Members: Zaghiroon el-Zein, Deputy Director for Irrigation; Yehia Abdel Meguid, Engineer-in-Chief, Water Research.

Article II. If, in future, circumstances should require the bringing about of any alteration to the Joint Committee's composition, such an alteration shall be effected pursuant to letters exchanged between the Ministers of Foreign Affairs of the United Arab Republic and the Republic of the Sudan upon the proposal of the appropriate authorities of both countries.

Article III. The present protocol shall be considered supplementing the Agreement for the Complete Utilization of the Nile Waters signed on November 8, 1959, and shall have effect as of the date of its signing.

III. TREATIES RELATING TO AMERICAN RIVERS
III. TRAITÉS SE RAPPORTANT AUX FLEUVES AMÉRICAINS

Argentina—Paraguay

35. SUPPLEMENTARY BOUNDARY TREATY[1] BETWEEN ARGENTINA AND PARAGUAY, SIGNED AT BUENOS AIRES, JULY 5. 1939[2]

. . .

Article 6. As soon as this treaty is ratified, both governments shall proceed to appoint a technical commission composed of Paraguayans and Argentines to study and draw up the plan of works necessary to regulate the proportional distribution of the flow of the river Pilcomayo into its two branches on the north and on the south of the frontier line.

36. SUPPLEMENTARY BOUNDARY TREATY[3] BETWEEN THE ARGENTINE REPUBLIC AND THE REPUBLIC OF PARAGUAY ON THE RIVER PILCOMAYO AND PROTOCOL[3] ANNEXED TO THE TREATY, SIGNED AT BUENOS AIRES ON 1 JUNE 1945[4]

The Governments of the Argentine Republic and the Republic of Paraguay, being desirous of reaching a permanent settlement of the question of the boundaries pending between the two countries at the Pilcomayo River, in the region lying between the points known as " Horqueta " and " Salto Palmar " referred to in the Supplementary Boundary Treaty

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[1] The exchange of ratifications took place at Buenos Aires on 10 November 1939.

[2] *British and Foreign State Papers*, vol. 143, p. 340.

[3] Entered into force on 16 August 1945.

[4] Ministry of Foreign Affairs and Public Worship of the Argentine Republic, *Instrumentos internacionales de carácter bilateral suscriptos por la República Argentina* (up to 30 June 1948), 1950, vol. II, p. 1181.

of 5 July 1939 and the Special Protocol annexed thereto, in which region there is in fact no river having a single, continuous and permanent bed, since the waters of the river aforesaid, whether they constitute a watercourse or mere marshland, do not have any stability either as a watercourse or as marshland and being subject, owing to the influence of various factors, to continual shifts and changes; and being desirous of establishing a frontier line which may serve as a permanent boundary between the two countries, in accordance with the Final Proposals contained in the Final Report of the Argentine-Paraguayan Joint Frontier Commission, reproduced in its Record No. 16, dated at the city of Asunción on 16 August 1944, which Final Report is annexed to this Treaty and was duly approved by the Supreme Government of the Argentine Republic by Decree No. 27,177 M-240 of 9 October 1944 and by the Supreme Government of Paraguay by Decree No. 5,950 of 9 November 1944; and

WHEREAS:

In the aforesaid Final Report mention is made of a dividing line between the two countries in that region and of the procedure for ensuring the stability of the dividing line and the utilization of the discharge of the waters of the River Pilcomayo on the basis of the plan of hydraulic works provided for in the relative Preliminary Project, which was duly noted in the Record of the " Pilcomayo Joint Technical Commission for Surveys and Hydraulic Works ", dated at Asunición on 30 November 1943,

RESOLVES:

By mutual agreement, and inspired by a constant desire for peace and concord, to conclude this Supplementary Permanent Boundary Treaty between the Argentine Republic and the Republic of Paraguay at the River Pilcomayo and:

. . .

Article 3

For the purpose of ensuring the stability of the dividing line indicated in article 1 and the utilization of the flow of the waters, the two Governments agree to the construction of the works mentioned in the Preliminary Project prepared by the " Pilcomayo Joint Technical Commission for Surveys and Hydraulic Works ", as set out in the Record of 30 November 1943, signed at Asunción, and confirmed by the " Argentine-Paraguayan Joint Frontier Commission " in its Record No. 14, signed at Asunción on 4 August 1944.

The said works shall be begun not later than two years and six months after the date of exchange of ratification of this Treaty. The procedure for the financing of and award of contracts for such works is laid down in the Special Protocol annexed to this Treaty.

Article 4

For the purpose of carrying out and financing the hydraulic works specified in the preceding article, the two Governments agree to establish a " Joint Technical Commission for Hydraulic Works on the River Pil-

comayo ", composed of one technical expert for each country. The Commission shall be authorized to make, by mutual agreement and in keeping with the letter and spirit of this Treaty, such amendments of detail as it may be deemed necessary or appropriate to introduce into the Preliminary Project of Hydraulic Works in order to facilitate the construction and maintenance of the works. The Commission shall begin its work not later than three months after the date of exchange of ratifications. Within the twelve succeeding months it shall submit the definitive plan of the works and financial estimates to the two Governments, which shall reach a decision thereon within two months from the date on which they are submitted.

The " Joint Frontier Demarcation Commission " shall take into account the amendments of detail introduced into the plan of works and any changes which may occur in the main course of the waters within the dike embankments referred to in the Preliminary Works Project.

Article 5

The two Governments agree to establish a system for the control of the waters of the River Pilcomayo throughout its course from the tripartite point " Esmeralda " (geographic co-ordinates: latitude 22° 13′ 44″. 19 south; longitude 62° 38′ 17″. 10 west of Greenwich) to its point of discharge into the Paraguay River, and for the maintenance of the works constructed and the utilization of the flow of the waters, in such a manner that full supervision may be exercised and appropriate measures taken in all cases and with the necessary speed to prevent shifts and changes in the present course of the Pilcomayo River in the first and third sectors and in its permanent course in the region of the second Sector. For this purpose a " Joint Argentine-Paraguayan Commission for the Administration and Supervision of the River Pilcomayo " shall be organized as a permanent body. It shall be composed of one technical expert from each country. Until such time as the hydraulic works provided for in article 3 of this Treaty have been completed, these functions shall be exercised by the " Joint Technical Commission for Hydraulic Works " established under article 4 of this Treaty.

Article 6

For the purpose of providing the necessary finance and for awarding the contracts for the works referred to in article 3 and for the functioning and regulation of the Joint Commissions provided for in articles 2, 4 and 5 of this Treaty, a Special Protocol of the same date has been signed and is annexed to this Treaty.

. . .

SPECIAL PROTOCOL TO THE SUPPLEMENTARY TREATY ON THE PERMANENT BOUNDARY BETWEEN THE ARGENTINE REPUBLIC AND THE REPUBLIC OF PARAGUAY ON THE RIVER PILCOMAYO

. . .

Article 9

The " Joint Technical Commission for Hydraulic Works on the River Pilcomayo ", set up under article 4 of the Supplementary Treaty on the

Permanent Boundary of this date, shall be responsible for the ground plan and final design of the hydraulic works provided for in article 3 of that treaty.

Article 10

This Commission shall meet first in the city of Buenos Aires within the time-limit stipulated in the treaty aforesaid for the purpose of its constitution and to draw up its Technical and Administrative Regulations, which shall be submitted for the consideration and approval of both Governments. It shall also draw up the plans of work for the discharge of its duties.

Article 11

When the final plans for the hydraulic works have been approved by both Governments, the "Joint Technical Commission for Hydraulic Works on the River Pilcomayo" shall be responsible for supervising the execution of these works.

Article 12

The "Joint Technical Commission for Hydraulic Works on the River Pilcomayo" shall submit for the consideration of both Governments, together with the final plans for the works, details of the measures and organization necessary for the execution, maintenance and administration of these works.

Article 13

Until the hydraulic engineering works agreed on are completed, the "Joint Technical Commission for Hydraulic Works on the River Pilcomayo" shall act at the same time as the "Argentine-Paraguyan Joint Commission for the Administration and Supervision of the River Pilcomayo", for the purpose of carrying out article 5 of the Supplementary Treaty on the Permanent Boundary of this date, and shall submit for the consideration of the Governments concerned the regulations needed for that purpose.

Article 14

Within two months after the approval of the final plans and the estimates for the works described in article 4 of the Supplementary Treaty on the Permanent Frontier of this date the two Governments shall decide by agreement which of them shall undertake to execute these works, the contracts for which shall be awarded to official departments of firms of the nationality of the country chosen.

Article 15

The country which is to carry out the works, in accordance with the provisions of the previous article, shall bear all the expenditure involved.

Article 16

The field activities of the various Joint Commissions shall be recorded in a Field Journal, produced in two identical copies.

Article 17

Each country shall pay the salaries of its staff and any expenditure due in respect of its own Commissions and shall provide them with any instruments, transport, vessels or other means which they may need for the performance of their work. The common expenditure of the various Joint Commissions shall be borne equally.

Article 18

Any instruments, equipment, vehicles, baggage, provisions and all tools or articles required by the various Joint Commissions shall be exempt from customs duties in both countries and enjoy complete freedom of entry and transit. The contracting Governments undertake to grant facilities for the transport of civil or military staff, equipment, instruments, etc. belonging to the Joint Commissions, and to allow military or civil aircraft, having a mission to carry out in connexion with the work allotted to them, to fly in the frontier zone and shall grant them for that purpose all facilities for the use of landing fields and hangars.

. . .

Final Report of the Joint Argentine-Paraguayan Frontier Commission[1]

In accordance with article 4 of the Supplementary Boundary Treaty of 5 July 1939, the Joint Argentine-Paraguayan Frontier Commission, by agreement between the two Delegations, has drawn up the following Final Report, which each Delegation will submit to its Government for the purposes set forth in articles 8 and 9 of the Special Protocol to the said Supplementary Treaty on the Frontier:

ESTABLISHMENT OF THE JOINT COMMISSION

The Joint Frontier Commission was established under article 2 of the Supplementary Boundary Treaty between the Argentine Republic and the Republic of Paraguay, signed at Buenos Aires on 5 July 1939, to determine the frontier line in the area comprised between the following points: to the north from Horqueta along the inlets formed by the northern arm of the River Pilcomayo to the Argentine fort of Caracoles; to the south, from the same point, Horqueta along the dry bed of the Pilcomayo to the fort of Zalazar, and this point to Salto Palmar; and, to the east, the line comprised between the fort of Caracoles and Salto Palmar.

. . .

CONCLUSIONS

The preceding examination shows the unique nature of the River Pilcomayo in the Second Sector, namely the area between Salto Palmar and

[1] Ministry of Foreign Affairs and Public Worship of the Argentine Republic, *Instrumentos internacionales de carácter bilateral suscriptos por la República Argentina* up to 30 June 1948), vol. II, p. 1189, Buenos Aires, 1950.

Horqueta, which the Joint Commission was required to survey under the Supplementary Boundary Treaty of 5 July 1939, with a view to proposing the frontier line. Nevertheless this physiographical examination leads to the following fundamental conclusions as can be seen in both the aerial photographic survey and the topographical surveys on the ground.

2. In the second place the waters of the River Pilcomayo throughout the area of the Second Sector, whether they form watercourses, or only marshes, lack permanent stability both as watercourses and as marshes. On the contrary, as seen in the preceding chapter, they are liable to change and shift constantly under the influence of various forces. Hence nothing would be gained by stipulating only one frontier line between the two adjacent countries. Such a frontier line would be little more than a line on paper. Nature would very soon make it meaningless by sending a large part of the waters in one direction or another, unexpectedly and capriciously, and part of the territory of one of the bordering countries might be left completely without water or covered with useless marshes.

It is necessary, therefore, to fix the course of the waters and to stabilize them, so that they cannot wander or lie stagnant, and to allow the current itself to dig and establish its own bed when it has been increased and controlled in this way.

This aspect of the question, which is most important, has been considered by the joint technical commission set up to make a survey and to draw up plans for the works needed to ensure the proportional distribution of the waters of the River Pilcomayo, as provided in article 6 of the Supplementary Boundary Treaty.

This joint technical commission has agreed on a preliminary plan of works which is described in a Record drawn up at Asunción on 30 November 1943 (see Record No. 14 in Annex 2). These works consist of the following: (1) Two embankments extending from near Punto Horqueta eastwards to the neighbourhood of the Laguna La Bella, one on each side of the proposed frontier line and about 10 kilometres apart, in order to limit the area within which the bed described above as the most permanent one silts and changes its course, and to give this bed stability; all this should ensure that the entire volume of water flowing eastwards past Punto Horqueta enters the Laguna La Bella; (2) The building of a dam in the Laguna La Bella, with a discharge intake structure and safety spills; (3) The digging of a channel of a width of 40 metres and an average depth of one and a half metres, across the Patino inlet, from the main outlet of the Laguna La Bella at a place about 600 metres to the north-north-east of the Fort Zalazar, and continuing approximately in a straight line to Salto Palmar.

The matter to be solved is more than an affair of frontiers and more than a question of the quantitative division of territory. It is the fixing and proportional distribution between the two neighbouring countries of a large mass of water which is now lost by evaporation, overflow or lack of control, in all cases to no advantage. The completion of the works described, which is essential if the river is to be given stability in a single bed within the Second Sector, will also confer great benefits on both the bordering countries, since it will make possible the full use and proportional distribution between them of a volume of water entering at Punto Horqueta, which amounted to 3,600 million cubic metres in 1942 and which is now wasted. It will make possible the construction of roads on the embankment causeways. Finally the increase in the volume of water in a fixed bed, and its control by the dam in the Laguna La Bella, will make possible the use of

large quantities of water for irrigation and the navigation of the River Pilcomayo from the Laguna La Bella to its mouth in the River Paraguay. Apart from these very diverse and valuable advantages, the frontier question pending between the two countries will be solved permanently and amicably. There is no doubt that the cost of the works, which is estimated at 7.5 million Argentine pesos, or about 5.8 million guaraníes, is an investment which is not only fully justified but may even be considered relatively small. When carrying out the final surveys on the spot for the construction of the dikes, dams and canals referred to in the report prepared at Asunción on 30 November 1943 and even during the actual work of construction it may in certain cases be thought necessary or advisable in the opinion of the technical engineers to make certain changes of detail in the preliminary project submitted, with a view to facilitating the execution of the works and their maintenance. There can be no doubt that the joint hydraulic commission to be set up to carry out those final surveys and work of construction should be authorized to make such changes of detail, it being understood that they are adopted by mutual agreement and in every case in accordance with the letter and the spirit of the treaties, keeping as close as possible to the frontier line proposed by the undersigned Joint Commission.

It is possible, also, that when the works have been completed, particularly in the section between Punto Horqueta and the Laguna La Bella, the main watercourse may also undergo certain physical changes as it deepens and establishes its own bed between the two embankments proposed in the above mentioned Report of 30 November 1943.

For both these reasons, the Joint Commission thinks that it would be useful to provide in the Final Boundary Treaty that when the dividing line is being traced on the spot such changes of detail together with any alterations of course between the two embankments should be taken into account.

Lastly, there is no doubt that the maintenance of these works calls for constant supervision, in order to prevent deterioration and to repair any damage caused by the weather. Moreover, the whole course of the River Pilcomayo from Esmeralda to its mouth in the River Paraguay needs special supervision for the same purpose. For these reasons, the undersigned suggest that a Joint Argentine-Paraguayan Commission for the River Pilcomayo should be set up to propose to both Governments any measures which may be necessary in each case. A special protocol would determine the duties of this Commission; it would be agreed that although the Commission need not be stationed permanently in the area, it would make periodical inspections and would go to the area on every occasion when necessary.

VI

FINAL PROPOSALS

In view of the preceding account, and in accordance with articles 8 and 9 of the Special Protocol to the Supplementary Boundary Treaty of 5 July 1939, i.e. in order that both Governments may be able to conclude a Final Boundary Treaty, the Paraguayan-Argentine Joint Frontier Commission submits to the Governments of the Republic of Paraguay and the Argentine Republic, by full agreement, the following proposals, which it considers indivisible:

. . . .

Second. " In order to ensure the permanence of the dividing line described in the previous article and the proportional distribution of the volume of water mentioned in article 6 of the Treaty of 5 July 1939, both Governments should provide for the execution and financing of the works described in the preliminary draft submitted by the Joint Technical Commission for Surveys and Hydraulic Works on the River Pilcomayo, and contained in its Report drawn up at Asunción on 30 November 1943.

Third. " The hydraulic joint commission to be set up to carry out the final surveys and the works mentioned in the previous article acting by agreement and in accordance with the letter and the spirit of the Treaties should be authorized to make any changes of detail in the preliminary draft submitted which it thinks necessary or useful, in order to facilitate the execution and maintenance of the works.

Fourth. " The joint commission for the demarcation of the permanent frontier line shall take into account the changes of detail mentioned in the previous article, as well as any changes in the main watercourse between the embankments described in the preliminary draft which is contained in the Report drawn up at Asunción on 30 November 1943.

Fifth. " An agreement shall also be reached on the system of administration of the waters of the River Pilcomayo, throughout its course from Esmeralda to its mouth in the River Paraguay, on the maintenance of the completed works and on the proportional distribution of the waters, all of which should be supervised, in each case and as quickly as may be considered necessary, by a joint commission for the River Pilcomayo, composed of delegates appointed by both Governments."

. . .

The members of the Joint Argentine-Paraguayan Frontier Commission are happy to declare that they sign the present report in full agreement, and they are most happy to note once more that, both in the completion of their work and their surveys on the ground, and in their deliberations, the greatest cordiality, harmony and mutual understanding have always prevailed among them.

Since, by completing the present report, the undersigned delegates have fulfilled the task with which the Governments of the Republic of Paraguay and the Argentine Republic have honoured them, they hope that it will soon be possible to base the determination and final demarcation of the boundaries between the two brother countries on the contents of this report.

Asunción del Paraguay, 16 August 1944

37. AGREEMENT[1] BETWEEN THE ARGENTINE REPUBLIC AND THE REPUBLIC OF PARAGUAY CONCERNING A STUDY OF THE UTILIZATION OF THE WATER POWER OF THE APIPE FALLS, SIGNED AT BUENOS AIRES ON 23 JANUARY 1958[2]

The Government of the Argentine Republic and the Government of the Republic of Paraguay,

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[1] Entered into force on 16 June 1958.

[2] Text provided by the Ministry of Foreign Affairs and Public Worship of the Argentine Republic (Translated from Spanish by United Nations Secretariat).

Considering the possibility of obtaining hydro-electric energy from the rapids in the River Paraná at the islands of Yacyretá and Apipé;

Convinced of the need for loyal international co-operation to make technical surveys on the possible utilization of this source of energy, and

Taking into account the fact that joint action in a new field of activity will promote closer ties and economic links and will strengthen the friendship between the two nations,

Have decided to conclude this Agreement creating a Joint Argentine-Paraguayan Technical Commission for the utilization of the water-power from and the improvement of the navigability of the River Paraná at the islands of Yacyretá and Apipé . . .

Article I

The object of this Agreement is the making of a study by a Joint Argentine-Paraguayan Technical Commission of the utilization of the water-power of the river Paraná at the islands of Yacyretá and Apipé and, in addition, of the improvement of the navigability of the said river.

Surveys shall also cover other advantageous uses of the waters of the Paraná and possibly the improvement of communications between the two countries through the works to be carried out.

Article II

This Agreement establishes a Joint Argentine-Paraguayan Technical Commission, composed of two representatives, one from each party, and such advisers as may be considered necessary for the accomplishment of their task.[1]

The surveys to be made shall consist principally of:

(*a*) Exploration and inspection of the above-mentioned region, determining all the technical characteristics of the waters which are relevant to hydraulic utilization.

(*b*) A hydrographic and hydrological survey of the River Paraná in the said region.

(*c*) A geological and hydrological survey of the said region.

(*d*) A plan of the works needed for hydraulic utilization, including cost estimates.

(*e*) A survey of the possibilities for financing the proposed projects.

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[1] Following the exchange of views which took place between the Ministry of Foreign Affairs of Paraguay and the Special Mission of the Government of the Argentine Republic at Asunción, it was agreed on 26 September 1960, that:

" Considering that the Government of the Republic of Paraguay has appointed its representative to the Joint Paraguayan-Argentine Technical Commission for the study of the utilization of the water-power of the Apipé falls, and that the Argentine delegation has likewise been appointed, it is decided that the above-mentioned Joint Technical Commission shall commence its work in the city of Buenos Aires during the second half of the month of October of this year ". [*Joint Paraguayan-Argentine Communiqué* on 26 September 1960, text provided by the Ministry of Foreign Affairs and Public Worship of the Argentine Republic.]

(*f*) A survey of the possible consumption of electric power in the region and of the possible costs.

Article III

All surveys made by the Joint Argentine-Paraguayan Technical Commission shall be at the disposal of both Contracting Parties.

The investigations and surveys made shall not affect or interrupt those being made by the technical agencies of both countries.

Article IV

The representatives and advisers and the technical personnel employed by the Joint Argentine-Paraguayan Technical Commission who are engaged in some work or survey shall have the right to travel freely in the said region and enter the territory of the other Contracting Party, bringing their instruments and other working tools.

They shall also enjoy all facilities for the accomplishment of their task.

Article V

A period of two years is fixed for the completion of all the surveys mentioned in this Agreement and for the submission by the Joint Argentine-Paraguayan Technical Commission to both Governments of its final report, giving a general description of the works, the advantages accruing therefrom, and the methods of carrying out any projects recommended, the execution of the work and the financing plan to be adopted.

Article VI

The Joint Commission shall draw up a work plan and request from both Governments equal contributions towards the funds needed for the execution of the work plan.

. . .

Argentina—Uruguay

38. PROTOCOL[1] BETWEEN URUGUAY AND ARGENTINA DEALING WITH THE QUESTION OF THE JURISDICTION OF THE RIVER PLATE, SIGNED AT MONTEVIDEO, JANUARY 5, 1910[2]

Dr. Gonzalo *Ramirez*, Envoy Extraordinary and Minister Plenipotentiary duly authorized by the Government of the Oriental Republic of Uruguay, and Dr. Roque *Saénz Peña*, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Argentina on special mission, duly authorized by his Government, after a friendly exchange of views and without prejudice to ulterior connections between the two nations, being met to-day in the salon of the Ministry of Foreign Affairs, declare:

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[1] Came into force on the date of signature.

[2] *American Journal of International Law*, vol. 4, 1910, Suppl., p. 138; *British and Foreign State Papers*, vol. 103, p. 357.

1. The sentiment and aspirations of both peoples are reciprocal in the desire to cultivate and maintain the ancient relations of friendship, fortified by the common origin of the two nations.

2. With the object of giving greater efficacy to the declaration which precedes, and eliminating any resentment which might have remained as a result of past differences, the signatories agree that these differences, not having been capable of causing or inferring offence, are to be considered as incapable of duration and in no respect as diminishing the spirit of harmony which animates the two countries or the considerations which mutually unite them.

3. The navigation and use of the waters of the River Plate will continue without alteration as up to the present, and whatever difference may arise in this connection will be removed and resolved in the same spirit of cordiality and harmony which has always existed between the two countries.

. . .

39. AGREEMENT[1] CONCLUDED BY ARGENTINA AND URUGUAY CONCERNING INCIDENTS WHICH OCCURRED ON CERTAIN ISLANDS OF THE URUGUAY RIVER, SIGNED AT BUENOS AIRES, ON 13 JANUARY 1938[2]

. . . with a view to definitively avoiding any possible repetition of similar occurrences, and desiring to proclaim once again the friendly feelings on which the traditional ties between the two countries are based and to strengthen those ties, have decided to conclude an agreement . . . .

Article 2. The two Governments shall jointly make a hydrographic survey of the Uruguay River in accordance with a plan to be drawn up by their competent agencies.

Article 3. Expenses arising from the work referred to in article 2 shall be met by the respective Governments in so far as their personnel and supplies are concerned.

. . .

Article 5. As utilization of the water-power of the Uruguay River is considered to be in their common interest, the two countries agree to arrange for the appointment of a Joint Argentine-Uruguayan Technical Commission which shall carry out the aforementioned survey and report as soon as possible to both Governments with a view to the implementation of the project.

. . .

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[1] Entered into force on 13 January 1938 by signature.

[2] Ministry of Foreign Affairs and Worship of the Argentine Republic, *Instrumentos internacionales de carácter bilateral suscriptos por la República Argentina* (up to 30 June 1948), 1950, vol. II, p. 1385.

40. AGREEMENT[1] BETWEEN ARGENTINA AND URUGUAY RELATING TO THE UTILIZATION OF THE RAPIDS OF THE URUGUAY RIVER IN THE AREA OF SALTO GRANDE, SIGNED AT MONTEVIDEO, ON 30 DECEMBER 1946[2]

His Excellency the President of the Argentine Republic and His Excellency the President of the Eastern Republic of Uruguay, desiring to obtain, for the economic, industrial and social development of the two countries, the greatest possible benefit from the natural advantages offered by the rapids of the Uruguay River in the area of Salto Grande, to improve the conditions for navigation, to utilize the waters of the river for the production of energy, to facilitate the linking of their land communications and to pursue any other objectives which, without prejudice to those aforementioned, will benefit the two countries in the manner aforesaid, have decided — pursuant to the provisions of article 5 of the agreement of 13 January 1938 — to conclude the present agreement.

Article 1

The High Contracting Parties declare, for the purposes of this agreement, that the waters of the Uruguay River shall be utilized jointly on a basis of equality.

Article 2

The High Contracting Parties agree to appoint and maintain a Joint Technical Commission which shall be composed of an equal number of representatives from each country and shall be responsible for dealing with all matters connected with the utilization, damming and diversion of the waters of the Uruguay River.

The remuneration and expenses of the said representatives shall be borne by the respective Governments.

Article 3

The Joint Technical Commission shall establish its own technical and administrative rules and draw up its plan of work, and shall, in the performance of its functions, conform with the following regulations and principles agreed upon by the High Contracting Parties:

(*a*) The following water-use priorities shall apply, and no use shall be permitted which hampers or restricts the same;

(1) Household use and sanitation;

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[1] The exchange of the instruments of ratification took place on 27 August 1958. The entry into force of the Agreement resulted in the abrogation of the " Additional Protocol " which had been in force since 28 January 1947. The object of the " Additional Protocol " was to keep in being the Joint Technical Commission set up by the Agreement of 13 January 1938. This Commission was replaced by the new Joint Technical Commission established by article 2 of the Agreement of 30 December 1946.

[2] Ministry of Foreign Affairs and Worship of the Argentine Republic, *Instrumentos internacionales de carácter bilateral suscriptos por la República Argentina* (up to 30 June 1948), vol. II, p. 1409, Buenos Aires, 1950.

(2) Navigation;

(3) Production of energy;

(4) Irrigation.

The Commission shall also request the Governments to take the necessary measures for the conservation of fish resources.

(*b*) Decisions of the Joint Technical Commission shall be taken by majority vote of the membership. If a vote is equally divided, the delegations shall submit separate reports to their respective Governments. The High Contracting Parties shall endeavour to reach an agreement, and if an agreement is arrived at, it shall be reduced to writing and shall be communicated to the Joint Technical Commission, which shall take the necessary steps for giving it effect. If no agreement is reached, the High Contracting Parties agree to settle the dispute by diplomatic means, and if a solution is not arrived at by this method, the dispute shall be submitted to arbitration.

(*c*) The Joint Technical Commission shall address all its communications to the Ministries of Foreign Affairs of the two countries, to which it shall also send a copy of all its minutes and decisions and any other information which it considers appropriate.

(*d*) The Commission shall employ permanent or temporary technical and administrative personnel in accordance with its needs. Except in special cases, it shall for this purpose use nationals of the two High Contracting Parties in equal numbers.

Article 4

The cost of joint works and installations, consisting mainly of a dam together with mechanical and electrical generating equipment, and the cost of surveys and plans shall be shared equally by the two Parties.

The cost of works not constructed jointly — consisting mainly of access facilities, supplementary works and transmission lines — and costs in respect of compensation and expropriation to be paid in the territory of each country shall be borne by the Governments concerned.

The cost of works and installations required for navigation upstream of the dam shall be borne by each country in proportion to the use made of them, taking into account their zones of influence, extent of shoreline and probable traffic.

The value to be assigned to the joint works and installations shall be such as will permit the production of energy at a cost not exceeding that which could be obtained from a thermal station of the same power established in the same area. If the total cost of the joint works and installations exceeds the value thus assigned, the excess shall be added to the cost of the works intended for navigation.

If the total installed capacity is temporarily distributed among the High Contracting Parties in a proportion other than 50 per cent each, the cost of the joint works and installations shall during such period be apportioned accordingly.

If, when the final plans are drawn up, the Eastern Republic of Uruguay reserves, for a specific period, less than half of the total installed capacity, the Argentine Republic shall take the remainder during such period and shall reimburse it to Uruguay in accordance with that country's anticipated

consumption requirements, four years' notice being required before such reimbursement becomes effective.

Irrespective of the proportionate contribution of each of the High Contracting Parties, the joint works and installations shall be jointly owned in an equal proportion by each of the signatory States at the end of the amortization period.

Article 5

The High Contracting Parties agree that the use and diversion, whether temporary or permanent, of the waters of the Uruguay River and its tributaries upstream of the dam shall be authorized by the Governments within their respective areas of jurisdiction only when a report has been received from the Joint Technical Commission.

Article 6

The Joint Technical Commission shall arrange for such studies as have not been made at the time when it commences to function and shall draw up plans for the construction of the necessary works and installations. These plans, together with the related estimates, specifications, economic and financing plans and relevant regulations governing the employment of workers, shall be submitted to the High Contracting Parties for consideration and approval.

When this approval has been obtained, the Commission shall be empowered to arrange for the construction work and to take partial and full delivery of the works and installations to be constructed.

The payments for studies and plans shall be made by the Commission, which shall also, as appropriate, issue artifications for the works and installations constructed.

Technical and administrative personnel and construction workers shall, as far as possible, be recruited from among nationals of the two High Contracting Parties in equal numbers.

Article 7

The High Contracting Parties shall establish an inter-State agency for the purpose of operating and administering the works and installations constructed in accordance with this Agreement. Pending the establishment of this agency, the aforementioned functions shall be performed by the Joint Technical Commission.

Article 8

The High Contracting Parties shall make the necessary arrangements in order that energy may be exchanged by the two Governments at cost price.

Article 9

Supplies and machinery intended for the works provided for in this Agreement shall be exempt from all types of duty and supplementary charges applicable to them in either country.

The personnel, equipment, instruments, baggage, food supplies and other articles required by the Joint Technical Commission shall be entitled

to the same customs exemptions and facilities for their transport shall be granted by the Governments.

Article 10

The measures taken to give effect to this Agreement shall not affect any of the rights of the High Contracting Parties relating to sovereignty and jurisdiction or to their navigation rights on the Uruguay River.

Article 11

The High Contracting Parties agree to invite the Government of the United States of Brazil, once this Agreement is signed, to a conference at which will be considered the changes which, as a result of this Agreement, are brought about in navigation on the Uruguay River and in the river regulations subject to the provisions of the conventions in force.[1]

Article 12

The Joint Technical Commission shall have its headquarters at Buenos Aires and shall be established within thirty days after the ratifications of this Agreement have been exchanged.

