

January 2010

Balancing Canada - United States Security and Economic Competitiveness: The Great Lakes and St. Lawrence River

Douglas McCreery

John E. Crowley Jr.

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Recommended Citation

Douglas McCreery and John E. Crowley Jr., *Balancing Canada - United States Security and Economic Competitiveness: The Great Lakes and St. Lawrence River*, 34 Can.-U.S. L.J. 249 (2008)
Available at: <https://scholarlycommons.law.case.edu/cuslj/vol34/iss1/13>

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BALANCING CANADA-UNITED STATES SECURITY AND ECONOMIC COMPETITIVENESS: THE GREAT LAKES AND ST. LAWRENCE RIVER

Session Chair – Douglas McCreery
Speaker – Rear Admiral John E. Crowley, Jr.

INTRODUCTION

Douglas McCreery

MR. MCCREERY: My name is Douglas McCreery, and fortunately my only role here is to introduce Admiral John E. Crowley, Jr. It is a distinguished career; it is a career that one could easily fill this hour discussing the Admiral's progress to this point.

He is the Commander, Ninth Coast Guard District, and the Operational Commander for the Great Lakes region. He leads over 7,700 regular reserve, auxiliary and civilian men and women in the field. And I could go on. There is that excerpt there in your materials.

Something that is not in the materials is that his career began as a J.A.G. attorney, and it is an example to the young lawyers in this room, or of those who are about to be lawyers, that there are alternatives to practicing law in a law firm.

And much of the materials that you heard yesterday and the first half of today go to the thickening of the border, but in the field, there is an actual thinning of the border as we go through the process of dealing with both regulated activity and unregulated activity.

I caught an article in the Globe in February, and I thought as a way of giving the Admiral a place to start from, I would just read briefly from it:

“A tangle of conflicting laws on both sides of the border is tying the hands of joint Canada-U.S. border squads undermining the efforts to nab international criminals, says a newly-released report. Team members cannot radio one another. They have to surrender their side arms when crossing into the other country. And there are forbidden

from crossing the Canadian-U.S. border except at official stations even though criminals prefer the isolated points in between.”¹

Admiral, how goes it?

SPEAKER

*Rear Admiral John E. Crowley, Jr.**

ADM. CROWLEY: Well, that is a great introduction, but I really cannot go further without taking the opportunity here at the podium, at the microphone, to offer my congratulations to Dr. Henry King and his great work here, and that we celebrated his time last night. And it is a true honor and privilege to be invited here to speak. And so congratulations again, and thank you, Dan, and everybody that had a part to play in that.

That is a great introduction. I will get a little bit to the punch line of three lessons learned, or recommendations, and then I will conclude with some remarks on those lessons, and really look forward to some questions and dialogue.

One of them has to do with getting people together and breaking down those borders, and one of them has to do with everybody being here today. And so, my second thank you really is to everybody who is here and participating in the Canada-United States Law Institute today, and throughout the year, because this is part of the way in my view that we break down the border.

And just as the article indicated - thank you for this leveraging point - my view is, the border is not a very helpful concept for the operational commander in getting the job done, the job being making the Great Lakes safer and more secure.

¹ See generally Dean Beeby, *Border Teams Handcuffed, Report Says Canadian, U.S. Officers Can't Even Talk By Radio*, TORONTO STAR, Feb. 11, 2008, available at <http://www.thestar.com/article/302358> (last visited Oct. 12, 2008).

Admiral John E. Crowley, Jr. assumed his current position as the Commander, Ninth Coast Guard District on April 18, 2006. As the operational commander for the Great Lakes region, he leads over 7,700 regular, reserve, auxiliary and civilian men and women, two air stations, two air facilities, four sectors, one sector field office, four marine safety units, eleven cutters, forty-six small boat stations, and five aids to navigation teams. Under his direction, Coast Guard personnel provide maritime security over 6,500 miles of shoreline and 1,500 miles of international border and provide the world's premiere search and rescue, marine safety and environmental protection, maritime law enforcement, aids to navigation and ice-breaking services to the region's citizens.

My area is the Great Lakes. That is water, and that is a U.S.-Canadian shared jurisdiction, shared concerns, shared interest, and shared solutions. With that in mind, I would like to walk through a few other issues here, and then look forward to more dialogue.

Because my colleague has convinced me that I should not use what I wanted to do as a tool after lunch, and show a video clip of a mono-automatic weapon rat-a-tatting through the water, I will try to keep you on your toes for a moment anyway, given the lunch hour here and have a little bit of audience participation. I am going to ask you to try to put yourself into a March 2009 scenario, and I am going to have an informal test as to what your read of the situation is after I get through the brief explanation here.

