

FUNCTIONS, POWERS AND DUTIES  
OF THE  
INTERNATIONAL JOINT COMMISSION  
AND OF THE  
INTERNATIONAL BOARDS OPERATING  
UNDER ITS JURISDICTION



OTTAWA  
J. O. PATENAUDE, I.S.O.  
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY  
1935

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## THE INTERNATIONAL JOINT COMMISSION

Experiments have been tried from time to time, in different parts of the world, in the peaceful settlement of international disputes, but none is perhaps so unusual and daring in form, none has had such a long trial, and none has been so conspicuously successful as the International Joint Commission.

One of the principal functions of the Commission is to decide questions involving the use of boundary waters, rivers flowing out of boundary waters, and rivers flowing across the boundary. The boundary between Canada and the United States is by far the longest separating two neighbouring countries. It passes through a group of immense lakes, the traffic on which is as vast as its value. On or near the shores of these lakes and their connecting rivers are large and growing communities and many important industries. Problems that have been, or may be, brought before the Commission for settlement involve not only the prosperity of people on both sides, but their health and comfort, and their friendly relations one to the other.

Another function of the Commission is to investigate important problems arising along the common frontier, not necessarily connected with waterways. Problems of this kind often have in them the seeds of serious trouble, and it is therefore of the utmost importance that there exists an impartial tribunal where all interested parties on both sides can count on fair play.

Still another authority vested in the Commission, and one of extraordinary significance, is the power to decide finally any question, whatever its nature or wherever it may arise in either country, which may be referred to it by the governments of Canada and the United States.

The International Joint Commission was created under the provisions of the Treaty of 1909, the preamble of which sets forth the objectives of the High Contracting Parties in the following terms:—

“ . . . being equally desirous to prevent disputes regarding the use of boundary waters and to settle all questions which are now pending between the United States and the Dominion of Canada involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other, along their common frontier, and to make provision for the adjustment and settlement of all such questions as may hereafter arise, have resolved to conclude a treaty in furtherance of these ends. . . . ”

### INTERNATIONAL BOUNDARY PROBLEMS

The International Boundary between Canada and the United States, for a distance of some 2,055 miles or 54 per cent of its entire length, passes through a series of lake and river waterways common to both countries. These waterways are defined in the Treaty as “boundary waters” and among others include Lake of the Woods and the boundary waters above Lakes Superior, Huron, St. Clair, Erie, Ontario and connecting rivers, and the upper St. Lawrence, the St. John and the St. Croix rivers. Elsewhere the International Boundary is formed by arbitrary surveyed lines unrelated to the natural river and drainage systems, which lines are crossed and recrossed by rivers and streams without regard to the natural water resources or assets of either country. The inevitable result of such boundary conditions, is the creation of endless possibilities of international friction and controversy.

## RESPONSIBILITIES OF THE COMMISSION

## Development Projects

In general terms, the Treaty provides in Article III in respect to "boundary waters," i.e., waters through which the International Boundary passes, that in addition to uses, obstructions and diversions heretofore permitted or hereafter provided for by special agreement between the High Contracting Parties, no further uses or obstructions or diversions, whether temporary or permanent, 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 with the approval of the International Joint Commission.

With respect to streams and rivers flowing from "boundary waters" or flowing across the Boundary from one country to the other the Treaty provides in Article IV that, except in cases provided for by special agreement between the High Contracting Parties, no remedial or protective works or any dams or other obstructions shall be placed in such waters, the effect of which would be to raise the natural level of waters on the other side of the Boundary unless the construction or maintenance thereof was approved by the International Joint Commission.

Under the foregoing provisions, numerous applications for the approval of various works and structures from coast to coast, have come before the Commission.

The projects dealt with and decided under Articles III and IV of the Treaty are:—

- That of the Rainy River Improvement Company, covering the erection of a permanent dam at Kettle Falls;
- That of the Watrous Island Boom Company, covering the erection of booms in the Rainy River;
- That of the Michigan Northern Power Company and of the Algoma Steel Corporation for the construction of compensating works in the St. Mary River at the outlet of Lake Superior, for the control of the outflow from, and the regulation of the water levels of, Lake Superior;
- That of the Greater Winnipeg Water District for utilization of the waters of Shoal Lake and Lake of the Woods for domestic and sanitary purposes;
- That of the St. Croix Water Power Company and the Sprague's Falls Manufacturing Company covering a dam and power canal at Grand Falls on the St. Croix River;
- That of the International Lumber Company covering a boom in Rainy River at International Falls;
- That of the Government of the United States for approval of certain channel improvements in the St. Clair River on the United States side of the boundary line;
- That of the New York and Ontario Power Company covering the reconstruction and repair of a dam and hydraulic structures at Waddington on the St. Lawrence River;
- That of the St. Lawrence River Power Company covering a submerged weir in the South Channel of the St. Lawrence River near Massena;
- That of the Commissioner of Inland Fisheries and Game for the State of Maine covering the erection of fishways past dams on the St. Croix River;
- That of the New Brunswick Electric Power Commission covering the development of power at Grand Falls on the St. John River;
- That of the Buffalo and Fort Erie Public Bridge Company covering the erection of a public highway bridge over the Niagara River between Buffalo and Fort Erie;

analysis and report. Among these may be mentioned the Lake of the Woods Reference; the Rainy Lake and Upper Boundary Waters Reference; the Roseau River Reference; the St. Lawrence River Reference; the Pollution of Boundary Waters Reference; and the Trail Smelter Fumes Reference.