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[1] *Brazil* was invited to attend a *tripartite conference* that was convened at Buenos Aires. This Conference concluded its works by adopting, on 23 September 1960, a *Joint Declaration* in which the Governments of Argentina, Brazil and Uruguay have agreed upon the following: (1) The Brazilian Government views favourably the joint execution by the Governments of Argentina and Uruguay of the Salto Grande works, which will demonstrate the spirit of solidarity and co-operation existing in the region of the continent shared by the signatory States; and the Argentine and Uruguayan Governments take note of its attitude with satisfaction; (2) In accordance with international doctrine and practice, the Brazilian Government reserves, and the Argentine and Uruguayan Governments recognize, the right to: (*a*) claim and obtain, at any time, fair compensation for any damages which may be caused in Brazilian territory during the construction or utilization of the works; (*b*) be consulted if, in the course of their studies, the participating countries wish to make any change in the plan which will alter the conditions at present contemplated; (3) The Governments of Argentina, Brazil and Uruguay reaffirm their mutual recognition of the right of free navigation of the Uruguay River and of non-discrimination in the use of locks by vessels flying their flags or in their service, as regards both rates and tariffs and the order in which vessels are serviced; (4) The Governments of Argentina and Uruguay recognize the Brazilian Government's right, in accordance with existing international instruments and the rules of international law, freely to carry out hydraulic works of any nature on the Brazilian reaches of the Uruguay River and its tributaries. The Brazilian Government will, in its turn, in accordance with international doctrine and practice, consult with the other riparian States before carrying out any hydraulic works which may alter the present regime of the Uruguay River; (5) The Governments of Argentina, Brazil and Uruguay declare their intention to prepare a joint regional plan for the utilization and reclamation of the entire basin of the Uruguay River and the regions adjacent thereto, in which the interests and aspirations of the frontier populations of the three friendly countries are increasingly becoming identified. [Argentina, Dirección de Defensa Nacional, *Documentación de la Conferencia prevista en el artículo XI del Convenio argentino-uruguayo sobre el aprovechamiento de los rápidos del río Uruguay en la zona del Salto Grande, in fine.* (Translated from the Spanish by the Secretariat of the United Nations).]

Article 13

Upon approval of this Agreement by the High Contracting Parties, the exchange of ratifications shall take place at Montevideo.

In witness whereof the respective plenipotentiaries have signed this Agreement in two copies, having the same effect and being equally authentic, and have thereto affixed their seals at Montevideo on 30 December 1946.

41. TREATY[1] BETWEEN THE ARGENTINE REPUBLIC AND THE EASTERN REPUBLIC OF URUGUAY ON THE BOUNDARY CONSTITUTED BY THE URUGUAY RIVER, SIGNED AT MONTEVIDEO ON 7 APRIL 1961[2]

. . .

Article 7. The High Contracting Parties shall agree on a statute governing the utilization of the river, which shall cover, *inter alia*, the following matters:

(*a*) Joint and uniform regulations to ensure safe navigation;

(*b*) A system of pilotage taking into account present practices;

(*c*) Regulations for the purpose of maintaining dredging and marking with buoys in accordance with the provisions of article 6;

(*d*) Reciprocal facilities for hydrological and other surveys relating to the river;

(*e*) Provisions for the conservation of living resources;

(*f*) Provisions designed to avoid pollution of the waters.

Article 8. In the islands remaining under Uruguayan jurisdiction included in the zone specified in article 1, paragraph B II, the High Contracting Parties, shall, by mutual agreement, determine the utilization of the waters for domestic, industrial and irrigation purposes and shall establish a system of policing which shall ensure, through joint Argentine-Uruguayan co-operation, that the relevant regulations are enforced.

. . .

Bolivia—Peru

42. PRELIMINARY CONVENTION[3] BETWEEN BOLIVIA AND PERU FOR THE EXPLOITATION OF FISHERIES IN LAKE TITICACA. SIGNED AT LIMA, ON 17 JULY 1935[4]

The Governments of Bolivia and Peru, considering the importance which

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[1] Ratified by Argentine Republic, on 2 October 1961. It has not yet been ratified by Eastern Republic of Uruguay.

[2] Text provided by the Ministry of Foreign Affairs and Public Worship of the Argentine Republic. [Translated by the Secretariat of the United Nations.]

[3] Approved by Peru by *Resolución Suprema* No. 429 of 21 August 1935, and by Bolivia by an Act of 20 September 1938.

[4] Bolivian Ministry of Foreign Affairs, *Colección de tratados vigentes de la República de Bolivia*, vol. V, *Convenciones bilaterales*, p. 486; Peruvian Ministry of Foreign Affairs, *Tratados y acuerdos vigentes entre el Perú y otros Estados*, I, *Instrumentos bilaterales*, p. 127.

the study and development of the fishery possibilities of Lake Titicaca may have for the economic life of their frontier regions, have agreed to concert their efforts to those ends ...

Article 1. The Governments of Bolivia and Peru shall, by agreement and simultaneously, provide for the dispatch of a Scientific Commission to study the varieties of fish in Lake Titicaca and the possibility of establishing and developing there other species suited to industrial exploitation.

Article 2. If it appears from the conclusions of the Commission referred to in the foregoing article that the establishment of fish hatcheries and distribution stations is desirable, the two Governments shall agree on the steps to be taken and the apportionment of the necessary expenditures.

Article 3. After the conclusions of the Commission have been adopted by the two Governments or modified by agreement between them, the two Governments shall conclude a Convention on Fishing in Lake Titicaca which shall provide for equality of rights and economic opportunities for Bolivian and Peruvian fishermen, and for a permanent régime governing the participation of the two Governments in the establishments referred to in the foregoing article and the reimbursement of whatever expenditures are incurred.

. . .

43. EXCHANGE OF NOTES[1] BETWEEN PERU AND BOLIVIA ESTABLISHING A JOINT COMMISSION FOR STUDY OF THE PUNO-GUAQUI RAILWAY LINE AND JOINT USE OF THE WATERS OF LAKE TITICACA. LA PAZ, 20 APRIL 1955[2]

REPUBLIC OF BOLIVIA
MINISTRY OF FOREIGN AFFAIRS AND WORSHIP

La Paz, 20 April 1955

Your Excellency,

I have the honour to inform you that the Government of Bolivia is in agreement with the Government of Peru concerning the usefulness of studying important questions of common interest the solution of which should effectively strengthen the economic ties between the two countries and further improve the friendly relations they now maintain.

For that purpose and in view of the need to organize and develop a co-ordinated technical plan for linking the Bolivian La Paz-Guaqui railway with the Peruvian Mollendo (Matarani)-Puno railway and utilizing the waters of Lake Titicaca, my Government has agreed with your Government as follows:

1. A Joint Bolivian-Peruvian Commission shall be established for the purpose of preparing studies concerning the Puno-Guaqui railway line and the use of the waters of Lake Titicaca for hydroelectric and other mutually beneficial purposes.

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[1] Came into force on 20 April 1955 by exchange of the said Notes.

[2] *Revista Peruana de Derecho Internacional*, vol. XV, January/December 1955, Nos. 47-48, p. 76.

2. The Joint Commission shall be composed of twelve members, six from each country, who shall be chosen as follows: two officials appointed by the Ministry of Foreign Affairs of each country, two railway experts and two bydroelectricity experts.

3. In order to carry out the functions assigned to it, the Joint Commission shall be divided into two sub-commissions, one for preparing the studies concerning the Puno-Guaqui railway line, and the other the studies concerning the use of the waters of Lake Titicaca.

4. The Commission shall meet at La Paz on a date agreed on by the two Governments in order to establish the rules under which it will function and to make whatever arrangements it considers desirable.

5. The sessions of the Joint Commission shall be held alternately at Lima and La Paz, and shall be presided over by the Minister of Foreign Affairs of the country concerned or a person appointed by him.

6. The appointment of the members of the Joint Bolivian-Peruvian Commission shall be made simultaneously by the two Governments twenty days after the date of signature of this note.

This note and your reply shall constitute evidence of the agreement reached by the two Governments. . . .

EMBASSY OF PERU

Your Excellency,

I have the honour to inform you that the Government of Peru is in agreement with the Government of Bolivia concerning the usefulness of studying important questions of common interest the solution of which should effectively strengthen the economic ties between the two countries and further improve the friendly relations they now maintain.

For that purpose and in view of the need to organize and develop a co-ordinated technical plan for linking the Peruvian Mollendo (Matarani)-Puno railway with the Bolivian La Paz-Guaqui railway and utilizing the waters of Lake Titicaca, my Government has agreed with your Government as follows:

[*See first note*]

44. PRELIMINARY CONVENTION[1] BETWEEN PERU AND BOLIVIA CONCERNING A STUDY OF THE JOINT UTILIZATION OF THE WATERS OF LAKE TITICACA. SIGNED AT LIMA, ON 30 JULY 1955[2]

The Governments of the Republic of Peru and the Republic of Bolivia,

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[1] This Agreement has not yet entered into force.

A Declaration made by the Presidents of Peru and Bolivia at Lima on 30 July 1955 on the date of signature of the Preliminary Convention states: "As regards the utilization of the waters of Lake Titicaca for industrial or other purposes, the two Governments declare that the said waters, being the joint and indivisible property of both may be used only with the express agreement of the two parties" [*Revista Peruana de Derecho Internacional*, vol. XV, January/December 1955, nos. 47-48, p. 87].

[2] *Ibid.*, p. 90.

moved by a desire to strengthen the cordial relations which happily exist between them, have decided to conclude a Preliminary Convention concerning a study of the utilization of the waters of Lake Titicaca — such study having been entrusted, by virtue of an exchange of notes signed by both Governments on 20 April 1955, to a joint Peruvian-Bolivian Commission — and have for this purpose appointed as their respective plenipotentiaries, . . .

Who, having exchanged their full powers, found in good and due form, have agreed as follows:

Article I. The Governments of Peru and Bolivia hereby approve the recommendations which the Joint Peruvian-Bolivian Commission to study the utilization of the waters of Lake Titicaca made at its first session, which was inaugurated at La Paz on 28 June 1955, their intention being to put into practice the decisions reached at the said session, namely:

1. To give careful attention to the question of finance for the immediate execution of the programme of preliminary study and observation relating to joint utilization of the waters of Lake Titicaca; and, if necessary, to seek economic assistance from appropriate national or international bodies;

2. To furnish their respective commissions with all the technical and economic facilities which they may require in order to discharge their duties promptly and effectively, providing them with transport, equipment and tools and with the necessary funds;

3. To grant extensive customs and transit facilities so that personnel, equipment, tools and other things needed for the work may move freely from one territory to the other for the purposes of their specific tasks; and

4. To hold the second session of the Joint Commission at Lima, in October of the present year.

Article II. With reference to the first recommendation mentioned in the preceding article, the Governments of Peru and Bolivia undertake to take the necessary steps to provide or obtain, as the case may be, finance for the preliminary surveys which will be used as a basis for the study concerning the utilization of the waters of Lake Titicaca.

Article III. The social and economic studies of the zones of influence adjacent to Lake Titicaca shall be carried out jointly by the Joint Commission on the territory of both Peru and Bolivia. The said zones shall be determined by the Joint Commission, and its conclusions shall be submitted to both Governments for approval.

Article IV. The present Agreement shall enter into force upon the exchange of the instruments of ratification, which shall take place as soon as possible at La Paz.

45. AGREEMENT[1] BETWEEN BOLIVIA AND PERU CONCERNING A PRELIMINARY ECONOMIC STUDY OF THE JOINT UTILIZATION OF THE WATERS OF LAKE TITICACA. SIGNED AT LA PAZ, ON 19 FEBRUARY 1957[2]

Article 1

The Governments of Peru and Bolivia, in view of the recommendations made by the Joint Peruvian-Bolivian Commission and by virtue of the fact that the two countries have joint, indivisible and exclusive ownership over the waters of Lake Titicaca, resolve to adopt a definite plan for a preliminary economic study concerning the joint utilization of the said waters in such manner as not to fundamentally alter the navigability or fishing facilities thereof or substantially affect the volume of water diverted from the Lake for industrial, irrigation or other purposes.

Article 2

The preliminary basic values of water drawn from the Lake in accordance with article 1 shall be as follows:

1. Kinetic energy of the water — $US 0.001 per kwh consumed;
2. Water used for irrigation purposes — $US 0.001 per cubic metre consumed.

These basic values, which are fixed on a preliminary basis and shall be divided equally between the two countries, shall be taken into consideration in carrying out the economic studies for the project to which this Agreement refers.

Article 3

The payments or other compensation to be made for the losses or the reduction in economic benefits sustained by either of the two countries as a result of hydroelectric development or use of the waters for irrigation and other purposes shall be the subject of an agreement to be concluded after the above-mentioned economic studies are completed.

Article 4

The preliminary economic study on the utilization by Peru and Bolivia of the waters of the Lake Titicaca shall contain, in a special introductory chapter, an estimate of the electricity consumption in both countries so that the construction of one or more hydroelectric stations capable of meeting the demand efficiently and equitably can be considered in the initial stage of development. It shall also include an agricultural and economic study of the areas where there is likely to be a market for the water for irrigation purposes after it has yielded its kinetic energy.

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[1] Ratified by Peru on 21 November 1957 [*Resolución legislativa*, No. 12857]. This Agreement has not yet been ratified by Bolivia, therefore it has not yet entered into force. This Agreement was recommended by the Joint Peruvian-Bolivian Commission at its third session, which was held at La Paz from 7 to 19 February 1957.

[2] *Revista Peruana de Derecho Internacional*, vol. XVII, No. 52, July-December 1957, p. 210.

Article 5

The two Governments agree that they may jointly or separately initiate negotiations with responsible bodies or firms of world-wide reputation regarding the contract for the preliminary economic studies mentioned in this Agreement. Each country shall promptly give notice of such negotiations to the other through their Ministries of Foreign Affairs so that a meeting of the Joint Sub-Commission for the utilization of the Waters of Lake Titicaca may be called, the said Sub-Commission being authorized to study and recommend acceptance and signature of the contract by the two Governments.

When the preliminary economic studies provided for in the said contract have been completed, the Joint Sub-Commission shall submit them to the Joint Peruvian-Bolivian Commission for consideration and approval.

Article 6

When the studies referred to in article 5 have been approved by the Joint Peruvian-Bolivian Commission, both Governments shall invite tenders in the world market for the final studies and for the financing, in whole or in part, of the project.

Article 7

This Agreement shall come into force upon the exchange of the instruments of ratification, which shall take place as soon as possible at Lima.

Brazil—Paraguay

46. AGREEMENT[1] CONCERNING CO-OPERATION BETWEEN THE UNITED STATES OF BRAZIL AND THE REPUBLIC OF PARAGUAY IN A STUDY ON THE UTILIZATION OF THE WATER-POWER OF THE ACARAY AND MONDAY RIVERS. SIGNED AT RIO DE JANEIRO, ON 20 JANUARY 1956[2]

. . . being convinced that the policy of closer co-operation between the two countries would be effectively promoted by the adoption of measures conducive to their economic development, and bearing in mind the spirit of loyal friendship which governs relations between Paraguay and Brazil, have decided to conclude an agreement for a study concerning the utilization of the water-power of the Acaray and Monday Rivers in Paraguayan territory . . .

Article I. The subject of this Agreement is a study concerning the utilization in Paraguayan territory — in the vicinity of the Brazilian town of Foz de Iguazú and the Paraguayan port of Presidente Franco — of the water-power of the Acaray and Monday rivers, which are tributaries of the Paraná River.

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[1] The exchange of the instruments of ratification took place at Rio de Janeiro on 6 September 1957.

[2] Ministry of Foreign Affairs, *Coleção de Atos Internacionais do Brasil*, No. 393, p. 4.

Article II. The studies to be carried out by the Government of the United States of Brazil, through the National Department of Land Improvement of the Ministry of Roads and Public Works, shall consist of:

(*a*) A reconnaissance and site inspection of the region in which the waterfalls of the aforementioned rivers are situated in order to determine the ways in which their power could be utilized in either one or two hydroelectric stations;

(*b*) A hydrological study of the régime of the two rivers in the vicinity of the waterfalls;

(*c*) A general topographical survey of the areas in which the plans for utilizing the aforementioned power would be carried out;

(*d*) A geological survey of the sites chosen for the works;

(*e*) Detailed topographical surveys;

(*f*) A description of the hydroelectric project setting out the general specifications necessary for preparing estimates, tenders for machinery and other equipment, and the project programme;

(*g*) A preliminary plan and specifications for transmission lines between the site of the power-stations and:

1. Asunción, including the possibility of intermediate transformer substations;

2. Foz de Iguazú and vicinity;

(*h*) An economic study of the works and their repercussions on the development of the neighbouring regions, including suggestions for electricity tariffs.

Article III. All the studies, surveys and the like mentioned in article II, together with the documents on which they are based, shall be transmitted by the Government of the United States of Brazil to the Government of the Republic of Paraguay as they are completed.

Article IV. The Government of the Republic of Paraguay, at its own expense, shall assign permanent representatives to the National Department of Land Improvement of Brazil for the purpose of following the progress of the studies and programmes referred to in this Agreement.

Article V. For a period of twenty years from the date on which the first electric generator is put into service, Brazil shall have the right to consume up to 20 per cent of the electric power which the generators in service can produce, paying the rates to be established in the corresponding tariffs.

Sole paragraph. The right referred to in this article may be renewed for the same number of years by agreement between the Contracting Parties.

Article VI. The Government of the United States of Brazil undertakes to inform the Government of the Republic of Paraguay, with at least three years' notice, of the date on which it will begin to make use of the right granted to it under article V and of the quantity of electricity that it wishes to consume.

Article VII. The terms of payment for the power requested or consumed by Brazil in accordance with articles V and VI shall be subject to adjust-

ment in a manner to be agreed upon at the appropriate time by the administrative authorities of both countries.

Article VIII. Personnel of either country whose task it is to carry out the studies, surveys and the like referred to in this Agreement may freely enter, travel in and leave the territory of the two States with the equipment, personal articles and service vehicles necessary for the discharge of their duties. This right shall also extend to the use of aircraft for aerial photographic reconnaissance and surveys.

Article IX. The time limit for transmittal of the studies, surveys and the like mentioned in article II shall be four years, reckoned from the date of signature of this Agreement.

Article X. The Government of the United States of Brazil, as an interested party, shall collaborate with the Government of the Republic of Paraguay in obtaining finance for the works to be undertaken in pursuance of this Agreement.

. . .

Brazil—United Kingdom

47. EXCHANGE OF NOTES[1] BETWEEN THE BRAZILIAN GOVERNMENT AND HIS MAJESTY'S GOVERNMENT IN THE UNITED KINGDOM CONSTITUTING AN AGREEMENT FOR THE DELIMITATION OF THE RIVERAIN AREAS OF THE BOUNDARY BETWEEN BRAZIL AND BRITISH GUIANA. LONDON, OCTOBER 27TH AND NOVEMBER 1ST, 1932[2]

I

FOREIGN OFFICE, S.W.1

No. A 7079/27/6

October 27th, 1932

Your Excellency,

In order to give effect to the desire expressed by the Brazilian Government that His Majesty's Government in the United Kingdom and the Brazilian Government should reach an agreement as to the principles to be adopted by the Mixed Commission in the delimitation of the riverain areas of the boundary between British Guiana and Brazil, I have the honour to make the following detailed proposals on the basis of the proposals already put forward by the Brazilian Government:

. . .

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[1] Came into force November 1st, 1932.

[2] League of Nations, *Treaty Series*, vol. 177, p. 128. The text of this Exchange of Notes is also reproduced as Annex 3 of the Exchange of Notes between Brazil and the United Kingdom of 15 March 1940 [United Nations, *Treaty Series*, vol. 5, p. 72].

(vi) The river shall be open to free navigation and fishing to both States throughout that portion of its length which constitutes the boundary but no works shall be permitted other than those intended solely to retain the river in its present course and not involving any risk of altering that course except with the mutual consent of the Governments of both States and any work such as canalisation, irrigation, or the development of electrical power shall only be undertaken subject to the mutual consent of both riparian States.

2. If the Brazilian Government agree to the adoption of these principles by the Mixed Commission, I have the honour to suggest that the present note and Your Excellency's note in reply accepting the proposals be regarded as constituting an Agreement between the two Governments to this effect.

I have the honour to be, with the highest consideration, Your Excellency's obedient Servant.

(For the Secretary of State)

(Signed) R. L. GRAIGIE

His Excellency

Monsieur Raul Régis de Oliveira, G.B.E., etc.

II

No. 59

London, November 1st, 1932

Monsieur le Secrétaire d'Etat,

I have the honour to acknowledge receipt of note No. A.7079/27/6, dated October 27th last, in which Your Excellency, for the purpose of giving effect to the desire expressed by the Brazilian Government that His Majesty's Government in the United Kingdom and the Brazilian Government should reach an agreement as to the principles to be adopted by the Mixed Commission in the delimitation of the riverain areas of the boundary between Brazil and British Guiana, made the following detailed proposals, which are based on the proposals already put forward by the Brazilian Government, and which I have the honour to accept:

[See paragraph (vi) of the Note above]

. . .

2. It is understood that the present Note and Your Excellency's Note, dated October 27th last, constitute an agreement between the Brazilian Government and His Britannic Majesty's Government in the United Kingdom to this effect.

I have the honour to be, etc.

(Signed) Raul Régis DE OLIVEIRA

The Right Honourable Sir John Simon,
G.C.S.I., K.C.V.O., K.C., M.P.,
His Britannic Majesty's
Principal Secretary of State
for Foreign Affairs.

48. EXCHANGE OF NOTES[1] BETWEEN HIS MAJESTY'S GOVERNMENT IN THE UNITED KINGDOM AND THE GOVERNMENT OF BRAZIL APPROVING THE GENERAL REPORT OF THE SPECIAL COMMISSIONERS APPOINTED TO DEMARCATE THE BOUNDARY-LINE BETWEEN BRITISH GUIANA AND BRAZIL (WITH GENERAL REPORT). RIO DE JANEIRO, 15 MARCH 1940[2]

No. 1

Sir Geoffrey Knox to Dr. Oswaldo Aranha

BRITISH EMBASSY

Rio de Janeiro, 15 March, 1940

Your Excellency,

In accordance with instructions from His Majesty's Principal Secretary of State for Foreign Affairs, I have the honour to inform Your Excellency that the Government of the United Kingdom of Great Britain and Northern Ireland have examined the General Report of the Special Commissioners appointed to demarcate the boundary-line between Brazil and British Guiana in accordance with the Treaty signed in London on 22nd April, 1926, and the Protocol signed in London on 18th March, 1930.

2. The Government of the United Kingdom approve the work of the Commissioners as set forth in their General Report, the original of which, with its appendices numbered 1 to 11 and the General Map referred to in Appendix No. 8, is annexed hereto, and they declare:

(1) That they accept the line laid down by the said Commissioners, in the manner shown in Appendices Nos 5 to 9 and the annexed General Map, as constituting the boundary-line between British Guiana and Brazil in accordance with the above-mentioned Treaty of 22nd April, 1926, the Protocol of 18th March, 1930, and the notes exchanged in London on 27th October/1st November, 1932;

. . .

3. If the Brazilian Government are prepared to make a corresponding declaration, I have the honour to propose that the present note and Your Excellency's reply in similar terms be regarded as constituting a formal agreement between the two Governments for the establishment of the boundary between British Guiana and Brazil.

I avail, . . .

(Signed) G. G. KNOX

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[1] Came into force on 15 March 1940 by signature.

[2] United Nations, *Treaty Series*, vol. 5, p. 72.

No. 2

MINISTRY FOR FOREIGN AFFAIRS

Rio de Janeiro, 15th March, 1940

Monsieur l'Ambassadeur,

I have the honour to acknowledge the receipt of the note of to-day's date, in which Your Excellency informs me that, according to instructions received from His Majesty's Principal Secretary of State for Foreign Affairs, the Government of the United Kingdom of Great Britain and Northern Ireland examined and approved the General Report of the Special Commissioners appointed to demarcate the boundary-line between Brazil and British Guiana in accordance with the Treaty signed in London on 22nd April, 1926, and the Protocol signed in London on 18th March, 1930.

2. In reply, I have to inform Your Excellency that the Brazilian Government have also given their approval to the work of the Commissioners referred to above, as set forth in the General Report, the original of which, accompanied by Appendices number 1 to 11 and the General Map referred to in Appendix 8, is annexed hereto, and they declare:

[See paragraph 1 (1) of Note No. 1 above]

. . .

3. Accordingly it is understood that the present note and that of Your Excellency, to which I have the honour to reply, shall be considered as a formal agreement between the two Governments for the establishment of the boundaries between Brazil and British Guiana.

I avail, . . .

(Signed) Oswaldo ARANHA

General report of the Commissioners appointed to demarcate the boundary

. . .

18. The question of the free navigation and fishing rights in those portions of the Rivers Mahú and Tacutú which constitute the boundary is covered in the Agreement reached between the two Governments, a copy of which is contained in (the Exchange of Note of 27th October, on 2nd November, 1932, concerning the Delimitation of the Riverain Areas.

. . .

Brazil—Uruguay

49. CONVENTION[1] REGARDING THE DETERMINATION OF THE LEGAL STATUS OF THE FRONTIER BETWEEN BRAZIL AND URUGUAY, SIGNED AT MONTEVIDEO, DECEMBER 20TH, 1933[2]

. . .

[1] The exchange of ratifications took place at Rio de Janeiro, July 21st, 1937.
[2] League of Nations, *Treaty Series*, vol. 181, p. 70.

Article XIX. Each of the two States shall be entitled to dispose of half the water flowing in the frontier watercourses.

Article XX. When there is a possibility that the installation of plant for the utilisation of the water may cause an appreciable and permanent alteration in the rate of flow of a watercourse running along or intersecting the frontier, the contracting State desirous of such utilisation shall not carry out the work necessary therefor until it has come to an agreement with the other State.

Article XXI. Each of the contracting States shall be responsible for the water police service in its own territory, subject to the limitations specified in the various frontier regimes in force, in accordance with the international instruments applicable thereto. Should the regime adopted be that of the bed or of the joint ownership of the water, the jurisdiction of each riparian State shall extend as far as the opposite bank, but shall not include the land skirting the watercourse.

Article XXII. Fishing rights shall be exercised by the nationals of each State in the waters within their respective jurisdictions.

. . .

Canada—United States

50. AGREEMENT[1] BETWEEN THE UNITED STATES OF AMERICA AND CANADA TO REGULATE THE LEVEL OF LAKE OF THE WOODS, SIGNED AT WASHINGTON, FEBRUARY 24, 1925[2]

Desiring to regulate the level of Lake of the Woods in order to secure to the inhabitants of Canada and the United States the most advantageous use of the waters thereof and of the waters flowing into and from the Lake on each side of the boundary between the two countries, and

Accepting as a basis of agreement the recommendations made by the International Joint Commission in its final report of May 18th, 1917[3] on the reference concerning Lake of the Woods submitted to it by the Governments of Canada and the United States of America,

. . .

Article 1

In the present Convention, the term " level of Lake of the Woods " or " level of the lake " means the level of the open lake unaffected by wind or currents.

The term " Lake of the Woods watershed " means the entire region in

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[1] Came into force 17 July 1925, by the exchange of ratifications.

[2] League of Nations, *Treaty Series*, vol. 43, p. 252.

[3] *Final Report of the International Joint Commission on the Lake of the Woods Reference*, Washington, 1917.

which the waters discharged at the outlets of Lake of the Woods have their natural source.

The term " sea level datum " means the datum permanently established by the International Joint Commission at the town of Warroad, Minnesota, of which the description is as follows:

" Top of copper plug in concrete block carried below frost line, and located near fence in front of and to the west of new schoolhouse. Established October 3, 1912. Elevation, sea level datum, 1068.797."

" The International Joint Commission " means the Commission established under the Treaty signed at Washington on the 11th day of January, 1909, between His Britannic Majesty and the United States of America, relating to boundary waters and questions arising between the United States and Canada.

Article 2

The level of Lake of the Woods shall be regulated to the extent and in the manner provided for in the present Convention, with the object of securing to the inhabitants of Canada and the United States the most advantageous use of the waters thereof and of the waters flowing into and from the Lake on each side of the boundary between the two countries for domestic and sanitary purposes, for navigation purposes, for fishing purposes, and for power, irrigation and reclamation purposes.

Article 3

The Government of Canada shall establish and maintain a Canadian Lake of the Woods Control Board, composed of engineers, which shall regulate and control the outflow of the waters of Lake of the Woods.

There shall be established and maintained an International Lake of the Woods Control Board composed of two engineers, one appointed by the Government of Canada and one by the Government of the United States from their respective public services, and whenever the level of the lake rises above elevation 1061 sea level datum or falls below elevation 1056 sea level datum the rate of total discharge of water from the lake shall be subject to the approval of this Board.

Article 4

The level of Lake of the Woods shall ordinarily be maintained between elevations 1056 and 1061.25 sea level datum, and between these two elevations the regulation shall be such as to ensure the highest continuous uniform discharge of water from the lake.

During periods of excessive precipitation the total discharge of water from the lake shall, upon the level reaching elevation 1061 sea level datum, be so regulated as to ensure that the extreme high level of the lake shall at no time exceed elevation 1062.5 sea level datum.

The level of the lake shall at no time be reduced below elevation 1056 sea level datum except during periods of low precipitation and then only upon the approval of the International Lake of the Woods Control Board and subject to such conditions and limitations as may be necessary to protect the use of the waters of the lake for domestic, sanitary, navigation and fishing purposes.

Article 5

If in the opinion of the International Lake of the Woods Control Board the experience gained in the regulation of the lake under Articles 3 and 4, or the provision of additional facilities for the storage of waters tributary to the lake, demonstrates that it is practicable to permit the upper limit of the ordinary range in the levels of the lake to be raised from elevation 1061.25 sea level datum to a higher level and at the same time to prevent during periods of excessive precipitation the extreme high level of the lake from exceeding elevation 1062.5 sea level datum, this shall be permitted under such conditions as the International Lake of the Woods Control Board may prescribe. Should such permission be granted, the level at which under Article 3 the rate of total discharge of water from the lake becomes subject to the approval of the International Lake of the Woods Control Board may, upon the recommendation of that Board and with the approval of the International Joint Commission, be raised from elevation 1061 sea level datum to a correspondingly higher level.

Article 6

Any disagreement between the members of the International Lake of the the Woods Control Board as to the exercise of the functions of the Board under Articles 3, 4 and 5 shall be immediately referred by the Board to the International Joint Commission whose decision shall be final.

Article 7

The outflow capacity of the outlets of Lake of the Woods shall be so enlarged as to permit the discharge of not less than forty-seven thousand cubic feet of water per second (47,000 c.f.s.) when the level of the lake is at elevation 1061 sea level datum.

The necessary works for this purpose, as well as the necessary works and dams for controlling and regulating the outflow of the water, shall be provided for at the instance of the Government of Canada, either by the improvement of existing works and dams or by the construction of additional works.

Article 8

A flowage easement shall be permitted up to elevation 1064 sea level datum upon all lands bordering on Lake of the Woods in the United States, and the United States assumes all liability to the owners of such lands for the costs of such easement.

The Government of the United States shall provide for the following protective works and measures in the United States along the shores of Lake of the Woods and the banks of Rainy River, in so far as such protective works and measures may be necessary for the purposes of the regulation of the level of the lake under the present Convention: namely, the removal or protection of buildings injuriously affected by erosion, and the protection of the banks at the mouth of Warroad River where subject to erosion, in so far in both cases as the erosion results from fluctuations in the level of the lake; the alteration of the railway embankment east of the town of Warroad, Minnesota, in so far as it may be necessary to prevent surface flooding of the higher lands in and around the town of Warroad; the making of provi-

sion for the increased cost, if any, of operating the existing sewage system of the town of Warroad, and the protection of the waterfront at the town of Beaudette, Minnesota.

Article 9

The Dominion of Canada and the United States shall each on its own side of the boundary assume responsibility for any damage or injury which may have heretofore resulted to it or to its inhabitants from the fluctuations of the level of Lake of the Woods or of the outflow therefrom.

Each shall likewise assume responsibility for any damage or injury which may hereafter result to it or to its inhabitants from the regulation of the level of Lake of the Woods in the manner provided for in the present Convention.

Article 10

The Governments of Canada and the United States shall each be released from responsibility for any claims or expenses arising in the territory of the other in connection with the matters provided for in Articles 7, 8 and 9.

In consideration, however, of the undertakings of the United States as set forth in Article 8, the Government of Canada shall pay to the Government of the United States the sum of two hundred and seventy-five thousand dollars ($275,000) in currency of the United States. Should this sum prove insufficient to cover the cost of such undertakings one-half of the excess of such cost over the said sum shall, if the expenditure be incurred within five years of the coming into force of the present Convention, be paid by the Government of Canada.

Article 11

No diversion shall henceforth be made of any waters from the Lake of the Woods watershed to any other watershed except by authority of the United States or the Dominion of Canada within their respective territories and with the approval of the International Joint Commission.[1]

. . .

