EXCHANGE OF NOTES

(June 9, 1939; June 10, 1939; October 30, 1940; November 2, 1940)

RELATING TO THE APPLICATION AND INTERPRETATION OF THE RUSH-BAGOT AGREEMENT

1. NOTE JUNE 9, 1939,
   From the United States Minister to Canada,
   To the Under-Secretary of State for External Affairs.

2. NOTE JUNE 10, 1939,
   From the Under-Secretary of State for External Affairs,
   To the United States Minister to Canada.

3. NOTE OCTOBER 30, 1940,
   From the Under-Secretary of State for External Affairs,
   To the United States Minister to Canada.

4. NOTE NOVEMBER 2, 1940,
   From the United States Minister to Canada,
   To the Under-Secretary of State for External Affairs.

No. 1

NOTE OF JUNE 9, 1939

From the United States Minister to Canada,
To the Under-Secretary of State for External Affairs.

OTTAWA, CANADA, June 9, 1939.

MY DEAR DR. SKELTON:

In a confidential letter addressed to the Secretary of State on January 31, 1939, Admiral Leahy, the Acting Secretary of the Navy, raised certain questions regarding the Rush-Bagot Agreement of 1817. Among other things, Admiral Leahy requested the views of Mr. Hull concerning the mounting of two 4-inch guns on each of the American naval vessels on the Great Lakes, to be used in firing target practice in connection with the training of naval reserves. He inquired, if this was considered improper, concerning the possibility of modifying the Rush-Bagot Agreement to permit this practice. The question was subsequently the subject of informal conversations between officers of our State and Navy Departments.

After careful consideration of the problem, Mr. Hull is inclined to the opinion that a modification of the Rush-Bagot Agreement would be undesirable at this time. It is clear from a study of the documents relating to the negotiation of the Agreement and its early history that the objective of the negotiators was to provide a solution of an immediate and urgent problem arising out of the war of 1812 and the terms of the Agreement themselves support the view that its indefinite continuation in force was not anticipated. Consequently, from a naval standpoint, its provisions have long been out of date, but in spite of numerous vicissitudes the Agreement itself has survived unchanged for more than one hundred and twenty years and, with the passage of time, has assumed a symbolic importance in the eyes of our own and Canadian citizens. It is true that shortly after the World War modification of the Agreement was studied in this country and in Canada, with a view to making its provisions conform more closely to modern conditions, and a stage was even reached where the Governments exchanged drafts of suggested changes. The proposed changes were never actually agreed upon, however, and Mr. Hull is inclined to think that the two Governments were wise to allow the matter to fall into abeyance, since it is highly debatable whether the realization of their limited objectives would have compensated for the disappearance of the 1817 Agreement as a symbol of the friendly relations between the two countries for over a century.

It was perhaps inevitable that an agreement, the technical provisions of which became obsolete more than half a century ago, should from time to time have been subjected to what may have been considered technical violations by both parties, and of such instances there is a clear record. We believe it can be successfully maintained, however, that without a degree of tolerance the Agreement could scarcely have survived to the present day in its original form. But it is a fact of equal significance that even when the two Governments felt compelled to depart from a strict observance of its terms they were concerned that the spirit underlying it should be preserved.

23016—2

I understand from information furnished by our Navy Department that the following five vessels of the United States Navy are now serving on the Great Lakes:

Ship	*Launched*	*Present Location*	*Displacement*	*Battery*
Dubuque	1905	Detroit	1085	None
Hawk	1891	Michigan City	375	None
Paducah	1905	Duluth	1085	None
Wilmington	1897	Toledo	1392	None
Wilmette	1903	Chicago	2600	4-4"/50 2-3"/50 A.A. 2-1 pdr.

In a number of respects the presence there of these vessels may not be considered entirely in keeping with a literal interpretation of the Rush-Bagot Agreement. On the other hand, it seems proper to take into account the fact that the vessels of our Navy now on the Great Lakes are there with the knowledge of the Canadian Government, written permission having been obtained for the passage of four of them through the Canadian canals en route to their stations. The case of the *Wilmette* is somewhat different, this vessel having been constructed on the lakes as a commercial vessel and subsequently taken over by our Navy during the World War.

