

agreements on various subjects have been entered into from time to time throughout the history of this country. Some of them have been specifically authorized by acts of Congress; others, though not specifically authorized, have been within the framework of acts of Congress; and still others have been concluded without enabling legislation on the subject.

Following the failure of the Senate to approve a treaty for the annexation of Texas, the annexation was accomplished by a joint resolution approved on March 1, 1845 (5 Stat. 797), after passage by a simple majority vote of the two houses of Congress. Likewise, in the case of Hawaii, a treaty of annexation had been signed on June 16, 1897, and approved by the Hawaiian Legislature, but there was not sufficient support in the United States Senate to obtain approval by a two-thirds vote. Thereafter Congress passed a joint resolution to accomplish the same purpose, which was approved July 7, 1898 (30 Stat. 750).

Of interest in this connection is action by Congress with respect to the construction of bridges across the international boundary—United States and Canada, subject to similar authorization by Canada. For example, Public Resolution No. 117, 75th Congress, 3rd session, created the Niagara Falls Bridge Commission and authorized it to construct and operate bridges across the Niagara River, subject to "approval of the proper authorities in the Dominion of Canada."

On November 11, 1927, President Coolidge issued a presidential licence to the Detroit-Ontario Subway, Inc., authorizing the company to construct, operate, and maintain a tunnel from a point in or near Brush or Randolph Street in the City of Detroit to a point on the international boundary line under the Detroit River. It is understood that corresponding authorization was given on the part of Canada by an Order in Council.

The improvement of the Great Lakes-St. Lawrence Basin for navigation and other purposes would seem clearly to fall within the commerce clause of the Constitution, giving the Congress the authority to regulate interstate and foreign commerce. Where the undertaking with respect to interstate and foreign commerce involves boundary waters over which this country does not have exclusive jurisdiction, there would seem to be no reason why the Congress should not within its Constitutional power enact legislation, contingent upon a like legislative enactment in the other country, signifying its approval of a joint undertaking signed by both Governments. The signing of an agreement by the two Governments would be but a convenient way of bringing about in advance of legislative enactments a joint undertaking by the two Governments on a complicated question which could hardly be handled without such advance understanding. The agreement would contain provisions which might otherwise be incorporated in a treaty, but would not take the treaty form or follow the treaty process. It would not constitute a binding international agreement until Congress and the Canadian Parliament had indicated their approval.

GREEN H. HACKWORTH.

(b) *Letter from the State Department, Washington, transmitting Legal Adviser's memorandum to the Attorney General of the United States, March 13, 1941*

DEPARTMENT OF STATE,
WASHINGTON, March 13, 1941.

MY DEAR MR. ATTORNEY GENERAL,—

I enclose for your consideration a memorandum prepared by the Legal Adviser of this Department, together with a copy of a proposed agreement between the United States and Canada regarding the Great Lakes-St. Lawrence Deep Waterway Project. It is hoped that an agreement may be signed within the next few days.