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[1] This article rose from the following recommendations of the " International Joint Commission:

" that, as a matter of sound international policy, neither Government should permit the permanent or temporary diversion out of the watershed of any waters within its jurisdiction which are tributary to the boundary waters under consideration, without first referring the matter to the Commission for such recommendation as it may deem appropriate. " (Final Report, cit., p. 38.)

" The Commission appreciates the fact that, in the case of drainage basins that lie wholly within one country or the other, it may be desirable to artificially divert waters out of and from their own local watershed for use in another. On the other hand, diversions from an international watershed, such as that of the Lake of the Woods, whereby the international channel in that watershed would be deprived by such diversion of waters which naturally belong to the Lake of the Woods drainage system, would very probably lead to irritating disputes between the people of two neighboring countries. Further, the existing and future developments of the entire waters of the Lake of the Woods watershed will involve very large expenditures, and an investment of such magnitude

PROTOCOL ACCOMPANYING CONVENTION TO REGULATE THE LEVEL OF LAKE OF THE WOODS

1. The plans of the necessary works for the enlargement of the outflow capacity of the outlets of Lake of the Woods provided for in Article 7 of the Convention, as well as of the necessary works and dams for controlling and regulating the outflow of the water, shall be referred to the International Lake of the Woods Control Board for an engineering report upon their suitability and sufficiency for the purpose of permitting the discharge of not less than forty-seven thousand cubic feet of water per second (47,000 c.f.s.) when the level of the lake is at elevation 1061 sea level datum. Any disagreement between the members of the International Lake of the Woods Control Board in regard to the matters so referred shall be immediately submitted by the Board to the International Joint Commission whose decision shall be final.

2. Should it become necessary to set up a special tribunal to determine the cost of the acquisition of the flowage easement in the United States provided for in Article 8 of the Convention, the Government of Canada shall be afforded an opportunity to be represented thereon. Should the cost be determined by means of the usual judicial procedure in the United States, the Government of Canada shall be given the privilege of representation by counsel in connection therewith.

3. Since Canada is incurring extensive financial obligations in connection with the protective works and measures provided for in the United States along the shores of Lake of the Woods and the banks of Rainy River, under Article 8 of the Convention, the plans, together with the estimates of cost, of all such protective works and measures as the Government of the United States may propose to construct or provide for within five years of the coming into force of the Convention shall be referred to the International Lake of the Woods Control Board for an engineering report upon their suitability and sufficiency for the purpose of the regulation of the level of the lake under the Convention. Any disagreement between the members of the International Lake of the Woods Control Board in regard to the matters so referred shall be immediately submitted by the Board to the International Joint Commission whose decision shall be final.

4. In order to ensure the fullest measure of co-operation between the International Lake of the Woods Control Board and the Canadian Lake of the Woods Control Board provided for in Article 3 of the Convention, the Government of Canada will appoint one member of the Canadian Board as its representative on the International Board.

5. Until the outlets of Lake of the Woods have been enlarged in accordance with Article 7 of the Convention, the upper limit of the ordinary range in the levels of the lake provided for in Article 4 of the Convention shall be elevation 1060.5 sea level datum, and the International Lake of

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must naturally depend upon some definite understanding that the flow of water on which it is based will not be diminished by a diversion of any portion thereof from the watershed. For these reasons, the Commission has suggested that no diversions, temporary or permanent, out of the Lake of the Woods watershed, of any waters which in their natural course flow into these boundary waters, should be permitted without first referring the matter to the Commission for such recommendation as it may deem appropriate." (*Ibid.*, p. 70, 71.)

the Woods Control Board may advise the Canadian Lake of the Woods Control Board in respect of the rate of total discharge of water from the lake which may be permitted.

. . .

At the moment of signing the Convention and Protocol between His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, in respect of the Dominion of Canada, and the United States of America, regarding the regulation of the level of Lake of the Woods, the undersigned Plenipotentiaries have agreed that the Government of the Dominion of Canada and the Government of the United States shall, without delay, address to the International Joint Commission identic letters of reference relating to Rainy Lake and other upper waters of the Lake of the Woods watershed as follows:

" I have the honour to inform you that, in pursuance of Article 9 of the Treaty of the 11th January 1909, between Great Britain and the United States, the Governments of Canada and the United States have agreed to refer to the International Joint Commission the following questions for examination and report, together with such conclusions and recommendations as may be deemed appropriate:

" Question 1. In order to secure the most advantageous use of the waters of Rainy Lake and of the boundary waters flowing into and from Rainy Lake, for domestic and sanitary purposes, for navigation purposes, for fishing purposes, and for power, irrigation and reclamation purposes; and in order to secure the most advantageous use of the shores and harbours of both Rainy Lake and the boundary waters flowing into and from the lake, is it, from an economic standpoint, now practicable and desirable, having regard for all or any of the interests affected thereby, or under what conditions will it become thus practicable and desirable:

" (*a*) To regulate the level of Rainy Lake in such a manner as to permit the upper limit of the ordinary range of the levels to exceed elevation 1108.61 sea level datum?

" (*b*) To regulate the level of Namakan Lake and the waters controlled by the dams at Kettle falls in such a manner as to permit the upper limit of the ordinary range of the levels to exceed elevation 1120.11 sea level datum?

" (*c*) To provide storage facilities upon all or any of the boundary waters above Namakan Lake?

" Question 2. If it be found practicable and desirable thus (1) to regulate the level of Rainy Lake, and/or (2) to regulate the level of Namakan Lake and the waters controlled by the dams at Kettle falls, and/or (3) to provide storage facilities upon all or any of the boundary waters above Namakan Lake:

" (*a*) What elevations are recommended?

" (*b*) To what extent will it be necessary to acquire lands and to construct works in order to provide for such elevations and/or storage, and what will be their respective costs?

" (*c*) What interests on each side of the boundary would be benefited? What would be the nature and extent of such benefit in each

case? How should the cost be apportioned among the various interests so benefited?

" Question 3. What methods of control and operation would be feasible and advisable in order to regulate the volume, use and outflow of the waters in each case in accordance with such recommendations as may be made in answer to questions one and two?

" Question 4. What interests on each side of the boundary are benefited by the present storage on Rainy Lake and on the waters controlled by the dams at Kettle falls? What are the nature and extent of such benefits in each case? What is the cost of such storage and how should such cost be apportioned among the various interests so benefited?

" Each Government will appoint from its public service such engineering and other technical assistance as may be necessary to enable the Commission to make the desired examination and to submit their report."

51. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT[1] BETWEEN THE UNITED STATES OF AMERICA AND CANADA REGARDING THE LEVEL OF LAKE MEMPHREMAGOG. WASHINGTON, SEPTEMBER 20 AND OTTAWA, NOVEMBER 6, 1935[2]

The Secretary of State to the Minister in Canada (Armour)

No. 17

Washington, August 26, 1935

Sir:

On April 9, 1920, the Secretary of State transmitted to the Chargé d'Affaires of Great Britain a copy of a petition presented by the inhabitants of the city of Newport and the towns of Derby, Coventry, Barton and Newport, in the State of Vermont, representing that owing to the action of the Dominion Textile Company in maintaining a dam for power purposes in the Magog River at or near the outlet of Lake Memphremagog, in the Province of Quebec, the level of the lake had been increased several feet above the normal level. This resulted in damage to American residence and property owners in the vicinity of the lake and along the Clyde, Barton and Black Rivers which empty therein, the levels of which are affected by the level of the lake.

The attention of the Chargé d'Affaires was also drawn to the provisions of Articles 3 and 4 of the Boundary Waters Convention of January 11, 1909.

In a note dated August 2, 1920, from the British Embassy it was suggested that the United States Government appoint an engineer to confer with a Canadian Government engineer and if possible unite with the latter in a joint recommendation to each government as to the levels or level at which Lake Memphremagog should be, as far as possible, maintained. This suggestion was acceptable to this Government and the International Lake Memphremagog Board was accordingly established.

After numerous delays, due in large part to the efforts of the interested parties to find a satisfactory solution to the problem between themselves,

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[1] Came into force on 6 November, 1935, by the exchange of the said Notes.

[2] *Foreign Relations of the United States*, 1935, vol. II, p. 53.

the Board completed its investigation and on May 14, 1934, submitted its report. It is gratifying to note that during the investigation the Board had the cooperation of the Dominion Textile Company " which has maintained the levels of the lake in a manner which has avoided the development of further complaints on the part of the foreshore landowners ". In conclusion the Board recommended that the following principles should govern the regulation of the flow of water from Lake Memphremagog:

" (*a*) That the levels of the lake shall continue to be regulated in accordance with the rights of regulation held and practised by the Dominion Textile Company at the time of the signing of the Boundary Waters Treaty in 1909, i.e. the levels under conditions of normal flow to range between the upper elevation of 682.57 old datum or 682.70 Geodetic Survey of Canada 1923 adjustment, and a lower limit of 678.85 old datum or 678.98 under the 1923 adjustment.

" (*b*) That during times of flood the sluiceways of the dam shall be sufficiently opened to ensure that the outflow from the lake shall be unobstructed by the dam, the flood water drawn off, and the water level in the lake reduced to the normal regulated level of 682.70 as rapidly as possible."

Please address a note to the Canadian Government in the above sense, stating that this Government is pleased to concur in the recommendations of the Board as a satisfactory solution of the problem at the present time and inquiring whether the recommendations in question also have the approval of the Canadian Government. You should add that while this Government has every expectation that the suggested adjustment will prove a satisfactory solution of the problem, should it be the subject of future complaints the matter would appear to be one which should be referred to the International Joint Commission.

A copy of the report of the International Lake Memphremagog Board is enclosed for your information.

. . .

The Minister in Canada (Armour) to the Secretary of State

No. 216

Ottawa, November 9, 1935

[Received November 18]

Sir:

I have the honor to refer to the Department's instruction No. 17 of August 26, 1935 (file No. 711.42157M51/24) relative to the report of the International Lake Memphremagog Board of May 14, 1934, and instructing me to address a note to the Canadian Government expressing the concurrence of the American Government in the recommendations of the Board and inquiring whether the Canadian Government approves them.

A note was accordingly sent to the Canadian Secretary of State for External Affairs in this sense, and a reply has now been received stating that the Canadian Government is also of the opinion the Board's recommendations afford a satisfactory solution to the Memphremagog problem and concurs therein.

It is of interest to note the precautionary measure adopted by the Cana-

dian Government, following submission of the Board's report, in securing full cooperation from the Dominion Textile Company in carrying out the Board's recommendations pending final definite action upon the report by the two Governments.

I should like to point out, in connection with the Canadian reply, the happy tone of the note, particularly of the concluding paragraph. It may also be remarked that the note was signed personally by the Prime Minister in his capacity of Secretary of State for External Affairs and is the first received from Mackenzie King since he took over the reins of office on October 23, 1935.

Copies of my note No. 35 of September 20, 1935, to the Canadian Government, and of the Canadian reply, note No. 124 of November 6, 1935, are enclosed, since it is presumed that the notes may perhaps be incorporated in the Executive Agreement Series. Should this be desired, I should appreciate receiving in due course a draft of any announcement which it may be proposed to make in making public the outcome of this matter. I have been assured informally by the Canadian Government that there will be no objection to the publication of its note in question; however, I should appreciate the receipt of an instruction requesting me to approach the Canadian Government in writing on this point. Should it be decided to issue any public statement with regard to the agreement reached between the two Governments I have no doubt the Canadian authorities would appreciate simultaneous issuance thereof.

52. CONVENTION [1] BETWEEN THE UNITED STATES OF AMERICA AND CANADA PROVIDING FOR EMERGENCY REGULATION OF THE LEVEL OF RAINY LAKE AND OF OTHER BOUNDARY WATERS IN THE RAINY LAKE WATER SHED, SIGNED AT OTTAWA, SEPTEMBER 15, 1938 [2]

Desirous of providing for emergency regulation of the level of Rainy Lake and of the level of other boundary waters in the Rainy Lake watershed, in such a way as to protect the interests of the inhabitants of the United States of America and Canada, and,

Accepting as a basis of agreement the following recommendations made by the International Joint Commission in its Final Report dated May 1st, 1934, on the Reference concerning Rainy Lake and the boundary waters flowing into and from that lake, and particularly in answer to Question 2 of that Reference, namely,

> that it would be wise and in the public interest that the Commission be clothed with power to determine when unusual or extraordinary conditions exist throughout the watershed, whether by reason of high or low water, and that it be empowered to adopt such measures of control as to it may seem proper with respect to existing dams at Kettle Falls and International Falls, as well as any future dams or works, in the event of the Commission determining that such unusual or extraordinary conditions exist.

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[1] Came into force on 3 October 1940 by the exchange of ratifications.

[2] League of Nations, *Treaty Series*, vol. 203, p. 208.

Have resolved to conclude a convention for that purpose. . . .

. . .

Article 1

The International Joint Commission, established pursuant to the provisions of the Treaty signed at Washington on the 11th day of January, 1909,[1] relating to questions arising between the United States of America and Canada, is hereby clothed with power to determine when emergency conditions exist in the Rainy Lake watershed, whether by reason of high or low water, and the Commission is hereby empowered to adopt such measures of control as to it may seem proper with respect to existing dams at Kettle Falls and International Falls, as well as with respect to any existing or future dams or works in boundary waters of the Rainy Lake watershed, in the event the Commission shall determine that such emergency conditions exist.

. . .

53. EXCHANGE OF NOTES[2] BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF CANADA CONSTITUTING AN AGREEMENT REGARDING THE DEVELOPMENT OF CERTAIN PORTIONS OF THE GREAT LAKES ST. LAWRENCE BASIN PROJECT. WASHINGTON, OCTOBER 14 AND 31, AND NOVEMBER 7, 1940[3]

DEPARTMENT OF STATE

Washington, October 14th, 1940

Sir,

I have the honor to refer to the conversations which have taken place recently between officials of the Governments of the United States and Canada in regard to the desirability of taking immediate steps looking to the early development of certain portions of the Great Lakes-St. Lawrence Basin project. These conversations have indicated that there is apprehension in both countries over the possibility of a power shortage; these apprehensions have been heightened by the necessity for increased supplies of power in consequence of Canada's war effort and of the major national defense effort in the United States.

In the light of these considerations, the Government of the United States proposes that each Government appoint forthwith a Temporary Great Lakes-St. Lawrence Basin Committee consisting of not more than five members. These two Committees would cooperate in preliminary engineering and other investigations for that part of the project which is located in the International Rapids Section of the St. Lawrence River, in order that the entire project may be undertaken without delay when final decision

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[1] See *infra*, Treaty No. 79 p. 260

[2] Came into force 7 November 1940 by the exchange of the said Notes.

[3] League of Nations, *Treaty Series*, vol. 203, p. 268.

is reached by the two Governments. The Government of the United States is prepared to advance the necessary funds up to $1,000,000 to pay for these preliminary engineering and other investigations, on the understanding that their cost shall ultimately be prorated by agreement between the two Governments.

Meanwhile, to assist in providing an adequate supply of power to meet Canadian defense needs and contingent upon the Province of Ontario's agreeing to provide immediately for diversions into the Great Lakes System of waters from the Albany River Basin which normally flow into Hudson Bay, the Government of the United States will interpose no objection, pending the conclusions of a final Great Lakes-St. Lawrence Basin agreement between the two countries, to the immediate utilization for power at Niagara Falls by the Province of Ontario of additional waters equivalent in quantity to the diversions into the Great Lakes Basin above referred to.

I shall be glad if you will let me know if your Government is in accord with the foregoing proposals.

. . .

CANADIAN LEGATION

No. 316

Washington, October 14th, 1940

Sir,

I have the honour to refer to your note of October 14th, in which you proposed that the Governments of Canada and the United States take immediate steps looking to the early development of certain portions of the Great Lakes-St. Lawrence Basin project.

I am instructed to inform you that the Canadian Government is in accord with the proposals which you have made.

. . .

CANADIAN LEGATION

No. 340

Washington, October 31st, 1940

Sir,

I have the honour to refer to the third paragraph of your note of October 14th concerning the Great Lakes-St. Lawrence Basin project, in which you state that to assist in providing an adequate supply of power to meet Canadian defence needs and contingent upon the Province of Ontario's agreeing to provide immediately for diversions into the Great Lakes System of waters from the Albany River Basin which normally flow into Hudson Bay, the Government of the United States would interpose no objection, pending the conclusion of a final Great Lakes-St. Lawrence Basin agreement between the two countries, to the immediate utilization for power at Niagara Falls by the Province of Ontario of additional waters equivalent in quantity to the diversions into the Great Lakes Basin above referred to.

I am instructed to inform you that the Canadian Government has received appropriate assurances that the Hydro-Electric Power Commission of Ontario is prepared to proceed immediately with the Long Lac-Ogoki diversions and that this action has been approved by the Government of the Province.

The Canadian Government is therefore giving appropriate instructions

to authorize the additional diversion of 5,000 cubic feet per second at Niagara by the Hydro-Electric Power Commission of Ontario.

. . .

DEPARTMENT OF STATE

Washington, November 7th, 1940

Sir,

I have the honor to acknowledge the receipt of your Note No. 340 of October 31st, 1940, stating that the Hydro-Electric Power Commission of Ontario is prepared to proceed immediately with the Long Lac-Ogoki diversions of waters from the Albany River Basin into the Great Lakes System and that this action has been approved by the Government of the Province.

I note also that the Canadian Government is giving appropriate instructions to authorize the additional diversion of 5,000 cubic feet per second of water at Niagara Falls by the Hydro-Electric Power Commission of Ontario.

. . .

54. EXCHANGE OF NOTES[1] BETWEEN THE GOVERNMENTS OF THE UNITED STATES OF AMERICA AND OF CANADA CONSTITUTING AN AGREEMENT RELATING TO THE TEMPORARY RAISING OF THE LEVEL OF LAKE ST. FRANCIS DURING LOW WATER PERIODS. WASHINGTON, 10 NOVEMBER 1941[2]

I

The Canadian Minister to the Secretary of State

CANADIAN LEGATION

Washington, November 10, 1941

No. 682

Sir,

I have the honour, on the instructions of my Government, to enquire whether the Government of the United States of America would agree to a temporary raising of the level of Lake St. Francis during low water periods, for the reasons and in the circumstances hereinafter set out:

1. The Beauharnois Light, Heat and Power Company has for some years, under the authority of the Parliament and Government of Canada, diverted water from Lake St. Francis for the development of hydro-electric power.
2. In order to conserve the supply of power in the lower St. Lawrence,

[1] Came into force on 10 November 1941, by the exchange of the said Notes.
[2] United Nations, *Treaty Series*, vol. 23, p. 276.

which is needed to continue the existing export of power for aluminum production at Massena, New York, the Company have asked the Canadian Government for authority to maintain the level of Lake St. Francis at 152.0 during low water periods, subject to the maintenance of the normal regimen of the Lake for levels above that elevation.

3. During these periods the water level of the Lake has fallen to 150.0 and may even fall to a lower level, whereas the mean level of the Lake is 151.7 and the normal high water 154.0. Extreme high water may go to above elevation 155.75.

4. To provide for the maintenance of the Lake level, the Company is presently installing a temporary dam to partially close the existing gap at the head of the Coteau Rapids, and have in contemplation for next season the construction of a permanent dam to close the gap completely, but this will not assure their output during low water periods unless they are permitted to maintain the Lake level at 152.0 as above. The regulation of the level of the Lake to 152.0 will not only be of benefit to the Beauharnois output in this vital period but will assure continuous 14 ft. depth for navigation in the Cornwall Canal, and may maintain more satisfactory shore conditions during low water periods.

5. The proposal would result in an increase, in low water periods, in the natural levels on the United States side of the St. Lawrence River near the head of Lake St. Francis.

In view of the importance to both Canada and the United States of America of the conservation of the power supply in this area, the Canadian Government proposes that both Governments should agree to permit the maintenance of the level of Lake St. Francis at 152.0 during low water periods, subject to the maintenance of the normal regimen of the Lake for levels above that elevation. The proposed agreement would expire on October 1st, 1942.

If the foregoing is acceptable to your Government, this note and your reply thereto shall be regarded as constituting a special agreement between the two Governments within the meaning of Article 4 of the Boundary Waters Treaty of 1909.

I have the honour to be, with the highest consideration, Sir, your most obedient, humble servant,

H. H. WRONG
For the Minister

The Hon. Cordell Hull
Secretary of State of the United States
Washington, D.C.

II

The Secretary of State to the Canadian Minister

DEPARTMENT OF STATE

Washington, November 10, 1941

Sir,

I have the honour to inform you that the Government of the United States concurs in the proposals contained in your note of November 10 regarding

the temporary raising of the level of Lake St. Francis during low water periods. The Government of the United States attaches importance to the understanding that this agreement authorizing the raising of the level of Lake St. Francis is temporary, and that this action shall not be deemed to create any vested or other right calling for or implying an extension of the authority to raise the level of Lake St. Francis beyond October 1, 1942.

Accept, Sir, the renewed assurances of my highest consideration.

For the Secretary of State:

A. A. BERLE, JR.

The Honorable Leighton McCarthy, K.C.
Minister of Canada

55. EXCHANGE OF NOTES[1] CONSTITUTING AN AGREEMENT EXTENDING THE ABOVE AGREEMENT. WASHINGTON, 5 AND 9 OCTOBER 1942[2]

I

The Canadian Minister to the Secretary of State

CANADIAN LEGATION

Washington, October 5, 1942

No. 653

Sir,

I have the honour, on the instructions of my Government, to refer to the exchange of notes of November 10th 1941, whereby the Government of the United States of America agreed to a temporary raising of the levels of Lake St. Francis during low water periods for the reasons and subject to the conditions and limitations set forth in the Notes.

The circumstances which led the Government of the United States to agree to the temporary raising of the levels of Lake St. Francis have continued and, in view of the importance to both Canada and the United States of America of the conservation of the power supply in this area, the Canadian Government proposes that the arrangements set forth in the exchange of Notes should be continued until October 1, 1943. The arrangements as continued would, of course, be subject to all of the conditions and limitations as contained in the exchange of Notes of November 10, 1941.

Accept, Sir, the renewed assurances of my highest consideration.

Leighton MCCARTHY

The Honourable Cordell Hull
Secretary of State of the United States
Washington, D.C.

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[1] Came into force on 9 October 1942, by the exchange of the said Notes.
[2] United Nations, *Treaty Series*, vol. 23, p. 280.

II

The Secretary of State to the Canadian Minister

DEPARTMENT OF STATE

Washington, October 9, 1942

Sir,

I have the honor to acknowledge the receipt of your note of October 5, 1942 concerning the arrangements effected through an exchange of notes on November 10, 1941 with respect to a temporary raising of the levels of Lake St. Francis during low water periods and to inform you that this Government is agreeable to your Government's proposal that these arrangements should be continued until October 1, 1943 subject, of course, to all of the conditions and limitations contained in the Notes exchanged on November 10, 1941.

Accept, Sir, the renewed assurances of my highest consideration.

For the Secretary of State:

A. A. BERLE, JR.

The Honorable Leighton McCarthy, K.C.
Minister of Canada

56. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT[1] CONTINUING IN EFFECT THE ABOVE MENTIONED AGREEMENT. WASHINGTON, 5 AND 9 OCTOBER 1943[2]

I

The Canadian Minister to the Secretary of State

CANADIAN LEGATION

Washington, October 5th, 1943

No. 516

Sir,

I have the honour, on the instructions of my Government, to refer to the exchange of notes of November 10th, 1941, whereby the Government of the United States of America agreed to a temporary raising of the levels of Lake St. Francis during low water periods for the reasons and subject to the conditions and limitations set forth in the Notes. By an exchange of notes of October 5th and 9th, 1942, the arrangements made on November 10th, 1941 were continued until October 1st, 1943.

The circumstances which led the Government of the United States to agree to the temporary raising of the levels of Lake St. Francis have continued and, in view of the importance to both Canada and the United States of America of the conservation of the power supply in this area, the Canadian Government proposes that the arrangements set forth in the exchange of Notes should be continued until October 1st, 1944.

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[1] Came into force on 9 October 1943, by the exchange of the said Notes.
[2] United Nations, *Treaty Series*, vol. 105, p. 306.

The arrangements as continued would, of course, be subject to all of the conditions and limitations as contained in the exchange of Notes of November 10th, 1941.

Accept, Sir, the renewed assurance of my highest consideration.

L. B. PEARSON
For the Minister

The Honourable Cordell Hull
Secretary of State of the United States
Washington, D.C.

II

The Secretary of State to the Canadian Minister

DEPARTMENT OF STATE

Washington, October 9, 1943

Sir,

I have the honor to acknowledge the receipt of your note of October 5, 1943 concerning the arrangements effected through an exchange of notes on November 10, 1941 with respect to a temporary raising of the levels of Lake St. Francis during low water periods and to inform you that this Government is agreeable to your Government's proposal that these arrangements should be continued until October 1, 1944 subject, of course, to all of the conditions and limitations contained in the Notes exchanged on November 10, 1941.

Accept, Sir, the renewed assurances of my highest consideration.

For the Secretary of State:
A. A. BERLE, JR.

The Honorable Leighton McCarthy, K.C.
Minister of Canada

57. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT[1] CONTINUING IN EFFECT THE AGREEMENT OF 10 NOVEMBER 1941. WASHINGTON, 31 AUGUST AND 7 SEPTEMBER 1944.[2]

I

The Canadian Chargé d'Affaires ad interim to the Secretary of State

CANADIAN EMBASSY

Washington 6, D.C. August 31, 1944

No. 309

Sir,

I have the honour, on the instructions of my Government, to refer to the exchange of Notes of November 10th, 1941, whereby the Government of

[1] Came into force on 7 September 1944, by the exchange of the said Notes.
[2] United Nations, *Treaty Series*, vol. 105, p. 310.

the United States of America agreed to a temporary raising of the levels of Lake St. Francis during low water periods for the reasons and subject to the conditions and limitations set forth in the notes. By an exchange of notes of October 5th and 9th, 1943, the arrangements made on November 10th, 1941 were continued until October 1st, 1944.

The circumstances which led the Government of the United States to agree to the temporary raising of the levels of Lake St. Francis have continued, and in view of the importance to both Canada and the United States of America of the conservation of the power supply in this area, the Canadian Government proposes that the arrangements set forth in the exchange of notes should be continued for the duration of the emergency, subject to review prior to October 1st of each year. The arrangements as continued would, of course, be subject to all of the conditions and limitations as contained in the exchange of notes of November 10th, 1941.

Accept, Sir, the renewed assurance of my highest consideration.

L. B. PEARSON
Chargé d'Affaires

The Honourable Cordell Hull
Secretary of State of the United States
Washington, D.C.

II

The Secretary of State to the Canadian Chargé d'Affaires ad interim

DEPARTMENT OF STATE

Washington, September 7, 1944

Sir,

I have received your note No. 309 of August 31, 1944 concerning the arrangements effected through an exchange of Notes on November 10, 1941 with respect to a temporary raising of the levels of Lake St. Francis during low water periods, and to inform you that this Government is agreeable to your Government's proposal that these arrangements should be continued for the duration of the emergency, subject to review prior to October 1 of each year and subject, of course, to all of the conditions and limitations contained in the Notes exchanged on November 10, 1941.

Accept, Sir, the renewed assurance of my high consideration.

For the Secretary of State:
A. A. BERLE, JR.

The Honorable L. B. Pearson, O.B.E.
Chargé d'Affaires ad interim of Canada

58. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT[1] BETWEEN THE UNITED STATES OF AMERICA AND CANADA RELATING TO A STUDY TO BE MADE BY THE INTERNATIONAL JOINT COMMISSION WITH RESPECT TO THE UPPER COLUMBIA RIVER BASIN. OTTAWA, 25 FEBRUARY AND 3 MARCH 1944[2]

I

The American Ambassador to the Canadian Secretary of State for External Affairs

EMBASSY OF THE UNITED STATES OF AMERICA

Ottawa, Canada, February 25, 1944

No. 101

Sir:

I have the honor to refer to your note No. 157 of December 10, 1943, concerning the desirability of having a study made by the International Joint Commission with respect to the Upper Columbia River Basin from the points of view of navigation, power development, irrigation, flood control, and other beneficial public uses and purposes.

As the result of informal exchanges of views on this subject I have been directed to bring the following suggested reference to the Commission to your attention with the request that I be informed whether it is acceptable to the Government of Canada:

" 1. In order to determine whether a greater use than is now being made of the waters of the Columbia River system would be feasible and advantageous, the Governments of the United States and Canada have agreed to refer the matter to the International Joint Commission for investigation and report pursuant to Article IX of the Convention concerning Boundary Waters between the United States and Canada, signed January 11th, 1909.

" 2. It is desired that the Commission shall determine whether in its judgment further development of the water resources of the river basin would be practicable and in the public interest from the points of view of the two Governments, having in mind (A) domestic water supply and sanitation, (B) navigation, (C) efficient development of water power, (D) the control of floods, (E) the needs or irrigation, (F) reclamation of wet lands, (G) conservation of fish and wildlife, and (H) other beneficial public purposes.

" 3. In the event that the Commission should find that further works or projects would be feasible and desirable for one or more of the purposes indicated above, it should indicate how the interests on either side of the boundary would be benefited or adversely affected thereby, and should estimate the costs of such works or projects, including indemnification for damage to public and private porperty and the costs of any

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[1] Came into force on 3 March 1944, by the exchange of the said Notes.
[2] United Nations, *Treaty Series*, vol. 109, p. 192.

remedial works that may be found to be necessary, and should indicate how the costs of any projects and the amounts of any resulting damage should be apportioned between the two Governments.

" 4. The Commission should also investigate and report on existing dams, hydro-electric plants, navigation works, and other works or projects located within the Columbia River system in so far as such investigation and report may be germane to the subject under consideration.

" 5. In the conduct of its investigation and otherwise in the performance of its duties under this reference, the Commission may utilize the services of engineers and other specially qualified personnel of the technical agencies of Canada and the United States and will so far as possible make use of information and technical data heretofore acquired by such technical agencies or which may become available during the course of the investigation, thus avoiding duplication of effort and unnecessary expense."

If the proposed reference is acceptable to your Government I should appreciate being informed, and this note together with your reply would be regarded as an agreement between our two Governments on the terms of reference.

Accept, Sir, the renewed assurances of my highest consideration.

Ray ATHERTON

The Right Honorable
The Secretary of State for External Affairs
Ottawa

II

The Canadian Secretary of State for External Affairs to the American Ambassador

DEPARTMENT OF EXTERNAL AFFAIRS
CANADA

Ottawa, March 3, 1944

No. 18

Excellency:

I have the honour to refer to your note No. 101 dated February 25, 1944, in which you brought to the attention of the Canadian Government the terms of a reference to the International Joint Commission with respect to the Upper Columbia River Basin.

The proposed reference is acceptable to the Canadian Government and your note, together with this reply, may be regarded as an agreement between our two Governments on the terms of reference.

Accept, Excellency, the renewed assurances of my highest consideration.

N. A. ROBERTSON
For Secretary of State for External Affairs

His Excellency
The Ambassador of the United States of America
United States Legation
Ottawa

59. TREATY[1] BETWEEN THE UNITED STATES OF AMERICA AND CANADA RELATING TO THE USES OF THE WATERS OF THE NIAGARA RIVER. SIGNED AT WASHINGTON, ON 27 FEBRUARY 1950[2]

The United States of America and Canada, recognizing their primary obligation to preserve and enhance the scenic beauty of the Niagara Falls and River and, consistent with that obligation, their common interest in providing for the most beneficial use of the waters of that River,

Considering that the quantity of water which may be diverted from the Niagara River for power purposes is at present fixed by Article V of the treaty with respect to the boundary waters between the United States of America and Canada, signed at Washington, January 11, 1909, between the United States of America and Great Britain, and by notes exchanged between the Government of the United States of America and the Government of Canada in 1940, 1941, and 1948 authorizing for emergency purposes temporary additional diversions,

Recognizing that the supply of low-cost power in northeastern United States and southeastern Canada is now insufficient to meet existing and potential requirements and considering that the water resources of the Niagara River may be more fully and efficiently used than is now permitted by international agreement,

Desiring to avoid a continuing waste of a great natural resource and to make it possible for the United States of America and Canada to develop, for the benefit of their respective peoples, equal shares of the waters of the Niagara River available for power purposes, and,

Realizing that any redevelopment of the Niagara River for power in the United States of America and Canada is not advisable until the total diversion of water which may be made available for power purposes is authorized permanently and any restrictions on the use thereof are agreed upon,

Have resolved to conclude a treaty. . . .

