direct agreements between the High Contracting Parties or mutual arrangements expressed by concurrent or reciprocal legislation. It seems to be clear that this Article cannot be interpreted as enabling a special agreement to be made in such a manner as to endow the agreement with elements of validity drawn from the Boundary Waters Treaty. It can only be interpreted as enabling a special agreement to except specific works from the requirements of Articles III and IV.

5. The second point is whether, apart from the Boundary Waters Treaty procedure by Agreement might be justified. This would depend upon two questions,—

(i) Whether such an Agreement would give rise to a valid legal obligation which would be recognized by the Courts of the United States;

(ii) Whether such an Agreement would create an obligation recognized in International Law and cognizable by international tribunals.

The question as to whether an Agreement based upon the legislative authority of Congress would give rise to a valid obligation is one that would depend primarily upon the constitutional law of the United States. It is one upon which it is not possible for a Canadian lawyer to speak with confidence and it is necessary to rely upon the formal opinion submitted by the advisers of the United States Government in legal matters.

This would not be an ordinary case of reliance upon a legal opinion. It is more than that. It is understood that the United States authorities will place upon record in a formal manner opinions by the Legal Adviser of the Department of State and by the Attorney General of the United States to the effect that an Agreement based upon Congressional legislation would give rise to a valid obligation, binding upon the United States as respecting Canada. It would be impossible for the Government of the United States, after following such a course, to maintain successfully, either in diplomatic negotiation or before an international tribunal, that such an Agreement had no legal validity. International tribunals are accustomed to recognize as an important source of law the formal opinions submitted by persons in the position of the Legal Adviser of the State Department or of the Attorney General. One could have complete confidence that an international tribunal seized of a dispute of this character would decide that such an Agreement created a legal obligation of which it could properly take cognizance.

Notwithstanding the difficulty in pronouncing upon a question of this sort, closely related to the constitutional law of the United States, it is submitted:—

(*a*) That an Agreement based upon the legislative authority of Congress would give rise to a valid obligation, recognized by the Courts of the United States;

(*b*) That it would not be possible for a Government of the United States, either in diplomatic negotiation or in the course of arbitration before an international tribunal, successfully to challenge the validity of such an Agreement as creating an obligation recognized in International Law and cognizable by international tribunals.

6. The third point is whether an arrangement of this sort, based upon legislation authorized by Congress, would give rise to an obligation that would be as effective from the international point of view as an arrangement based upon a treaty.