Early March 2009, there is intelligence and a threat received against the Sault locks, between Sault Ste. Marie, Ontario and Sault Ste. Marie, Michigan. And of course the locks is an area where a great deal of shipping, some Canada to Canada, some U.S. to U.S., some Canada to U.S., and vice versa, and some simply foreign to Canada and U.S., all transits.² So early March, the threat is made. Mid March, Canadian Steel is stalled north of the locks. U.S. Ore is stalled in White Fish Bay. Ocean born wind turbines destined for Duluth and the interior of the nation are stalled in the Straits of Mackinaw waiting for outbound transit.

Late March, 15 days of closure thereafter, amounting to \$41 million worth of accumulated costs, commerce has not concluded. Let me ask you to informally poll yourselves, what happened?

Who thought the locks were closed by a security zone established by the Coast Guard? Anybody? Who thought ICE impeded the transit of all the commercial ships trying to make the trip, as might have happened this last year?

Who thought that a terrorist attack on the fuel tanks of an up-bound ship closed the St. Mary's River, and therefore the locks, because of the extreme environmental damage done to both sides of the river and the precious fresh water system of the Great Lakes? Who thought that it was a terrorist attack on the lock gate itself that actually closed the gate, closed the locks?

I guess my point being, that without actually asking for some show of hands that there are - there is a rough scatter diagram as to who might have thought what the answer was. And when we start talking about the balance of commerce and security, I come up with some different definitions of balance quite frankly. I come up with a definition of balance saying that we have taken the steps necessary to equally protect commerce as we have to protect the infrastructure, and that we protect the life as we know it. I do not see it as much as security versus commerce.

² See generally NationMaster.com, Encyclopedia: Soo Locks, <http://www.nationmaster.com/encyclopedia/Soo-Locks> (last visited Oct. 9, 2008).

As a little turn on Steve Flynn's comment from last night on balance versus integration, I would like to follow a couple of things that my esteemed former colleague, Professor Dr. Flynn, has shared with us. To stimulate a little more about some of the context of the dynamics here before I get into the more operational, how do we get things done, what works, and ultimately, what are the challenges that we are facing?

By and all, Steve talked about balance versus integration. Integration in my mind is the integration of strategies. There are commercial strategies, and we spent some of the time over the last day-and-a-half talking about some of those commercial strategies. And, there are commercial strategies to ensure that the product that is shipped actually gets to the destination without theft, without damage, and that has to be a commercial strategy. So why cannot we be talking about integration of that which is motivated well by commerce, like the motivation to protect from ICE is still a protection? And it has the same sort of impact on the closure, and so why cannot we look at integration in a slightly different way? And that balance maybe does not have to be a balance between security and commerce. It only gets that way because you ultimately end up making some choices I suggest, and ultimately the operator and the federal governments on both sides of the border make significant choices based upon resources available, and there are balances created by those choices, but the choices themselves are not necessarily balancing choices, and in that matter I agree with Dr. Flynn

Now, he also talked a little bit about compliance versus security. Well, I am seeing two columns develop. I look at compliance as being those things that develop most often out of the balance of individual measures. There are actual things. There are in compliance with accomplishing the things that are sent out. A master of the ship may choose not to do everything because the voyage was rough, but he must make mooring time and make the dockage where the stevedores are ready, and so there is a tradeoff.

So compliance becomes a victim, sometimes, of time and the examination of the things we need to do, whereas security is the system, it is the strategy; it is the overall fabric of how we hold security together.³ And let us think for a second that we really did not have a fabric of security to speak of before 2001.

In fact, I would suggest that we did not have much of a fabric of security even from a theft law standpoint from a Maritime Waterborne Commerce perspective prior to 9/11.⁴ And when you look back at Dr. Flynn's early

³ See generally Five Years After 9/11 Attacks: U.S. Ports More Secure Than Ever; Progress Must Continue AAPA Cites Advances In Guarding America's Seaports Against Terrorism, <http://www.aapa-ports.org/Press/PRdetail.cfm?itemnumber=1092> (last visited Oct. 9, 2008).

⁴ See generally *id.*

work, that is exactly what it was in - trying to develop a strategy and a philosophy of security a la theft loss.

Let us get down to the proof which we ultimately as federal agencies get held to, and questions were asked earlier yesterday how can you prove that these measures show results in security attained? And it drives us I suggest as we go down the column of balance to compliance to establishing and discussing proof to very zero tolerance sorts of tensions which are almost impossible to deal with. There are impossible philosophically, and there are certainly impossible from a real-life sailor perspective.

