

in each federal government – the Canadian Cabinet and the U.S. Presidency. What this focus tends to overlook, however, are the other governmental agents in each country that can vitiate executive willingness to make the IJC work.

#### Provincial resource

In Canada, the proprietors of water resources are the provincial governments, whose willingness to provide the Commission with technical co-operation is as crucial to the IJC's work as federal involvement. There has, on occasion, been a parting of the ways between the federal and provincial governments (British Columbia's policy on the Columbia River in the 1950s and Saskatchewan's tiff with the IJC in 1978 over the Poplar River power project are two such cases), but on the whole the record of provincial co-operation has been creditable – if only, perhaps, because there are statutory constraints to provincial freedom of manoeuvre on transboundary questions. The Canada Water Act provides for federal-provincial consultation on water-management, and gives the Federal Government the power to undertake research on any waters in Canada. Similarly, the International Rivers Improvement Act requires the provincial governments to apply to the federal Minister of the Environment for licensing before undertakings on international waterways can proceed.

In the United States, the separation of powers renders legislative desire to make the IJC work as important as the willingness of the President and his executive departments. The power of appropriation given to Congress provides a separate source of foreign-policy-making influence within the U.S. Government that is quite independent of the executive. The decisions taken in appropriation committees can – and do – channel policy in directions not at all desired by the President or his Cabinet. There are options open to the White House in the face of a recalcitrant Congress, such as the veto or impoundment, but there is a limit on how far the President can pursue a policy opposed by a large part of the legislature.

#### Garrison

An illustration of how the Congress can have an impact on the course of Canadian-American relations is provided by the Garrison Diversion Unit in North Dakota. Approved by Congress in 1965 after many years of North Dakotan pressure on the Federal Government, the GDU is a multimillion-dollar irrigation scheme to provide water to semi-arid

lands in the northern and southeastern areas of the state.

As originally proposed, the Garrison Diversion was designed to pump Missouri River waters over the Continental Divide. Canals would channel the water into a reservoir formed by the Lonetree and Wintering Dams, and from there to land in north and southeast North Dakota. The water used for irrigation would run off into the Souris and Red Rivers, which flow north into Manitoba.

The expected change in both quantity and quality of water flowing across the 49th Parallel as a result of Garrison was a source of concern to Manitoba municipalities, fishermen and farmers; it was feared that increased flows would exacerbate flooding, that irrigation waters would carry more sediment, saline and minerals, and that waters from the Missouri River basin would bring new species of fish and plant life into the Hudson Bay drainage basin, disrupting commercial fishing in Manitoba.

As a result of the concern expressed in Manitoba, the Canadian Government began to seek assurances from the U.S. Government in 1969, shortly after construction had begun on the Diversion, that Garrison would not contravene Article IV of the Boundary Waters Treaty, which prohibits transboundary pollution "to the injury of health or property".

Because initial meetings between Canadian and American officials proved inconclusive, the Canadian Government asked the U.S. Government, in October 1973, to impose a moratorium on construction of the parts of the project that would affect Canada. In its reply, the U.S. promised that none of the controversial aspects of the GDU would be started until Canadian concerns were met. Washington assured Ottawa that it would meet its obligations under the 1909 treaty.

However, these assurances did not satisfy Ottawa. Further meetings of officials, in August 1974 and January 1975, ended in an impasse. The Congress was continuing to appropriate funds for Garrison, and construction and expropriation of land was continuing in North Dakota. This, together with persistent pressure from Progressive Conservative Members of Parliament from Manitoba in the House of Commons, prompted the Canadian Government to urge Washington to send the matter to the International Joint Commission.

By October 1975, both governments had agreed on a joint reference, which asked the IJC to report on the "transboundary implications" of the GDU. The

*Construction moratorium requested by Canada*