Article I

This Treaty shall terminate the third, fourth, and fifth paragraphs of Article V of the treaty between the United States of America and Great Britain relating to boundary waters and questions arising between the United States of America and Canada dated January 11, 1909, and the provisions embodied in the notes exchanged between the Government of the United States of America and the Government of Canada at Washington on May 20, 1941, October 27, 1941, November 27, 1941, and December 23, 1948 regarding temporary diversions of water of the Niagara River for power purposes.

Article II

The United States of America and Canada agree to complete in accordance with the objectives envisaged in the final report submitted to the United States of America and Canada on December 11, 1929, by the Special Inter-

[1] The treaty came into force on 10 October 1950 by the exchange of ratifications at Ottawa.

[2] United Nations, *Treaty Series*, vol. 132, p. 224.

national Niagara Board, the remedial works which are necessary to enhance the beauty of the Falls by distributing the waters so as to produce an unbroken crestline on the Falls. The United States of America and Canada shall request the International Joint Commission to make recommendations as to the nature and design of such remedial works and the allocation of the task of construction as between the United States of America and Canada. Upon approval by the United States of America and Canada of such recommendations the construction shall be undertaken pursuant thereto under the supervision of the International Joint Commission and shall be completed within four years after the date upon which the United States of America and Canada shall have approved the said recommendations. The total cost of the works shall be divided equally between the United States of America and Canada.

Article III

The amount of water which shall be available for the purposes included in Articles IV and V of this Treaty shall be the total outflow from Lake Erie to the Welland Canal and the Niagara River (including the Black Rock Canal) less the amount of water used and necessary for domestic and sanitary purposes and for the service of canals for the purposes of navigation. Waters which are being diverted into the natural drainage of the Great Lakes System through the existing Long Lac-Ogoki works shall continue to be governed by the notes exchanged between the Government of the United States of America and the Government of Canada at Washington on October 14 and 31 and November 7, 1940, and shall not be included in the waters allocated under the provisions of this Treaty.

Article IV

In order to reserve sufficient amounts of water in the Niagara River for scenic purposes, no diversions of the water specified in Article III of this Treaty shall be made for power purposes which will reduce the flow over Niagara Falls to less than one hundred thousand cubic feet per second each day between the hours of eight a.m., E.S.T., and ten p.m., E.S.T., during the period of each year beginning April 1 and ending September 15, both dates inclusive, or to less than one hundred thousand cubic feet per second each day between the hours of eight a.m., E.S.T., and eight p.m., E.S.T., during the period of each year beginning September 16 and ending October 31, both dates inclusive, or to less than fifty thousand cubic feet per second at any other time; the minimum rate of fifty thousand cubic feet per second to be increased when additional water is required for flushing ice above the Falls or through the rapids below the Falls. No diversion of the amounts of water, specified in this Article to flow over the Falls, shall be made for power purposes between the Falls and Lake Ontario.

Article V

All water specified in Article III of this Treaty in excess of water reserved for scenic purposes in Article IV may be diverted for power purposes.

Article VI

The waters made available for power purposes by the provisions of this

Treaty shall be divided equally between the United States of America and Canada.

Article VII

The United States of America and Canada shall each designate a representative who, acting jointly, shall ascertain and determine the amounts of water available for the purposes of this Treaty, and shall record the same, and shall also record the amounts of water used for power diversions.

Article VIII

Until such time as there are facilities in the territory of one party to use its full share of the diversions of water for power purposes agreed upon in this Treaty, the other party may use the portion of that share for the use of which facilities are not available.

Article IX

Neither party shall be responsible for physical injury or damage to persons or property in the territory of the other which may be caused by any act authorized or provided for by this Treaty.

. . .

60. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT[1] BETWEEN THE UNITED STATES OF AMERICA AND CANADA RELATING TO THE ST. LAWRENCE SEAWAY PROJECT. WASHINGTON, 30 JUNE 1952[2]

I

The Canadian Ambassador to the Acting Secretary of State

CANADIAN EMBASSY

No. 447

Washington, D.C., June 30, 1952

Sir,

I have the honour to refer to our exchange of notes of January 11, 1952, relating to the St. Lawrence Seaway and Power Project. In my note to you, I informed you that the Canadian Government is prepared to proceed with the construction of the seaway as soon as appropriate arrangements can be made for the construction of the power phase of the project as well.

I have been instructed by my Government to inform you that, when all arrangements have been made to ensure the completion of the power phase of the St. Lawrence project, the Canadian Government will construct locks and canals on the Canadian side of the International Boundary to provide for deep-water navigation to the standard specified in the proposed agreement between Canada and the United States for the development of navigation and power in the Great Lakes-St. Lawrence Basin, signed March 19, 1941, and in accordance with the specifications of the Joint

[1] Came into force on 30 June 1952 by the exchange of the said Notes.
[2] United Nations, *Treaty Series*, vol. 234, p. 200.

Board of Engineers, dated November 16, 1926, and that such deep-water navigation shall be provided as nearly as possible concurrently with the completion of the power phase of the St. Lawrence project.

The undertaking of the Government of Canada with respect to these deepwater navigation facilities is based on the assumption that it will not be possible in the immediate future to obtain Congressional approval of the Great Lakes-St. Lawrence Basin Agreement of 1941. As it has been determined that power can be developed economically, without the seaway, in the International Rapids Section of the St. Lawrence River and as there has been clear evidence that entities in both Canada and the United States are prepared to develop power on such a basis, the Canadian Government has, with Parliamentary approval, committed itself to provide and maintain whatever additional works may be required to allow uninterrupted 27-foot navigation between Lake Erie and the Port of Montreal, subject to satisfactory arrangements being made to ensure the development of power.

Canada's undertaking to provide the seaway is predicated on the construction and maintenance by suitable entities in Canada and the United States of a sound power project in the International Rapids Section. The features of such a power project are described in section 8 of the applications to be submitted to the International Joint Commission by the Governments of Canada and of the United States. They are also described in the Agreement of December 3, 1951, between the Government of Canada and the Government of Ontario, forming part of the International Rapids Power Development Act, Chapter 13 of the Statutes of Canada, 1951 (Second Session), a copy of which is attached hereto. The Canadian Government wishes to make it clear that, even were the seaway not to be constructed, Canada would not give its approval to any power development scheme in the International Rapids Section of the St. Lawrence River which omitted any of the features so described.

However, in order to ensure that construction of both the power project and the deep waterway may be commenced without any further delay and notwithstanding:

(*a*) That the power-developing entities would be required, if power were to be developed alone, to provide for continuance of 14-foot navigation (such provision was indeed made in the 1948 applications by the Province of Ontario and the State of New York), and that the Canadian Government's commitment to provide concurrently a deep waterway between Lake Erie and the Port of Montreal does not alter the basic principle that any entity developing power in boundary waters must make adequate provision for the maintenance of existing navigation facilities, and

(*b*) That, in view of the clear priority given to navigation over power by Article VIII of the 1909 Boundary Waters Treaty, provision of channeling to the extent specified in the Annex to the 1951 Canada-Ontario Agreement referred to above is reasonable and in conformity with Canadian practice,

the Canadian Government is now prepared to agree:

(*a*) That the amount to be paid to Canada, as specified in the Agreement of December 3, 1951, between Canada and Ontario, in lieu of the construction by the power-developing entities of facilities required for the continuance of 14-foot navigation, be excluded from the total cost of the power project to be divided between the Canadian and United States power-developing entities, in consideration of the fact that actual re-

placement of 14-foot navigation facilities will be rendered unnecessary by reason of the concurrent construction of the deep waterway in Canada, and

(*b*) That the Authority to be established pursuant to the provisions of the St. Lawrence Seaway Authority Act, Chapter 24 of the Statutes of Canada, 1951 (Second Session), contribute $15 million towards the cost of the channel enlargement which the power-developing entities must undertake in the St. Lawrence River, as set out in paragraph 4 of the Annex to the Canada-Ontario Agreement of December 3, 1951, and in section 8 of the applications to the International Joint Commission, in consideration of the benefits which will accrue to navigation from such channel enlargement.

I understand that your Government approves the arrangements outlined in this note and that it is further agreed, subject to the modifications outlined in the preceding paragraph, that the Government of Canada and the Government of the United States will request the International Joint Commission to allocate equally between the two power-developing entities the cost of all the features described in section 8 of the applications to the International Joint Commission and in the Agreement of December 3, 1951, between Canada and Ontario.

Accept, Sir, the renewed assurances of my highest consideration.

H. H. WRONG

The Honourable David Bruce
Acting Secretary of State of the United States
Washington, D.C.

II

The Acting Secretary of State to the Canadian Ambassador

DEPARTMENT OF STATE

Washington, June 30, 1952

Excellency:

I have the honor to acknowledge the receipt of your note of June 30, 1952, in which you inform me that your Government, when all arrangements have been made to ensure the completion of the power phase of the St. Lawrence project, will construct locks and canals on the Canadian side of the International Boundary to provide deep-water navigation to the standard specified in the proposed agreement between the United States and Canada for the development of navigation and power in the Great Lakes-St. Lawrence Basin, signed March 19, 1941, and in accordance with the specifications of the Joint Board of Engineers, dated November 16, 1926, and that such deep-water navigation shall be provided as nearly as possible concurrently with the completion of the power phase of the St. Lawrence Project.

My Government approves the arrangements set forth in your note and, subject to the modifications there proposed and outlined below, agrees to request the International Joint Commission to allocate equally between the power-developing entities the cost of all the features described in Section 8 of the applications to the International Joint Commission and in the Agreement of December 3, 1951, between the Governments of Canada and Ontario.

These modifications are:

(*a*) The amount to be paid to Canada, as specified by the Agreement of December 3, 1951, between Canada and Ontario, in lieu of the construction by the power-developing entities of facilities required for the continuance of 14-foot navigation, be excluded from the total cost of the power project to be divided between the Canadian and United States power-developing entities, in consideration of the fact that actual replacement of 14-foot navigation facilities will be rendered unnecessary by reason of the concurrent construction of the deep waterway in Canada, and

(*b*) That the Authority to be established pursuant to the provisions of the St. Lawrence Seaway Authority Act, chapter 24 of the Statutes of Canada, 1951 (Second Session), contribute $15 million toward the cost of channel enlargement which the power developing entities must undertake in the St. Lawrence River, as set out in Section 8 of the applications to the International Joint Commission and in paragraph 4 of the Annex to the Canada-Ontario Agreement of December 3, 1951, in consideration of the benefits which will accrue to navigation from such channel enlargement.

Accept, Excellency, the renewed assurances of my highest consideration.

David BRUCE
Acting Secretary

His Excellency the Honorable Hume Wrong
Ambassador of Canada

61. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT[1] BETWEEN THE UNITED STATES OF AMERICA AND CANADA RELATING TO THE ESTABLISHMENT OF THE ST. LAWRENCE RIVER JOINT BOARD OF ENGINEERS. WASHINGTON, 12 NOVEMBER 1953[2]

I

The Canadian Ambassador to the Secretary of State

CANADIAN EMBASSY

No. 820

Washington, D. C., November 12, 1953

Sir:

I have the honour to refer to the Order of Approval issued by the International Joint Commission on October 29, 1952, under authority of the Boundary Waters Treaty of January 11, 1909, in the matter of the applications of the Government of Canada and the Government of the United States of America for an Order of Approval for the construction of certain works for the development of power in the International Rapids Section of the St. Lawrence River.

The Government of Canada has designated the Hydro-Electric Power

[1] Came into force on 12 November 1953 by the exchange of the said Notes.
[2] United Nations, *Treaty Series*, vol. 234, p. 98.

Commission of Ontario as the entity to construct, maintain and operate the proposed works in Canada and I have been informed that the Government of the United States, consistent with the action of the Federal Power Commission in licensing the Power Authority of the State of New York, has declared that authority to be the designee of the Government of the United States of America for the construction of the works referred to in the Order of Approval of the International Joint Commission of October 29, 1952. It would, therefore, be agreeable to the Canadian Government if the St. Lawrence River Joint Board of Engineers, proposed in the applications of both Governments to the International Joint Commission and approved in that Commission's Order, were now established so that the Hydro-Electric Power Commission of Ontario and the Power Authority of the State of New York may submit their plans and programmes of construction to the Board for its approval.

The Canadian Government suggests that the Board consist of four members, two to be designated by and to act on behalf of the Government of Canada and two to be designated by and to act on behalf of the Government of the United States of America, and that the Board should perform the duties specified in clause (*g*) of the Order of Approval, including the approval of the plans and specifications of the works and the programmes of construction thereof, submitted for approval of the respective Governments as required by the Order of Approval, and assurance that the construction of the works is in accordance with such approval.

Reports shall be made by the Joint Board of Engineers to the respective governments to keep them currently informed of the progress of the construction of the works.

If the Government of the United States is agreeable to the foregoing proposals, I suggest that this note and your reply should constitute an agreement between our two governments establishing the St. Lawrence River Joint Board of Engineers.

Accept, Sir, the renewed assurances of my highest consideration.

A. D. P. HEENEY

The Honourable John Foster Dulles
Secretary of State of the United States
Washington, D.C.

II

The Secretary of State to the Canadian Ambassador

DEPARTMENT OF STATE

Washington, Nov. 12, 1953

Excellency:

I have the honor to refer to your note No. 820 of November 12, 1953, in which you made proposals for the establishment of the St. Lawrence River Joint Board of Engineers.

I have the honor to inform you that the Government of the United States concurs in these proposals and agrees that your note and the present reply shall constitute an agreement between our two Governments establishing the St. Lawrence River Joint Board of Engineers, as proposed in the applications of each Government, dated June 30, 1952, to the International Joint

Commission and approved in that Commission's Order of October 29, 1952.

Accept, Excellency, the renewed assurances of my highest consideration.

John Foster DULLES

His Excellency A. D. P. Heeney
Ambassador of Canada

62. CONVENTION[1] BETWEEN THE UNITED STATES OF AMERICA AND CANADA ON GREAT LAKES FISHERIES. SIGNED AT WASHINGTON, ON 10 SEPTEMBER 1954[2]

. . .

Taking note of the interrelation of fishery conservation problems and of the desirability of advancing fishery research in the Great Lakes,

Being aware of the decline of some of the Great Lakes fisheries,

Being concerned over the serious damage to some of these fisheries caused by the parasitic sea lamprey and the continuing threat which this lamprey constitutes for other fisheries, . . .

Article I

This Convention shall apply to Lake Ontario (including the St. Lawrence River from Lake Ontario to the forty-fifth parallel of latitude), Lake Erie, Lake Huron (including Lake St. Clair), Lake Michigan, Lake Superior and their connecting waters, hereinafter referred to as " the Convention Area ". This Convention shall also apply to the tributaries of each of the above waters to the extent necessary to investigate any stock of fish of common concern, the taking or habitat of which is confined predominantly to the Convention Area, and to eradicate or minimize the populations of the sea lamprey (*Petromyzon marinus*) in the Convention Area.

Article II

1. The Contracting Parties agree to establish and maintain a joint commission, to be known as the Great Lakes Fishery Commission, hereinafter referred to as " the Commission ", and to be composed of two national sections, a Canadian Section and a United States Section. Each Section shall be composed of not more than three members appointed by the respective Contracting Parties.

2. Each Section shall have one vote. A decision or recommendation of the Commission shall be made only with the approval of both Sections.

3. Each Contracting Party may establish for its Section an advisory committee for each of the Great Lakes. The members of each advisory committee so established shall have the right to attend all sessions of the Commission except those which the Commission decides to hold *in camera*.

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[1] Came into force on 11 October 1955, by the exchange of the instruments of ratification at Ottawa.

[2] United Nations, *Treaty Series*, vol. 238, p. 98.

Article III

1. At the first meeting of the Commission and at every second subsequent annual meeting thereafter the members shall select from among themselves a Chairman and a Vice-Chairman, each of whom shall hold office from the close of the annual meeting at which he has been selected until the close of the second annual meeting thereafter. The Chairman shall be selected from one Section and the Vice-Chairman from the other Section. The offices of Chairman and Vice-Chairman shall alternate biennially between the Sections.

2. The seat of the Commission shall be at such place in the Great Lakes area as the Commission may designate.

3. The Commission shall hold a regular annual meeting at such place as it may decide. It may hold such other meetings as may be agreed upon by the Chairman and Vice-Chairman and at such time and place as they may designate.

4. The Commission shall authorize the disbursement of funds for the joint expenses of the Commission and may employ personnel and acquire facilities necessary for the performance of its duties.

5. The Commission shall make such rules and by-laws for the conduct of its meetings and for the performance of its duties and such financial regulations as it deems necessary.

6. The Commission may appoint an Executive Secretary upon such terms as it may determine.

7. The staff of the Commission may be appointed by the Executive Secretary in the manner determined by the Commission or appointed by the Commission itself on terms to be determined by it.

8. The Executive Secretary shall, subject to such rules and procedures as may be determined by the Commission, have full power and authority over the staff and shall perform such functions as the Commission may prescribe. If the office of Executive Secretary is vacant, the Commission shall prescribe who shall exercise such power or authority.

Article IV

The Commission shall have the following duties:

(*a*) To formulate a research program or programs designed to determine the need for measures to make possible the maximum sustained productivity of any stock of fish in the Convention Area which, in the opinion of the Commission, is of common concern to the fisheries of the United States of America and Canada and to determine what measures are best adapted for such purpose;

(*b*) To coordinate research made pursuant to such programs and, if necessary, to undertake such research itself;

(*c*) To recommend appropriate measures to the Contracting Parties on the basis of the findings of such research programs;

(*d*) To formulate and implement a comprehensive program for the purpose of eradicating or minimizing the sea lamprey populations in the Convention Area; and

(*e*) To publish or authorize the publication of scientific and other information obtained by the Commission in the performance of its duties.

Article V

In order to carry out the duties set forth in Article IV, the Commission may:

(*a*) Conduct investigations;

(*b*) Take measures and install devices in the Convention Area and the tributaries thereof for lamprey control; and

(*c*) Hold public hearings in the United States of America and Canada.

Article VI

1. In the performance of its duties, the Commission shall, in so far as feasible, make use of the official agencies of the Contracting Parties and of their Provinces or States and may make use of private or other public organizations, including international organizations, or of any person.

2. The Commission may seek to establish and maintain working arrangements with public or private organization for the purpose of furthering the objectives of this Convention.

Article VII

Upon the request of the Commission a Contracting Party shall furnish such information pertinent to the Commission's duties as is practicable. A Contracting Party may establish conditions regarding the disclosure of such information by the Commission.

Article VIII

1. Each Contracting Party shall determine and pay the expenses of its Section. Joint expenses incurred by the Commission shall be paid by contributions made by the Contracting Parties. The form and proportion of the contributions shall be those approved by the Contracting Parties after the Commission has made a recommendation.

2. The Commission shall submit an annual budget of anticipated joint expenses to the Contracting Parties for approval.

Article IX

The Commission shall submit annually to the Contracting Parties a report on the discharge of its duties. It shall make recommendations to or advise the Contracting Parties whenever it deems necessary on any matter relating to the Convention.

Article X

Nothing in this Convention shall be construed as preventing any of the States of the United States of America bordering on the Great Lakes or, subject to their constitutional arrangements, Canada or the Province of Ontario from making or enforcing laws or regulations within their respective jurisdictions relative to the fisheries of the Great Lakes so far as such laws or regulations do not preclude the carrying out of the Commission's duties.

Article XI

The Contracting Parties agree to enact such legislation as may be necessary to give effect to the provisions of this Convention.

Article XII

The Contracting Parties shall jointly review in the eighth year of the operation of this Convention the activities of the Commission in relation to the objectives of the Convention in order to determine the desirability of continuing, modifying or terminating this Convention.

. . .

63. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT[1] BETWEEN THE UNITED STATES OF AMERICA AND CANADA WITH RESPECT TO THE CONSTRUCTION OF REMEDIAL WORKS AT NIAGARA FALLS, SIGNED AT OTTAWA, SEPTEMBER 13, 1954[2]

The Canadian Secretary of State for External Affairs
to the American Chargé d'Affaires ad interim,

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA

Ottawa, September 13, 1954

Sir:

I have the honour to refer to recent conversations between representatives of our two Governments with respect to the construction of remedial works at Niagara Falls. As Article II of the Convention between the United States and Canada signed on February 27, 1950, concerning uses of the waters of the Niagara River provides that " the total cost of the works shall be divided equally between the United States of America and Canada ", the Government of Canada and the Government of the United States consider it desirable that 50 per cent of the cost of the remedial works at Niagara Falls completed by or on behalf of the other Government shall be paid by or on behalf of such other Government as work progresses.

I have the honour to propose, therefore, that our two Governments agree as follows:

(*a*) The Government of Canada and the Government of the United States shall each bear 50 per cent of the cost of the remedial works at Niagara Falls done by or on behalf of the other Government as work progresses. Monthly statements of expenditures and payments to cover them in the funds of the country performing the work shall be exchanged between the agents of the two countries as indicated below. Adjustments will be made from time to time as required.

(*b*) In order to facilitate administration, payments by the United States Government shall be made directly to The Hydro-Electric Power Commission of Ontario, through the office of the Project Manager, Sir Adam

[1] Came into force on 13 September 1954, by the exchange of the said Notes.
[2] United Nations, *Treaty Series*, vol. 236, p. 382.

Beck-Niagara Generating Station No. 2, Niagara Falls, Ontario, acting on behalf of the Government of the Province of Ontario, which, under an Agreement dated March 27, 1950, made between the Government of Canada and the Government of Ontario, has assumed the obligations of the Government of Canada in respect of the Canadian share of the cost of the remedial works to be constructed pursuant to Article II of the Niagara Treaty. Payments to the United States Government by The Hydro-Electric Power Commission of Ontario shall be made to " The Treasurer of the United States " and be forwarded to the District Engineer, Buffalo, New York, District of the Corps of Engineers. In order to comply with the provisions of Article II of the Niagara Treaty, the receipts to be given for each payment made by The Hydro-Electric Power Commission of Ontario to the United States Corps of Engineers, and *vice versa*, shall constitute a full and sufficient discharge of the financial obligations of the two Governments under the Treaty in respect of each such payment. In addition a final discharge of financial obligations shall be made between the Government of Canada and the Government of the United States when payments for all costs of the remedial works have been completed.

(*c*) Data in support of claims for reimbursements incurred for the period covered shall be made available by the Government of the United States through the District Office of the United States Corps of Engineers in Buffalo, New York, and by the Government of Canada through The Hydro-Electric Power Commission of Ontario, Office of the Project Manager, Sir Adam Beck-Niagara Generating Station No. 2, Niagara Falls, Ontario.

(*d*) This arrangement shall remain in force until all payments have been completed and the final discharge of financial obligations referred to above has been made by an exchange of notes. It is understood that the arrangements herein set forth for the procedure respecting payment of amounts due Canada are subject to the appropriation by the Congress of the funds required to pay such disbursements.

If the Government of the United States is agreeable to the foregoing proposals, I suggest that the present Note and your reply to that effect should constitute an agreement between our two Governments which shall take effect this day. . . .

The American Chargé d'Affaires ad interim
to the Canadian Secretary of State for External Affairs

THE FOREIGN SERVICE OF THE UNITED STATES OF AMERICA,
UNITED STATES EMBASSY

Ottawa, September 13, 1954

Sir:

I have the honor to acknowledge receipt of your note No. X-233 of September 13, 1954, in which you make proposals concerning the procedure to be followed in the payment of expenditures incurred by or on behalf of the respective Governments for work performed at Niagara Falls pursuant to Article II of the convention between the United States and Canada signed on February 27, 1950 concerning the uses of the waters of the Niagara River.

I have the honor to state that the Government of the United States

concurs in these proposals and agrees that your note and the present reply shall constitute an agreement between our Governments establishing procedures to be followed with respect to disbursement of funds in payment for expenditures on construction of remedial works at Niagara Falls. . . .

64. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT[1] BETWEEN THE UNITED STATES OF AMERICA AND CANADA RELATING TO THE ST. LAWRENCE SEAWAY. OTTAWA, 27 FEBRUARY 1959[2]

The Agreement refers to a project involving the dredging and disposal of spoil in the St. Clair River and Lake St. Clair for the purpose of deepening the Great Lakes connecting channels in those areas.

. . .

(*f*) That any machine, plant, vessel, barge or the operators or crews thereof, used on these works, shall not be permitted to tie up, discharge ashes, fuel oil, waste oil, etc., in a manner prejudicial to the health, well-being and activities of the owners and/or users of land or water areas, or to commit any other nuisance in Canadian territory during the progress of, or subsequent to, the carrying out of these works. The attention of the United States Government is also drawn to Section 33 of the Fisheries Act of Canada and Section 40 of the Regulations under the Migratory Birds Convention Act which refer to the pollution of waters with special reference to the effect upon fish and migratory birds.

. . .

65. TREATY[3] BETWEEN THE UNITED STATES OF AMERICA AND CANADA RELATING TO COOPERATIVE DEVELOPMENT OF THE WATER RESOURCES OF THE COLUMBIA RIVER BASIN AND ANNEXES, SIGNED AT WASHINGTON, JANUARY 17, 1961[4]

The Governments of the United States of America and Canada,

Recognizing that their peoples have, for many generations, lived together and cooperated with one another in many aspects of their national enterprises for the greater wealth and happiness of their respective nations, and

Recognizing that the Columbia River basin, as a part of the territory

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[1] Came into force on 27 February 1959, by the exchange of the said Notes.

[2] United Nations, *Treaty Series*, vol. 341, p. 4. Similar dispositions are contained in the Exchange of Notes of 23 July and 26 October 1956 and 26 February 1957 (Detroit River Section of the Great Lakes connecting channel) [United Nations, *Treaty Series*, vol. 279, p. 179] and of 30 November 1956 and 8 and 9 April 1957 (St. Mary's River and St. Clair River Sections of the Great Lakes Connecting Channels) [*Ibid.*, vol. 283, p. 218].

[3] This treaty has not yet been ratified by any contracting Parties.

[4] *87th Congress, 1st Session, Senate, Executive C*, p. 12.

of both countries, contains water resources that are capable of contributing greatly to the economic growth and strength and to the general welfare of the two nations, and

Being desirous of achieving the development of those resources in a manner that will make the largest contribution to the economic progress of both countries and to the welfare of their peoples of which those resources are capable, and

Recognizing that the greatest benefit to each country can be secured by cooperative measures for hydroelectric power generation and flood control, which will make possible other benefits as well,

Have agreed as follows:

ARTICLE I

Interpretation

(1) In the Treaty, the expression

(*a*) " average critical period load factor " means the average of the monthly load factors during the critical stream flow period;

(*b*) " base system " means the plants, works and facilities listed in the table in Annex B as enlarged from time to time by the installation of additional generating facilities, together with any other plants, works or facilities which may be constructed on the main stem of the Columbia River in the United States of America;

(*c*) " Canadian storage " means the storage provided by Canada under Article II;

(*d*) " critical stream flow period " means the period, beginning with the initial release of stored water from full reservoir conditions and ending with the reservoirs empty, when the water available from reservoir releases plus the natural stream flow is capable of producing the least amount of hydroelectric power in meeting system load requirements;

(*e*) " consumptive use " means use of water for domestic, municipal, stock-water, irrigation, mining or industrial purposes but does not include use for the generation of hydroelectric power;

(*f*) " dam " means a structure to impound water, including facilities for controlling the release of the impounded water;

(*g*) " entity " means an entity designated by either the United States of America or Canada under Article XIV and includes its lawful successor;

(*h*) " International Joint Commission " means the Commission established under Article VII of the Boundary Waters Treaty, 1909, or any body designated by the United States of America and Canada to succeed to the functions of the Commission under this Treaty;

(*i*) " maintenance curtailment " means an interruption or curtailment which the entity responsible therefor considers necessary for purposes of repairs, replacements, installations of equipment, performance of other maintenance work, investigations and inspections;

(*j*) " monthly load factor " means the ratio of the average load for a month to the integrated maximum load over one hour during that month;

(*k*) " normal full pool elevation " means the elevation to which water is stored in a reservoir by deliberate impoundment every year, subject to the availability of sufficient flow;

(*l*) " ratification date " means the day on which the instruments of ratification of the Treaty are exchanged;

(*m*) " storage " means the space in a reservoir which is usable for impounding water for flood control or for regulating stream flows for hydroelectric power generation;

(*n*) " Treaty " means this Treaty and its Annexes A and B;

(*o*) " useful life " means the time between the date of commencement of operation of a dam or facility and the date of its permanent retirement from service by reason of obsolescence or wear and tear which occurs notwithstanding good maintenance practices.

(2) The exercise of any power, or the performance of any duty, under the Treaty does not preclude a subsequent exercise or performance of the power or duty.

ARTICLE II

Development by Canada

(1) Canada shall provide in the Columbia River basin in Canada 15,500,000 acre-feet of storage usable for improving the flow of the Columbia River.

(2) In order to provide this storage, which in the Treaty is referred to as the Canadian storage, Canada shall construct dams:

(*a*) On the Columbia River near Mica Creek, British Columbia, with approximately 7,000,000 acre-feet of storage;

(*b*) Near the outlet of Arrow Lakes, British Columbia, with approximately 7,100,000 acre-feet of storage; and

(*c*) On one or more tributaries of the Kootenay River in British Columbia downstream from the Canada-United States of America boundary with storage equivalent in effect to approximately 1,400,000 acre-feet of storage near Duncan Lake, British Columbia.

(3) Canada shall commence construction of the dams as soon as possible after the ratification date.

ARTICLE III

Development by the United States of America respecting power

(1) The United States of America shall maintain and operate the hydroelectric facilities included in the base system and any additional hydroelectric facilities constructed on the main stem of the Columbia River in the United States of America in a manner that makes the most effective use of the improvement in stream flow resulting from operation of the Canadian storage for hydroelectric power generation in the United States of America power system.

(2) The obligation in paragraph (1) is discharged by reflecting in the determination of downstream power benefits to which Canada is entitled the assumption that the facilities referred to in paragraph (1) were maintained and operated in accordance therewith.

ARTICLE IV

Operation by Canada

(1) For the purpose of increasing hydroelectric power generation in the United States of America and Canada, Canada shall operate the Canadian storage in accordance with Annex A and pursuant to hydroelectric operating plans made thereunder. For the purposes of this obligation an operating plan if it is either the first operating plan or if in the view of either the United States of America or Canada it departs substantially from the immediately preceding operating plan must, in order to be effective, be confirmed by an exchange of notes between the United States of America and Canada.

(2) For the purpose of flood control until the expiration of sixty years from the ratification date, Canada shall

(*a*) Operate in accordance with Annex A and pursuant to flood control operating plans made thereunder

(i) 80,000 acre-feet of the Canadian storage described in Article 11(2)(*a*),

(ii) 7,100,000 acre-feet of the Canadian storage described in Article 11(2)(*b*),

(iii) 1,270,000 acre-feet of the Canadian storage described in Article 11(2)(*c*),

provided that the Canadian entity may exchange flood control storage under subparagraph (ii) for flood control storage additional to that under subparagraph (i), at the location described in Article II(2)(*a*), if the entities agree that the exchange would provide the same effectiveness for control of floods on the Columbia River at the Dalles, Oregon;

(b) Operate any additional storage in the Columbia River basin in Canada, when called upon by an entity designated by the United States of America for that purpose, within the limits of existing facilities and as the entity requires to meet flood control needs for the duration of the flood period for which the call is made.

(3) For the purpose of flood control after the expiration of sixty years from the ratification date, and for so long as the flows in the Columbia River in Canada continue to contribute to potential flood hazard in the United States of America, Canada shall, when called upon by an entity designated by the United States of America for that purpose, operate within the limits of existing facilities any storage in the Columbia River basin in Canada as the entity requires to meet flood control needs for the duration of the flood period for which the call is made.