If I come down on the other side, I start looking at and examining comparative strategies, and I look at the system as a whole. And as Dr. Flynn suggested at the end of his talk, is the system robust and resilient enough to respond and recover following something that might happen? And have we instilled a system and a strategy that at least is protective enough to ensure that be accomplished? So, those are some of the idea struggles that I want to seed with you a little bit. Well, I got a little bit more real-life, and first talk about the strategy that we have for maritime security.

First developed in an international forum – first developed internationally, not at the home front - at the IMO, the International Ship and Port Facility Code, ISPS, later coordinated with the government in Canada, Transport Canada, and the Coast Guard and the compliance enforcement working group as we develop MTSA, Maritime Transportation Security Act in the United States, and now as formulated, a system wherein we have ships and port facilities that are required to establish security plans and require to have security managers.⁵ Now that is really pretty simple. But that is an earth-shatteringly new idea after 9/11.⁶ And so it began at an international level because we are talking about international commerce. We are talking about commerce coming from all over the world as such a large part of our GNPs throughout; both countries are dependent upon global commerce.

What that amounts to, and later articulated in the national strategy for maritime security, is called a layered-strategy approach.⁷ I say this because I think as we look and talk about pushing out the borders; it is often viewed as the layered strategy. And if we look at it from a naval warfare standpoint, we have historically thought geographically as being the layers, drawing rings around whatever we are protecting. I argue that the international strategy as founded in ISPS and then later put forth in MTSA is a layered strategy of a different version. It is a means of establishing a mesh - and as a sailor, I think

⁵ See Steven D. Emerson & John Nadeau, *A Coastal Perspective On Security*, 104 J. Hazardous Materials 1-13 (Nov. 2003).

⁶ *Id.*

⁷ See generally The National Strategy for Maritime Security, <http://www.whitehouse.gov/homeland/maritime-security.html> (last visited Sept. 19, 2008).

of fiberglass sheets, cross-patterned and bonded together wherein it becomes lightweight, agile, flexible, but much stronger than the individual sheets as a whole, and it is that layering of different functional security measures on this shipper at the port facility with the response vessel that we have that bonded, kind of fiberglass mesh sheet that is the new version of layered security. That is what I would like to kind of put forth a little bit as the way ahead.

Referring back to what I said about the Great Lakes, unique to the Canada-U.S. relationship, we have got to recognize some things are very special with them. We have to recognize that it is a fresh water system.⁸ We have to recognize that there is a whole other kind of evolution of economics within the Great Lakes that is in addition to all the great figures and facts that were shared amongst us over the last day-and-a-half. And over half of Canada's 20 largest ports are actually within the Great Lakes system.⁹

And we have ten percent of all U.S. waterborne domestic commerce in the Great Lakes.¹⁰ We have on the recreational side a quarter of the recreational vessels in the U.S. registered, which amount to about four-plus million recreational vessels in the Great Lakes. Add another million on the Canadian side, and that is all amongst the commercial vessels and all the other people and cargo that are being sorted from an intelligence or information perspective. Very, very unique.

We have within the Great Lakes an inter-lake system with lakes - with both Canadian-U.S. flags sharing only each other's ports - but we also have an ocean system that demands some different attributes to ensure that it remains secure, as well as our nations.¹¹ Within our area we have threats, and they may start with the weather, whether they are the gales of November, the ice storms of February, or the thunderstorms of the mid-summer months. But looking at terrorism, for example, we have specific threats that I cannot tell you about, that we have confronted over the last couple years, and that give me pause to following that column I talked to you about that starts up at the top as a balance, as compliance, as kind of very fact-specific, zero-tolerance proof to me why that insured security, that being a specific action.

But on the nonspecific side, look at all the dimensions that we have, whether it is the lack of infrastructure improvements on the locks,¹² whether

⁸ See generally Great Lakes: Basic Information, <http://www.epa.gov/cgi-bin/epaprintonly.cgi> (last visited Sept. 19, 2008).

⁹ See generally WorldPortSource.com, Ports in Canada, <http://www.worldportsource.com/ports/CAN.php> (last visited Oct. 6, 2008).

¹⁰ See generally Waterborne Commerce of the United States, www.iwr.usace.army.mil/ndc/wcsc/pdf/wcusnatl04.pdf (last visited Oct. 6, 2008).

¹¹ See generally Gao.gov, Border Security: Agencies Need to Better Coordinate Their Strategies and Operations on Federal Lands, <http://www.gao.gov/new.items/d04590.pdf> (last visited Oct. 9, 2008).

