

Title: Supplementary boundary treaty between Argentina and Paraguay on the river Pilcomayo
Parties: Argentina, Paraguay
Basin: Pilcomayo
Date: 6/1/1945
Argentina-Paraguay

35. SUPPLEMENTARY BOUNDARY TREATY¹ BETWEEN ARGENTINA AND PARAGUAY, SIGNED AT BUENOS AIRES, JULY 5, 1939²

Article 6. As soon as this treaty is ratified, both governments shall proceed to appoint a technical commission composed of Paraguayans and Argentines to study and draw up the plan of works necessary to regulate the proportional distribution of the flow of the river Pilcomayo into its two branches on the north and on the south of the frontier line.

36. SUPPLEMENTARY BOUNDARY TREATY³ BETWEEN THE ARGENTINE REPUBLIC AND THE REPUBLIC OF PARAGUAY ON THE RIVER PILCOMAYO AND PROTOCOL³ ANNEXED TO THE TREATY, SIGNED AT BUENOS AIRES ON 1 JUNE 1945⁴

The Governments of the Argentine Republic and the Republic of Paraguay, being desirous of reaching a permanent settlement of the question of the boundaries pending between the two countries at the Pilcomayo River, in the region lying between the points known as "Horqueta" and "Salto Palmar" referred to in the Supplementary Boundary Treaty of 5 July 1939 and the Special Protocol annexed thereto, in which region there is in fact no river having a single, continuous and permanent bed, since the waters of the river aforesaid, whether they constitute a water-course or mere marshland, do not have any stability either as a watercourse or as marshland and being subject, owing to the influence of various factors, to continual shifts and changes; and being desirous of establishing a frontier line which may serve as a permanent boundary between the two countries, in accordance with the Final Proposals contained in the Final Report of the Argentine-Paraguayan Joint Frontier Commission, reproduced in its Record No. 16, dated at the city of Asunción on 16 August 1944, which Final Report is annexed to this Treaty and was duly approved by the Supreme Government of the Argentine Republic by Decree No. 27,177 M-240 of 9 October 1944 and by the Supreme Government of Paraguay by Decree No. 5,950 of 9 November 1944; and

Whereas:

In the aforesaid Final Report mention is made of a dividing line between the two countries in that region and of the procedure for ensuring the stability of the dividing line and the utilization of the discharge of the waters of the River Pilcomayo on the basis of the plan of hydraulic works provided for in the relative Preliminary Project, which was duly noted in the Record of the "Pilcomayo Joint Technical Commission for Surveys and Hydraulic Works", dated at Asunción on 30 November 1943,

RESOLVES:

By mutual agreement, and inspired by a constant desire for peace and concord, to conclude this Supplementary Permanent Boundary Treaty between the Argentine Republic and the Republic of Paraguay at the River Pilcomayo and:

Article 3

For the purpose of ensuring the stability of the dividing line indicated in article 1 and the utilization of the flow of the waters, the two Governments agree to the construction of the works mentioned in the Preliminary Project prepared by the "Pilcomayo Joint Technical Commission

for Surveys and Hydraulic Works", as set out in the Record of 30 November 1943, signed at Asunción, and confirmed by the "Argentine-Paraguayan Joint Frontier Commission" in its Record No. 14, signed at Asunción on 4 August 1944.

The said works shall be begun not later than two years and six months after the date of exchange of ratification of this Treaty. The procedure for the financing of arid award of contracts for such works is laid down in the Special Protocol annexed to this Treaty.

Article 4

For the purpose of carrying out and financing the hydraulic works specified in the preceding article, the two Governments agree to establish a "Joint Technical Commission for Hydraulic Works on the River Pilcomayo", composed of one technical expert for each country. The Commission shall be authorized to make, by Mutual agreement and in keeping with the letter and spirit of this Treaty, such amendments of detail as it may be deemed necessary or appropriate to introduce into the Preliminary Project of Hydraulic Works in order to facilitate the construction and maintenance of the works. The Commission shall begin its work not later than three months after the date of exchange of ratifications. Within the twelve succeeding months it shall submit the definitive plan of the works and financial estimates to the two Governments, which shall reach a decision thereon within two months from the date on which they are submitted.

The "Joint Frontier Demarcation Commission" shall take into account the amendments of detail introduced into the plan of works and any changes which may occur in the main course of the waters within the dike embankments referred to in the Preliminary Works Project.