(4) The return to Canada for hydroelectric operation and the compensation to Canada for flood control operation shall be as set out in Articles V and VI.

(5) Any water resource development, in addition to the Canadian storage, constructed in Canada after the ratification date shall not be operated in a way that adversely affects the stream flow control in the Columbia River within Canada so as to reduce the flood control and hydroelectric power benefits which the operation of the Canadian storage in accordance with the operating plans in force from time to time would otherwise produce.

(6) As soon as any Canadian storage becomes operable Canada shall commence operation thereof in accordance with this Article and in any event shall commence full operation of the Canadian storage described in Article II(2)(*b*) and Article II(2)(*c*) within five years of the ratification date and shall commence full operation of the balance of the Canadian storage within nine years of the ratification date.

ARTICLE V

Entitlement to downstream power benefits

(1) Canada is entitled to one half the downstream power benefits determined under Article VII.

(2) The United States of America shall deliver to Canda at a point on the Canada-United States of America boundary near Oliver, British Columbia, or at such other place as the entities may agree upon, the downstream power benefits to which Canada is entitled, less

(*a*) Transmission loss,

(*b*) The portion of the entitlement disposed of under Article VIII(1), and

(*c*) The energy component described in Article VIII(4).

(3) The entitlement of Canada to downstream power benefits begins for any portion of Canadian storage upon commencement of its operation in accordance with Annex A and pursuant to a hydro-electric operating plan made thereunder.

ARTICLE VI

Payment for flood control

(1) For the flood control provided by Canada under Article VI(2)(*a*) the United States of America shall pay Canada in United States funds:

(*a*) 1,200,000 dollars upon the commencement of operation of the storage referred to in subparagraph (*a*)(i) thereof,

(*b*) 52,100,000 dollars upon the commencement of operation of the storage referred to in subparagraph (*a*)(ii) thereof, and

(*c*) 11,100,000 dollars upon the commencement of operation of the storage referred to in subparagraph (*a*)(iii) thereof.

(2) If full operation of any storage is not commenced within the time specified in Article IV, the amount set forth in paragraph (1) of this Article with respect to that storage shall be reduced as follows:

(*a*) under paragraph (1)(*a*), 4,500 dollars for each month beyond the required time.

(*b*) Under paragraph (1)(*b*), 192,100 dollars for each month beyond the required time, and

(*c*) Under paragraph (1)(*c*), 40,800 dollars for each month beyond the required time.

(3) For the flood control provided by Canada under Article IV(2)(*b*) the United States of America shall pay Canada in United States funds in respect only of each of the first four flood periods for which a call is

made 1,875,000 dollars and shall deliver to Canada in respect of each and every call made, electric power equal to the hydroelectric power lost by Canada as a result of operating the storage to meet the flood control need for which the call was made, delivery to be made when the loss of hydroelectric power occurs.

(4) For each flood period for which flood control is provided by Canada under Article IV(3) the United States of America shall pay Canada in United States funds:

(*a*) The operating cost incurred by Canada in providing the flood control, and

(*b*) Compensation for the economic loss to Canada arising directly from Canada foregoing alternative uses of the storage used to provide the flood control.

(5) Canada may elect to receive in electric power, the whole or any portion of the compensation under paragraph (4)(*b*) representing loss of hydroelectric power to Canada.

ARTICLE VII

Determination of downstream power benefits

(1) The downstream power benefits shall be the difference in the hydroelectric power capable of being generated in the United States of America with and without the use of Canadian storage, determined in advance, and is referred to in the Treaty as the downstream power benefits.

(2) For the purpose of determining the downstream power benefits:

(*a*) The principles and procedures set out in Annex B shall be used and followed;

(*b*) The Canadian storage shall be considered as next added to 13,000,000 acre-feet of the usable storage listed in Column 4 of the table in Annex B;

(*c*) The hydroelectric facilities included in the base system shall be considered as being operated to make the most effective use for hydroelectric power generation of the improvement in stream flow resulting from operation of the Canadian storage.

(3) The downstream power benefits to which Canada is entitled shall be delivered as follows:

(*a*) Dependable hydroelectric capacity as scheduled by the Canadian entity, and

(*b*) Average annual usable hydroelectric energy in equal amounts each month, or in accordance with a modification agreed upon under paragraph (4).

(4) Modification of the obligation in paragraph (3) (*b*) may be agreed upon by the entities.

ARTICLE VIII

Disposal of entitlement to downstream power benefits

(1) With the authorization of the United States of America and Canada

evidenced by exchange of notes, portions of the downstream power benefits to which Canada is entitled may be disposed of within the United States of America. The respective general conditions and limits within which the entities may arrange initial disposals shall be set out in an exchange of notes to be made as soon as possible after the ratification date.

(2) The entities may arrange and carry out exchanges of dependable hydroelectric capacity and average annual usable hydroelectric energy to which Canada is entitled for average annual usable hydroelectric energy and dependable hydroelectric capacity respectively.

(3) Energy to which Canada is entitled may not be used in the United States of Ameriea except in accordance with paragraphs (1) and (2).

(4) The bypassing at dams on the main stem of the Columbia River in the United States of America of an amount of water which could produce usable energy equal to the energy component of the downstream power benefits to which Canada is entitled but not delivered to Canada under Article V or disposed of in accordance with paragraphs (1) and (2) at the time the energy component was not so delivered or disposed of, is conclusive evidence that such energy component was not used in the United States of America and that the entitlement of Canada to such energy component is satisfied.

ARTICLE IX

Variation of entitlement to downstream power benefits

(1) If the United States of America considers with respect to any hydroelectric power project planned on the main stem of the Columbia River between Priest Rapids Dam and McNary Dam that the increase in entitlement of Canada to downstream power benefits resulting from the operation of the project would produce a result which would not justify the United States of America in incurring the costs of construction and operation of the project, the United States of America and Canada at the request of the United States of America shall consider modification of the increase in entitlement.

(2) An agreement reached for the purposes of this Article shall be evidenced by an exchange of notes.

ARTICLE X

East-West standby transmission

(1) The United States of America shall provide in accordance with good engineering practiee east-west standby transmission service adequate to safeguard the transmission from Oliver, British Columbia, to Vancouver, British Columbia, of the downstream power benefits to which Canada is entitled and to improve system stability of the east-west circuits in British Columbia.

(2) In consideration of the standby transmission service, Canada shall pay the United States of America in Canadian funds the equivalent of 1.50 United States dollars a year for each kilowatt of dependable hydroelectric capacity included in the downstream power benefits to which Canada is entitled.

(3) When a mutually satisfactory electrical coordination arrangement is entered into between the entities and confirmed by exchange of notes between the United States of America and Canada the obligation of Canada in paragraph (2) ceases.

ARTICLE XI

Use of improved stream flow

(1) Improvement in stream flow in one country brought about by operation of storage constructed under the Treaty in the other country shall not be used directly or indirectly for hydroelectric power purposes except:

(*a*) In the case of use within the United States of America with the prior approval of the United States entity, and

(*b*) In the case of use within Canada with the prior approval of the authority in Canada having jurisdiction.

(2) The approval required by this Article shall not be given except upon such conditions, consistent with the Treaty, as the entity or authority considers appropriate.

ARTICLE XII

Kootenai river development

(1) The United States of America for a period of five years from the ratification date, has the option to commence construction of a dam on the Kootenai River near Libby, Montana, to provide storage to meet flood control and other purposes in the United States of America. The storage reservoir of the dam shall not raise the level of the Kootenai River at the Canada-United States of America boundary above an elevation consistent with a normal full pool elevation at the dam of 2,459 feet, United States Coast and Geodetic Survey datum, 1929 General Adjustment, 1947 International Supplemental Adjustment.

(2) All benefits which occur in either country from the construction and operation of the storage accrue to the country in which the benefits occur.

(3) The United States of America shall exercise its option by written notice to Canada and shall submit with the notice a schedule of construction which shall include provision for commencement of construction, whether by way of railroad relocation work or otherwise, within five years of the ratification date.

(4) If the United States of America exercises its option, Canada in consideration of the benefits accruing to it under paragraph (2) shall prepare and make available for flooding the land in Canada necessary for the storage reservoir of the dam within a period consistent with the construction schedule.

(5) If a variation in the operation of the storage is considered by Canada to be of advantage to it the United States of America shall, upon request, consult with Canada. If the United States of America deter-

mines that the variation would not be to its disadvantage it shall vary the operation accordingly.

(6) The operation of the storage by the United States of America shall be consistent with any order of approval which may be in force from time to time relating to the levels of Kootenay Lake made by the International Joint Commission under the Boundary Waters Treaty, 1909.

(7) Any obligation of Canada under this Article ceases if the United States of America, having exercised the option, does not commence construction of the dam in accordance with the construction schedule.

(8) If the United States of America exercises the option it shall commence full operation of the storage within seven years of the date fixed in the construction schedule for commencement of construction.

(9) If Canada considers that any portion of the land referred to in paragraph (4) is no longer needed for the purpose of this Article the United States of America and Canada, at the request of Canada, shall consider modification of the obligation of Canada in paragraph (4).

(10) If the Treaty is terminated before the end of the useful life of the dam Canada shall for the remainder of the useful life of the dam continue to make available for the storage reservoir of the dam any portion of the land made available under paragraph (4) that is not required by Canada for purposes of diversion of the Kootenay River under Article XIII.

ARTICLE XIII

Diversions

(1) Except as provided in this Article neither the United States of America nor Canada shall, without the consent of the other evidenced by an exchange of notes, divert for any use, other than a consumptive use, any water from its natural channel in a way that alters the flow of any water as it crosses the Canada-United States of America boundary within the Columbia River basin.

(2) Canada has the right, after the expiration of twenty years from the ratification date, to divert not more than 1,500,000 acre-feet of water a year from the Kootenay River in the vicinity of Canal Flats, British Columbia, to the headwaters of the Columbia River, provided that the diversion does not reduce the flow of the Kootenay River immediately downstream from the point of diversion below the lesser of 200 cubic feet per second or the natural flow.

(3) Canada has the right, exercisable at any time during the period commencing sixty years after the ratification date and expiring one hundred years after the ratification date, to divert to the headwaters of the Columbia River any water which, in its natural channel, would flow in the Kootenay River across the Canada-United States of America boundary, provided that the diversion does not reduce the flow of the Kootenay River at the Canada-United States of America boundary near Newgate, British Columbia, below the lesser of 2,500 cubic feet per second or the natural flow.

(4) During the last twenty years of the period within which Canada may exercise the right to divert described in paragraph (3) the limitation on diversion is the lesser of 1,000 cubic feet per second or the natural flow.

(5) Canada has the right:

(*a*) If the United States of America does not exercise the option in Article XII(1), or

(*b*) If it is determined that the United States of America, having exercised the option, did not commence construction of the dam referred to in Article XII in accordance therewith or that the United States of America is in breach of the obligation in that Article to commence full operation of the storage,

to divert to the headwaters of the Columbia River any water which, in its natural channel, would flow in the Kootenay River across the Canada-United States of America boundary, provided that the diversion does not reduce the flow of the Kootenay River at the Canada-United States of America boundary near Newgate, British Columbia, below the lesser of 1,000 cubic feet per second or the natural flow.

(6) If a variation in the use of the water diverted under paragraph (2) is considered by the United States of America to be of advantage to it Canada shall, upon request, consult with the United States of America. If Canada determines that the variation would not be to its disadvantage it shall vary the use accordingly.

ARTICLE XIV

Arrangements for implementation

(1) The United States of America and Canada shall each, as soon as possible after the ratification date, designate entities and when so designated the entities are empowered and charged with the duty to formulate and carry out the operating arrangements necessary to implement the Treaty. Either the United States of America or Canada may designate one or more entities. If more than one is designated the powers and duties conferred upon the entities by the Treaty shall be allocated among them in the designation.

(2) In addition to the powers and duties dealt with specifically elsewhere in the Treaty the powers and duties of the entities include:

(*a*) Coordination of plans and exchange of information relating to facilities to be used in producing and obtaining the benefits contemplated by the Treaty,

(*b*) Calculation of and arrangements for delivery of hydroelectric power to which Canada is entitled for providing flood control,

(*c*) Calculation of the amounts payable to the United States of America for standby transmission services,

(*d*) Consultation on requests for variations made pursuant to Articles XII(5) and XIII(6),

(*e*) The establishment and operation of a hydrometeorological system as required by Annex A,

(*f*) Assisting and cooperating with the Permanent Engineering Board in the discharge of its functions,

(*g*) Periodic calculation of accounts,

(*h*) Preparation of the hydroelectric operating plans and the flood

control operating plans for the Canadian storage together with determination of the downstream power benefits to which Canada is entitled,

(*i*) Preparation of proposals to implement Article VIII and carrying out any disposal authorized or exchange provided for therein,

(*j*) Making appropriate arrangements for delivery to Canada of the downstream power benefits to which Canada is entitled including such matters as load factors for delivery, times and points of delivery, and calculation of transmission loss,

(*k*) Preparation and implementation of detailed operating plans that may produce results more advantageous to both countries than those that would arise from operation under the plans referred to in Annexes A and B.

(3) The entities are authorized to make maintenance curtailments. Except in case of emergency, the entity responsible for a maintenance curtailment shall give notice to the corresponding United States or Canadian entity of the curtailment, including the reason therefor and the probable duration thereof and shall both schedule the curtailment with a view to minimizing its impact and exercise due diligence to resume full operation.

(4) The United States of America and Canada may by an exchange of notes empower or charge the entities with any other matter coming within the scope of the Treaty.

ARTICLE XV

Permanent engineering board

(1) A Permanent Engineering Board is established consisting of four members, two to be appointed by Canada and two by the United States of America. The initial appointments shall be made within three months of the ratification date.

(2) The Permanent Engineering Board shall:

(*a*) Assemble records of the flows of the Columbia River and the Kootenay River at the Canada-United States of America boundary;

(*b*) Report to the United States of America and Canada whenever there is substantial deviation from the hydroelectric and flood control operating plans and if appropriate include in the report recommendations for remedial action and compensatory adjustments;

(*c*) Assist in reconciling differences concerning technical or operational matters that may arise between the entities;

(*d*) Make periodic inspections and require reports as necessary from the entities with a view to ensuring that the objectives of the Treaty are being met;

(*e*) Make reports to the United States of America and Canada at least once a year of the results being achieved under the Treaty and make special reports concerning any matter which it considers should be brought to their attention;

(*f*) Investigate and report with respect to any other matter coming within the scope of the Treaty at the request of either the United States of America or Canada.

(3) Reports of the Permanent Engineering Board made in the course of the performance of its functions under this Article shall be *prima facie*

evidence of the facts therein contained and shall be accepted unless rebutted by other evidence.

(4) The Permanent Engineering Board shall comply with directions, relating to its administration and procedures, agreed upon by the United States of America and Canada as evidenced by an exchange of notes.

ARTICLE XVI

Settlement of differences

(1) Differences arising under the Treaty which the United States of America and Canada cannot resolve may be referred by either to the International Joint Commission for decision.

(2) If the International Joint Commission does not render a decision within three months of the referral or within such other period as may be agreed upon by the United States of America and Canada, either may then submit the difference to arbitration by written notice to the other.

(3) Arbitration shall be by a tribunal composed of a member appointed by Canada, a member appointed by the United States of America and a member appointed jointly by the United States of America and Canada who shall be Chairman. If within six weeks of the delivery of a notice under paragraph (2) either the United States of America or Canada has failed to appoint its member, of they are unable to agree upon the member who is to be Chairman, either the United States of America or Canada may request the President of the International Court of Justice to appoint the member or members. The decision of a majority of the members of an arbitration tribunal shall be the decision of the tribunal.

(4) The United States of America and Canada shall accept as definitive and binding and shall carry out any decision of the International Joint Commission or an arbitration tribunal.

(5) Provision for the administrative support of a tribunal and for remuneration and expenses of its members shall be as agreed in an exchange of notes between the United States of America and Canada.

(6) The United States of America and Canada may agree by an exchange of notes on alternative procedures for settling differences arising under the Treaty including reference of any difference to the International Court of Justice for decision.

ARTICLE XVII

Restoration of pre-treaty legal status

(1) Nothing in this Treaty and no action taken or foregone pursuant to its provisions shall be deemed, after its termination or expiration, to have abrogated or modified any of the rights or obligations of the United States of America or Canada under then existing international law, with respect to the uses of the water resources of the Columbia River basin.

(2) Upon termination of this Treaty, the Boundary Waters Treaty, 1909, shall, if it has not been terminated, apply to the Columbia River basin, except insofar as the provisions of that Treaty may be inconsistent with any provision of this Treaty which continues in effect.

(3) Upon termination of this Treaty, if the Boundary Waters Treaty, 1909, has been terminated in accordance with Article XIV of that Treaty, the provisions of Article II of that Treaty shall continue to apply to the waters of the Columbia River basin.

(4) If, upon the termination of this Treaty, Article II of the Boundary Waters Treaty, 1909, continues in force by virtue of paragraph (3) of this Article the effect of Article II of that Treaty with respect to the Columbia River basin may be terminated by either the United States of America or Canada delivering to the other one year's written notice to that effect; provided however that the notice may be given only after the termination of this Treaty.

(5) If, prior to the termination of this Treaty, Canada undertakes works usable for and relating to a diversion of water from the Columbia River basin, other than works authorized by or undertaken for the purpose of exercising a right under Article XIII or any other provision of this Treaty, paragraph (3) of this Article shall cease to apply one year after delivery by either the United States of America or Canada to the other of written notice to that effect.

ARTICLE XVIII

Liability for damage

(1) The United States of America and Canada shall be liable to the other and shall make appropriate compensation to the other in respect of any act, failure to act, omission or delay amounting to a breach of the Treaty or of any of its provisions other than an act, failure to act, omission or delay occurring by reason of war, strike, major calamity, act of God, uncontrollable force or maintenance curtailment.

(2) Except as provided in paragraph (1) neither the United States of America nor Canada shall be liable to the other or to any person in respect of any injury, damage or loss occurring in the territory of the other caused by any act, failure to act, omission or delay under the Treaty whether the injury, damage or loss results from negligence or otherwise.

(3) The United States of America and Canada, each to the extent possible within its territory, shall exercise due diligence to remove the cause of and to mitigate the effect of any injury, damage or loss occurring in the territory of the other as a result of any act, failure to act, omission or delay under the Treaty.

(4) Failure to commence operation as required under Articles IV and XII is not a breach of the Treaty and does not result in the loss of rights under the Treaty if the failure results from a delay that is not wilful or reasonably avoidable.

(5) The compensation payable under paragraph (1):

(*a*) In respect of a breach by Canada of the obligation to commence full operation of a storage, shall be forfeiture of entitlement to downstream power benefits resulting from the operation of that storage, after operation commences, for a period equal to the period between the day of commencement of operation and the day when commencement should have occurred;

(*b*) In respect of any other breach by either the United States of Ame-

rica or Canada, causing loss of power benefits, shall not exceed the actual loss in revenue from the sale of hydroelectric power.

ARTICLE XIX

Period of treaty

(1) The Treaty shall come into force on the ratification date.

(2) Either the United States of America or Canada may terminate the Treaty other than Article XIII (except paragraph (1) thereof), Article XVII and this Article at any time after the Treaty has been in force for sixty years if it has delivered at least ten years' written notice to the other of its intention to terminate the Treaty.

(3) If the Treaty is terminated before the end of the useful life of a dam built under Article XII then, notwithstanding termination, Article XII remains in force until the end of the useful life of the dam.

(4) If the Treaty is terminated before the end of the useful life of the facilities providing the storage described in Article IV(3) and if the conditions described therein exist then, notwithstanding termination, Articles IV(3) and VI(4) and (5) remain in force until either the end of the useful life of those facilities or until those conditions cease to exist, whichever is the first to occur.

ARTICLE XX

Ratification

The instruments of ratification of the Treaty shall be exchanged by the United States of America and Canada at Ottawa, Canada.

ARTICLE XXI

Registration with the United Nations

In conformity with Article 102 of the Charter of the United Nations, the Treaty shall be registered by Canada with the Secretariat of the United Nations.

This Treaty has been done in duplicate copies in the English language.

IN WITNESS WHEREOF the undersigned, duly authorized by their respective Governments, have signed this Treaty at Washington, District of Columbia, United States of America, this 17th day of January, 1961.

For the United States of America:

DWIGHT D. EISENHOWER
President
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Minister of Justice

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Ambassador Extraordinary and Plenipotentiary of Canada to the United States of America

ANNEX A — PRINCIPLES OF OPERATION

GENERAL

1. The Canadian storage provided under Article II will be operated in accordance with the procedures described herein.

2. A hydrometeorological system, including snow courses, precipitation stations and streamflow gauges will be established and operated, as mutually agreed by the entities and in consultation with the Permanent Engineering Board, for use in establishing data for detailed programming of flood control and power operations. Hydrometeorological information will be made available to the entities in both countries for immediate and continuing use in flood control and power operations.

3. Sufficient discharge capacity at each dam to afford the desired regulation for power and flood control will be provided through outlet works and turbine installations as mutually agreed by the entities. The discharge capacity provided for flood control operations will be large enough to pass inflow plus sufficient storage releases during the evacuation period to provide the storage space required. The discharge capacity will be evaluated on the basis of full use of any conduits provided for that purpose plus one half the hydraulic capacity of the turbine installation at the time of commencement of the operation of storage under the Treaty.

4. The outflows will be in accordance with storage reservation diagrams and associated criteria established for flood control purposes and with reservoir-balance relationships established for power operations. Unless otherwise agreed by the entities the average weekly outflows shall not be less than 3,000 cubic feet per second at the dam described in Article II(2)(*a*), not less than 5,000 cubic feet per second at the dam described in Article II(2)(*b*) and not less than 1,000 cubic feet per second at the dam described in Article II(2)(*c*). These minimum average weekly releases may be scheduled by the Canadian entity as required for power or other purposes.

FLOOD CONTROL

5. For flood control operation, the United States entity will submit flood control operating plans which may consist of or include flood control storage reservation diagrams and associated criteria for each of the dams. The Canadian entity will operate in accordance with these diagrams or any variation which the entities agree will not derogate from the desired aim of the flood control plan. The use of these diagrams will be based on data obtained in accordance with paragraph 2. The diagrams will consist of relationships specifying the flood control storage reservations required at indicated times of the year for volumes of forecast runoff. After consultation with the Canadian entity the United States entity may from time to time as conditions warrant adjust these storage reservation diagrams within the general limitations of flood control operation. Evacuation of the storages listed hereunder will be guided by the flood control storage reservation diagrams and refill will be as requested by the United States entity after consultation with the Canadian entity. The general limitations of flood control operation are as follows:

(*a*) *The Dam described in Article II(2)(a)* — The reservoir will be evacuated

to provide up to 80,000 acre-feet of storage, if required, for flood control use by May 1 of each year.

(*b*) *The Dam described in Article II(2)(b)* — The reservoir will be evacuated to provide up to 7,100,000 acre-feet of storage, if required, for flood control use by May 1 of each year.

(*c*) *The Dam described in Article II(2)(c)* — The reservoir will be evacuated to provide up to 700,000 acre-feet of storage, if required, for flood control use by April 1 of each year and up to 1,270,000 acre-feet of storage, if required, for flood control use by May 1 of each year.

(*d*) The Canadian entity may exchange flood control storage provided in the reservoir referred to in subparagraph (*b*) for additional storage provided in the reservoir referred to in subparagraph (*a*) if the entities agree that the exchange would provide the same effectiveness for control of floods on the Columbia River at The Dalles, Oregon.

POWER

6. For power generating purposes the 15,500,000 acre-feet of Canadian storage will be operated in accordance with operating plans designed to achieve optimum power generation downstream in the United States of America until such time as power generating facilities are installed at the site referred to in paragraph 5(*a*) or at sites in Canada downstream therefrom.

7. After at-site power is developed at the site referred to in paragraph 5(*a*) or power generating facilities are placed in operation in Canada downstream from that site, the storage operation will be changed so as to be operated in accordance with operating plans designed to achieve optimum power generation at-site in Canada and downstream in the United States of America and Canada, including consideration of any agreed electrical coordination between the two countries. Any reduction in the downstream power benefits in the United States of America resulting from that change in operation of the Canadian storage shall not exceed in any one year the reduction in downstream power benefits in the United States of America which would result from reducing by 500,000 acre-feet the Canadian storage operated to achieve optimum power generation in the United States of America and shall not exceed at any time during the period of the Treaty the reduction in downstream power benefits in the United States of America which would result from similarly reducing the Canadian storage by 3,000,000 acre-feet.

8. After at-site power is developed at the site referred to in paragraph 5(*a*) or power generating facilities are placed in operation in Canada downstream from that site, storage may be operated to achieve optimum generation of power in the United States of America alone if mutually agreed by the entities in which event the United States of America shall supply power to Canada to offset any reduction in Canadian generation which would be created as a result of such operation as compared to operation to achieve optimum power generation at-site in Canada and downstream in the United States of America and Canada. Similarly, the storage may be operated to achieve optimum generation of power in Canada alone if mutually agreed by the entities in which event Canada shall supply power to the United States of America to offset any reduction in United States generation which would be created as a result of such operation as

compared to operation to achieve optimum power generation at-site in Canada and downstream in the United States of America and Canada.

9. Before the first storage becomes operative, the entities will agree on operating plans and the resulting downstream power benefits for each year until the total of 15,500,000 acre-feet of storage in Canada becomes operative. In addition, commencing five years before the total of 15,500,000 acre-feet of storage is expected to become operative, the entities will agree annually on operating plans and the resulting downstream power benefits for the sixth succeeding year of operation thereafter. This procedure will continue during the life of the Treaty, providing to both the entities, in advance, an assured plan of operation of the Canadian storage and a determination of the resulting downstream power benefits for the next succeeding five years.

Annex B—Determination of Downstream Power Benefits

1. The downstream power benefits in the United States of America attributable to operation in accordance with Annex A of the storage provided by Canada under Article II will be determined in advance and will be the estimated increase in dependable hydroelectric capacity in kilowatts for agreed critical stream flow periods and the increase in average annual usable hydroelectric energy output in kilowatt hours on the basis of an agreed period of stream flow record.

2. The dependable hydroelectric capacity to be credited to Canadian storage will be the difference between the average rates of generation in kilowatts during the appropriate critical stream flow periods for the United States of America base system consisting of the projects listed in the table, with and without the addition of the Canadian storage, divided by the estimated average critical period load factor. The capacity credit shall not exceed the difference between the capability of the base system without Canadian storage and the maximum feasible capability of the base system with Canadian storage, to supply firm load during the critical stream flow periods.

3. The increase in the average annual usable hydroelectric energy will be determined by first computing the difference between the available hydroelectric energy at the United States base system with and without Canadian storage. The entities will then agree upon the part of available energy which is usable with and without Canadian storage, and the difference thus agreed will be the increase in average annual usable hydroelectric energy. Determination of the part of the energy which is usable will include consideration of existing and scheduled transmission facilities and the existence of markets capable of using the energy on a contractual basis similar to the then existing contracts. The part of the available energy which is considered usable shall be the sum of:

(*a*) The firm energy,

(*b*) The energy which can be used for thermal power displacement in the Pacific Northwest Area as defined in Paragraph 7, and

(*c*) The amount of the remaining portion of the available energy which is agreed by the entities to be usable and which shall not exceed in any event 40% of that remainder.

4. An initial determination of the estimated downstream power benefits

in the United States of America from Canadian storage added to the United States base system will be made before any of the Canadian storage becomes operative. This determination will include estimates of the downstream power benefits for each year until the total of 15,500,000 acre-feet of Canadian storage becomes operative.

5. Commencing five years before the total of 15,500,000 acre-feet of storage is expected to become operative, estimates of downstream power benefits will be calculated annually for the sixth succeeding year on the basis of the assured plan of operation for that year.

6. The critical stream flow period and the details of the assured plan of operation will be agreed upon by the entities at each determination. Unless otherwise agreed upon by the entities, the determination of the downstream power benefits shall be based upon stream flows for the twenty year period beginning with July 1928 as contained in the report entitled *Modified Flows at Selected Powers Sites—Columbia River Basin,* dated June 1957. No retroactive adjustment in downstream power benefits will be made at any time during the period of the Treaty. No reduction in the downstream power benefits credited to Canadian storage will be made as a result of the load estimate in the United States of America, for the year for which the determination is made, being less than the load estimate for the preceding year.

7. In computing the increase in dependable hydroelectric capacity and the increase in average annual hydroelectric energy, the procedure shall be in accordance with the three steps described below and shall encompass the loads of the Pacific Northwest Area. The Pacific Northwest Area, for purposes of these determinations, shall be Oregon, Washington, Idaho and Montana west of the Continental Divide but shall exclude areas served on the ratification date by the California Oregon Power Company and Utah Power and Light Company.

Step I

The system for the period covered by the estimate will consist of the Canadian storage, the United States base system, any thermal installation operated in coordination with the base system, and additional hydroelectric projects which will provide storage releases usable by the base system or which will use storage releases that are usable by the base system. The installations included in this system will be those required, with allowance for adequate reserves, to meet the forecast power load to be served by this system in the United States of America, including the estimated flow of power at points of inter-connection with adjacent areas, subject to paragraph 3, plus the portion of the entitlement of Canada that is expected to be used in Canada. The capability of this system to supply this load will be determined on the basis that the system will be operated in accordance with the established operating procedures of each of the projects involved.

Step II

A determination of the energy capability will be made using the same thermal installation as in *Step I,* the United States base system with the same installed capacity as in *Step I* and Canadian storage.

Step III

A similar determination of the energy capability will be made using the same thermal installation as in *Step I* and the United States base system with the same installed capacity as in *Step I.*

8. The downstream power benefits to be credited to Canadian storage will be the differences between the determinations in *Step II* and *Step III* in dependable hydroelectric capacity and in average annual usable hydroelectric energy, made in accordance with paragraphs 2 and 3.

Chile—Peru

66. TREATY[1] BETWEEN CHILE AND PERU FOR THE SETTLEMENT OF THE DISPUTE REGARDING TACNA AND ARICA, SIGNED AT LIMA, JUNE 3, 1929[2]

. . .

Article 1. The dispute arising out of Article 3 of the Treaty of Peace and Friendship of the twentieth day of October of the year one thousand eight hundred and eighty-three, which was the only difficulty outstanding between the signatory Governments, is hereby finally settled.

Article 2. The territory of Tacna and Arica shall be divided into two portions, of which Tacna shall be allotted to Peru and Arica to Chile. . . Chile cedes to Peru in perpetuity all her rights over the irrigation-channels Uchusuma and the Mauri (also known as Azucarero), without prejudice to the sovereignty she will be entitled to exercise over such part of the above-mentioned aqueducts as may come within Chilean territory after the tracing of the dividing line mentioned in the present Article. In respect of both channels, Chile grants to Peru a perpetual and absolute easement over the sections which pass through Chilean territory. Such easement shall include the right to widen the present channels, to change their course and to utilize all the water that may be collected in their passage through Chilean territory, except the waters that at present flow into the river Lluta and those which are used in the Tacora sulphur mines.

. . .

Article 12. If the Governments of Chile and Peru disagree as to the interpretation of any of the provisions of this Treaty, and if, in spite of their goodwill, they can reach no agreement, the dispute shall be settled by the President of the United States of America.

. . .

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[1] The exchange of ratifications took place at Santiago de Chile, July 28, 1929.
[2] League of Nations, *Treaty Series*, vol. 94, p. 402.

Colombia—Venezuela

67. STATUTE[1] BETWEEN COLOMBIA AND VENEZUELA REGULATING THE FRONTIER REGIME. CARACAS, AUGUST 5, 1942[2]

. . .

Article 22. Fishing rights may not be exercised beyond the centre-line of rivers and non-navigable streams.

Article 23. It shall be forbidden to divide the frontier waters by means of fixed nets or by any other device which shall impede the free passage of fish from one bank to the other.

It shall equally be forbidden to fish by means of explosive, poisonous or noxious substances, or to use any other methods of catching fish, except by fish-hooks.

. . .

