

33. The Secretary of State for External Affairs quoted from a memorandum prepared for President Truman by the legal division of the U.S. State Department, prior to the Prime Minister's recent visit to the White House. This set forth the legal basis upon which the Province of Ontario and the State of New York could proceed with the power development and Canada with the seaway development. It pointed out that, under the 1909 Boundary Waters Treaty, the International Joint Commission had authority to approve "uses, obstructions and diversions" in the St. Lawrence River affecting the natural level or flow of boundary waters with the authority of the United States or Canada within their respective jurisdictions. However, approval by the two governments and the International Joint Commission did not constitute an international agreement, it merely authorized the respective projects for the approval of which application had been made. Since under the 1909 Treaty the United States had the right to use on terms of equality the canal which Canada contemplated building on the Canadian side of the boundary and since under the same Treaty Canada was entitled to equal rights in the use of the boundary waters for power purposes, it would be within U.S. executive power to enter into an agreement with Canada in respect of both the seaway and power aspects of the project. In the view of the U.S. State Department, however, the executive could give no assurance that power would continue to be developed in the manner indicated by the project. Article I, section 10, of the U.S. Constitution provided that "no State shall, without the consent of Congress, ... enter into any agreement or contract with another State or with a foreign power". Consequently, in the view of the U.S. State Department, if the approval of Congress was not to be sought in connection with the St. Lawrence project, Canada would have to be content with proceeding merely on the good faith of a New York corporation and with the assurance as to equality now contained in the 1909 Treaty, possibly supported by executive agreement.

(Telegram, Oct. 6, 1951, Canadian Ambassador in Washington and attached memorandum).

34. The Minister of Trade and Commerce did not see the necessity of a formal agreement between the State of New York and Ontario or between their respective power agencies.

Privy Council Office
Bureau du Conseil privé

RG 2, A5a,
Vol. 2649

National Archives of Canada
Archives nationales du Canada

000013