Article 5

The two Governments agree to establish a system for the control of the waters of the River Pilcomayo throughout its course from the tripartite point "Esmcralda" (geographic co-ordinates: latitude 22° 13' 44". 19 south; longitude 62° 38' 17". 10 west of Greenwich) to its point of discharge into the Paraguay River, and for the maintenance of the works constructed and the utilization of the flow of the waters, in such a manner that full supervision may be exercised and appropriate measures taken in all cases and with the necessary speed to prevent shifts and changes in the present course of the Pilcomayo River in the first and third sectors and in its permanent course in the region of the second Sector. For this purpose a "Joint Argentine-Paraguayan Commission for the Administration and Supervision of the River Pilcomayo" shall be organized as a permanent body. It shall be composed of one technical expert from each country. Until such time as the hydraulic works provided for in article 3 of this Treaty have been completed, these functions shall be exercised by the "Joint Technical Commission for Hydraulic Works" established under article 4 of this Treaty.

Article 6

For the purpose of providing the necessary finance and for awarding the contracts for the works referred to in article 3 and for the functioning and regulation of the Joint Commissions provided for in articles 2, 4 and 5 of this Treaty, a Special Protocol of the same date has been signed and is annexed to this Treaty.

SPECIAL PROTOCOL TO THE SUPPLEMENTARY TREATY ON THE PERMANENT BOUNDARY BETWEEN THE ARGENTINE REPUBLIC AND THE REPUBLIC OF PARAGUAY ON THE RIVER PILCOMAYO

Article 9

The "Joint Technical Commission for Hydraulic Works on the River Pilcomayo", set up under article 4 of the Supplementary Treaty on the Permanent Boundary of this date, shall be responsible for the ground plan and final design of the hydraulic works provided for in article 3 of that treaty.

Article 10

This Commission shall meet first in the city of Buenos Aires within the time-limit stipulated in the treaty aforesaid for the purpose of its constitution and to draw up its Technical and Administrative Regulations, which shall be submitted for the consideration and approval of both Governments.

It shall also draw up the plans of work for the discharge of its duties.

Article 11

When the final plans for the hydraulic works have been approved by both Governments, the "Joint Technical Commission for Hydraulic Works on the River Pilcomayo" shall be responsible for supervising the execution of these works.

Article 12

The "Joint Technical Commission for Hydraulic Works on the River Pilcomayo " shall submit for the consideration of both Governments, together with the final plans for the works, details of the measures and organization necessary for the execution, maintenance and administration of these works.

Article 13

Until the hydraulic engineering works agreed on are completed, the "Joint Technical Commission for Hydraulic Works on the River Pilcomayo " shall act at the same time as the " Argentine-Paraguyan Joint Commission for the Administration and Supervision of the River Pilcomayo", for the purpose of carrying out article 5 of the Supplementary Treaty on the Permanent Boundary of this date, and shall submit for the consideration of the Governments concerned the regulations needed for that purpose.

Article 14

Within two months after the approval of the final plans and the estimates for the works described in article 4 of the Supplementary Treaty on the Permanent Frontier of this date the two Governments shall decide by agreement which of them shall undertake to execute these works, the contracts for which shall be awarded to official departments of firms of the nationality of the country chosen.

Article 15

The country which is to carry out the works, in accordance with the provisions of the previous article, shall bear all the expenditure involved.

Article 16

The field activities of the various Joint Commissions shall be recorded in a Field journal, produced in two identical copies.

Article 17

Each country shall pay the salaries of its staff and any expenditure due in respect of its own Commissions and shall provide them with any instruments, transport, vessels or other means which they may need for the performance of their work. The common expenditure of the various joint Commissions shall be borne equally.

Article 18

Any instruments, equipment, vehicles, baggage, provisions and all tools or articles required by the various joint Commissions shall be exempt from customs duties in both countries and enjoy complete freedom of entry and transit. The contracting Governments undertake to grant facilities for the transport of civil or military staff, equipment, instruments, etc. belonging to the joint Commissions, and to allow military or civil aircraft, having a mission to carry out in connexion with the work allotted to them, to fly in the frontier zone and shall grant them for that purpose all facilities for the use of landing fields and hangars.