¹² See generally *Lakers Hampered by Cargo Declines, Aging Locks and Harsh Weather*,

it is that a mistake or intentional act can really release a quantity of pollution that makes some of the Exxon Valdez,¹³ some of the Oakland San Francisco Bay,¹⁴ Buzzards Bay¹⁵ incidents almost pale in comparison given the fresh water system that both nations enjoy.¹⁶

The threats for a country are the point of origins for the vessels and the ocean shipping. We do a good job of identifying where ships come from, and those vessels that come from places that are deemed to be more vulnerable from their own security perspective are cranked into our calculus as to whether or not they need greater attention by our forces on both sides of our border.

Ask hypothetically, ask whether or not we give the same credit in reverse to the vessels that come from not only our own ports, U.S. to U.S., but Canadian to U.S. and vice versa? Are we able to give any credit in establishing a strategy of layered security for that kind of system view? And the challenges then ultimately end up being, when I look at our area, when I look at our threats, exactly the article that was read when we started this session, and that is the border. The border is my challenge. The border is the challenge of our RCMP and Coast Guard, of people that are trying to keep our communities and our commerce safe and secure.

In Search and Rescue, if we have got a boater lost on Lake Ontario, I would imagine within 15 minutes we have got a Coast Guard on the U.S. side, boat under way, and we have got a Canadian aircraft under way from the Canadian side, and nobody is asked where the border is. And nobody asked where the border is when we have to put a line and tow someone in, or when we have to pick someone out of the water. It is irrelevant. It is a functionally efficient and effective system.¹⁷

In our mission of icebreaking, we are just wrapping up now. Mention that in the hypothetical in the scenario I offered at the outset. We have an operation center in Sarnia that is one of the most effective operation centers

<http://www.professionalmariner.com/ME2/Audiences/dirmod.asp?sid=&nm=&type=Publishing&mod=Publications%3A%3AArticle&mid=8F3A7027421841978F18BE895F87F791&tier=4&id=9FB4C98CE411452890CE61C0E622762D&AudID=3D903BF30CAB4FBD94D0D7A42077D181> (last visited Sept. 19, 2008).

¹³ See generally Exxon Valdez Oil Spill, http://www.eoearth.org/article/Exxon_Valdez_oil_spill (last visited Sept. 21, 2008).

¹⁴ See generally Our Poisoned Bay, <http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/1999/08/02/MN14115.DTL> (last visited Sept. 21, 2008).

¹⁵ See generally The Coalition For Buzzards Bay, <http://www.savebuzzardsbay.org/bayinfo/2007/state-of-the-bay-07/pollution.htm> (last visited Sept. 21, 2008).

¹⁶ See generally KEITH G. BANTING, ET AL., *DEGREE OF FREEDOM: CANADA AND THE UNITED STATES IN A CHANGING WORLD*, ch. 9, 341-42 (McGill-Queen's 1997).

¹⁷ See generally Marie-Christine Therrien, *The Canada-U.S. Border: Achieving an Efficient Inter-Organizational Policy Coordination*, 54 CAN.-AM. PUB. POL'Y. - (2003).

that I have seen amongst any kind of joint military set of forces and operated by the U.S. and Canadian Coast Guard.¹⁸ Of course, honed out of Sarnia, the regional operational center of the Central Antarctic Canadian Coast Guard office, but deploying icebreakers on both sides of the border without regard to the flag of vessel that needs icebreaking assistance, without regard to the placement of the border, but with regard to the effectiveness of the available asset, the right asset at the right time in the right place. It is one of the most effective operations that I have seen in my 30-some years of Coast Guard experience including many overseas operating in NATO and other joint and combined military operations.¹⁹ I am absolutely straightforward with that comment.

It is navigation, taking care of it on both sides of the border. But now we get to oil pollution. Still pretty good. We have got a Canada-U.S. exercise that went off last year in the St. Lawrence Seaway region planning for one coming up in the Detroit-Windsor corridor, Canuslak exercise.²⁰ We have some challenges because we have some authorities we have to scrub, not because the desire's not there, and we have to scrub them through. But, for example, to get a U.S. response vessel over the Canadian side and back, in the Jones Act sort of situation, we have to scrub it with customs.²¹ So we pre-grease those things to make those happen and not be impediments. But I point them out to say the will, the experience, the connection between our forces allows us to be successful, we have identified the impediments, we have tried to make our systems consistent, and we have overcome them at least in, I think, our exercise fashion.