These various References have dealt with navigation, power, storage, and drainage and other matters of great magnitude. In the Lake of the Woods and Rainy Lake References the advantageous utilization of some 500,000 horse power on the Winnipeg River, as well as important navigation, domestic water supply and foreshore problems were involved; in the Roseau Reference important drainage interests in both countries were affected; in the St. Lawrence Reference outstanding questions of navigation, transportation and power, as well as foreshore interests generally, of utmost concern to both countries, were involved; the Pollution of Boundary Waters Reference covered a problem of peculiar import to the general health of the communities in both countries; the Trail Smelter Fumes Reference dealt with an irritant problem which contained all the elements of possible future controversy.

The References have dealt with complex situations—frequently with an intricate interweaving of conflicting interests. Ample opportunity was given in all cases to all parties concerned, to submit to the Commission their respective views, supported by all physical data necessary to permit of a complete analysis of the same. The Commission, through governmental agencies in both countries, has carried out extensive surveys and investigations in the field, when and where necessary. The Commission's reports to the two Governments have been comprehensive and all-embracing.

#### **Other Problems**

Aside from international waterway problems, the Treaty further provides in Article X that 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 the consent of the two parties. In each case so referred the 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.

#### **INTERNATIONAL WATERWAY BOARDS**

In the handling of the various projects which have been submitted by public and private bodies, the Commission in issuing its Orders of Approval has at times found it necessary to provide for the creation of International Boards of Control.

These Boards in each case consist of two Engineer Members, one appointed by the Government of Canada and the other by the Government of the United States. The functions of the Boards are to ensure that the provisions of the Commission's Orders of Approval are observed. The Boards form the effective machinery in the field to ensure the observance of the international obligations which are embodied in the Commission's Orders. The Boards report directly to the Commission, and in the event of disagreement between their members, the decision rests with the Commission. Brief reference to their activities follows:—

#### **The International Lake of the Woods Control Board**

The findings, conclusions and recommendations of the Commission in connection with the Lake of the Woods Reference were submitted to the two Governments in the form of a final report. The report was accepted by the two Governments and the conclusions contained therein were embodied in the Lake of the Woods Convention and Protocol of 1925.

### **The International Massena Board of Control**

In issuing the Order of Approval in respect to the construction by the St. Lawrence River Power Company of the submerged weir across the South Sault Channel of the St. Lawrence river for the better control of the diversion of water into the Massena power canal for development at Massena, New York, the Commission was faced with the primary problem of protecting the all important interests of navigation in the reach of the St. Lawrence river above the weir and in the Cornwall Canal, as well as adequately safeguarding the development of power at Massena and in the Canadian plants drawing water from the Cornwall Canal.

The Commission's Order provided for the proper control of the water level at the head of the Cornwall Canal. The Order further provided for the appointment of the International Massena Board of Control consisting of two engineers, one to be named by the Government of Canada and the other to be named by the Government of the United States, who were made responsible for ensuring that the conditions imposed by the Order should be observed.

The Board is in receipt of monthly water level and discharge records and, in times of emergency, of daily records, from which its control over the diversion is exercised. This is supplemented by inspection on the ground when necessary.

The Board reports regularly and direct to the Commission.

The Order also provides that in the event of disagreement in the execution of its powers, the Board of Control shall apply to the Commission for directions and further shall have the right to apply in any circumstances where deemed necessary or advisable.

The Board has functioned to the entire satisfaction of all interests concerned on both sides of the Boundary.

### **The International St. Croix River Board of Control**

On the St. Croix River several matters have come before the Commission. The Commission issued an Order in 1915 approving the power and storage dam at Grand Falls under specific restrictions set forth in the Order designed to protect the interests located on both sides of the river above and below. The Order further provided for the appointment of the International St. Croix River Board of Control consisting of an officer to be appointed by Canada and one to be appointed by the United States, which Board was made responsible for seeing that the conditions imposed by the Order were observed.

In 1923, following an application by the Commissioner of Inland Fisheries and Game for the State of Maine, with respect to the fishways past the dams located on the river, the Commission issued an Order approving the application and providing for the operation of fishways under the International Board of Control.

In 1931 the Commission approved the raising of the crest of the Grand Falls dam by one and one-half feet and continued the supervision of the operation under the International Board.

In 1934 the Commission approved the replacement by the Canadian Cottons Limited of its old wooden dam at Milltown by a concrete structure of the same crest elevation, but with enlarged discharge capacity. The operation of the dam was placed under the supervision of the International Board.

The Board is in receipt of regular water level, discharge and other records necessary to keep it fully advised as to all matters requiring its supervision and carries out such inspections on the ground as are needful from time to time. The Board reports regularly and direct to the Commission.

The Board has functioned in respect to all its responsibilities to the entire satisfaction of all interests concerned on both sides of the Boundary.

# INTERNATIONAL JOINT COMMISSION WATERWAYS PROBLEMS

