Re: Aiken Amendment

Mr. President:

The pending amendment authorizes the construction of the Great Lakes-St. Lawrence project in accordance with the Agreement of the United States and Canada, negotiated by Secretary of State Cordell Hull and signed by both Governments, March 19, 1941. The amendment simply authorizes the project and approves the agreement subject to the adoption of similar reciprocal legislation by the Canadian Parliament.

Opponents of the St. Lawrence Seaway and Power Project have criticized the form of our undertaking with Canada.

I have given a great deal of thought to this subject and I am convinced that this project can be authorized in the manner and in the form proposed through concurrent legislation by the Congress of the United States and the Parliament of Canada. In taking this position I am glad to say that I find myself in full agreement with the views of the President of the United States, Franklin D. Roosevelt, our former colleague and great Secretary of State, Cordell Hull, and

former Attorney-General, now Justice of the United States Supreme Court, Robert H. Jackson. I am glad to find that my own views on this matter coincide with those of the eminent and responsible authorities who have dealt with this problem.

Article I, Section 8(3) of the Constitution provides that "Congress shall have power to regulate commerce with foreign nations and among the several States." The proposed Great Lakes-St. Lawrence Agreement, in my opinion, comes clearly within the Commerce clause of the Constitution. The St. Lawrence Project involves improvements in waters over which ~~[illegible]~~ this country does not have exclusive jurisdiction. ~~There is, therefore, no reason why~~ Congress can~~not~~, therefore, within its Constitutional power, enact legislation, contingent upon a like legislative enactment in the other country, approving the joint undertaking signed by both governments. The signing of the St. Lawrence seaway and power agreement by the two governments was ~~[illegible]~~ a ~~convenient~~ reasonable way of bringing about, ~~[illegible]~~

~~advanced~~ prior to legislative enactments, a joint understanding ~~by the two governments~~ on a construction project, ~~which could hardly be initiated without such an advance understanding.~~ ~~[illegible]~~ and does not constitute a binding international agreement until the Congress of the United States and the Parliament of Canada have approved it. There are numerous precedents for undertaking such a project by concurrent legislation rather than by treaty. I will cite three such precedents in the relations between the United States and Canada.

Public Resolution No. 117, 75th Congress, third session, created the Niagara Falls Bridge Commission and authorized it to construct and operate bridges across the Niagara River subject to "the approval of the proper authorities in the Dominion of Canada". Similar legislation was enacted in the Dominion of Canada and a bridge was built across the Niagara River. I see no difference in principle between the construction of a bridge across boundary waters and the

construction of such works as are proposed in the St. Lawrence Agreement.

On November 11, 1927, President Coolidge issued a Presidential License to the Detroit - Ontario Subway, Inc. authorizing the Company to construct, operate and maintain a tunnel under the Detroit River from a point in the United States to a point in Canada. Corresponding authorization was given on the part of Canada by an Order-in-Council and the Detroit-Windsor Tunnel became an accomplished fact. No one ever suggested that our Constitution required a treaty for this undertaking.

Numerous acts of Congress have been passed beginning in 1874 providing for the dredging and improvement of channels in the connecting waters of the Great Lakes. Some of these waters like Livingston Channel near Detroit are almost exclusively on the Canadian side of the International Boundary. The Canadian Government assented to the proposed construction by exchange of notes and the Congress of the

United States authorized the improvements in River and Harbor Act and appropriated the money for the works. The channels were deepened and are now an accomplished fact. No one ever suggested that a treaty was required for this work, almost entirely in Canadian waters.

Following the World War, debt settlements were made with a number of foreign governments in the form of agreements requiring the approval of both Houses of Congress of the United States. These debt settlements though clearly arrangements with foreign governments involving billions of dollars were put into effect by agreements approved by both Houses of Congress. No one has challenged the constitutionality of these debt agreements and so far as I am aware no one has suggested that they should have been reached only by treaties approved by two-thirds of the Senate.