Now, security. The article that was written.²² Absolutely accurate. In fact, a couple years ago my predecessor and the Coast Guard men and women and the RCMP men and women got together, in anticipation of the All Star game in Detroit, later the World Series in Detroit, the Super Bowl, and established a prototype called Shiprider, where we put RCMP officers on Coast Guard boats and Coast Guard officers on Canadian vessels and were able to operate regardless of the border in that Detroit-St. Clair corridor river and really operate pretty effectively.²³

¹⁸ See generally U.S. Coast Guard Completes Another Successful Ice Breaking Season, <https://www.piersystem.com/go/doc/443/36095/> (last visited Sept. 21, 2008).

¹⁹ See generally *id.*

²⁰ See generally Report On Spills In The Great Lakes Basin, <http://www.ijc.org/php/publications/pdf/ID1594.pdf> (last visited Sept. 23, 2008).

²¹ See generally Jones Act Proponents Sue Coast Guard, <http://www.marinelog.com/DOCS/NEWSMMVII/2007jul00123.html> (last visited Sept. 23, 2008).

²² Beeby, *supra* note 1.

²³ See generally The Great Lakes, <http://www.lakestclair.net/forums/index.php?showtopic=46997&mode=threaded> (last visited

We had issues remaining with respect to communications, with respect to arms carriage.²⁴ Okay, we have to take off our arms and stow them when we go on this side of the border. Okay. We are over here. RCMP shift. Does not make any sense.

We have this last year had a great experience up in the Cornwall-Messina region, a two-month evolution with our colleagues that was absolutely fantastic. I visited the joint team at the end of the two-month experience. You could tell as they sat intermingled amongst each other they were shipmates. And when a sailor calls someone else a shipmate that is the highest form of flattery, of recognition of their value and the trustworthiness as a partner.²⁵ They were shipmates. They trusted each other, and law enforcement, they trusted each other and the knowledge of the laws. They trusted each other in understanding that they each had something to bring to the table in recognizing the dynamics of the communities that they were serving on each side of the border, remembering that we are serving communities and our people and not just ourselves. What a fantastic team.

Do you know how that started—I mean that evolution started? It started with a training program down in Charleston at the Coast Guard's Maritime Law Enforcement School, and it started with them getting to know each other. It started with them reviewing each other's laws. It started with them practicing each other's self and weapons defense practices, and it ended with them exercising those things that they became comfortable with each other about. And so I will come back to that in a moment.

Some of the things that we have done across the range of activities is information sharing. Important, I think we have talked about, eluded to in a couple different presentations. IBET was a subject of one of the earlier sessions.²⁶ IBET, a great mechanism for sharing information that the Coast Guard is absolutely committed to making work better, and as Superintendent Kuhn alluded to, we are still grappling with the numbers and being able to do that, but it is absolutely important.²⁷

Sept. 23, 2008).

²⁴ See generally Unnati Gandhi, *Officers Could Carry Their Guns Across Border*, THE GLOBE AND MAIL, available at <http://www.theglobeandmail.com/servlet/story/RTGAM.20070626.wguns26/BNStory/National/home> (last visited Oct. 10, 2008).

²⁵ See generally Nayv.mil, HSM-41 Sailor Saves Shipmate's Life, http://www.navy.mil/search/display.asp?story_id=30353 (last visited Oct. 10, 2008).

²⁶ See generally *National Security Implications of Border Security Along the Northern Border Hearing Before the Armed Services Committee*, 109th Cong. 3-4 (2006) (statement of Patrick W. Brennan, Captain, U.S. Coast Guard), available at http://www.globalsecurity.org/military/library/congress/2006_hr/060801-brennan.pdf (last visited Oct. 12, 2008) (providing an overview of the United States Coast Guard's involvement in and support of Integrated Border Enforcement Teams (IBET)).

²⁷ See *id.* at 5 (providing information on the United States Coast Guard implementation of

Maritime security operation centers. There are two versions that Canada is supporting. One in Halifax, more Naval-orientated, owned as - designated by the Canadian government where we have sent up and began the partnering and learning what is going on and sharing information where we can. One on the lakes designated to be operated and run by the RCMP. We are committed to work with both of those in order to understand how to gain the information that we need within the system.

There are two very important maritime security operation centers tracking ships because it really is a system in the Great Lakes. And that is part of that unique character of our region. It is a system, and Halifax is an entry point as vessels start coming in through the St. Lawrence into the Great Lakes system—they interlock within the Great Lakes, run by our RCMP and it is a great asset to recognize the intra-system traffic.²⁸ These are two very unique components where a geographically-layered strategy just does not work. We have to team this out together.

