

At the turn of the century with the invention of the electric generator which could be set in motion by the power of falling water and with the evolution of the means of transmitting electric power over considerable distances, these limitations became particularly apparent to the leaders of the two nations which share the St. Lawrence where immense resources had thereby become potentially available to be turned to useful account. Under the stimulus of this interest and necessity a system was in fact evolved through which the difficulties of separate and distinct communities in working together could be overcome. This system is set forth in the Treaty of 1909, usually referred to as the Boundary Waters Treaty; but its usefulness is by no means confined to questions concerning the use of its waters.

The fundamental conception of this Treaty is both to dispel trouble arising, or threatening to arise, between the two countries or their peoples and also to provide a means through which their joint aspirations can be fulfilled. The methods adopted are in many instances quite novel in character and nowhere else, between any other two countries, have they ever been brought into effective use, either before or since.

The Treaty of 1909 established the International Joint Commission, a body composed of six commissioners, three on the part of the United States and a like number on the part of Canada. The members on either side are equal so that, if the Commission is to proceed at all in the matters which have been referred to it, it must proceed by agreement and this principle has also been followed by the Commission itself in the establishment of the many international engineering boards and committees which it has had occasion to set up to assist it in the discharge of its duties during the 38 years which it has been in existence. In order to discharge these responsibilities effectively the Commission has been armed with authority which, in certain precisely defined spheres, has been placed above that of national law.

For example, unless there has first been a special agreement between the Governments of Canada and the United States, "no further or other use or obstructions or diversions, whether temporary or permanent of boundary waters on either side of the line. . . shall be made except by the authority of the United States and. . . Canada within their respective jurisdictions and with the approval of the International Joint Commission".

By these provisions the power to initiate plans for the deepening of channels, the construction of breakwaters, the improvement of harbours, and the like, is left to the respective Governments on their own sides of the line, provided that the results "do not materially affect the level or flow. . . at the other. . ." in which case the plans must be submitted to the Commission for "approval".

Article IX of the Treaty of 1909 provides that "any question. . . involving the rights, obligations or interests of either in relation to the other. . . along the common frontier shall be referred. . . to the International Joint Commission for examination and report, whenever either. . . the United States or. . . Canada shall request. . .".

It was pursuant to these provisions that in January 1920 the question of the further improvement of the St. Lawrence River between Montreal and Lake Ontario for