating to fishing shall be applicable within a special area, as indicated in chapter 5, article 1.

Article 2

The Agreement shall cover:

—Measures that involve hydraulic construction works within the meaning of chapter 3 or water regulation within the meaning of chapter 4 or that may cause pollution within the meaning of chapter 6, where such measures are carried out in frontier rivers;

—Measures of the same nature which are carried out within the area of application defined above in article 1, first paragraph, in either State and may produce effects in the other State;

—Fishing in the special area defined in chapter 5, article 1.

Provisions concerning timber floating appear in the Agreement of 17 February 1949¹ between Finland and Sweden concerning timber floating in the Torne and Muonio frontier rivers together with the accompanying Regulations concerning timber floating in the floatway of the Torne and Muonio frontier rivers. The necessary supplementary provisions will be issued in an additional agreement to the above-mentioned Agreement and accompanying supplementary regulations.

Article 3

In the light of the considerations set out in detail in this Agreement, the waters covered by the Agreement shall be used in such a manner that both countries derive benefit from the frontier watercourses and that the interests of the frontier areas are promoted as effectively as possible. Particular importance shall be accorded to the interests of nature conservancy; the greatest possible attention shall be given to the preservation of fish stocks and the prevention of water pollution.

Article 4

In cases involving a number of different projects which affect the same waters or for some other reason cannot be carried out concurrently, preference shall be given to the project which may be assumed to be of the greatest public and private benefit. Conflicting interests shall, in so far as possible, be adjusted in such a way that each may be satisfied without substantial injury to the others.

Article 5

In frontier rivers with branches, each party shall be entitled to an equal share of the water volume even if a larger portion thereof discharges in one State than in the other. This provision shall be without prejudice to any individual water rights based on a judicial decision, immemorial usage or other special legal grounds.

Article 6

An owner or usufructuary of the bank of a frontier river may, without regard to the frontier, use waters along the bank belonging to a third party to erect a small landing stage, boathouse, bath-house, wash-house or other similar building.

Any person shall be entitled to take water or ice from frontier rivers for domestic requirements or to use the water for other similar purposes.

Waters may not be used for the purposes specified in this article if the owner of the waters is thereby caused significant inconvenience or if fishing or timber floating is hampered. This article shall be without prejudice to other regulations applicable to traffic across the State frontier.

Article 7

In accordance with article IV of the Frontier Regulation Treaty of 20 (8) November 1810, residents of either State shall be entitled to travel freely by boat on frontier rivers and, where necessary for the safety of the boat's passage or for the purpose of manoeuvring the boat, to put in at the opposite bank.

Article 8

In cases where no special provision is made in the Agreement, the laws in force in each State shall apply.

Chapter 2: FRONTIER RIVER COMMISSION

Article 1

For purposes of the application of the Agreement, a permanent commission (the Finnish—Swedish Frontier River Commission) shall be established jointly by the two States.

Article 2

The Frontier River Commission shall have six members, of whom the Government of each State shall appoint three. Members shall be appointed for a fixed term. One member from each State shall be a legal expert with experience as a judge, and one shall be a technical expert; the third member shall be a person with an intimate knowledge of conditions in the frontier areas, being appointed in the case of Finland on the basis of a recommendation from the county administration of Lappland county and in the case of Sweden on the basis of a recommendation from the county administration of Norrbotten county.

The Governments of the two States shall alternately designate one of their members to serve as Chairman or Vice-Chairman of the Commission for a term of one year.

One or more alternates who meet the qualifications established for members shall be appointed for each member in accordance with the procedure applicable in the case of members.

Secretarial and other personnel required by the Commission shall be made available to it.

Article 3

The Frontier River Commission shall, pursuant to its own decisions, institute such inquiries and investigation as are required in order to enable it to accomplish its tasks in accordance with this Agreement.

The Commission may enter into direct contact with the authorities of either State and may call upon them for assistance in obtaining any necessary information and arranging for any necessary consultations.

The Commission may, where necessary, employ the services of experts for special investigations.

Article 4

Each State shall pay the salary of the members it appoints to the Commission. Other costs of the Commission's work which are not obviously to be regarded as expenditure by only one State shall be borne equally by the two States.

Article 5

Members of the Frontier River Commission shall, while serving with the Commission, be criminally liable for their actions under the law of the State by whose Government they were appointed. The staff of the Commission shall be subject, in the matter of criminal liability, to the legal provisions relating to civil servants at their State of residence.