New partnerships are unfolding this year as we look to the joint seaways. Canadian development and U.S. management corporations help us get more advanced notice of arrival, information from ships coming inbound.²⁹ I know some shippers have complained that is now earlier, and it is to somebody they have not given it to. But, it is what the purpose of having information earlier and at one time so that we are not getting information sequentially as a vessel pulls into Cleveland, as they pull into Windsor, as they pull into Saginaw Bay, into Thunder Bay, Duluth, Indiana Harbor, each ports. And if we looked at those individually, as we look at maritime security otherwise in our nations, we would have industry and commerce with individual arrival information that we gained no efficiency at all, but a great partnership between the two seaway corporations, and a great partnership with Transport Canada and the U.S. Coast Guard to do that.

And that moves into some initial coordination as we start inspecting ships coming into the system to make sure that when they pass Windsor and Detroit, a stones throw from either side of the border, with population, a chemical industry, lots of vulnerable infrastructure bound for Thunder Bay or Duluth, that we already have a degree of assurance that there are secure. And we do so through the joint inter-ship inspection team in Montreal. We have Coast Guard inspectors teamed with Transport Canada inspectors without U.S. authority per se, but a team that begins working together, and I visit them also, to see them looking for eye contact and the kind of information

intelligence sharing with Canadian agencies as well as United States agencies).

²⁸ See generally *id.* (Discussing interagency planning and coordination concerning issues and challenges along the northern maritime border).

²⁹ See generally *id.* at 6 (discussing the use of technology and interagency cooperation to transmit information regarding incoming ship traffic).

exchange that only great shipmates can offer a great reflection of the partnership between the two countries on an operational and agency level.

Regarding compliance, I talked about Shiprider. I also talked about that within the Great Lakes, within the U.S.; there is the Great Lakes security-working group that is co-chaired with me and Todd Owen, who spoke to you yesterday from Customs. We begin to continue a partnership intra-DHS offering partnered solutions, teaming out, dissecting our various laws and regulations, and providing a layered strategy at the operational level.

I started by saying I was going to offer three lessons learned or recommendations. The first one was the importance of having consistency of laws on both sides.³⁰ We know on an operational level we need to have communication devices, radios that talk to each other that have the same frequencies. We know that we need to have use-of-force policies that recognize each other so that when we are working together, we do so in a mutually supportive way. But we also need the laws as established by our respective legislative branches and political branches to be consistent so we are not getting in each other's way or not being put in a position where we cannot work together. Both countries through the cross-border crime forum and the ministry and the department of justices have gone a long way in my view to help over the last couple years in support of Shiprider, our operational-level entity. So we have got to at least have a consistency of law so we are not in each other's way

My next lesson learned, or observation, is what about a bi-national solution? Pause for a second. Is that so far and hard to believe – a bi-national system?³¹ It is in some ways, but take a look at treaties such as the Treaty of Washington³² and the Boundary Waters Agreement formed from the late 1700s through the 1900s,³³ and you see treaties and agreements between our

³⁰ See *id.* (Discussing the necessity of reform on both sides of the borders in order to create greater cooperation).

³¹ See generally Gregory W. Carman, *Resolution of Trade Disputes by Chapter 19 Panels: A Long-Term Solution or Interim Procedure of Dubious Constitutionality*, 21 *FORDHAM INT'L L.J.* 1 (1997) (Discussing the establishment of binational panels to resolve trade issues between Canada and the United States and the problems associated with the creation of binational systems); Thomas W. Bark, *The Binational Panel Mechanism for Reviewing United State-Canadian Antidumping and Countervailing Duty Determinations: A Constitutional Dilemma?* 29 *681* (1989) (analyzing the survival of a binational system constitutionally).

³² See generally Heidi K. Hubbard, *Separation of Powers within the United Nations: A Revised Role for the International Court of Justice*, 38 *STAN. L. REV.* 165 (1985) (Discussing briefly the Treaty of Washington signed in 1871 and how this treaty serves as an example where Canada and the United States were able to resolve their issues and cooperating on the basis of law).

³³ See generally Richard Kyle Paisley, Cuauhtemoc Leon, Boris Graizbord & Eugene C. Bricklemeyer, Jr., *Transboundary Water Management: An Institutional Comparison Among Canada, the United States and Mexico*, 9 *OCEAN & COASTAL L.J.* 177, at 182 (2004) (providing background on the Boundary Waters Treaty and discussing the handling of water bound-

two countries that really formed an aversion of partnership that recognize the similarities of our interests and our peoples more than they recognize the differences,³⁴ and I would at least offer that we are a lot closer to being able to look to some bi-national solutions within the boundaries at least of the Great Lakes than we are in some other areas.³⁵

Now the third lesson learned, the third recommendation is that which I referred to at the very beginning, and that is the partnership. It is continuing to learn to work with each other as to becoming comfortable and familiar with the views on each side, getting them on the table whether we agree or not, it is what this institute does at this level.³⁶ It is great to see representatives of the industry in commerce as well as academic and government lawyers and non-lawyer representatives. Are the jurists involved? Are the legislators involved? They have a part to play in the law as well.