Dominicau Republic—Haiti

68. TRAITÉ[3] DE PAIX, D'AMITIÉ ET D'ARBITRAGE ENTRE LA RÉPUBLIQUE DOMINICAINE ET LA RÉPUBLIQUE D'HAÏTI, SIGNÉ À SAINT-DOMINGUE, LE 20 FÉVRIER 1929[4]

. . .

Article 10. En raison de ce que des rivières et autres cours d'eau naissent sur le territoire d'un des deux Etats, traversent sur le territoire de l'autre ou leur servent de limites, les deux Hautes Parties contractantes s'engagent à ne faire ni consentir aucun ouvrage susceptible soit de changer le cours naturel de ces eaux, soit d'altérer le débit de leurs sources.

Cette disposition ne pourra s'interpréter de manière à priver l'un ou l'autre des deux Etats du droit d'user d'une manière juste et équitable, dans les limites de leurs territoires respectifs, des dites rivières et autres cours d'eau pour l'arrosage des terres et autres fins agricoles et industrielles.

. . .

Ecuador—Peru

69. DECLARATION AND EXCHANGE OF NOTES[5] CONCERNING THE TERMINATION OF THE PROCESS OF DEMARCATION OF THE PERUVIAN-ECUADOREAN FRONTIER. LIMA/QUITO, MAY 22-24, 1944[6]

It is with the deepest patriotic satisfaction that the Government discharges the very pleasant duty of announcing to the country, as stated in the com-

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[1] The exchange of ratifications took place on 22 February 1944.
[2] *British and Foreign State Papers*, vol. 144, p. 1127.
[3] L'échange des ratifications a eu lieu à Saint-Domingue, le 1er juillet 1929.
[4] Société des Nations, *Recueil des Traités*, vol. 105, p. 216.
[5] Came into force on 24 May 1944, by the exchange of the said Notes.
[6] *British and Foreign State Papers*, vol. 145, p. 566.

muniqué of the 20th inst., that the process of demarcation of the Peruvian-Ecuadorean frontier has been brought to a conclusion, with the faithful and strict execution of the Protocol of Peace, Friendship and Boundaries signed between Peru and Ecuador in Rio de Janeiro on January 29, 1942,[1] which determined the boundary line between the two countries.

. . .

The negotiations have achieved complete success, and owing to the intelligent and wise intervention of the distinguishcd Brazilian Chancellor, H. E. Sr. Oswaldo Aranha, the definite frontier between Peru and Ecuador has been determined. . . .

. . .

In the Western Section, it has been established that the boundary line shall pass through the so-called old bed of the River Zarumilla, as far as its outlet into the Hualtaco estuary, all the territory lying in the zone called that of the two river beds being included under our sovereignty. . . .

Peru undertakes, by this agreement, to take the necessary steps within 3 years, to guarantee the supply of water necessary for the life of the Ecuadorean villages on the right bank of the so-called old bed of the river Zarumilla, fixed as the frontier. . . .

Official notes have to-day been exchanged between the Ministers for Foreign Affairs of Peru and Ecuador, expressing the acceptance of the two Governments of the results obtained in the negotiations just concluded. . .

No. 1. *The Peruvian Minister for Foreign Affairs to the Ecuadorean Minister for Foreign Affairs*

Lima, May 22, 1944

Your Excellency:

I have the honour to communicate to Your Excellency that my Government is in agreement with the formula of H. E. Sr. Oswaldo Aranha, Minister for Foreign Affairs of Brazil,[2] resolving the differences in interpretation arising on certain points of the demarcation of the Peruvian-Ecuadorean frontier which has been in process of execution in accordance with the Protocol of Peace, Friendship and Boundaries signed in Rio de Janeiro in

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[1] *British and Foreign State Papers*, vol. 144, p. 1161; *American Journal of International Law*, vol. 36, 1942, Suppl., p. 168. His Protocol was denounced by the President of Ecuador on 1 September 1960. The Government of Peru declared that this denunciation did not modify the legal situation created by the Protocol of 29 January 1942.

[2] With regard to the utilization of the waters of the River Zarumilla, Sr. Oswaldo Aranha proposed the following solution:

" Peru undertakes to divert, within a period of three years, part of the waters of the River Zarumilla so that they shall flow along the former bed of the river, in order to provide the Ecuadorian villages situated along its banks with the aid essential to their existence, Ecuador retaining joint ownership of the waters in accordance with international practice. "

(*Informe del Ministro de Relaciones Exteriores a la Nación, Agosto 1944-Julio 1946*, Quito, Ecuador, p. 610.)

January 29, 1942. This formula, which has the support of the countries guaranteeing the fulfilment of the Protocol in question, is contained in the notes handed over by the Brazilian Chancery, on the 17th instant, to the Ambassadors of Peru and Ecuador accredited to the Government of that Republic.

. . .

No. 2. [The Minister for Foreign Affairs of Ecuador handed the note of acceptance of his Government to the Peruvian Legation, Quito, on May 22, 1944.]

El Salvador—Guatemala

70. TREATY[1] FOR THE DELIMITATION OF THE BOUNDARY BETWEEN GUATEMALA AND EL SALVADOR, SIGNED AT GUATEMALA, APRIL 9, 1938[2]

. . .

Article 2. No change in the bed of frontier rivers, whether due to natural causes such as alluvium deposits, landslides, freshets, etc., or to artificial causes such as the construction of public works, the deepening of channels for water-supply, etc., shall affect the frontier as determined at the time of demarcation, which shall continue to be the international boundary even though a stream may have completely abandoned its original bed.

Each Government reserves the right to utilize half the volume of water in frontier rivers, either for agricultural or industrial purposes; but in no circumstances may concessions be granted to foreign undertakings or companies.

. . .

71. TREATY[3] OF FREE TRADE AND ECONOMIC INTEGRATION BETWEEN THE REPUBLIC OF GUATEMALA AND EL SALVADOR, SIGNED AT SAN SALVADOR, ON 14 DECEMBER 1951[4]

. . .

Article 19. The competent authorities of both States shall co-ordinate their activities with a view to protecting forest reserves and water resources and preventing soil erosion in the frontier regions of their respective territories.

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[1] The exchange of ratifications took place at Guatemala, May 24, 1938.

[2] League of Nations, *Treaty Series*, vol. 189, p. 276.

[3] Came into force, on 17 May 1952, by the exchange of the instruments of ratification at Guatemala.

[4] United Nations, *Treaty Series*, vol. 131, p. 132.

France—Netherlands

72. CONVENTION[1] ENTRE LA FRANCE ET LES PAYS-BAS POUR FIXER CONVENTIONNELLEMENT LA LIMITE ENTRE LES COLONIES DE LA GUYANE FRANÇAISE ET DE SURINAM, DANS LA PARTIE DU FLEUVE FRONTIÈRE COMPRISE ENTRE L'EXTRÉMITÉ SEPTENTRIONALE DE L'ÎLE NÉERLANDAISE STOELMAN, DITE STOELMANSEILAND, ET L'EXTRÉMITÉ MÉRIDIONALE DE L'ÎLE FRANÇAISE PORTAL, SIGNÉE À PARIS, LE 30 SEPTEMBRE 1915[2]

. . .

Article 3. Aucun ouvrage d'utilité publique ou privée susceptible de modifier le régime hydrographique ou d'entraver la navigation ou le halage dans les eaux de la partie du fleuve Maroni (Marowijne) délimitée conformément à l'article 1er, ne pourra être entrepris sans l'entente préalable des deux gouvernements.

Toutefois, un tel accord préalable ne sera pas exigé pour l'installation sur l'une quelconque des rives d'appontements, de bassins, de cales, de chenaux et de tous travaux généralement quelconques, destinés à assurer le libre accès de la rive. Les installations de ce genre seront toujours permises sur chaque rive à l'administration publique, ainsi qu'aux bénéficiaires de concessions, à condition que ces derniers se conforment aux règlements édictés par le gouvernement de la nation à laquelle appartient la rive intéressée.

Article 4. Les concessions de dragages sont accordées de concert par les deux gouvernements de la Guyane française et de la colonie de Surinam dans une même partie du fleuve délimitée, soit à un solliciteur unique, soit à un groupe unique de solliciteurs, de manière que la même exploitation puisse s'exercer dans la partie française et dans la partie néerlandaise des eaux qui sont en regard l'une de l'autre.

Article 5. Les deux puissances s'engagent à déterminer, aussitôt que possible, les formes dans lesquelles seront accordées par les deux gouvernements les concessions de dragages, ainsi que les obligations qui seront imposées aux concessionnaires.

Il sera stipulé dans les concessions de dragages:

1) que toute quantité de minéral extraite dans la partie du fleuve délimitée conformément à l'article premier, sera réputée provenir pour moitié des eaux françaises, et pour moitié des eaux néerlandaises.

2) que les concessionnaires devront acquitter dans l'une et l'autre colonie tous les droits sur les minéraux édictés par les tarifs actuels ou futurs, proportionnellement à la quantité de minéral réputée extraite des eaux de chaque nation;

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[1] L'échange des instruments de ratification a eu lieu à Paris, le 6 septembre 1916.

[2] *British and Foreign State Papers*, vol. 110, p. 872.

3) que les concessionnaires seront tenus de tolérer le halage le long du fleuve, et qu'ils devront se conformer à tous les règlements destinés à assurer la libre navigation

Article 6. Les hautes parties contractantes s'engagent à soumettre à la Cour permanente d'arbitrage de La Haye les différends qui pourraient s'élever entre elles au sujet de l'application ou de l'interprétation de la présente convention et qui n'auront pu être résolus par la voie diplomatique.

Dans chaque cas particulier, les hautes parties contractantes signeront un compromis spécial déterminant nettement l'objet du litige, l'étendue des pouvoirs de l'arbitre ou du tribunal arbitral, le mode de sa désignation, la langue dont l'arbitre ou le tribunal arbitral fera usage et celles dont l'emploi sera autorisé devant eux, le montant de la somme que chacune des hautes parties contractantes aura à déposer à titre d'avance pour les frais, ainsi que les règles à observer en ce qui concerne les formalités et les délais de la procédure.

. . .

Guatemala—Honduras

73. TREATY[1] OF FREE TRADE AND ECONOMIC INTEGRATION BETWEEN THE REPUBLICS OF GUATEMALA AND HONDURAS, SIGNED AT GUATEMALA, ON 22 AUGUST 1956[2]

. . .

Article 19. The competent authorities of the two States shall co-ordinate their activities with a view to protecting forest reserves and water resources and preventing forest fires and soil erosion in the frontier regions of their respective territories.

. . .

Mexico—United States

74. BOUNDARY CONVENTION[3] BETWEEN THE UNITED STATES OF AMERICA AND MEXICO, SIGNED AT WASHINGTON, MARCH 1, 1889[4]

. . . to facilitate the carrying out of the principles contained in the treaty of November 12, 1884, and to avoid the difficulties occasioned by reason of

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[1] Came into force on 28 December 1956 by the exchange of the instruments of ratification at Tegucigalpa.

[2] United Nations, *Treaty Series*, vol. 263, p. 66.

[3] Came into force on 24 December 1890, by the exchange of ratifications. This Convention has been indefinitely extended according to article 2, para. 1, of the Treaty of 3 February 1944 below.

[4] *Treaties and Conventions between the United States and other powers* (Malloy's Collection), vol. 1, p. 1167.

the changes which take place in the bed of the Rio Grande and that of the Colorado river, in that portion thereof where they serve as a boundary between the two Republics, . . .

. . .

Article I. All differences or questions that may arise on that portion of the frontier between the United States of America and the United States of Mexico where the Rio Grande and the Colorado rivers form the boundary line, whether such differences or questions grow out of alterations or changes in the bed of the aforesaid Rio Grande and that of the aforesaid Colorado River, or of works that may be constructed in said rivers, or of any other cause affecting the boundary line, shall be submitted for examination and decision to an International Boundary Commission, which shall have exclusive jurisdiction in the case of said differences or questions.

Article II. The International Boundary Commission shall be composed of a Commissioner appointed by the President of the United States of America, and of another appointed by the President of the United States of Mexico, in accordance with the constitutional provisions of each country, of a Consulting Engineer, appointed in the same manner by each Government, and of such Secretaries and Interpreters as either Government may see fit to add to its Commission. Each Government separately shall fix the salaries and emoluments of the members of its Commission.

Article III. The International Boundary Commission shall not transact any business unless both Commissioners are present. It shall sit on the frontier of the two contracting countries, and shall establish itself at such places as it may determine upon; it shall, however, repair to places at which any of the difficulties or questions mentioned in this convention may arise, as soon as it shall have been duly notified thereof.

Article IV. When, owing to natural causes, any change shall take place in the bed of the Rio Grande or in that of the Colorado River, in that portion thereof wherein those rivers form the boundary line between the two countries, which may affect the boundary line, notice of that fact shall be given by the proper local authorities on both sides to their respective Commissioners of the International Boundary Commission, on receiving which notice it shall be the duty of the said Commission to repair to the place where the change has taken place or the question has arisen, to make a personal examination of such change, to compare it with the bed of the river as it was before the change took place, as shown by the surveys, and to decide whether it has occurred through avulsion or erosion, for the effects of articles I and II of the convention of November 12, 1884; having done this, it shall make suitable annotations on the surveys of the boundary line.

Article V. Whenever the local authorities on any point of the frontier between the United States of America and the United States of Mexico, in that portion in which the Rio Grande and the Colorado River form the boundary between the two countries, shall think that works are being constructed, in either of those rivers, such as are prohibited by article III of the convention of November 12, 1884, or by article VII of the treaty of Guadalupe Hidalgo of February 2, 1848, they shall so notify their respective Commis-

sioners, in order that the latter may at once submit the matter to the International Boundary Commission, and that said Commission may proceed, in accordance with the provisions of the foregoing article, to examine the case, and that it may decide whether the work is among the number of those which are permitted, or of those which are prohibited by the stipulations of those treaties.

The Commission may provisionally suspend the construction of the works in question pending the investigation of the matter, and if it shall fail to agree on this point, the works shall be suspended, at the instance of one of the two Governments.

Article VI. In either of these cases, the Commission shall make a personal examination of the matter which occasions the change, the question or the complaint, and shall give its decision in regard to the same, in doing which it shall comply with the requirements established by a body of regulations to be prepared by the said Commission and approved by both Governments.

Article VII. The International Boundary Commission shall have power to call for papers and information, and it shall be the duty of the authorities of each of the two countries to send it any papers that it may call for, relating to any boundary question in which it may have jurisdiction in pursuance of this convention.

The said Commission shall have power to summon any witnesses whose testimony it may think proper to take, and it shall be the duty of all persons thus summoned to appear before the same and to give their testimony, which shall be taken in accordance with such by-laws and regulations as may be adopted by the Commission and approved by both Governments. In case of the refusal of a witness to appear, he shall be compelled to do so, and to this end the Commission may make use of the same means that are used by the courts of the respective countries to compel the attendance of witnesses, in conformity with their respective laws.

Article VIII. If both Commissioners shall agree to a decision, their judgment shall be considered binding upon both Governments, unless one of them shall disapprove it within one month reckoned from the day on which it shall have been pronounced. In the latter case, both Governments shall take cognizance of the matter, and shall decide it amicably, bearing constantly in mind the stipulation of Article XXI of the treaty of Guadalupe Hidalgo of February 2, 1848.

The same shall be the case when the Commissioners shall fail to agree concerning the point which occasions the question, the complaint or the change, in which case each Commissioner shall prepare a report, in writing, which he shall lay before his Government.

. . .

75. CONVENTION[1] BETWEEN THE UNITED STATES OF AMERICA AND MEXICO CONCERNING THE EQUITABLE DISTRIBUTION OF THE WATERS OF THE RIO GRANDE FOR IRRIGATION PURPOSES, SIGNED AT WASHINGTON, MAY 21, 1906[2]

The United States of America and the United States of Mexico being desirous to provide for the equitable distribution of the waters of the Rio Grande for irrigation purposes, and to remove all causes of controversy between them in respect thereto, and being moved by considerations of international comity, have resolved to conclude a Convention for these purposes. . . .

. . .

Article I. After the completion of the proposed storage dam near Engle, New Mexico, and the distributing system auxiliary thereto, and as soon as water shall be available in said system for the purpose, the United States shall deliver to Mexico a total of 60,000 acre-feet of water annually, in the bed of the Rio Grande at the point where the head works of the Acequia Madre, known as the Old Mexican Canal, now exist above the city of Juarez, Mexico.

Article II. The delivery of the said amount of water shall be assured by the United States and shall be distributed through the year in the same proportions as the water supply proposed to be furnished from the said irrigation system to lands in the United States in the vicinity of El Paso, Texas, according to the following schedule, as nearly as may be possible:

	Acre feet per month	Corresponding cubic feet of water.
January	0	0
February	1,090	47,480,400
March	5,460	237,837,600
April	12,000	522,720,000
May	12,000	522,720,000
June	12,000	522,720,000
July	8,180	356,320,800
August	4,370	190,357,200
September	3,270	142,441,200
October	1,090	47,480,400
November	540	23,522,400
December	0	0
Total for the year	60,000	2,613,600,000

In case, however, of extraordinary drought or serious arrident to the irrigation system in the United States, the amount delivered to the Mexican Canal shall be diminished in the same proportion as the water delivered to lands under said irrigation system in the United States.

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[1] Came into force on 16 January 1907, by the exchange of ratifications.

[2] De Martens, *Nouveau Recueil Général des Traités*, 2nd series, vol. XXXV, p. 461.

Article III. The said delivery shall be made without cost to Mexico, and the United States agrees to pay the whole cost of storing the said quantity of water to be delivered to Mexico, of conveying the same to the international line, of measuring the said water, and of delivering it in the river bed above the head of the Mexican Canal. It is understood that the United States assumes no obligation beyond the delivering of the water in the bed of the river above the head of the Mexican Canal.

Article IV. The delivery of water as herein provided is not to be construed as a recognition by the United States of any claim on the part of Mexico to the said waters; and it is agreed that in consideration of such delivery of water, Mexico waives any and all claims to the waters of the Rio Grande for any purpose whatever between the head of the present Mexican Canal and Fort Quitman, Texas, and also declares fully settled and disposed of, and hereby waives, all claims heretofore asserted or existing, or that may hereafter arise, or be asserted, against the United States on account of any damages alleged to have been sustained by the owners of land in Mexico, by reason of the diversion by citizens of the United States of waters of the Rio Grande.

Article V. The United States, in entering into this treaty, does not thereby concede, expressly or by implication, any legal basis for any claims heretofore asserted or which may be hereafter asserted by reason of any losses incurred by the owners of land in Mexico due or alleged to be due to the diversion of the waters of the Rio Grande within the United States; nor does the United States in any way concede the establishment of any general principle or precedent by the concluding of this treaty. The understanding of both parties is that the arrangement contemplated by this treaty extends only to the portion of the Rio Grande which forms the international boundary, from the head of the Mexican Canal down to Fort Quitman, Texas, and in no other case.

. . .

76. CONVENTION[1] BETWEEN THE UNITED STATES OF AMERICA AND MEXICO FOR THE RECTIFICATION OF THE RIO GRANDE (RIO BRAVO DEL NORTE) IN THE PASO-JUAREZ VALLEY, SIGNED AT MEXICO, FEBRUARY 1, 1933[2]

. . . having taken into consideration the studies and engineering plans carried on by the International Boundary Commission, and specially directed to relieve the towns and agricultural lands located within the El-Paso-Juarez Valley from flood dangers, and securing at the same time the stabilization of the international boundary line, which, owing to the present meandering nature of the river it has not been possible to hold within the mean line of its channel; and fully conscious of the great importance involved in this matter, both from a local point of view as well as from a good international understanding, have resolved to undertake, in common agreement and cooperation, the necessary works as provided in Minute 129 (dated

[1] Came into force on 10 November 1933, by the exchange of ratifications.
[2] *Treaties and Conventions between the United States and other powers* (Malloy's Collection), vol. IV, p. 4463.

July 31, 1930) of the International Boundary Commission,[1] approved by the two Governments in the manner provided by treaty. . . .

Article I. The Government of the United States of America and the Government of the United Mexican States have agreed to carry out the Rio Grande rectification works provided for in Minute 129 of the International Boundary Commission and annexes thereto, approved by both Governments, in that part of the river beginning at the point of intersection of the present river channel with the located line as shown in map, exhibit No. 2 of Minute 129 of said Commission (said intersection being south of Monument 15 of the boundary polygon of Córdoba Island) and ending at Box Canyon.

The terms of this Convention and of Minute 129 shall apply exclusively to river rectification within the limits above set out.

The two Governments shall study such further minutes and regulations as may be submitted by the International Boundary Commission and, finding them acceptable, shall approve same in order to carry out the material execution of the works in accordance with the terms of this Convention. The works shall be begun after this Convention becomes effective.

Article II. For the execution of the works there shall be followed the procedure outlined in the technical study of the project. The works shall be begun and shall be carried on primarily from the lower end, but at the same time and for reasons of necessity works may be carried on in the upper sections of the valley.

Article III. In consideration of the difference existing in the benefits derived by each of the contracting countries by the rectification works, the proratable cost of the works will be defrayed by both Governments in the proportion of eighty-eight per cent (88%) by the United States of America and of twelve per cent (12%) by the United Mexican States.

Article IV. The direction and inspection of the works shall be under the International Boundary Commission, each Government employing for the construction of that portion of the work it undertakes, the agency that in accordance with its administrative organization should carry on the work.

Article V. The International Boundary Commission shall survey the ground to be used as the right of way to be occupied by the rectified channel, as well as the parts to be cut from both sides of said channel. Within thirty days after a cut has been made, it shall mark the boundaries on the ground, there being a strict superficial compensation in total of the areas taken from each country. Once the corresponding maps have been prepared, the Commission shall eliminate these areas from the provisions of Article II of the Convention of November 12, 1884, in similar manner to that adopted in the Convention of March 20, 1905 for the elimination of bancos.

Article VI. For the sole purpose of equalizing areas, the axis of the rectified channel shall be the international boundary line. The parcels of land that, as a result of these cuts or of merely taking the new axis of the channel as the boundary line, shall remain on the American side of the axis of the rectified channel shall be the territory and property of the United

[1] *Ibid.*, p. 4465. Report of consulting engineers annexed to the Minute, *ibid.*, p. 4470.

States of America, and the territory and property of the United Mexican States those on the opposite side, each Government mutually surrendering in favor of the other the acquired rights over such parcels.

In the completed rectified river channel — both in its normal and construction sections — and in any completed portion thereof, the permanent international boundary shall be the middle of the deepest channel of the river within such rectified river channel.

Article VII. Lands within the rectified channel, as well as those which, upon segregation, pass from the territory of one country to that of the other, shall be acquired in full ownership by the Government in whose territory said lands are at the present time; and the lands passing as provided in Article V hereof, from one country to the other, shall pass to each Government respectively in absolute sovereignty and ownership, and without encumbrance of any kind, and without private national titles.

Article VIII. The construction of works shall not confer on the contracting parties any property rights in or any jurisdiction over the territory of the other. The completed work shall constitute part of the territory and shall be the property of the country within which it lies.

Each Government shall respectively secure title, control, and jurisdiction of its half of the flood channel, from the axis of that channel to the outer edge of the acquired right of way on its own side, as this channel is described and mapped in the International Boundary Commission Minute number 129, and the maps, plans, and specifications attached thereto, which Minute, maps, plans, and specifications are attached hereto and made a part of this Convention. Each Government shall permanently retain full title, control, and jurisdiction of that part of the flood channel constructed as described, from the deepest channel of the running water in the rectified channel to the outer edge of such acquired right of way.

Article IX. Construction shall be suspended upon request of either Government, if it be proved that the works are being constructed outside of the conditions herein stipulated or fixed in the approved plan.

Article X. In the event there be presented private or national claims for the construction or maintenance of the rectified channel, or for causes connected with the works of rectification, each Government shall assume and adjust such claims as arise within its own territory.

Article XI. The International Boundary Commission is charged hereafter with the maintenance and preservation of the rectified channel. To this end the Commission shall submit, for the approval of both Governments, the regulations that should be issued to make effective said maintenance.

Article XII. Both Governments bind themselves to exempt form import duties all materials, implements, equipment, and supplies intended for the works, and passing from one country to the other.

. . .

77. TREATY[1] BETWEEN THE UNITED STATES OF AMERICA AND MEXICO RELATING TO THE UTILIZATION OF THE WATERS OF THE COLORADO AND TIJUANA RIVERS, AND OF THE RIO GRANDE (RIO BRAVO) FROM FORT QUITMAN, TEXAS, TO THE GULF OF MEXICO, SIGNED AT WASHINGTON ON 3 FEBRUARY 1944, AND SUPPLEMENTARY PROTOCOL, SIGNED AT WASHINGTON ON 14 NOVEMBER 1944[2]

The Government of the United States of America and the Government of the United Mexican States: animated by the sincere spirit of cordiality and friendly cooperation which happily governs the relations between them; taking into account the fact that Articles VI and VII of the Treaty of Peace, Friendship and Limits between the United States of America and the United Mexican States signed at Guadalupe Hidalgo on February 2, 1848, and Article IV of the boundary treaty between the two countries signed at the City of Mexico December 30, 1853 regulate the use of the waters of the Rio Grande (Rio Bravo) and the Colorado River for purposes of navigation only; considering that the utilization of these waters for other purposes is desirable in the interest of both countries, and desiring, moreover, to fix and delimit the rights of the two countries with respect to the waters of the Colorado and Tijuana Rivers, and of the Rio Grande (Rio Bravo) from Fort Quitman, Texas, United States of America, to the Gulf of Mexico, in order to obtain the most complete and satisfactory utilization thereof, have resolved to conclude a treaty.

. . .

I—Preliminary Provisions

Article 1

For the purpose of this Treaty it shall be understood that:

(*a*) " The United States " means the United States of America.

(*b*) " Mexico " means the United Mexican States.

(*c*) " The Commission " means the International Boundary and Water Commission, United States and Mexico, as described in Article 2 of this Treaty.

(*d*) " To divert " means the deliberate act of taking water from any channel in order to convey it elsewhere for storage, or to utilize it for domestic, agricultural, stock-raising or industrial purposes whether this be done by means of dams across the channel, partition weirs, lateral intakes, pumps or any other methods.

(*e*) " Point of diversion " means the place where the act of diverting the water is effected.

(*f*) " Conservation capacity of storage reservoirs " means that part of their total capacity devoted to holding and conserving the water for disposal

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[1] Came into force on 2 November 1945, by the exchange of ratification.
[2] United Nations, *Treaty Series*, vol. 3, p. 314.

thereof as and when required, that is, capacity additional to that provided for silt retention and flood control.

(*g*) " Flood discharges and spills " means the voluntary or involuntary discharge of water for flood control as distinguished from releases for other purposes.

(*h*) " Return flow " means that portion of diverted water that eventually finds its way back to the source from which it was diverted.

(*i*) " Release " means the deliberate discharge of stored water for conveyance elsewhere or for direct utilization.

(*j*) " Consumptive use " means the use of water by evaporation, plant transpiration or other manner whereby the water is consumed and does not return to its source of supply. In general it is measured by the amount of water diverted less the part thereof which returns to the stream.

(*k*) " Lowest major international dam or reservoir " means the major international dam or reservoir situated farthest downstream.

(*l*) " Highest major international dam or reservoir " means the major international dam or reservoir situated farthest upstream.

Article 2

The International Boundary Commission established pursuant to the provisions of the Convention between the United States and Mexico signed in Washington March 1, 1889 to facilitate the carrying out of the principles contained in the Treaty of November 12, 1884 and to avoid difficulties occasioned by reason of the changes which take place in the beds of the Rio Grande (Rio Bravo) and the Colorado River shall hereafter be known as the International Boundary and Water Commission, United States and Mexico, which shall continue to function for the entire period during which the present Treaty shall continue in force. Accordingly, the term of the Convention of March 1, 1889 shall be considered to be indefinitely extended, and the Convention of November 21, 1900 between the United States and Mexico regarding that Convention shall be considered completely terminated.

The application of the present Treaty, the regulation and exercise of the rights and obligations which the two Governments assume thereunder, and the settlement of all disputes to which its observance and execution may give rise are hereby entrusted to the International Boundary and Water Commission, which shall function in conformity with the powers and limitations set forth in this Treaty.

The Commission shall in all respects have the status of an international body, and shall consist of a United States Section and a Mexican Section. The head of each Section shall be an Engineer Commissioner. Wherever there are provisions in this Treaty for joint agreement by the two Governments, or for the furnishing of reports, studies or plans to the two Governments, or similar provisions, it shall be understood that the particular matter in question shall be handled by or through the Department of State of the United States and the Ministry of Foreign Relations of Mexico.

The Commission or either of its two Sections may employ such assistants and engineering and legal advisers as it may deem necessary. Each Government shall accord diplomatic status to the Commissioner, designated by the other Government. The Commissioner, two principal engineers, a legal adviser, and a secretary, designated by each Government as members of

its Section of the Commission, shall be entitled in the territory of the other country to the privileges and immunities appertaining to diplomatic officers. The Commission and its personnel may freely carry out their observations, studies and field work in the territory of either country.

The jurisdiction of the Commission shall extend to the limitrophe parts of the Rio Grande (Rio Bravo) and the Colorado River, to the land boundary between the two countries, and to works located upon their common boundary, each Section of the Commission retaining jurisdiction over that part of the works located within the limits of its own country. Neither Section shall assume jurisdiction of control over works located within the limits of the country of the other without the express consent of the Government of the latter. The works constructed, acquired or used in fulfillment of the provisions of this Treaty and located wholly within the territorial limits of either country, although these works may be international in character, shall remain, except as herein otherwise specifically provided, under the exclusive jurisdiction and control of the Section of the Commission in whose country the works may be situated.

The duties and powers vested in the Commission by this Treaty shall be in addition to those vested in the International Boundary Commission by the Convention of March 1, 1889 and other pertinent treaties and agreements in force between the two countries except as the provisions of any of them may be modified by the present Treaty.

Each Government shall bear the expenses incurred in the maintenance of its Section of the Commission. The joint expenses, which may be incurred as agreed upon by the Commission, shall be borne equally by the two Governments.

Article 3

In matters in which the Commission may be called upon to make provision for the joint use of international waters, the following order of preferences shall serve as a guide:

1. Domestic and municipal uses.
2. Agriculture and stock-raising.
3. Electric power.
4. Other industrial uses.
5. Navigation.
6. Fishing and hunting.
7. Any other beneficial uses which may be determined by the Commission.

All of the foregoing uses shall be subject to any sanitary measures or works which may be mutually agreed upon by the two Governments, which hereby agree to give preferential attention to the solution of all border sanitation problems.

II—Rio Grande (Rio Bravo)

Article 4

The waters of the Rio Grande (Rio Bravo) between Fort Quitman, Texas and the Gulf of Mexico are hereby allotted to the two countries in the following manner:

A. To Mexico:

(*a*) All of the waters reaching the main channel of the Rio Grande (Rio Bravo) from the San Juan and Alamo Rivers, including the return flow from the lands irrigated from the latter two rivers.

(*b*) One-half of the flow in the main channel of the Rio Grande (Rio Bravo) below the lowest major international storage dam, so far as said flow is not specifically allotted under this Treaty to either of the two countries.

(*c*) Two-thirds of the flow reaching the main channel of the Rio Grande (Rio Bravo) from the Conchos, San Diego, San Rodrigo, Escondido and Salado Rivers and the Las Vacas Arroyo, subject to the provisions of subparagraph (*c*) of paragraph B of this Article.

(*d*) One-half of all other flows not otherwise allotted by this Article occurring in the main channel of the Rio Grande (Rio Bravo), including the contributions from all the unmeasured tributaries, which are those not named in this Article, between Fort Quitman and the lowest major international storage dam.

B. To the United States:

(*a*) All of the waters reaching the main channel of the Rio Grande (Rio Bravo) from the Pecos and Devils Rivers, Goodenough Spring, and Alamito, Terlingua, San Felipe and Pinto Creeks.

(*b*) One-half of the flow in the main channel of the Rio Grande (Rio Bravo) below the lowest major international storage dam, so far as said flow is not specifically allotted under this Treaty to either of the two countries.