FINAL REPORT OF THE JOINT ARGENTINE-PARAGUAYAN FRONTIER COMMISSION⁵

In accordance with article 4 of the Supplementary Boundary Treaty of 5 July 1939, the Joint Argentine-Paraguayan Frontier Commission, by agreement between the two Delegations, has drawn up the following Final Report, which each Delegation will submit to its Government for the purposes set forth in articles 8 and 9 of the Special Protocol to the said Supplementary Treaty on the Frontier:

ESTABLISHMENT OF THE JOINT COMMISSION

The Joint Frontier Commission was established under article 2 of the Supplementary Boundary Treaty between the Argentine Republic and the Republic of Paraguay, signed at Buenos Aires on 5 July 1939, to determine the frontier line in the area comprised between the following points: to the north from Horqueta along the inlets formed by the northern arm of the River Pilcomayo to the Argentine fort of Caracoles; to the south, from the same point, Horqueta along the dry bed of the Pilcomayo to the fort of Zalazar, and this point to Salto Palmar; and, to the east, the line comprised between the fort of Caracoles and Salto Palmar.

CONCLUSIONS

The preceding examination shows the unique nature of the River Pilcomayo in the Second Sector, namely the area between Salto Palmar and Horqueta, which the Joint Commission was required to survey, under the Supplementary Boundary Treaty of 5 July 1939, with a view to proposing the frontier line. Nevertheless this physiographical examination leads to the following fundamental conclusions as can be seen in both the aerial photographic survey and the topographical surveys on the ground.

2. In the second place the waters of the River Pilcomayo throughout the area of the Second Sector, whether they form watercourses, or only marshes, lack permanent stability both as watercourses and as marshes. On the contrary, as seen in the preceding chapter, they are liable to change and shift constantly under the influence of various forces. Hence nothing would be gained by stipulating only one frontier line between the two adjacent countries. Such a frontier line would be little more than a line on paper. Nature would very soon make it meaningless by sending a large part of the waters in one direction or another, unexpectedly and capriciously, and part of the territory of one of the bordering countries might be left completely without water or covered with useless marshes.

It is necessary, therefore, to fix the course of the waters and to stabilize them, so that they cannot wander or lie stagnant, and to allow the current itself to dig and establish its own bed when it has been increased and controlled in this way.

This aspect of the question, which is most important, has been considered by the joint technical commission set up to make a survey and to draw up plans for the works needed to ensure the proportional distribution of the waters of the River Pilcomayo, as provided in article 6 of the Supplementary Boundary Treaty.

This joint technical commission has agreed on a preliminary plan of works which is described in a Record drawn up at Asunción on 30 November 1943 (see Record No. 14 in Annex 2). These works consist of the following: (1) Two embankments extending from near Punto Horqueta eastwards to the neighbourhood of the Laguna La Bella, one on each side of the proposed frontier line and about 10 kilometres apart, in order to limit the area within which the bed described above as the most permanent one silts and changes its course, and to give this bed stability; all this should ensure that the entire volume of water flowing eastwards past Punto Horqueta enters the Laguna La Bella; (2) The building of a dam in the Laguna La Bella, with its discharge intake structure and safety spills; (3) The digging of a channel of a width of 40 metres and an average depth of one and a half metres, across the Patino inlet, from the main outlet of the Laguna La Bella at a place about 600 metres to the north-northeast of the Fort Zalazar, and continuing approximately in a straight line to Salto Palmar.

The matter to be solved is more than an affair of frontiers and more than a question of the quantitative division of territory. It is the fixing and proportional distribution between the two neighbouring countries of a large mass of water which is now lost by evaporation, overflow or lack of control, in all cases to no advantage. The completion of the works described, which is essential if the river is to be given stability in a single bed within the Second Sector, will also confer great benefits on both the bordering countries, since it will make possible the full use and proportional distribution between them of a volume of water entering at Punto Horqueta, which amounted to 3,600 million cubic metres in 1942 and which is now wasted. It will make possible the construction of roads on the embankment causeways. Finally the increase in the volume of water in a fixed bed, and its control by the dam in the Laguna La Bella, will make possible the use of large quantities of water for irrigation and the navigation of the River Pilcomayo from the Laguna La Bella to its mouth in the River Paraguay. Apart from these very diverse and valuable advantages the frontier question pending between the two countries will be solved permanently and amicably. There is no doubt that the cost of the works, which is estimated at 7.5 million Argentine pesos, or about 5.8 million guaranies, is an investment which is not only fully justified but may even be considered relatively small. When carrying out the final surveys on the spot for the construction of the dikes, dams and canals referred to in the report prepared at Asunción on 30 November 1943 and even during the actual work of construction it may in certain cases be thought necessary or advisable in the opinion of the technical engineers to make certain changes or detail in the preliminary project submitted, with a view to facilitating the execution of the works and their maintenance. There can be no doubt that the joint hydraulic commission to be set up to carry out those final surveys and work of construction should be authorized to make such changes or detail, it being understood that they are adopted by mutual agreement and in every case in accordance with the letter and the spirit of the treaties, keeping as close as possible to the frontier line proposed by the undersigned Joint Commission.