At lunch, Dan remarked on the groups of Great Lakes mayors and the Great Lakes provincial and state governors,³⁷ and I have to remark that I am very impressed with those groups as entities that are able to talk and work and identify common interests and common concerns. And a group that I was able to interact with on an operational level over my tenure through the Great Lakes in being better able to understand the communities that we serve on both sides of the border, an entree very quickly to Canadian mayors to hear what was on their minds and for them to understand my operational concerns that influence, that effected, that got to their citizens, to the people in their communities. It is a great group, organized and founded to share information and become comfortable with each other. The governors, provincial and state, are the same way. You can agree or disagree with some of the priorities, but a great entree for me again at a different level of government.

Now I know at the federal level there is an inter-parliamentary group that I have unfortunately not taken the step to reach out to at this point.³⁸ I am

dary disputes between Canada and the United States); Leonard B. Dworsky & Albert E. Utton, *Assessing North America's Management of its Transboundary Waters*, 33 NAT. RESOURCES J. 413 (1993) (discussing the Boundary Waters Treaty and the institutional changes that is required for agreements concerning shared water sources and water boundaries to work appropriately).

³⁴ See generally *id.*

³⁵ See, e.g., The Council of Great Lakes Governors, <http://www.cglg.org/> (last visited Oct. 8, 2008) (official website of the Council of Great Lakes Governors); Great Lakes and St. Lawrence Cities Initiative, <http://www.glslcities.org/> (last visited Oct. 8, 2008) (official website of Great Lakes and St. Lawrence Cities Initiative).

³⁶ See Canada United States Law Institute, <http://cusli.org/> (last visited Oct. 6, 2008) (official website for the Canada United States Law Institute).

³⁷ See The Council of Great Lakes Governors, *supra* note 34.

³⁸ See Canada-United States Inter-Parliamentary Group, <http://www.parl.gc.ca/iaa/?Lang=E> (follow "Associations" hyperlink; then follow "List of

remiss. In a parliamentary group, people get together with members of parliament and representatives and senators on the U.S. side. I happened to talk to Senator Klobuchar from Minnesota while we are on the dais over this last year one time, and it brought to her attention a lot of the cooperation that we have with our peers and our colleagues on the Canadian side that she had not recognized before. And it was a great discussion. And how does that get leveraged as our legislators begin to understand what the needs of their people and the needs of their operating agencies really tend to be?

Citizens are the last group of people who team up, and I know within this group that we heard this morning, and that we represent often as lawyers are people who cross the border in business or to their vacation homes, but I am here to tell you in my public meetings that I have attended throughout the Great Lakes and the interaction I have had with the mayors on both sides of the border, that there are citizens in our communities on both sides who do not share that cross-border mentality. And that is a group, too, that needs to greater appreciate the cross-border nature of the water that knows no bounds, that does not recognize a border on the lakes.³⁹

Doctor, all yours.

MR. McCREERY: Admiral, thank you. That was most illuminating. There must be some questions out there.

DISCUSSION FOLLOWING THE REMARKS OF REAR ADMIRAL JOHN E. CROWLEY, JR.

DR. KING: Are there any examples, Admiral, throughout the world that you follow? Are there any other areas in the world that you look at to determine the approach to be taken on the Great Lakes? Are there any parallels? Are there any formula?

ADM. CROWLEY: That is a great question, and I think it is one as I look, a couple members of my staff out here that I pressed for early in my tenure, as we might have looked towards the EU, as we might have looked at least to the Baltic countries. So we look to the Indonesian Archipelago. What I tell you, sir, is that I do not think there is a better region in effect. There are different ways of operating together, and there are different issues that people have grappled with. I think the Great Lakes region is further ahead in the

Associations and Interparliamentary Groups” hyperlink; then follow “Canada–United States Inter-Parliamentary Group” link) (last visited Oct. 8, 2008) (official website for the Canada–United States Inter-Parliamentary Group).

³⁹ See generally Official Comment of the Government of Canada: Advance Notice of Proposed Rulemaking Western Hemisphere Travel Initiative, http://geo.international.gc.ca/can-am/main/right_nav/whiti_comment-en.asp (last visited Oct. 11, 2008) (discussing issues that will affect citizens and issues that they should be aware of at the United States Canada Border).