(*c*) One-third of the flow reaching the main channel of the Rio Grande (Rio Bravo) from the Conchos, San Diego, San Rodrigo, Escondido and Salado Rivers and the Las Vacas Arroyo, provided that this third shall not be less, as an average amount in cycles of five consecutive years, than 350,000 acre-feet (431,721,000 cubic meters) annually. The United States shall not acquire any right by the use of the waters of the tributaries named in this subparagraph, in excess of the said 350,000 acre-feet (431,721,000 cubic meters) annually, except the right to use one-third of the flow reaching the Rio Grande (Rio Bravo) from said tributaries, although such one-third may be in excess of that amount.

(*d*) One-half of all other flows not otherwise allotted by this Article occurring in the main channel of the Rio Grande (Rio Bravo), including the contributions from all the unmeasured tributaries, which are those not named in this Article, between For Quitman and the lowest major international storage dam.

In the event of extraordinary drought or serious accident to the hydraulic systems on the measured Mexican tributaries, making it difficult for Mexico to make available the run-off of 350,000 acre-feet (431,721,000 cubic meters) annually, allotted in subparagraph (*c*) of paragraph B of this Article to the United States as the minimum contribution from the aforesaid Mexican tributaries, any deficiencies existing at the end of the aforesaid five-year cycle shall be made up in the following five-year cycle with water from the said measured tributaries.

Whenever the conservation capacities assigned to the United States in at least two of the major international reservoirs, including the highest major reservoir, are filled with waters belonging to the United States, a cycle of

five years shall be considered as terminated and all debits fully paid, whereupon a new five-year cycle shall commence.

Article 5

The two Governments agree to construct jointly, through their respective Sections of the Commission, the following works in the main channel of the Rio Grande (Rio Bravo):

I. The dams required for the conservation, storage and regulation of the greatest quantity of the annual flow of the river in a way to ensure the continuance of existing uses and the development of the greatest number of feasible projects, within the limits imposed by the water allotments specified.

II. The dams and other joint works required for the diversion of the flow of the Rio Grande (Rio Bravo).

One of the storage dams shall be constructed in the section between Santa Helena Canyon and the mouth of the Pecos River; one in the section between Eagle Pass and Laredo, Texas (Piedras Negras and Nuevo Laredo in Mexico); and a third in the section between Laredo and Roma, Texas (Nuevo Laredo and San Pedro de Roma in Mexico). One or more of the stipulated dams may be omitted, and others than those enumerated may be built, in either case as may be determined by the Commission, subject to the approval of the two Governments.

In planning the construction of such dams the Commission shall determine:

(*a*) The most feasible sites;

(*b*) The maximum feasible reservoir capacity at each site;

(*c*) The conservation capacity required by each country at each site, taking into consideration the amount and regimen of its allotment of water and its contemplated uses;

(*d*) The capacity required for retention of silt;

(*e*) The capacity required for flood control.

The conservation and silt capacities of each reservoir shall be assigned to each country in the same proportion as the capacities required by each country in such reservoir for conservation purposes. Each country shall have an undivided interest in the flood control capacity of each reservoir.

The construction of the international storage dams shall start within two years following the approval of the respective plans by the two Governments. The works shall begin with the construction of the lowest major international storage dam, but works in the upper reaches of the river may be constructed simultaneously. The lowest major international storage dam shall be completed within a period of eight years from the date of the entry into force of this Treaty.

The construction of the dams and other joint works required for the diversion of the flows of the river shall be initiated on the dates recommended by the Commission and approved by the two Governments.

The cost of construction, operation and maintenance of each of the international storage dams shall be prorated between the two Governments in proportion to the capacity allotted to each country for conservation purposes in the reservoir at such dam.

The cost of construction, operation and maintenance of each of the dams and other joint works required for the diversion of the flows of the river shall

be prorated between the two Governments in proportion to the benefits which the respective countries receive therefrom, as determined by the Commission and approved by the two Governments.

Article 6

The Commission shall study, investigate, and prepare plans for flood control works, where and when necessary, other than those referred to in Article 5 of this Treaty, on the Rio Grande (Rio Bravo) from Fort Quitman, Texas to the Gulf of Mexico. These works may include levees along the river, floodways and grade control structures, and works for the canalization, rectification and artificial channeling of reaches of the river. The Commission shall report to the two Governments the works which should be built, the estimated cost thereof, the part of the works to be constructed by each Government, and the part of the works to be operated and maintained by each Section of the Commission. Each Government agrees to construct, through its Section of the Commission, such works as may be recommended by the Commission and approved by the two Governments. Each Government shall pay the costs of the works constructed by it and the costs of operation and maintenance of the part of the works assigned to it for such purpose.

Article 7

The Commission shall study, investigate and prepare plans for plants for generating hydro-electric energy which it may be feasible to construct at the international storage dams on the Rio Grande (Rio Bravo). The Commission shall report to the two Governments in a Minute the works which should be built, the estimated cost thereof, and the part of the works to be constructed by each Government. Each Government agrees to construct, through its Section of the Commission, such works as may be recommended by the Commission and approved by the two Governments. Both Governments, through their respective Sections of the Commission, shall operate and maintain jointly such hydro-electric plants. Each Government shall pay half the cost of the construction, operation and maintenance of such plants, and the energy generated shall be assigned to each country in like proportion.

Article 8

The two Governments recognize that both countries have a common interest in the conservation and storage of waters in the international reservoirs and in the maximum use of these structures for the purpose of obtaining the most beneficial, regular and constant use of the waters belonging to them. Accordingly, within the year following the placing in operation of the first of the major international storage dams which is constructed, the Commission shall submit to each Government for its approval, regulations for the storage, conveyance and delivery of the waters of the Rio Grande (Rio Bravo) from Fort Quitman, Texas to the Gulf of Mexico. Such regulations may be modified, amended or supplemented when necessary by the Commission, subject to the approval of the two Governments. The following general rules shall severally govern until modified or amended by agreement of the Commission, with the approval of the two Governments:

(*a*) Storage in all major international reservoirs above the lowest shall

be maintained at the maximum possible water level, consistent with flood control, irrigation use and power requirements.

(*b*) Inflows to each reservoir shall be credited to each country in accordance with the ownership of such inflows.

(*c*) In any reservoir the ownership of water belonging to the country whose conservation capacity therein is filled, and in excess of that needed to keep it filled, shall pass to the other country to the extent that such country may have unfilled conservation capacity, except that one country may at its option temporarily use the conservation capacity of the other country not currently being used in any of the upper reservoirs; provided that in the event of flood discharge or spill occurring while one country is using the conservation capacity of the other, all of such flood discharge or spill shall be charged to the country using the other's capacity, and all inflow shall be credited to the other country until the flood discharge or spill ceases or until the capacity of the other country becomes filled with its own water.

(*d*) Reservoir losses shall be charged in proportion to the ownership of water in storage. Releases from any reservoir shall be charged to the country requesting them, except that releases for the generation of electrical energy, or other common purpose, shall be charged in proportion to the ownership of water in storage.

(*e*) Flood discharges and spills from the upper reservoirs shall be divided in the same proportion as the ownership of the inflows occurring at the time of such flood discharges and spills, except as provided in subparagraph (*c*) of this Article. Flood discharges and spills from the lowest reservoir shall be divided equally, except that one country, with the consent of the Commission, may use such part of the share of the other country as is not used by the latter country.

(*f*) Either of the two countries may avail itself, whenever it so desires, of any water belonging to it and stored in the international reservoirs, provided that the water so taken is for direct beneficial use or for storage in other reservoirs. For this purpose the Commissioner of the respective country shall give appropriate notice to the Commission, which shall prescribe the proper measures for the opportune furnishing of the water.

Article 9

(*a*) The channel of the Rio Grande (Rio Bravo) may be used by either of the two countries to convey water belonging to it.

(*b*) Either of the two countries may, at any point on the main channel of the river from Fort Quitman, Texas to the Gulf of Mexico, divert and use the water belonging to it and may for this purpose construct any necessary works. However, no such diversion or use, not existing on the date this Treaty enters into force, shall be permitted in either country, nor shall works be constructed for such purpose, until the Section of the Commission in whose country the diversion or use is proposed has made a finding that the water necessary for such diversion or use is available from the share of that country, unless the Commission has agreed to a greater diversion or use as provided by paragraph (*d*) of this Article. The proposed use and the plans for the diversion works to be constructed in connection therewith shall be previously made known to the Commission for its information.

(*c*) Consumptive uses from the main stream and from the unmeasured

tributaries below Fort Quitman shall be charged against the share of the country making them.

(*d*) The Commission shall have the power to authorize either country to divert and use water not belonging entirely to such country, when the water belonging to the other country can be diverted and used without injury to the latter and can be replaced at some other point on the river.

(*e*) The Commission shall have the power to authorize temporary diversion and use by one country of water belonging to the other, when the latter does not need it or is unable to use it, provided that such authorization or the use of such water shall not establish any right to continue to divert it.

(*f*) In case of the occurrence of an extraordinary drought in one country with an abundant supply of water in the other country, water stored in the international storage reservoirs and belonging to the country enjoying such abundant water supply may be withdrawn, with the consent of the Commission for the use of the country undergoing the drought.

(*g*) Each country shall have the right to divert from the main channel of the river any amount of water, including the water belonging to the other country, for the purpose of generating hydro-electric power, provided that such diversion causes no injury to the other country and does not interfere with the international generation of power and that the quantities not returning directly to the river are charged against the share of the country making the diversion. The feasibility of such diversions not existing on the date this Treaty enters into force shall be determined by the Commission, which shall also determine the amount of water consumed, such water to be charged against the country making the diversion.

(*h*) In case either of the two countries shall construct works for diverting into the main channel of the Rio Grande (Rio Bravo) or its tributaries waters that do not at the time this Treaty enters into force contribute to the flow of the Rio Grande (Rio Bravo) such water shall belong to the country making such diversion.

(*i*) Main stream channel losses shall be charged in proportion to the ownership of water being conveyed in the channel at the times and places of the losses.

(*j*) The Commission shall keep a record of the waters belonging to each country and of those that may be available at a given moment, taking into account the measurement of the allotments, the regulation of the waters in storage, the consumptive uses, the withdrawals, the diversions, and the losses. For this purpose the Commission shall construct, operate and maintain on the main channel of the Rio Grande (Rio Bravo) and each Section shall construct, operate and maintain on the measured tributaries in its own country, all the gauging stations and mechanical apparatus necessary for the purpose of making computations and of obtaining the necessary data for such record. The information with respect to the diversions and consumptive uses on the unmeasured tributaries shall be furnished to the Commission by the appropriate Section. The cost of construction of any new gauging stations located on the main channel of the Rio Grande (Rio Bravo) shall be borne equally by the two Governments. The operation and maintenance of all gauging stations of the cost of such operation and maintenance shall be apportioned between the two Sections in accordance with determinations to be made by the Commission.

III—Colorado River

Article 10

Of the waters of the Colorado River, from any and all sources, there are alloted to Mexico:

(*a*) A guaranteed annual quantity of 1,500,000 acre-feet (1,850,234,000 cubic meters) to be delivered in accordance with the provisions of Article 15 of this Treaty.

(*b*) Any other quantities arriving at the Mexican points of diversion, with the understanding that in any year in which, as determined by the United States Section, there exists a surplus of waters of the Colorado River in excess of the amount necessary to supply uses in the United States and the guaranteed quantity of 1,500,000 acre-feet (1,850,234,000 cubic meters) annually to Mexico, the United States undertakes to deliver to Mexico, in the manner set out in Article 15 of this Treaty, additional waters of the Colorado River system to provide a total quantity not to exceed 1,700,000 acre-feet (2,096,931,000 cubic meters) a year. Mexico shall acquire no right beyond that provided by this subparagraph by the use of the waters of the Colorado River system, for any purpose whatsoever, in excess of 1,500,000 acre-feet (1,850,234,000 cubic meters) annually.

In the event of extraordinary drought or serious accident to the irrigation system in the United States, thereby making it difficult for the United States to deliver the guaranteed quantity of 1,500,000 acre-feet (1,850,234,000 cubic meters) a year, the water allotted to Mexico under subparagraph (*a*) of this Article will be reduced in the same proportion as consumptive uses in the United States are reduced.

Article 11

(*a*) The United States shall deliver all waters allotted to Mexico wherever these waters may arrive in the bed of the limitrophe section of the Colorado River, with the exceptions hereinafter provided. Such waters shall be made up of the waters of the said river, whatever their origin, subject to the provisions of the following paragraphs of this Article.

(*b*) Of the waters of the Colorado River allotted to Mexico by subparagraph (*a*) of Article 10 of this Treaty, the United States shall deliver, wherever such waters may arrive in the limitrophe section of the river, 1,000,000 acre-feet (1,233,489,000 cubic meters) annually from the time the Davis dam and reservoir are placed in operation until January 1, 1980 and thereafter, 1,125,000 acre-feet (1,387,675,000 cubic meters) annually, except that, should the main diversion structure referred to in subparagraph (*a*) of Article 12 of this Treaty be located entirely in Mexico and should Mexico so request, the United States shall deliver a quantity of water not exceeding 25,000 acre-feet (30,837,000 cubic meters) annually, unless a larger quantity may be mutually agreed upon, at a point, to be likewise mutually agreed upon, on the international land boundary near San Luis, Sonora, in which event the quantities of 1,000,000 acre-feet (1,233,489,000 cubic meters) and 1,125,000 acre-feet (1,387,657,000 cubic meters) provided hereinabove as deliverable in the limitrophe section of the river shall be reduced by the quantities to be delivered in the year concerned near San Luis, Sonora.

(*c*) During the period from the time the Davis dam and reservoir are placed in operation until January 1, 1980, the United States shall also

deliver to Mexico annually, of the water allotted to it, 500,000 acre-feet (616,745,000 cubic meters), and thereafter the United States shall deliver annually 375,000 acre-feet (462,558,000 cubic meters), at the international boundary line, by means of the All-American Canal and a canal connecting the lower end of the Pilot Knob Wasteway with the Alamo Canal or with any other Mexican Canal which may be substituted for the Alamo Canal. In either event the deliveries shall be made at an operating water surface elevation not higher than that of the Alamo Canal at the point where it crossed the international boundary line in the year 1943.

(*d*) All the deliveries of water specified above shall be made subject to the provisions of Article 15 of this Treaty.

Article 12

The two Governments agree to construct the following works:

(*a*) Mexico shall construct at its expense, within a period of five years from the date of the entry into force of this Treaty, a main diversion structure below the point where the northernmost part of the international land boundary line intersects the Colorado River. If such diversion structure is located in the limitrophe section of the river, its location, design and construction shall be subject to the approval of the Commission. The Commission shall thereafter maintain and operate the structure at the expense of Mexico. Regardless of where such diversion structure is located, there shall simultaneously be constructed such levees, interior drainage facilities and other works, or improvements to existing works, as in the opinion of the Commission shall be necessary to protect lands within the United States against damage from such floods and seepage as might result from the construction, operation and maintenance of this diversion structure. These protective works shall be constructed, operated and maintained at the expense of Mexico by the respective Sections of the Commission, or under their supervision, each within the territory of its own country.

(*b*) The United States, within a period of five years from the date of the entry into force of this Treaty, shall construct in its own territory and at its expense, and thereafter operate and maintain at its expense, the Davis storage dam and reservoir, a part of the capacity of which shall be used to make possible the regulation at the boundary of the waters to be delivered to Mexico in accordance with the provisions of Article 15 of this Treaty.

(*c*) The United States shall construct or acquire in its own territory the works that may be necessary to convey a part of the waters of the Colorado River allotted to Mexico to the Mexican diversion points on the international land boundary line referred to in this Treaty. Among these works shall be included: the canal and other works necessary to convey water from the lower end of the Pilot Knob Wasteway to the international boundary, and, should Mexico request it, a canal to connect the main diversion structure referred to in subparagraph (*a*) of this Article, if this diversion structure should be built in the limitrophe section of the river, with the Mexican system of canals at a point to be agreed upon by the Commission on the international land boundary near San Luis, Sonora. Such works shall be constructed or acquired and operated and maintained by the United States Section at the expense of Mexico. Mexico shall also pay the costs of any sites or rights of way required for such works.

(*d*) The Commission shall construct, operate and maintain in the limitrophe section of the Colorado River, and each Section shall construct, operate and maintain in the territory of its own country on the Colorado River below Imperial Dam and on all other carrying facilities used for the delivery of water to Mexico, all necessary gauging stations and other measuring devices for the purpose of keeping a complete record of the waters delivered to Mexico and of the flows of the river. All data obtained as to such deliveries and flows shall be periodically compiled and exchanged between the two Sections.

Article 13

The Commission shall study, investigate and prepare plans for flood control on the Lower Colorado River between Imperial Dam and the Gulf of California, in both the United States and Mexico, and shall, in a Minute, report to the two Governments the works which should be built, the estimated cost thereof, and the part of the works to be constructed by each Government. The two Governments agree to construct, through their respective Sections of the Commission, such works as may be recommended by the Commission and approved by the two Governments, each Government to pay the costs of the works constructed by it. The Commission shall likewise recommend the parts of the works to be operated and maintained jointly by the Commission and the parts to be operated and maintained by each Section. The two Governments agree to pay in equal shares the cost of operation and maintenance of the works assigned to it for such purpose.

Article 14

In consideration of the use of the All-American Canal for the delivery to Mexico, in the manner provided in Article 11 and 15 of this Treaty, of a part of its allotment of the waters of the Colorado River, Mexico shall pay to the United States:

(*a*) A proportion of the costs actually incurred in the construction of Imperial Dam and the Imperial Dam-Pilot Knob section of the All-American Canal, this proportion and the method and terms of repayment to be determined by the two Governments, which, for this purpose, shall take into consideration the proportionate uses of these facilities by the two countries, these determinations to be made as soon as Davis dam and reservoir are placed in operation.

(*b*) Annually, a proportionate part of the total costs of maintenance and operations of such facilities, these costs to be prorated between the two countries in proportion to the amount of water delivered annually through such facilities for use in each of the two countries.

In the event that revenues from the sale of hydro-electric power which may be generated at Pilot Knob become available for the amortization of part or all of the costs of the facilities named in subparagraph (*a*) of this Article, the part that Mexico should pay of the costs of said facilities shall be reduced or repaid in the same proportion as the balance of the total costs are reduced or repaid. It is understood that any such revenue shall not become available until the cost of any works which may be constructed for the generation of hydro-electric power at said location has been fully amortized from the revenues derived therefrom.

Article 15

A. The water allotted in subparagraph (*a*) of Article 10 of this Treaty shall be delivered to Mexico at the points of delivery specified in Article 11, in accordance with the following two annual schedules of deliveries by months, which the Mexican Section shall formulate and present to the Commission before the beginning of each calendar year:

SCHEDULE I

Schedule I shall cover the delivery, in the limitrophe section of the Colorado River, of 1,000,000 acre-feet (1,233,489,000 cubic meters) of water each year from the date Davis dam and reservoir are placed in operation until January 1, 1980 and the delivery of 1,125,000 acre-feet (1,387,675,000 cubic meters) of water each year thereafter. This schedule shall be formulated subject to the following limitations:

With reference to the 1,000,000 acre-foot (1,233,489,000 cubic meter) quantity:

(*a*) During the months of January, February, October, November and December the prescribed rate of delivery shall be not less than 600 cubic feet (17.0 cubic meters) nor more than 3,500 cubic feet (99.1 cubic meters) per second.

(*b*) During the remaining months of the year the prescribed rate of delivery shall be not less than 1,000 cubic feet (28.3 cubic meters) nor more than 3,500 cubic feet (99.1 cubic meters) per second.

With reference to the 1,125,000 acre-foot (1,387,675,000 cubic meter) quantity:

(*a*) During the months of January, February, October, November and December the prescribed rate of delivery shall be not less than 675 cubic feet (19.1 cubic meters) nor more than 4,000 cubic feet (113,3 cubic meters) per second.

(*b*) During the remaining months of the year the prescribed rate of delivery shall be not less than 1,125 cubic feet 31.9 cubic meters) nor more than 4,000 cubic feet 113.3 cubic meters) per second.

Should deliveries of water be made at a point on the land boundary near San Luis, Sonora, as provided for in Article 11, such deliveries shall be made under a sub-schedule to be formulated and furnished by the Mexican Section. The quantities and monthly rates of deliveries under such sub-schedule shall be in proportion to those specified for Schedule I, unless otherwise agreed upon by the Commission.

SCHEDULE II

Schedule II shall cover the delivery at the boundary line by means of the All-American Canal of 500,000 acre-feet (616,745,000 cubic meters) of water each year from the date Davis dam and reservoir are placed in operation until January 1, 1980 and the delivery of 375,000 acre-feet (462,558,000 cubic meters) of water each year thereafter. This schedule shall be formulated subject to the following limitations:

With reference to the 500,000 acre-foot (616,745,000 eubic meter) quantity:

(*a*) During the months of January, February, October, November and December the prescribed rate of delivery shall be not less than 300

cubic feet (8.5 cubic meters) nor more than 2,000 cubic feet (56.6 cubic meters) per second.

(*b*) During the remaining months of the year the prescribed rate of delivery shall be not less than 500 cubic feet (14.2 cubic meters) nor more than 2,000 cubic feet (56.6 cubic meters) per second.

With reference to the 375,000 acre-foot (462,558,000 cubic meter) quantity:

(*a*) During the months of January, February, October, November and December the prescribed rate of delivery shall be not less than 225 cubic feet (6.4 cubic meters) nor more than 1,500 cubic feet (42.5 cubic meters) per second.

(*b*) During the remaining months of the year the prescribed rate of delivery shall be not less than 375 cubic feet (10.6 cubic meters) nor more than 1,500 cubic feet (42.5 cubic meters) per second.

B. The United States shall be under no obligation to deliver, through the All-American Canal, more than 500,000 acre-feet (616,745,000 cubic meters) annually from the date Davis dam and reservoir are placed in operation until January 1, 1980 or more than 375,000 acre-feet (462,558,000 cubic meters) annually thereafter. If, by mutual agreement, any part of the quantities of water specified in this paragraph are delivered to Mexico at points on the land boundary otherwise than through the All-American Canal, the above quantities of water and the rates of deliveries set out under Schedule II of this Article shall be correspondingly diminished.

C. The United States shall have the option of delivering, at the point on the land boundary mentioned in subparagraph (*c*) of Article 11, any part or all of the water to be delivered at that point under Schedule II of this Article during the months of January, February, October, November and December of each year, from any source whatsoever, with the understanding that the total specified annual quantities to be delivered through the All-American Canal shall not be reduced because of the exercise of this option, unless such reduction be requested by the Mexican Section, provided that the exercise of this option shall not have the effect of increasing the total amount of scheduled water to be delivered to Mexico.

D. In any year in which there shall exist in the river water in excess of that necessary to satisfy the requirements in the United States and the guaranteed quantity of 1,500,000 acre-feet (1,850,234,000 cubic meters) allotted to Mexico, the United States hereby declares its intention to cooperate with Mexico in attempting to supply additional quantities of water through the All-American Canal as such additional quantities are desired by Mexico, if such use of the Canal and facilities will not be detrimental to the United States, provided that the delivery of any additional quantities through the All-American Canal shall not have the effect of increasing the total scheduled deliveries to Mexico. Mexico hereby declares its intention to cooperate with the United States by attempting to curtail deliveries of water through the All-American Canal in years of limited supply, if such curtailment can be accomplished without detriment to Mexico and is necessary to allow full use of all available water supplies, provided that such curtailment shall not have the effect of reducing the total scheduled deliveries of water to Mexico.

E. In any year in which there shall exist in the river water in excess of that necessary to satisfy the requirements in the United States and the

guaranteed quantity of 1,500,000 acre-feet (1,850,234,000 cubic meters) allotted to Mexico, the United States Section shall so inform the Mexican Section in order that the latter may schedule such surplus water to complete a quantity up to a maximum of 1,700,000 acre-feet (2,096,931,000 cubic meters). In this circumstance the total quantities to be delivered under Schedules I and II shall be increased in proportion to their respective total quantities and the two schedules thus increased shall be subject to the same limitations as those established for each under paragraph A of this Article.

F. Subject to the limitations as to rates of deliveries and total quantities set out in Schedules I and II, Mexico shall have the right, upon thirty days' notice in advance to the United States Section, to increase or decrease each monthly quantity prescribed by those schedules by not more than 20% of the monthly quantity.

G. The total quantity of water to be delivered under Schedule I of paragraph A of this Article may be increased in any year if the amount to be delivered under Schedule II is correspondingly reduced and if the limitations as to rates of delivery under each schedule are correspondingly increased and reduced.

IV—Tijuana River

Article 16

In order to improve existing uses and to assure any feasible further development, the Commission shall study and investigate, and shall submit to the two Governments for their approval:

(1) Recommendations for the equitable distribution between the two countries of the waters of the Tijuana River system;

(2) Plans for storage and flood control to promote and develop domestic, irrigation and other feasible uses of the waters of this system;

(3) An estimate of the cost of the proposed works and the manner in which the construction of such works or the cost thereof should be divided between the two Governments;

(4) Recommendations regarding the parts of the works to be operated and maintained by the Commission and the parts to be operated and maintained by each Section.

The two Governments through their respective Sections of the Commission shall construct such of the proposed works as are approved by both Governments, shall divide the work to be done or the cost thereof, and shall distribute between the two countries the waters of the Tijuana River in the proportions approved by the two Governments. The two Governments agree to pay in equal shares the costs of joint operation and maintenance of the works involved, and each Government agrees to pay the cost of operation and maintenance of the works assigned to it for such purpose.

V—General Provisions

Article 17

The use of the channels of the international rivers for the discharge of flood or other excess waters shall be free and not subject to limitation by

either country, and neither country shall have any claim against the other in respect of any damage caused by such use. Each Government agrees to furnish the other Government, as far in advance as practicable, any information it may have in regard to such extraordinary discharges of water from reservoirs and flood flows on its own territory as may produce floods on the territory of the other.

Each Government declares its intention to operate its storage dams in such manner, consistent with the normal operations of its hydraulic systems, as to avoid as far as feasible, material damage in the territory of the other.

Article 18

Public use of the water surface of lakes formed by international dams shall, when not harmful to the services rendered by such dams, be free and common to both countries, subject to the police regulations of each country in its territory, to such general regulations as may appropriately be prescribed and enforced by the Commission with the approval of the two Governments for the purpose of the application of the provisions of this Treaty, and to such regulations as may appropriately be prescribed and enforced for the same purpose by each Section of the Commission with respect to the areas and borders of such parts of those lakes as lie within its territory. Neither Government shall use for military purposes such water surface situated within the territory of the other country except by express agreement between the two Governments.

Article 19

The two Governments shall conclude such special agreements as may be necessary to regulate the generation, development and disposition of electric power at international plants, including the necessary provisions for the export of electric current.

Article 20

The two Governments shall, through their respective Sections of the Commission, carry out the construction of works allotted to them. For this purpose the respective Sections of the Commission may make use of any competent public or private agencies in accordance with the laws of the respective countries. With respect to such works as either Section of the Commission may have to execute on the territory of the other, it shall, in the execution of such works, observe the laws of the place where such works are located or carried out, with the exceptions hereinafter stated.

All materials, implements, equipment and repair parts intended for the construction, operation and maintenance of such works shall be exempt from import and export customs duties. The whole of the personnel employed either directly or indirectly on the construction, operation or maintenance of the works may pass freely from one country to the other for the purpose of going to and from the place of location of the works, without any immigration restrictions, passports or labor requirements. Each Government shall furnish, through its own Section of the Commission, convenient means of identification to the personnel employed by it on the aforesaid works and verification certificates covering all materials, implements, equipment and repair parts intended for the works.

Each Government shall assume responsibility for and shall adjust ex-

clusively in accordance with its own laws all claims arising within its territory in connection with the construction, operation or maintenance of the whole or of any part of the works herein agreed upon, or of any works which may, in the execution of this Treaty, be agreed upon in the future.

Article 21

The construction of the international dams and the formation of artificial lakes shall produce no change in the fluvial international boundary, which shall continue to be governed by existing treaties and conventions in force between the two countries.

The Commission shall, with the approval of the two Governments, establish in the artificial lakes, by buoys or by other suitable markers, a practicable and convenient line to provide for the exercise of the jurisdiction and control vested by this Treaty in the Commission and its respective Sections. Such line shall also mark the boundary for the application of the customs and police regulations of each country.

Article 22

The provisions of the Convention between the United States and Mexico for the rectification of the Rio Grande (Rio Bravo) in the El Paso-Juárez Valley signed on February 1, 1933, shall govern so far as delimitation of the boundary, distribution of jurisdiction and sovereignty, and relations with private owners are concerned, in any places where works for the artificial channeling, canalization or rectification of the Rio Grande (Rio Bravo) and the Colorado River are carried out.

Article 23

The two Governments recognize the public interest attached to the works required for the execution and performance of this Treaty and agree to acquire, in accordance with their respective domestic laws, any private property that may be required for the construction of the said works, including the main structures and their appurtenances and the construction materials therefor, and for the operation and maintenance thereof, at the cost of the country within which the property is situated, except as may be otherwise specifically provided in this Treaty.

Each Section of the Commission shall determine the extent and location of any private property to be acquired within its own country and shall make the necessary request upon its Government for the acquisition of such property.

The Commission shall determine the cases in which it shall become necessary to locate works for the conveyance of water or electrical energy and for the servicing of any such works, for the benefit of either of the two countries, in the territory of the other country, in order that such works can be built pursuant to agreement between the two Governments. Such works shall be subject to the jurisdiction and supervision of the Section of the Commission within whose country they are located.

Construction of the works built in pursuance of the provisions of this Treaty shall not confer upon either of the two countries any rights either of property or of jurisdiction over any part whatsoever of the territory of the other. These works shall be part of the territory and be the property of the country wherein they are situated. However, in the case of any incidents

occurring on works constructed across the limitrophe part of a river and with supports on both banks, the jurisdiction of each country shall be limited by the center line of such works, which shall be marked by the Commission, without thereby changing the international boundary.

Each Government shall retain, through its own Section of the Commission and within the limits and to the extent necessary to effectuate the provisions of this Treaty, direct ownership, control and jurisdiction within its own territory and in accordance with its own laws, over all real property—including that within the channel of any river—rights of way and rights *in rem*, that it may be necessary to enter upon and occupy for the construction, operation or maintenance of all the works constructed, acquired or used pursuant to this Treaty. Furthermore, each Government shall similarly acquire and retain in its own possession the titles, control and jurisdiction over such works.

Article 24

The International Boundary and Water Commission shall have, in addition to the powers and duties otherwise specifically provided in this Treaty, the following powers and duties:

(*a*) To initiate and carry on investigations and develop plans for the works which are to be constructed or established in accordance with the provisions of this and other treaties or agreements in force between the two Governments dealing with boundaries and international waters, to determine, as to such works, their location, size, kind and characteristic specifications; to estimate the cost of such works; and to recommend the division of such costs between the two Governments, the arrangements for the furnishing of the necessary funds, and the dates for the beginning of the works, to the extent that the matters mentioned in this subparagraph are not otherwise covered by specific provisions of this or any other Treaty.

(*b*) To construct the works agreed upon or to supervise their construction and to operate and maintain such works or to supervise their operation and maintenance, in accordance with the respective domestic laws of each country. Each Section shall have, to the extent necessary to give effect to the provisions of this Treaty, jurisdiction over the works constructed exclusively in the territory of its country whenever such works shall be connected with or shall directly affect the execution of the provisions of this Treaty.

(*c*) In general to exercise and discharge the specific powers and duties entrusted to the Commission by this and other treaties and agreements in force between the two countries, and to carry into execution and prevent the violation of the provisions of those treaties and agreements. The authorities of each country shall aid and support the exercise and discharge of these powers and duties, and each Commissioner shall invoke when necessary the jurisdiction of the courts or other appropriate agencies of this country to aid in the execution and enforcement of these powers and duties.

(*d*) To settle all differences that may arise between the two Governments with respect to the interpretation or application of this Treaty, subject to the approval of the two Governments. In any case in which the Commissioners do not reach an agreement, they shall so inform their re-

spective governments reporting their respective opinions and the grounds therefor and the points upon which they differ, for discussion and adjustment of the difference through diplomatic channels and for application where proper of the general or special agreements which the two Governments have concluded for the settlement of controversies.