In considering the number and size, disposition, functions and armaments of naval vessels in relation to the provisions of the Rush-Bagot Agreement, it is Mr. Hull's view, with which I feel sure you will agree, that the primary concern of both Governments is to maintain at all costs the spirit which underlies that Agreement and which is representative of the feelings of the Canadian and American people toward each other. With that clear objective in mind, Mr. Hull wishes me to make the following observations.

(1) *Number and size of vessels.*—As indicated above, the United States Navy now has five vessels, all "unclassified", on the Great Lakes. In the discussion of this problem between officials of the State and Navy Departments, the fact was brought out that approximately one third of the national naval reserve personnel in the United States is concentrated in the region of which Chicago is the centre. The need for adequate training of this personnel is clear and I am given to understand that even with our present five vessels on the Great Lakes our facilities are strained. A possible alternative would be to transport these reserves to the Atlantic Coast every summer for the customary two weeks' training period, but I am told that the cost of so transporting even a small fraction of these reserves would in all probability be prohibitive. In the circumstances and in view of the fact that these five vessels have been maintained on the Great Lakes since the war without objection on the part of the Canadian Government, Mr. Hull is inclined to think that the withdrawal of one of them would not be necessary.

Mr. Hull would be reluctant, however, to see American vessels on the Great Lakes increased beyond the present number, omitting from this calculation vessels which are "retained immobile" and used solely as floating barracks for naval reserves. The Canadian Government has in the past given permission for vessels of the latter category to be maintained on the Great Lakes and, it is hoped, would give sympathetic consideration to any similar requests which might be made in the future.

It is my understanding that the *Sacramento*, a vessel of 1,140 tons launched in 1914 and similar in size and type to vessels already on the Great Lakes, is now returning from China, her usefulness as an active naval vessel in regular commission having passed. I am informed that the Navy Department will probably wish this vessel to take the place of the *Hawk*, but that this will not involve an increase in the number of our naval vessels on the lakes. A formal request of your Government for permission for this vessel to proceed to the Great Lakes through Canadian waters will be made in due course.

With regard to the size of these vessels, it has been noted that all are of more than one hundred ton burden, the limit imposed by the Agreement. The change from wood to steel around the middle of the last century, along with other factors, contributed toward rendering this part of the Agreement obsolete. To our knowledge no objection has been taken by the Canadian Government to the presence on the Great Lakes of naval vessels of more than one hundred tons burden and there would be no inclination to question the maintenance by Canada of vessels similar to ours now operating there. It appears to have been the practice of our Navy Department for many years to station on the Great Lakes only "unclassified" vessels that have long since outlived their usefulness in terms of modern warfare and that have a draft of not more than fourteen feet. I understand that these vessels have and could have no use except to provide elementary training for naval reserves. Mr. Hull believes that it would be desirable to continue this policy, which goes beyond the objectives of the 1817 Agreement, but which is so clearly in keeping with the present temper of public opinion. He is so informing the Navy Department.

(2) *Disposition of Vessels.*—At the time the Rush-Bagot Agreement was negotiated the Great Lakes were independent inland waters with no navigable connection between them and the ocean or, in most cases, between the lakes themselves. This geographical fact was no doubt largely responsible for the provision of the Agreement which allotted one vessel to Lake Champlain, one to Lake Ontario and two to the so-called "Upper Lakes". That situation, of course, no longer exists, and Mr. Hull would not regard it as unreasonable or contrary to the spirit of the Rush-Bagot Agreement to have the naval vessels of each party move freely in the Great Lakes basin or to "maintain" them at any port or ports in the Lakes. Were the Canadian Government to act in accordance with such an interpretation, it is certain that no objection would be taken.

(3) *Functions of the Vessels.*—In his letter of January 31, last, Admiral Leahy inquired whether the firing of target practice on the Great Lakes was consistent with the provisions of the Rush-Bagot Agreement. Since the Agreement is silent with respect to the functions of the naval vessels maintained by the two parties on the Great Lakes, other than to state that the naval force of each party is to be restricted to such services as will in no respect interfere with the proper duties of the armed vessels of the other party, it is clearly within the letter as well as the spirit of the Agreement for the naval vessels of both parties to be employed in the training of naval reserves or in any other normal activity, including the firing of target practice, within their respective territorial waters. Mr. Hull is so informing the Navy Department.