Members and staff of the Commission shall, while in the performance Of their duties, enjoy the protection under criminal law which is accorded to civil servants in the State in which the duties are performed.

Article 6

The authorities of each State shall permit members and staff of the Frontier River Commission and experts appointed to exercise supervision pursuant to chapter 9, article 1, to cross the frontier wherever appropriate for the purposes of the Commission's work or for the purpose of exercising supervision and shall grant them the most favourable possible treatment with regard to passports and other identity papers and with regard to the times when they may cross the frontier and stay in the State concerned.

Article 7

The property of the Frontier River Commission shall be exempt from all customs formalities and from import and export duties.

Article 8

The statute of the Frontier River Commission appears in annex A of this Agreement.

Chapter 3: HYDRAULIC CONSTRUCTION WORKS

Article 1

For the purposes of this Agreement, the following shall be deemed to be

hydraulic construction works:

- The erection of installations in any waters;
- Regulation of the water level or flow;
- The diversion of water from any body of water;
- Any other measure which may result in a change in the water level or flow or in the depth or position of the water.

The provisions concerning hydraulic construction works shall also apply to:

- Measures taken in any waters which may affect ground water conditions;
- The erection of bridges or other installations over any body of water;
- The laying of conduits or the construction of other installations under any body of water.

Any alteration or demolition of hydraulic structures shall be regarded as construction works if the measures in question are such as might cause a significant change in water conditions.

Article 2

Hydraulic construction works shall be carried out in such a way that their purpose is achieved without unreasonable cost and with the least possible damage and inconvenience to other interests

in either State. Due regard shall be given to proposed future projects that may be affected by the installation.

Article 3

Where any person would suffer damage or inconvenience as a result of hydraulic construction works, the works shall be carried out only if they can be shown to bring public or private benefit that substantially outweighs the in. convenience.

Where the construction would result in a substantial deterioration in the living conditions of the population or cause a permanent change in natural conditions such as might entail substantially diminished comfort for people living in the vicinity or a significant nature conservancy loss or where significant public interests would be otherwise prejudiced, the construction shall be permitted only if it is of particular importance for the economy or for the locality or from some other public standpoint.

Compensation pursuant to chapter 7 shall be paid in respect of any damage or inconvenience.

Article 4

In deciding whether projected construction is to be carried out, conditions in both States shall be given equal weight.

Article 5

Where several persons, by reason of ownership, perpetual easement rights or usufruct. has control over part of a stretch of rapids lying in a frontier river in either State, one or more of the said persons may. in accordance with the procedure provided for in article 13, be granted the right to make use of a part belonging to a third party if that is permissible under the relevant legal provisions of the State to which the part in question belongs. Compensation for such use shall be paid pursuant to chapter 7.

Article 6

Any person who, by reason of ownership, perpetual easement rights or usufruct, has control over part of a stretch of rapids lying in a frontier river in either State or who, by reason of such rights, together with any rights arising out of article 5, is entitled to make use of the said part of the rapids may propose to the person who has control over the opposite side that they should make joint use of the rapids. If the proposal is rejected, the person making it may. in accordance with

the procedure provided for in article 13, be granted the right to make use of the other person's part in return for compensation pursuant to chapter 7.

If the person who has control over the opposite side declares his willingness to participate in construction in the rapids but agreement cannot be reached on the conditions governing such participation, the conditions shall be determined in accordance with the procedure provided for in article 13.

Article 7

Where hydraulic construction works are such that they may have a harmful effect on fishing, the person carrying out the construction shall take or pay for such measures as are reasonably called for in order to protect the fish stock or maintain fishing of an equal standard.

Article 8

Any person who carries out hydraulic construction works shall be bound to take or pay for reasonable measures to prevent inconvenience to traffic.

Persons carrying out construction works shall also be bound to take or pay for the measures required in order to prevent any significant inconvenience to timber floating. Where, in a particular case, relatively extensive measures are required in order to relieve inconvenience to timber floating, the two States shall consider jointly whether and to what extent the cost of such measures may be defrayed from public funds.

Article 9

In carrying out hydraulic construction works, care shall be taken to ensure that, apart from occasional, temporary turbidity, no pollution occurs that causes any significant inconvenience.

Article 10

Where hydraulic construction works cause a substantial change in water conditions or are otherwise significant in their magnitude or impact, the person carrying out the project may be required to pay a specified annual charge. The said charge shall be used for preventing or minimizing damage or inconvenience caused by the project which is not of such a nature as to be subject to compensation, for making good such damage or inconvenience or for other purposes beneficial to the locality affected by the project.