It is possible, also, that when the works have been completed, particularly in the section between Punto Horqueta and the Laguna La Bella, the main watercourse may also undergo certain physical changes as it deepens and establishes its own bed between the two embankments proposed in the above mentioned Report of 30 November 1943.

For both these reasons, the Joint Commission thinks that it would be useful to provide in the Final Boundary Treaty that when the dividing line is being traced on the spot such changes of

detail together with any alterations of course between the two embankments should be taken into account.

Lastly, there is no doubt that the maintenance of these works calls for constant supervision, in order to prevent deterioration and to repair any damage caused by the weather. Moreover, the whole course of the River Pilcomayo from Esmeralda to its mouth in the River Paraguay needs special supervision for the same purpose. For these reasons, the undersigned suggest that a Joint Argentine-Paraguayan Commission for the River Pilcomayo should be set up to propose to both Governments any measures which may be necessary in each case. A special protocol would determine the duties of this Commission; it would be agreed that although the Commission need not be stationed permanently in the area, it would make periodical inspections and would go to the area on every occasion when necessary.

VI

FINAL PROPOSALS

In view of the preceding account, and in accordance with articles 8 and 9 of the Special Protocol to the Supplementary Boundary Treaty of 5 July 1939, i.e. in order that both Governments may be able to conclude a Final Boundary Treaty, the Paraguayan-Argentine Joint Frontier Commission submits to the Governments of the Republic of Paraguay and the Argentine Republic, by full agreement, the following proposals, which it considers indivisible:

Second. " In order to ensure the permanence of the dividing line described in the previous article and the proportional distribution of the volume of water mentioned in article 6 of the Treaty of 5 July 1939, both Governments should provide for the execution and financing of the works described in the preliminary draft submitted by the joint Technical Commission for Surveys and Hydraulic Works on the River Pilcomayo, and contained in its Report drawn up at Asunción on 30 November 1943.

Third. "The hydraulic joint commission to be set up to carry out the final surveys and the works mentioned in the previous article acting by agreement and in accordance with the letter and the spirit of the Treaties should be authorized to make any changes of detail in the preliminary draft submitted which it thinks necessary or useful, in order to facilitate the execution and maintenance of the works.

Fourth. "The joint commission for the demarcation of the permanent frontier line shall take into account the changes of detail mentioned in the previous article, as well as any changes in the main watercourse between the embankments described in the preliminary draft which is contained in the Report drawn up at Asunción on 30 November 1943.

Fifth. "An agreement shall also be reached on the system of administration of the waters of the River Pilcomayo, throughout its course from Esmeralda to its mouth in the River Paraguay, on the maintenance of the completed works and on the proportional distribution of the waters, all of which should be supervised, in each case and as quickly as may be considered necessary, by a joint commission for the River Pilcomayo, composed of delegates appointed by both Governments."

The members of the Joint Argentine-Paraguayan Frontier Commission are happy to declare that they sign the present report in full agreement, and they are most happy to note once more that, both in the completion of their work and their surveys on the ground, and in their deliberations, the greatest cordiality, harmony and mutual understanding have always prevailed among them.

Since, by completing the present report, the undersigned delegates have fulfilled the task with which the Governments of the Republic of Paraguay and the Argentine Republic have honoured

them, they hope that it will soon be possible to base the determination and final demarcation of the boundaries between the two brother countries on the contents of this report.

Asunción del Paraguay, 16 August 1944

¹ The exchange or ratifications took place at Buenos Aires on 10 November 1939.

² *British and Foreign State Papers*, vol. 143, P. 340.

³ Entered into force on 16 August 1945.

⁴ Ministry of Foreign Affairs and Public Worship of the Argentine Republic, *Instrumentos internacionales de caracter bilateral scriptos por la Republica Argentina* (up to 30 June 1948), 1950, vol. II, p. 1181.

⁵ Ministry of Foreign Affairs and Public Worship of the Argentine Republic, *Instrumentos internacionales de caracter bilateral suscriptos por la Republica Argentina* up to 30 June 1948), vol. II, p. 1189, Buenos Aires, 1950.

FUENTE:

<http://ocid.nacse.org/qml/research/tfdd/toTFDDdocs/56ENG.htm>