(4) *Armaments.*—In Admiral Leahy's letter, the hope was expressed that the Rush-Bagot Agreement might be modified so as to permit each of our naval vessels to carry not over two 4-inch guns.

The Agreement itself provides that each of the naval vessels maintained by each Government may carry one 18-pound cannon. It is my understanding that the shell for a 3-inch gun weighs approximately fourteen pounds and the shell for a 4-inch gun approximately thirty pounds. It would therefore be within the scope of the Agreement for each of the naval vessels in question to carry one 3-inch gun. In the discussions between officers of the State and Navy Departments, however, it was brought out that since the 4-inch gun is now what is considered "standard equipment", whereas the 3-inch gun is not, the use of the former is much more desirable from the point of view of giving adequate training to our naval reserves.

After careful consideration of this problem, Mr. Hull is of the opinion that the following proposal would be in harmony with the spirit of the Rush-Bagot Agreement; namely, the placing of two 4-inch guns on each of three

naval vessels on the Great Lakes, and the removal of all other armaments, subject to certain conditions. These are that the firing of target practice be confined to the territorial waters of the United States, and that the 4-inch guns be dismantled except in the summer season during the period of the training of naval reserves.

There remains a question which is of definite interest to both Governments, namely, the construction of naval vessels in shipyards situated on the Great Lakes. The State Department has recently received renewed inquiries on this question.

The Rush-Bagot Agreement, after providing for the maintenance of four naval vessels of each party on the Great Lakes, stipulated that

> "All other armed vessels on those lakes shall be forthwith dismantled and no other vessels of war shall be there built or armed."

The provision just quoted should, Mr. Hull believes, be read in the light of the geographical factor to which reference has already been made. At a time when there was no navigable connection between the Great Lakes and the Atlantic Ocean, it was obvious that naval vessels constructed on the lakes could only be intended for use in those waters. Mr. Hull is satisfied that it was this contingency alone which the contracting parties wished to guard against, for no evidence whatever exists to suggest that either party at any time considered that the Agreement should affect the naval forces of the two countries outside the Great Lakes area.

In the circumstances, Mr. Hull believes that it would be entirely in harmony with the intent of the negotiators and the spirit of the Agreement for either country to permit naval vessels, unquestionably intended for tidewater service only, to be constructed in shipyards situated on the Great Lakes. In order carefully to preserve the intent of the Agreement, however, it is believed that prior to the commencement of construction each Government should provide the other with full information concerning any naval vessels to be constructed at Great Lake ports; that such vessels should immediately be removed from the lakes upon their completion; and that no armaments whatever should be installed until the vessels reach the seaboard.

I shall be happy to receive for Mr. Hull's informal and confidential information any observations which you may wish to make with regard to the questions touched on in this letter.

Sincerely yours,

DANIEL C. ROPER.

Dr. O. D. SKELTON,
Under-Secretary of State
for External Affairs,
Ottawa, Canada.

No. 2

NOTE OF JUNE 10, 1939

From the Under-Secretary of State for External Affairs,
To the United States Minister to Canada.

OTTAWA, 10th June, 1939.

My DEAR MR. ROPER:

I have consulted the Acting Prime Minister and Secretary of State for External Affairs and the Department of National Defence concerning your informal letter of June 9, 1939, which conveys the observations of the Secretary of State of the United States upon certain questions raised by the United States Navy Department regarding the Rush-Bagot Agreement of 1817.

The Canadian Government concur fully in the desirability of preserving this long-standing Agreement which has been of such inestimable value in furthering the ideals of good neighbourhood in this region of the world. It is also recognized that the great changes in technical, industrial, water transport and population conditions which have occurred in the meantime, while in no sense altering the desire of both peoples to maintain the underlying spirit and objective of the Agreement, have rendered its technical scheme and definitions somewhat out of date. It might be urged that the logical method of dealing with the changed situation would be the conclusion of some formal revision of the Agreement, but it is further recognized that the drafting of a new document which would cover present and future considerations of interest to both countries might present difficulties at the present time, and it is noted that Mr. Hull is inclined to the opinion that this would be undesirable.