The amount of the charge shall be fixed with due regard on the one hand, for the benefit derived from the project and, on the other hand, for the damage and inconvenience resulting therefrom. The charge shall in no case be fixed at more than 2 per cent of the estimated annual net profit from the project. It shall be paid to the Frontier River Commission and allocated to the fund referred to in chapter 9, article 8.

Other special conditions which may reasonably be deemed necessary from the standpoint of the locality and the public interest in general may also be laid down with respect to projects involving hydraulic construction works.

Article 11

In order to facilitate hydraulic construction works which are of substantial public or private significance or to prevent or minimize damage or inconvenience resulting from hydraulic construction works, the builder may be granted the right, in return for compensation pursuant to chapter 7, to make a permanent or temporary use of immovable property belonging to a third party.

Article 12

Under the conditions specified in article 11. the builder may be granted the right, in return for compensation pursuant to chapter 7, to make use of, alter or demolish hydraulic structures belonging to a third party.

Article 13

Permission from the Frontier River Commission shall be required for hydraulic construction works covered by the Agreement. Permission need not be obtained, however, where the construction is on a small scale and it is apparent that no public or private interest will be adversely affected by it.

Where the question arises of erecting or significantly altering a dam in a frontier river or of water regulation measures of such a nature as to substantially affect water conditions in a frontier river, the Commission shall, before permission is granted, submit for consideration by the two Governments the question of the admissibility of the project and the conditions which should apply to it from the standpoint of the public interest. Regardless of the nature of the project, such submission shall take place if the Commission finds that the project may have the effects referred to in article 3, second paragraph. Submission to the two Governments shall also take place in other cases if the Commission finds that a special reason for such action exists or if either Government

reserves the right to consider the project and so notifies the Commission before the latter has decided the question of the admissibility of the project.

The question of the grant of permission under article 6, first paragraph, and of the establishment of conditions in accordance with the second paragraph of the same article shall be submitted to the two Governments for consideration.

Article 14

Where hydraulic construction works are carried out without the grant of permission under this Agreement or under provisions previously in force, the builder shall be entitled to call upon the Frontier River Commission to consider whether the construction is legal.

The burden of proof with respect to the water conditions prevailing before the construction shall rest with the builder. Articles 16, 18 and 19 shall apply, as appropriate, with respect to the effects of the decision of the Frontier River Commission.

Article 15

Permission to carry out hydraulic construction works may, where circumstances so require, be granted for a specified period of time.

Article 16

Decisions granting permission to carry out hydraulic construction works shall be applicable to all persons to the extent that they have legal force, but subject to the limitations indicated in articles 17—19.

Article 17

Where a project involving hydraulic construction works is not completed within the period fixed in accordance with chapter 8, article 9. (5), the permission granted shall lapse in respect of the uncompleted portion of the project. The Frontier River Commission may, however, upon application being made prior to the expiry of the said period, grant an extension for a maximum of 10 years if reason exists for so doing.

Article 18

Permission to carry out hydraulic construction works may be reviewed on application by the competent authority of either State or by the owner of the project, with regard to the conditions that should apply to the project from the standpoint of the public interest. Such application may be made during the fortieth year after the calendar year in which permission is granted and every fortieth year thereafter; in respect of the charge referred to in article 10, however, the period shall be 10 years. If the review is not requested during the last year of a given period, the previously applicable provisions shall apply for the next period as well.

The provisions relating to the matter referred to in article 7 may be reviewed in accordance with this article without regard to any specific period of time if the said provisions prove to be unsuitable for protecting fishing; however, the provisions may not be amended in a manner that is prejudicial to the rights of third parties.

Where a review is carried out, the owner of the project may not be made subject to obligations entailing substantial costs or inconvenience over and above those previously imposed on him.

Article 19

Claims for compensation for damage or inconvenience for which no provision is made by the Frontier River Commission at the time of granting permission may be submitted within 10 years from the end of the period within which the construction is to be completed. Where the damage or inconvenience is significant, application may be made within the same period for the issue of amended regulations governing the project such as will without prejudicing the rights of third parties or causing substantial inconvenience to the owner, prevent or reduce to a minimum any future damage or inconvenience.

Article 20

The owner of any project involving hydraulic construction works shall be required to maintain the installations belonging to the project in such a manner that no danger arises to public or private rights.