

an agreement upon which the welfare of the people in the two countries was dependent. No government would dare to contravene the pact. There is no way in which the Canadian Government could contravene the pact without causing as much disadvantage to Canadians as to interests in the United States. In the same way Congress could not repeal the legislation authorizing the agreement without causing as much disadvantage to United States interests as to Canadian. Further, Congress could not in this manner gain any advantage whatsoever for United States interests.

7. The foregoing considerations lead to the following conclusions:—

- (a) Procedure by concurrent legislation or by agreement could not be supported by the authority of the provisions of the Boundary Waters Treaty;
- (b) Apart from that Treaty, an agreement based upon the legislative authority of Congress would give rise to a valid obligation which would be recognized by the Courts of the United States. Further, it would not be possible for the Government of the United States, either in diplomatic negotiations, or in the course of arbitration before an international tribunal, successfully to challenge the validity of such an agreement.
- (c) An agreement based upon legislation would give rise to an obligation that would in fact be as effective from the international point of view as an arrangement based upon treaty.

J. E. READ,
*Legal Adviser of the Department of
External Affairs.*

No. 4.

FORMAL OPINIONS BY LEGAL AUTHORITIES IN THE UNITED STATES

- (a) *Memorandum by the Legal Adviser of the State Department.
Washington, March 13, 1941*

AGREEMENT BETWEEN THE UNITED STATES AND CANADA FOR THE UTILIZATION OF THE WATERS OF THE GREAT LAKES-ST. LAWRENCE BASIN

For several years the United States and Canada have had under consideration the feasibility of a joint undertaking for the improvement of the Great Lakes-St. Lawrence Basin so as to make these waters available to sea-going vessels, the development of hydro-electric power, etc. The Legal Adviser of the Department of State, in a memorandum dated February 10, 1939, expressed the opinion that an arrangement between the United States and Canada concerning the project could be effected by a simple agreement between the two countries and approval of the agreement by legislation in the United States and in Canada. The negotiations have progressed to the point where an agreement is about ready to be signed, but before proceeding to signature it is thought desirable to ascertain whether the Attorney General concurs in the view that the purposes may be accomplished in this fashion.

It is not necessary here to enter into a discussion of the treaty-making power or of the power of the President to enter into executive agreements with foreign countries. It is sufficient to say that a very large number of such