If formal revision is, as we agree, impracticable, it is nevertheless recognized that there are certain measures which are mutually considered to be practically necessary or desirable and, at the same time, to be consistent with the underlying objective of the Agreement though not strictly consistent with its technical scheme or definitions. In the case of various instances of this character which have occurred in the past, the two Governments have consulted and made appropriate dispositions by means of correspondence. It is felt that such procedure, which appears to be essentially inherent in the underlying spirit and objective, should be pursued as regards any new practical measures concerning naval vessels on the Great Lakes which may be contemplated at the present moment or in the future.

In the light of these general considerations it will be convenient to give you the views of the Canadian Government regarding the particular measures which your Government now consider desirable and which have been described in your letter under separate headings.

(1) *Number and Size of Vessels.*—I note that there is no proposal to increase the present number of United States naval vessels on the Great Lakes. As regards the proposed substitution of the *Hawk*, which is now on the Lakes, by another vessel, the *Sacramento*, it is noted also that a formal request of the Canadian Government for permission for the latter vessel to proceed into the Great Lakes through Canadian waters will be made in due course. The Canadian authorities will be agreeable to this substitution, and I assume that at the time particular information will be given as to the disposition of the *Hawk* as well as a description of the *Sacramento* and the purpose of the substitution.

(2) *Disposition of Vessels.*—It is recognized, for the reasons indicated in your letter, that it would be consistent with the underlying purpose of the Agreement to have the naval vessels of each party move freely in the Great Lakes or to maintain them at any of its ports in the Lakes.

(3) *Functions of the Vessels.*—The Rush-Bagot Agreement, as your letter points out, is silent with respect to the functions of the naval vessels maintained by the two parties on the Great Lakes other than to state that the naval force of each party is to be restricted to such services as will in no respect interfere with the proper duties of the armed vessels of the other party. The Canadian Government accordingly recognize that it is within the letter as well as the spirit of the Agreement for such naval vessels of both parties to be employed in the training of naval reserves, or in any other normal activity, including the firing of target practice, within their respective territorial waters.

(4) *Armaments.*—It appears that in view of present-day technical conditions, the United States naval authorities regard 3-inch guns as no longer adequate for the purpose of training naval reserves, whereas 4-inch guns, though not strictly within the technical definition of the Agreement, would be

suitable for that purpose. Accordingly Mr. Hull suggests the following proposal as being in harmony with the spirit of the Agreement, namely, the placing of two 4-inch guns on each of three of the United States naval vessels on the Great Lakes and the removal of all other armaments, subject to certain conditions. These conditions are that the firing of target practice be confined to the territorial waters of the United States and that the 4-inch guns be dismantled except in the summer season during the period of the training of naval reserves. The Canadian naval authorities concur in the view of the United States naval authorities above indicated, and the Canadian Government agree that Mr. Hull's proposal is consistent with the underlying purpose and spirit of the Agreement. It is assumed that in due course the Canadian Government will be informed of the names of the vessels upon which the 4-inch guns have been placed. It is also assumed that, should any alteration as regards armament take place in any of the five vessels in the future, particulars will be furnished.

A further particular question is raised by your letter, namely, the construction of naval vessels in shipyards situated on the Great Lakes. Careful consideration has been given to Mr. Hull's observations regarding the changes in actual conditions that have occurred in this regard during the past century, and to the suggestion he has made in order to preserve the intent of the Agreement. The suggestion is that prior to the commencement of construction, each Government should provide the other with full information concerning any naval vessels to be constructed at Great Lakes ports; that such vessels should immediately be removed from the Lakes upon their completion; and that no armaments whatever should be installed until the vessels reach the seaboard. The Canadian Government appreciate the force of Mr. Hull's observations, and they agree that his particular suggestion would be consistent with the underlying objective of the Agreement. They would understand that in the case of each vessel so constructed, when the time came for her removal to the seaboard, the Government concerned would make the usual request through diplomatic channels for permission to pass through the other party's waters.

As regards all these matters and particular measures, the Canadian Government assume it would be understood that the foregoing observations and understandings so far as they have been expressed only with relation to United States naval vessels maintained on the Great Lakes or to naval vessels to be constructed in United States shipyards there will apply equally to the case of any Canadian naval vessels that may be maintained on the Great Lakes or of naval vessels to be constructed in Canadian shipyards there.

Yours sincerely,

O. D. SKELTON.

The Honourable Daniel C. Roper,
Legation of the United States of America,
Ottawa.