(*e*) To furnish the information requested of the Commissioners jointly by the two Governments on matters within their jurisdiction. In the event that the request is made by one Government alone, the Commissioner of the other Government must have the express authorization of his Government in order to comply with such request.

(*f*) The Commission shall construct, operate and maintain upon the limitrophe parts of the international streams, and each Section shall severally construct, operate and maintain upon the parts of the international streams and their tributaries within the boundaries of its own country, such stream gauging stations as may be needed to provide the hydrographic data necessary or convenient for the proper functioning of this Treaty. The data so obtained shall be compiled and periodically exchange between the two Sections.

(*g*) The Commission shall submit annually a joint report to the two Governments on the matters in its charge. The Commission shall also submit to the two Governments joint reports on general or any particular matters at such other times as it may deem necessary or as may be requested by the two Governments.

Article 25

Except as otherwise specifically provided in this Treaty, Articles III and VII of the Convention of March 1, 1889 shall govern the proceedings of the Commission in carrying out the provisions of this Treaty. Supplementary thereto the Commission shall establish a body of rules and regulations to govern its procedure, consistent with the provisions of this Treaty and of Articles III and VII of the Convention of March 1, 1889 and subject to the approval of both Governments.

Decisions of the Commission shall be recorded in the form of Minutes done in duplicate in the English and Spanish languages, signed by each Commissioner and attested by the Secretaries, and copies thereof forwarded to each Government within three days after being signed. Except where the specific approval of the two Governments is required by any provision of this Treaty, if one of the Governments fails to communicate to the Commission its approval or disapproval of a decision of the Commission within thirty days reckoned from the date of the Minute in which it shall have been pronounced, the Minute in question and the decisions which it contains shall be considered to be approved by that Government. The Commissioners, within the limits of their respective jurisdiction, shall execute the decisions of the Commission that are approved by both Governments.

If either Government disapproves a decision of the Commission the two Governments shall take cognizance of the matter, and if an agreement regarding such matter is reached between the two Governments, the agreement shall be communicated to the Commissioners, who shall take such further proceedings as may be necessary to carry out such agreement.

V—Transitory Provisions

Article 26

During a period of eight years from the date of the entry into force of this Treaty, or until the beginning of operation of the lowest major international reservoirs on the Rio Grande (Rio Bravo), should it be placed in operation prior to the expiration of said period, Mexico will cooperate with the United States to relieve, in times of drought, any lack of water needed to irrigate the lands now under irrigation in the Lower Rio Grande Valley in the United States, and for this purpose Mexico will release water from El Azúcar reservoir on the San Juan River and allow that water to run through its system of canals back into the San Juan River in order that the United States may divert such water from the Rio Grande (Rio Bravo). Such releases shall be made on condition that they do not affect the Mexican irrigation system, provided that Mexico shall, in any event, except in cases of extraordinary drought or serious accident to its hydraulic works, release and make available to the United States for its use the quantities requested, under the following conditions: that during the said eight years there shall be made available a total of 160,000 acre-feet (197,358,000 cubic meters) and up to 40,000 acre-feet (49,340,000 cubic meters) in any one year; that the water shall be made available as requested at rates not exceeding 750 cubic feet 21.2 cubic meters) per second; that when the rates of flow requested and made available have been more than 500 cubic feet (14.2 cubic meters) per second the period of release shall not extend beyond fifteen consecutive days; and that at least thirty days must elapse between any two periods of release during which rates of flow in excess of 500 cubic feet (14.2 cubic meters) per second have been requested and made available. In addition to the guaranteed flow, Mexico shall release from El Azúcar reservoir and conduct through its canal system and the San Juan River, for use in the United States during periods of drought and after satisfying the needs of Mexican users, any excess water that does not in the opinion of the Mexican Section have to be stored and that may be needed for the irrigation of lands which were under irrigation during the year 1943 in the Lower Rio Grande Valley in the United States.

Article 27

The provisions of Article 10, 11, and 15 of this Treaty shall not be applied during a period of five years from the date of the entry into force of this Treaty, or until the Davis dam and the major Mexican diversion structure on the Colorado River are placed in operation, should these works be placed in operation prior to the expiration of said period. In the meantime Mexico may construct and operate at its expense a temporary diversion structure in the bed of the Colorado River in territory of the United States for the purpose of diverting water into the Alamo Canal, provided that the plans for such structure and the construction and operation thereof shall be subject to the approval of the United States Section. During this period of time the United States will make available in the river at such diversion structure river flow now currently required in the United States, and the United States will cooperate with Mexico to the end that the latter may satisfy its irrigation requirements within the limits of those requirements for lands irrigated in Mexico from the Colorado River during the year 1943.

. . .

PROTOCOL

The Government of the United States of America and the Government of the United Mexican States agree and understand that:

Wherever, by virtue of the provisions of the Treaty between the United States of America and the United Mexican States, signed in Washington on February 3, 1944, relating to the utilization of the waters of the Colorado and Tijuana Rivers and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico, specific functions are imposed on, or exclusive jurisdiction is vested in, either of the Sections of the International Boundary and Water Commission, which involve the construction or use of works for storage or conveyance of water, flood control, stream gauging, or for any other purpose, which are situated wholly within the territory of the country of that Section, and which are to be used only partly for the performance of treaty provisions, such jurisdiction shall be exercised, and such functions, including the construction, operation and maintenance of the said works, shall be performed and carried out by the Federal agencies of that country which now or hereafter may be authorized by domestic law to construct, or to operate and maintain, such works. Such functions or jurisdictions shall be exercised in conformity with the provisions of the Treaty and in cooperation with the respective Section of the Commission, to the end that all international obligations and functions may be coordinated and fulfilled.

The works to be constructed or used on or along the boundary, and those to be constructed or used exclusively for the discharge of treaty stipulations, shall be under the jurisdiction of the Commission or of the respective Section, in accordance with the provisions of the Treaty. In carrying out the construction of such works the Sections of the Commission may utilize the services of public or private organizations in accordance with the laws of their respective countries.

This Protocol, which shall be regarded as an integral part of the aforementioned Treaty signed in Washington on February 3, 1944, shall be ratified and the ratifications thereof shall be exchanged in Washington. This Protocol shall be effective beginning with the day of the entry into force of the Treaty and shall continue effective so long as the Treaty remains in force.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS a treaty between the United States of America and the United Mexican States relating to the utilization of the waters of the Colorado and Tijuana Rivers, and of the Rio Grande (Rio Bravo) from Fort Quitman, Texas, to the Gulf of Mexico, was signed by their respective Plenipotentiaries in Washington on February 3, 1944, and a protocol supplementary to the said treaty was signed by their respective Plenipotentiaries in Washington on November 14, 1944, the originals of which treaty and protocol, in the English and Spanish languages, are word for word as follows:

AND WHEREAS the Senate of the United States of America by their Resolution of April 18, 1945, two-thirds of the Senators present concurring therein, did advise and consent to the ratification of the said treaty and protocol,

subject to certain understandings, the text of which Resolution is word for word as follows:

" *Resolved (two-thirds of the Senators present concurring therein)*, That the Senate advise and consent to the ratification of Executive A, Seventy-eighth Congress, second session, a treaty between the United States of America and the United Mexican States, signed at Washington on February 3, 1944, relating to the utilization of the waters of the Colorado and Tijuana Rivers and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico, and Executive H, Seventy-eighth Congress, second session a protocol, signed at Washington on November 14, 1944, supplementary to the treaty, subject to the following understandings, and that these understandings will be mentioned in the ratification of this treaty as conveying the true meaning of the treaty, and will in effect form a part of the treaty:

" (*a*) That no commitment for works to be built by the United States in whole or in part at its expense, or for expenditures by the United States, other than those specifically provided for in the treaty, shall be made by the Secretary of State of the United States, the Commissioner of the United States Section of the International Boundary and Water Commission, the United States Section of said Commission, or any other officer or employee of the United States, without prior approval of the Congress of the United States. It is understood that the works to be built by the United States, in whole or in part at its expense, and the expenditures by the United States, which are specifically provided for in the treaty, are as follows:

" 1. The joint construction of the three storage and flood-control dams on the Rio Grande below Fort Quitman, Texas, mentioned in article 5 of the treaty.

" 2. The dams and other joint works required for the diversion of the flow of the Rio Grande mentioned in subparagraph II of article 5 of the treaty, it being understood that the commitment of the United States to make expenditures under this subparagraph is limited to its share of the cost of one dam and works appurtenant thereto.

" 3. Stream-gauging stations which may be required under the provisions of section (*j*) of article 9 of the treaty and of subparagraph (*d*) of article 12 of the treaty.

" 4. The Davis Dam and Reservoir mentioned in subparagraph (*b*) of article 12 of the treaty.

"5. The joint flood-control investigations, preparation of plans, and reports on the Rio Grande below Fort Quitman required by the provisions of article 6 of the treaty.

" 6. The joint flood-control investigations, preparations of plans, and reports on the lower Colorado River between the Imperial Dam and the Gulf of California required by article 13 of the treaty.

" 7. The joint investigations, preparation of plans, and reports on the establishment of hydroelectric plants at the international dams on the Rio Grande below Fort Quitman provided for by article 7 of the treaty.

" 8. The studies, investigations, preparation of plans, recommendations, reports, and other matters dealing with the Tijuana River system provided for by the first paragraph (including the numbered subparagraphs) of article 16 of the treaty.

" (*b*) Insofar as they affect persons and property in the territorial limits of the United States, the powers and functions of the Secretary of State of the United States, the Commissioner of the United States Section of the International Boundary and Water Commission, the United States Section of said Commission, and any other officer or employee of the United States, shall be subject to the statutory and constitutional controls and processes. Nothing contained in the treaty or protocol shall be construed as impairing the power of the Congress of the United States to define the terms of office of members of the United States Section of the International Boundary and Water Commission or to provide for their appointment by the President by and with the advice and consent of the Senate or otherwise.

" (*c*) That nothing contained in the treaty or protocol shall be construed as authorizing the Secretary of State of the United States, the Commissioner of the United States Section of the International Boundary and Water Commission, or the United States Section of said Commission, directly or indirectly to alter or control the distribution of water to users within the territorial limits of any of the individual States.

" (*d*) That 'international dam or reservoir' means a dam or reservoir built across the common boundary between the two countries.

" (*e*) That the words ' international plants', appearing in article 19, mean only hydroelectric generating plants in connection with dams built across the common boundary between the two countries.

" (*f*) That the words 'electric current', appearing in article 19, mean hydroelectric power generated at an international plant.

" (*g*) That by the use of the words 'The jurisdiction of the Commission shall extend to the limitrophe parts of the Rio Grande (Rio Bravo) and the Colorado River, to the land boundary between the two countries, and to works located upon their common boundary * * *' in the first sentence of the fifth paragraph of article 2, is meant: 'The jurisdiction of the Commission shall extend and be limited to the limitrophe parts of the Rio Grande (Rio Bravo) and the Colorado River, to the land boundary between the two countries, and to works located upon their common boundary * * *.'

" (*h*) The word 'agreements' whenever used in subparagraph (*a*), (*c*), and (*d*) of article 24 of the treaty shall refer only to agreements entered into pursuant to and subject to the provisions and limitations of treaties in force between the United States of America and the United Mexican States.

" (*i*) The word 'disputes' in the second paragraph of article 2 shall have reference only to disputes between the Governments of the United States of America and the United Mexican States.

" (*j*) First, that the one million seven hundred thousand acre-feet specified in subparagraph (*b*) of article 10 includes and is not in addition to the one million five hundred thousand acre-feet, the delivery of which to Mexico is guaranteed in subparagraph (*a*) of article 10; second, that the one million five hundred thousand acre-feet specified in three places in said subparagraph (*b*) is identical with the one million five hundred thousand acre-feet specified in said subparagraph (*a*); third, that any use by Mexico under said subparagraph (*b*) of quantities of water arriving at the Mexican points of diversion in excess of said one million five

hundred thousand acre-feet shall not give rise to any future claim of right by Mexico in excess of said guaranteed quantity of one million five hundred thousand acre-feet of water.

" (*k*) The United States recognizes a duty to require that the protective structures to be constructed under article 12, paragraph (*a*), of this treaty, are so constructed, operated, and maintained as to adequately prevent damage to property and lands within the United States from the construction and operation of the diversion structure referred to in said paragraph."

AND WHEREAS the said treaty and protocol were duly ratified by the President of the United States of America on November 1, 1945, in pursuance of the aforesaid advice and consent of the Senate and subject to the aforesaid understandings on the part of the United States of America;

AND WHEREAS the said treaty and protocol were duly ratified by the President of the United Mexican States on October 16, 1945, in pursuance and according to the terms of a Decree of September 27, 1945, of the Senate of the United Mexican States approving the said treaty and protocol and approving the said understandings on the part of the United States of America in all that refers to the rights and obligations between the parties;

AND WHEREAS it is provided in Article 28 of the said treaty that the treaty shall enter into force on the day of the exchange of ratifications;

AND WHEREAS it is provided in the said protocol that the protocol shall be regarded as an integral part of the said treaty and shall be effective beginning with the day of the entry into force of the said treaty;

AND WHEREAS the respective instruments of ratification of the said treaty and protocol were duly exchanged, and a protocol of exchange of instruments of ratification was signed in the English and Spanish languages, by the respective Plenipotentiaries of the United States of America and the United Mexican States on November 8, 1945, the English text of which protocol of exchange of instruments of ratification reads in part as follows:

" The ratification by the Government of the United States of America of the treaty and protocol aforesaid recites in their entirety the understandings contained in the resolution of April 18, 1945, of the Senate of the United States of America advising and consenting to ratification, the text of which resolution was communicated by the Government of the United States of America to the Government of the United Mexican States. The ratification by the Government of the United Mexican States of the treaty and protocol aforesaid is effected, in the terms of its instrument of ratification, in conformity to the Decree of September 27, 1945, of the Senate of the United Mexican States approving the treaty and protocol aforesaid and approving also the aforesaid understandings on the part of the United States of America in all that refers to the rights and obligations between both parties, and in which the Mexican Senate refrains from considering, because it is not competent to pass judgment upon them, the provisions which relate exclusively to the internal application of the treaty within the United States of America and by its own authorities, and which are included in the understandings set forth under the letter (*a*) in its first part to the period preceding the words ' It is understood ' and under the letters (*b*) and (*c*)."

78. AGREEMENT[1] TO PROCEED WITH THE CONSTRUCTION OF AMISTAD DAM ON THE RIO GRANDE TO FORM PART OF THE SYSTEM OF INTERNATIONAL STORAGE DAMS PROVIDED FOR BY THE WATER TREATY OF FEBRUARY 3, 1944. SIGNED AT CIUDAD ACUÑA, OCTOBER 24, 1960[2]

Dwight D. Eisenhower, President of the United States of America, and Adolfo López Mateos, President of the United Mexican States, inspired by the true friendship that binds the Governments and peoples of the United States of America and Mexico and by the fruitful cooperation that has characterized their relations,

Considering that international hydraulic works constitute one of the most valued examples of this cooperation, the bases of which were established in the Water Treaty between the United States of America and Mexico signed on February 3, 1944;

Considering that Amistad Dam will complement Falcón Dam and will form part of the sytem of international dams provided for in the above-mentioned treaty;

Considering that Amistad Dam will serve to control floods of the Rio Grande, which repeatedly have caused very serious damage to border communities and agricultural areas of both countries; to provide additional waters for irrigation needs of both countries; and to permit production of hydroelectric energy as required;

Have agreed that:

The Government of the United States of America and the Government of Mexico will proceed with the construction of Amistad Dam as soon as possible after the two Governments have approved the technical recommendations that are to be made for that purpose by the International Boundary and Water Commission, United States and Mexico.

Done in two copies in the English and Spanish languages at Ciudad Acuña, Coahuila, Mexico, October 24, 1960.

DWIGHT D. EISENHOWER A. L. MATEOS

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[1] Came into force upon signature.

[2] *United States Treaties and other International Agreements*, TIAS 4624.

United Kingdom—United States

79. TREATY[1] BETWEEN GREAT BRITAIN AND THE UNITED STATES RELATING TO BOUNDARY WATERS, AND QUESTIONS ARISING BETWEEN THE UNITED STATES AND CANADA, SIGNED AT WASHINGTON, JANUARY 11, 1909[2]

. . . to prevent disputes regarding the use of boundary waters and to settle all questions which are now pending. . . and to make provision for the adjustment and settlement of all such questions as may hereafter arise. . .

. . .

Preliminary Article. For the purposes of this Treaty, boundary waters are defined as the waters from main shore to main shore of the lakes and rivers and connecting waterways, or the portions thereof, along which the international boundary between the United States and the Dominion of Canada passes, including all bays, arms, and inlets thereof, but not including tributary waters which in their natural channels would flow into such lakes, rivers, and waterways, or waters flowing from such lakes, rivers, and waterways, or the waters of rivers flowing across the boundary.

. . .

Article II. Each of the High Contracting Parties reserves to itself or to the several State Governments on the one side and the Dominion or Provincial Governments on the other, as the case may be, subject to any treaty provisions now existing with respect thereto, the exclusive jurisdiction and control over the use and diversion, whether temporary or permanent, of all waters on its own side of the line which in their natural channels would flow across the boundary or into boundary waters; but it is agreed that any interference with or diversion from their natural channel of such waters on either side of the boundary, resulting in any injury on the other side of the boundary, shall give rise to the same rights and entitle the injured parties to the same legal remedies as if such injury took place in the country where such diver-

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[1] Came into force May 5, 1910 by the exchange of ratifications. The Senate of the United States by their resolution of March 3, 1909, resolved, as a part of its ratification " that the United States approves this Treaty with the understanding that nothing in this Treaty shall be construed as affecting, or changing, any existing territorial, or riparian rights in the water, or rights of the owners of lands under water, on either side of the international boundary at the rapids of the St. Mary's river at Sault Ste Marie, in the use of the waters flowing over such lands, subject to the requirements of navigation in boundary waters and of navigation canals, and without prejudice to the existing right of the United States and Canada, each to use the waters of the St. Mary's River, within its own territory; and further, that nothing in this Treaty shall be construed to interfere with the drainage of wet, swamp, and overflowed lands into streams flowing into boundary waters, and that this interpretation will be mentioned in the ratification of this Treaty as conveying the true meaning of the Treaty, and will, in effect, form part of the Treaty." [De Martens, *Nouveau Recueil Général de Traités*, 3ème série, tome IV, p. 208 (note).] This reservation was accepted by Great Britain by the " Protocol of Exchange " below.

[2] *British and Foreign State Papers*, vol. 102, p. 137.

sion or interference occurs; but this provision shall not apply to cases already existing or to cases expressly covered by special agreement between the parties hereto.

It is understood, however, that neither of the High Contracting Parties intends by the foregoing provision to surrender any right which it may have to object to any interference with or diversions of waters on the other side of the boundary the effect of which would be productive of material injury to the navigation interests on its own side of the boundary.

Article III. It is agreed that, in addition to the uses, obstructions and diversions heretofore permitted or hereafter provided for by special agreement between the Parties hereto, no further or other uses or obstructions or diversions, whether temporary or permanent, of boundary waters on either side of the line, affecting the natural level or flow of boundary waters on the other side of the line, shall be made except by authority of the United States or the Dominion of Canada within their respective jurisdictions and with the approval, as hereinafter provided, of a joint commission, to be known as the International Joint Commission.

The foregoing provisions are not intended to limit or interfere with the existing rights of the Government of the United States on the one side and the Government of the Dominion of Canada on the other, to undertake and carry on governmental works in boundary waters for the deepening of channels, the construction of breakwaters, the improvement of harbours, and other governmental works for the benefit of commerce and navigation, provided that such works are wholly on its own side of the line and do not materially affect the level or flow of the boundary waters on the other, nor are such provisions intended to interfere with the ordinary use of such waters for domestic and sanitary purposes.

Article IV. The High Contracting Parties agree that, except in cases provided for by special agreement between them, they will not permit the construction or maintenance on their respective sides of the boundary of any remedial or protective works or any dams or other obstructions in waters flowing from boundary waters or in waters at a lower level than the boundary in rivers flowing across the boundary, the effect of which is to raise the natural level of waters on the other side of the boundary unless the construction or maintenance thereof is approved by the aforesaid International Joint Commission.

It is further agreed that the waters herein defined as boundary waters and waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other.

Article V. The High Contracting Parties agree that it is expedient to limit the diversion of waters from the Niagara River so that the level of Lake Erie and the flow of the stream shall not be appreciably affected. It is the desire of both Parties to accomplish this object with the least possible injury to investments which have already been made in the construction of power plants on the United States side of the river under grants of authority from the State of New York, and on the Canadian side of the river under licences authorized by the Dominion of Canada and the Province of Ontario.

So long as this Treaty shall remain in force, no diversion of the waters of the Niagara River above the Falls from the natural course and stream

thereof shall be permitted except for the purposes and to the extent hereinafter provided.

. . .

Article VI. The High Contracting Parties agree that the St. Mary and Milk Rivers and their tributaries (in the State of Montana and the Provinces of Alberta and Saskatchewan) are to be treated as one stream for the purposes of irrigation and power, and the waters thereof shall be apportioned equally between the two countries, but in making such equal apportionment more than half may be taken from one river and less than half from the other, by either country, so as to afford a more beneficial use to each. It is further agreed that in the division of such waters during the irrigation season, between the 1st of April and 31st October, inclusive, annually, the United States is entitled to a prior appropriation of 500 cubic feet per second of the waters of the Milk River, or so much of such amount as constitutes three-fourths of its natural flow, and that Canada is entitled to a prior appropriation of 500 cubic feet per second of the flow of St. Mary River, or so much of such amount as constitutes three fourths of its natural flow.

The channel of the Milk River in Canada may be used at the convenience of the United States for the conveyance, while passing through Canadian territory, of waters diverted from the St. Mary River. The provisions of Article II of this Treaty shall apply to any injury resulting to property in Canada from the conveyance of such waters through the Milk River.

The measurement and apportionment of the water to be used by each country shall from time to time be made jointly by the properly constituted reclamation officers of the United States and the properly constituted irrigation officers of His Majesty under the direction of the International Joint Commission.

Article VII. The High Contracting Parties agree to establish and maintain an International Joint Commission of the United States and Canada, composed of six commissioners, three on the part of the United States, appointed by the President thereof, and three on the part of the United Kingdom, appointed by His Majesty on the recommendation of the Governor in Council of the Dominion of Canada.

Article VIII. This International Joint Commission shall have jurisdiction over and shall pass upon all cases involving the use or obstruction or diversion of the waters, with respect to which, under Articles III and IV of this Treaty, the approval of this Commission is required, and in passing upon such cases the Commission shall be governed by the following rules and principles which are adopted by the High Contracting Parties for this purpose:

The High Contracting Parties shall have, each on its own side of the boundary, equal and similar rights in the use of the waters hereinbefore defined as boundary waters.

The following order of precedence shall be observed among the various uses enumerated hereinafter for these waters, and no use shall be permitted which tends materially to conflict with or restrain any other use which is given preference over it in this order of precedence:

1. Uses for domestic and sanitary purposes;

2. Uses for navigation, including the service of canals for the purposes of navigation;

3. Uses for power and for irrigation purposes.

The foregoing provisions shall not apply to or disturb any existing uses of boundary waters on either side of the boundary.

The requirement for an equal division may, in the discretion of the Commission, be suspended in the cases of temporary diversions along boundary waters at points where such equal division cannot be made advantageously on account of local conditions, and where such diversion does not diminish elsewhere the amount available for use on the other side.

The Commission, in its discretion, may make its approval in any case conditional upon the construction of remedial or protective works to compensate, so far as possible, for the particular use or diversion proposed, and in such cases may require that suitable and adequate provision, approved by the Commission, be made for the protection and indemnity against injury of any interests on either side of the boundary.

In cases involving the elevation of the natural level of waters on either side of the line as a result of the construction or maintenance on the other side of remedial or protective works or dams or other obstructions in boundary waters or in waters flowing therefrom or in waters below the boundary in rivers flowing across the boundary, the Commission shall require, as a condition of its approval thereof, that suitable and adequate provision, approved by it, be made for the protection and indemnity of all interests on the other side of the line which may be injured thereby.

The majority of the Commissioners shall have power to render a decision. In case the Commission is evenly divided upon any question or matter presented to it for decision, separate reports shall be made by the Commissioners on each side to their own Government. The High Contracting Parties shall thereupon endeavour to agree upon an adjustment of the question or matter of difference, and if an agreement is reached between them, it shall be reduced to writing in the form of a protocol, and shall be communicated to the Commissioners, who shall take such further proceedings as may be necessary to carry out such agreement.

Article IX. The High Contracting Parties further agree that any other questions or matters of difference arising between them involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other, along the common frontier between the United States and the Dominion of Canada, shall be referred from time to time to the International Joint Commission for examination and report whenever either the Government of the United States or the Government of the Dominion of Canada shall request that such questions or matters of difference be so referred.

The International Joint Commission is authorized in each case so referred to examine into and report upon the facts and circumstances of the particular questions and matters referred, together with such conclusions and recommendations as may be appropriate, subject, however, to any restrictions or exceptions which may be imposed with respect thereto by the terms of the reference.

Such reports of the Commission shall not be regarded as decisions of the questions or matters so submitted either on the facts or the law, and shall in no way have the character of an arbitral award.

The Commission shall make a joint report to both Governments in all

cases in which all or a majority of the Commissioners agree, and in case of disagreement the minority may make a joint report to both Governments, or separate reports to their respective Governments.

In case the Commission is evenly divided upon any question or matter referred to it for report, separate reports shall be made by the Commissioners on each side to their own Government.

Article X. Any questions or matters of difference arising between the High Contracting Parties involving the rights, obligations, or interests of the United States or of the Dominion of Canada either in relation to each other or to their respective inhabitants, may be referred for decision to the International Joint Commission by consent of the two Parties, it being understood that on the part of the United States any such action will be by and with the advice and consent of the Senate, and on the part of His Majesty's Government with the consent of the Governor-General in Council. In each case so referred the said Commission is authorized to examine into and report upon the facts and circumstances of the particular questions and matters referred, together with such conclusions and recommendations as may be appropriate, subject, however, to any restrictions or exceptions which may be imposed with respect thereto by the terms of the reference.

A majority of the said Commission shall have power to render a decision or finding upon any of the questions or matters so referred.

If the said Commission is equally divided or otherwise unable to render a decision or finding as to any questions or matters so referred, it shall be the duty of the Commissioners to make a joint report to both Governments, or separate reports to their respective Governments, showing the different conclusions arrived at with regard to the matters or questions so referred, which questions or matters shall thereupon be referred for decision by the High Contracting Parties to an umpire chosen in accordance with the procedure prescribed in the 4th, 5th, and 6th paragraphs of Article XLV of the Hague Convention for the pacific settlement of international disputes, dated the 18th October, 1907. Such umpire shall have power to render a final decision with respect to those matters and questions so referred on which the Commission failed to agree.

Article XI. A duplicate original of all decisions rendered and joint reports made by the Commission shall be transmitted to and filed with the Secretary of State of the United States and the Governor-General of the Dominion of Canada, and to them shall be addressed all communications of the Commission.

Article XII. The International Joint Commission shall meet and organize at Washington promptly after the members thereof are appointed, and when organized the Commission may fix such times and places for its meetings as may be necessary, subject at all times to special call or direction by the two Governments. Each Commissioner, upon the first joint meeting of the Commission after his appointment, shall, before proceeding with the work of the Commission, make and subscribe a solemn declaration in writing that he will faithfully and impartially perform the duties imposed upon him under this Treaty, and such declaration shall be entered on the records of the proceedings of the Commission.

The United States and Canadian sections of the Commission may each appoint a secretary, and these shall act as joint secretaries of the Commis-

sion at its joint sessions, and the Commission may employ engineers and clerical assistants from time to time as it may deem advisable. The salaries and personal expenses of the Commission and of the secretaries shall be paid by their respective Governments, and all reasonable and necessary joint expenses of the Commission incurred by it shall be paid in equal moieties by the High Contracting Parties.

The Commission shall have power to administer oaths to witnesses and to take evidence on oath whenever deemed necessary in any proceeding, or enquiry, or matter within its jurisdiction under this Treaty, and all parties interested therein shall be given convenient opportunity to be heard, and the High Contracting Parties agree to adopt such legislation as may be appropriate and necessary to give the Commission the powers above mentioned on each side of the boundary, and to provide for the issue of subpoenas and for compelling the attendance of witnesses in proceedings before the Commission. The Commission may adopt such rules of procedure as shall be in accordance with justice and equity, and may make such examination in person and through agents or employees as may be deemed advisable.

Article XIII. In all cases where special agreements between the High Contracting Parties hereto are referred to in the foregoing Articles, such agreements are understood and intended to include not only direct agreements between the High Contracting Parties, but also any mutual arrangement between the United States and the Dominion of Canada expressed by concurrent or reciprocal legislation on the part of Congress and the Parliament of the Dominion.

. . .

Protocol of Exchange[1]

On proceeding to the exchange of the ratifications of the Treaty signed at Washington on the 11th January, 1909, between Great Britain and the United States, relating to boundary waters and questions arising along the boundary between the United States and the Dominion of Canada, the undersigned Plenipotentiaries, duly authorized thereto by their respective Governments, hereby declare that nothing in this Treaty shall be construed as affecting or changing any existing territorial or riparian rights in the water, or rights of the owners of lands under water, on either side of the international boundary at the rapids of the St. Mary's River at Sault Ste. Marie, in the use of the waters flowing over such lands, subject to the requirements of navigation in boundary waters and of navigation canals, and without prejudice to the existing right of the United States and Canada each to use the waters of the St. Mary's River within its own territory; and further, that nothing in this Treaty shall be construed to interfere with the drainage of wet, swamp, and overflowed lands into streams flowing into boundary waters, and also that this declaration shall be deemed to have equal force and effect as the Treaty itself and to form an integral part thereof.

[1] The British ratification of this instrument was deposited with the United States Government on July 23, 1910.

The exchange of ratifications then took place in the usual form.

In witness whereof they have signed the present Protocol of Exchange and have affixed their seals thereto.

Done at Washington this 5th day of May, 1910.

IV. TREATIES RELATING TO ASIAN RIVERS
IV. TRAITÉS SE RAPPORTANT AUX FLEUVES ASIATIQUES

(i) MULTIPARTITE TREATIES
(ii) TRAITÉS MULTILATÉRAUX

80. PROTOCOLE[1] RELATIF À LA DÉLIMITATION DE LA FRONTIÈRE TURCO-PERSANE, SIGNÉ À CONSTANTINOPLE PAR LES REPRÉSENTANTS DE LA GRANDE-BRETAGNE, DE LA RUSSIE, DE LA PERSE ET DE LA TURQUIE, LE 4 (17) NOVEMBRE 1913[2]

. . .

Article 1. Il est convenu que la frontière entre la Perse et la Turquie sera tracée comme suit:

. . .

Il est entendu que les tribus qui ont l'habitude de passer l'été . . . aux sources de Gadyr et de Lavène [en Iran] resteront en jouissance de leurs paturages aux mêmes conditions que par le passé.

. . .

De ce point la frontière suit le cours du Chatt-el-Arab jusqu'à la mer, en laissant sous la souveraineté ottomane le fleuve et toutes les îles qui s'y trouvent aux conditions et avec les exceptions suivantes:

. . .

c) Aucune atteinte ne sera portée aux droits, us et coutumes existants en ce qui concerne la pêche sur le rivage persan du Chatt-el-Arab, le mot « rivage » comprenant aussi les terres réunies à la côte par les eaux basses.

. . .

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[1] Ce Protocole, ainsi que les procès-verbaux des séances de la Commission de délimitation de 1914, sont considérés valables par l'article 1 du Traité de frontière entre l'Irak et l'Iran, signé à Téhéran, le 4 juillet 1937, reproduit ci-dessous.

[2] *C.U. Aitchison, A Collection of Treaties, Engagements and Sanads relating to India and Neighbouring Countries,* vol. XIII, p. 126.