But, opponents of the St. Lawrence Project say, the St. Lawrence Agreement is different and they assert that, in this instance a treaty is necessary. I can best answer

that by quoting from the letter of Secretary of State Cordell Hull to a member of this body on May 23, 1944, as follows:

> "This project, like many other matters pertaining to our foreign relations, may be undertaken either by the treaty process or by an agreement approved by the Congress. The matter is squarely within Article I, Section 8 of the Constitution, giving the Congress the power to regulate foreign and interstate commerce. The fact that the Congress is given this power does not mean that these matters may not also be covered by treaties. Many matters relating to foreign commerce are covered, for example, in our treaties of commerce and navigation. All of our commercial treaties treat of matters which could be regulated by legislative acts, conditioned, where some act is to be performed by another government, upon reciprocity by that government.
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> "In brief, we have a situation of tremendous interest to our country which is open to be dealt with by either of these two Constitutional methods. The fact that the treaty process was chosen in 1932 does not mean that a treaty was necessary at that time nor does it preclude resort to the legislative process proposed in the present agreement between the United States and Canada.
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> "To my mind it is a question of little importance which method is pursued. What is of importance is that we should not lose the benefits of this great international waterway system with all its potentialities."

Mr. President, there are also precedents for dealing with a matter by legislation even though the treaty method for dealing with the same matter had been employed. In 1844 a treaty was signed between the United States and

the Republic of Texas by which all of that Republic's rights as a separate and independent sovereignty were to be transferred to the United States. That treaty was rejected by the Senate of the United States. Thereafter a Joint Resolution of Congress was approved on March 1, 1845, consenting to the annexation of Texas as a new state. Texas having accepted and complied with the conditions of the Resolution was thereafter formally admitted as a state of the Union.

A similar situation prevailed in connection with Hawaii. Hawaii was an independent country and as such signed a treaty with the United States on June 6, 1897 providing for its annexation to the United States. Later, while the treaty was pending in the Senate, the annexation was approved by Joint Resolution of July 7, 1898.

The Boundary Waters Treaty of 1909 anticipated agreements which like the present one would be approved by reciprocal legislation on the part of the Congress of the United States

and the Parliament of Canada. The preamble to that Treaty notes an intention "to make provision for the adjustment and settlement of all such questions as may hereafter arise" after an earlier reference to the desirability of settling questions in relation to boundary waters. Article 13 of the Treaty specifically refers to special agreements as including arrangements between the United States and Canada "expressed by concurrent or reciprocal legislation on the part of the Congress and the Parliament of the Dominion." It seems clear therefore that this treaty provision contemplated agreements like the one now under consideration.

Before the St. Lawrence Agreement was signed, Secretary Hull requested the opinion of Attorney General Robert H. Jackson regarding the legality of the contemplated arrangement. On March 14, 1941 the Attorney General advised the Secretary of State that:

> "It is legally unobjectionable so far as this country is concerned for the executives of

> the United States and Canada to enter into an agreement regarding the Great Lakes - St. Lawrence Deep Waterway Project conditioned for its effectiveness upon the subsequent enactment of necessary legislation by the Congress and by the Canadian Parliament. If an agreement is executed and approved in this manner its provisions would be binding upon the United States as respects Canada."

Mr. President, I agree with President Roosevelt and Secretary Hull that it is of the utmost importance to the nation that we provide now for the effective utilization of the St. Lawrence resources for the people of the United States and Canada. In the International Rapids Section of the St. Lawrence River there will be developed 1,100,000 horsepower of hydro-electric energy on each side of the line or 2,200,000 horsepower in all. Think of the waste of continuing to let this water rush unharnessed toward the sea, to say nothing of the loss of transportation benefits for the people of both the United States and Canada.

Let us not quibble at this late date over technicalities. Let us instead enact legislation which will bring this great undertaking into being.