No. 3

Note of October 30, 1940

From the Under-Secretary of State for External Affairs,
To the United States Minister to Canada.

Ottawa, October 30, 1940.

My Dear Mr. Moffat:

May I refer to your predecessor's letter of June 9, 1939, and to my letter to Mr. Roper of the 10th June of the same year concerning certain questions raised by the United States Navy Department regarding the Rush-Bagot Agreement of 1817.

2. At that time it was recognized that there were certain measures which were mutually considered to be practically necessary or desirable and, at the same time, to be consistent with the underlying objective of the Rush-Bagot Agreement, though not strictly consistent with its technical scheme or definitions. In various instances of this character which had occurred in the past, the two Governments had concurred and made appropriate dispositions by means of correspondence. It was also agreed that such a procedure, which appeared to be essentially inherent in the underlying spirit and objective of the Agreement, should be pursued as regards any new practical measures, concerning naval vessels on the Great Lakes, which might be contemplated.

3. Certain special questions including "number and size of the vessels", "disposition of the vessels", "functions of the vessels", and "armaments" were discussed and dealt with in the correspondence. A further particular question was also raised, namely, the construction of naval vessels in shipyards situated on the Great Lakes. The practice and procedure that should be followed in the case of such construction was formulated along lines that met with the approval of the two Governments.

4. The practice that was then approved included the following elements:—

(*a*) That each Government should provide the other with full information concerning any naval vessels to be constructed in Great Lakes ports prior to the commencement of construction.

(*b*) That such vessels should be removed from the Lakes upon their completion.

(*c*) That no armaments whatever should be installed until the vessels reached the seaboard.

5. A new aspect of this question has arisen owing to the congestion at the Atlantic seaboard shipyards and it is the desire of the Canadian Government to have the vessels in the most complete form practicable while still on the Great Lakes. This might involve equipment with gun mounts and with guns which would be so dismantled as to be incapable of immediate use so long as the vessels remained in the Great Lakes.

6. It is therefore suggested that a further interpretation of the Rush-Bagot Agreement might be made in conformity with the basic intent of the Agreement that important naval vessels should not be built for service on the Great Lakes. This would involve recognition that armament might be installed on naval vessels constructed on the Great Lakes provided that:—

(*a*) The vessels are not intended for service on the Great Lakes;

(*b*) Prior to commencement of construction, each Government furnish the other with full information concerning any vessel to be constructed at Great Lakes ports;

(*c*) The armaments of the vessels are placed in such condition as to be incapable of immediate use while the vessels remain in the Great Lakes; and

(*d*) The vessels are promptly removed from the Great Lakes upon completion.

I should be grateful if you would let me know, in due course, whether the above suggestion commends itself to your Government.

Yours sincerely,

O. D. SKELTON.

The Honourable Jay Pierrepont Moffat,
Legation of the United States of America,
Ottawa.

No. 4

NOTE OF NOVEMBER 2, 1940

From the United States Minister to Canada,
To the Under-Secretary of State for External Affairs.

OTTAWA, November 2, 1940.

MY DEAR DR. SKELTON:

I have received your letter of October 30, 1940, in which, after referring to Mr. Roper's letter to you of June 9, 1939, and to your reply to him of June 10, 1939, concerning certain questions regarding the interpretation of the Rush-Bagot Agreement of 1817, you comment on the previous practice in this regard, in the light of modern conditions of naval construction, and make the suggestion that a further interpretation of the Rush-Bagot Agreement might be made in conformity with the intent of the Agreement that important naval vessels should not be built for service on the Great Lakes. This would involve recognition that armament might be installed on naval vessels constructed on the Great Lakes provided that:—

(*a*) The vessels are not intended for service on the Great Lakes;

(*b*) Prior to commencement of construction, each Government furnish the other with full information concerning any vessel to be constructed at Great Lakes ports;

(*c*) The armaments of the vessels are placed in such condition as to be incapable of immediate use while the vessels remain in the Great Lakes; and

(*d*) The vessels are promptly removed from the Great Lakes upon completion.

In reply, I am authorized to inform you that the United States Government agrees to this further interpretation of the Rush-Bagot Agreement.

Sincerely yours,

PIERREPONT MOFFAT.

Dr. O. D. SKELTON,
Under-Secretary of State for External Affairs,
Ottawa, Canada.