U.S.-Canadian partnership than the other regions. The Baltic may be the closest.⁴⁰ And I think the commonality and the lessons learned there is the frequency with which the Baltic nations in the maritime world meet. And they meet within the commercial sector, and they meet within the governmental sector, and they meet in scheduling ferries, and their people cross the Baltic in the ferries whether it was between Finland and even the former Soviet Union. The border there was less a border than it is today in our Great Lakes. That would be one of my observations.

MR. CHERRIN: I was just wondering, sir, if you can comment on various initiatives bringing back short sea shipping to the Great Lakes, and where we are at with that as a way to crossing that border as well as bring back commerce to the Great Lakes?

ADM. CROWLEY: I would be happy to make a brief comment. Of course short sea shipping is an initiative that is primarily managed out of the maritime administration.⁴¹ I have talked and shared a podium with Shawn Connaughton on that subject,⁴² so what I am going to share with you is really only what I know and not what I own per se.

I think it is an option. I think many of the challenges that we have seen on the Great Lakes for short sea shipping seasons -add another "S" to the already challenging alliteration. -

MR. McCREERY: Say that again quickly.

ADM. CROWLEY: No. You only get one time. - is the weather. It is the ice season which interrupts an otherwise more dependable path.⁴³ I am not suggesting it cannot be overtaken, but that is been the challenge and will continue to be a little bit of a challenge.

From a security standpoint, I think it offers us some great opportunities. It offers us an opportunity to establish ports and processes from the bottom up,

⁴⁰ See generally The Great Lakes/Baltic Sea Partnership Program, <http://www.epa.gov/glnpo/baltic> (last visited Oct. 11, 2008) (discussing the Canada-U.S. partnership in the Great Lakes region and Baltic Sea).

⁴¹ See MARAD Short Sea Shipping Initiative, <http://www.marad.dot.gov/Programs/shortseashipping.html> (last visited Oct. 6, 2008). See generally *The Development of Short Sea Shipping in the United States: A National Short Sea Shipping Initiative Hearing Before the House Committee on Coast Guard and Maritime Transportation*, 109th Cong.(2007) (Testimony of Anatassis Margaronis, President Santa Maria Shipowning & Trading, Inc.), available at http://www.santamariashipping.com/short_shipping_initiative_02-07.html (last visited Oct. 6, 2008) (arguing for a short sea shipping initiative).

⁴² See generally Biography: Sean T. Connaughton Maritime Administrator, <http://www.marad.dot.gov/offices/administrator.html> (last visited Oct. 6, 2008) (biographical information regarding Sean Connaughton).

⁴³ See generally *National Security Implications of Border Security Along the Northern Border Hearing Before the Armed Services Committee*, *supra* note 25 (providing information regarding the problems that the Coast Guard encounters with icing on the water ways).

and those limited opportunities where we have started new business on the Great Lakes where we have got communities and we have got Transport Canada and U.S. Coast Guard, CBSA, U.S. Coast Guard working issues on both sides, we have been able to formulate some innovative solutions that if we begin and not have to recreate the wheel with a given infrastructure, we can make more headway.⁴⁴

So I would offer from a manager of security strategy, and responsibilities that that is a unique opportunity to get better at what we do. Not without challenges, but it is really I would offer is a great opportunity and should not be shied away from.

MR. VANDEVERT: Putting aside the laws of Antonian physics, can you take your philosophy on the water to the land, or is there a difference? I mean, is somehow the land different and present different challenges or different issues than the water as you have explained it?

ADM. CROWLEY: Well, I think you can, but I think it is different at the same time. That is an interesting question. Let me answer it by saying what I have used, the differences, and then what I think might be similarities that could be leveraged.

What is different is that the water moves. You cannot put a fence in the middle of the water. You are not going to put one in the middle of Lake Erie; it is not going to happen. You are not going to put a fence down 730 feet in Lake Superior; it is not going to happen. And so that whole concept just is not one, and you are not going to have a checkpoint because the boat moves quite frankly, even if you put a boat out there to do a checkpoint.

We have vessels ocean-going that cross the border 26 times going from Montreal to Duluth. 26 times we ignore those crossings. We do not ignore them, we track them. We understand where the vessel is, but we are not going through a checkpoint process each time. It never has happened, and I do not really expect it will. That is the primary difference where it has just always been different.

I think we recognize that in some way in those early treaties that I mentioned in a spirited partnership, and maybe that is where we get into the similarities is that the spirit of partnering I do not think should be different. When we look at the people in this room, when we look at our colleagues in all the agencies, the issues create different tensions, and crossing the land border with a weapon as opposed to, okay, I am on this side now, I am on that side of the water border, creates a little bit different of a tension, you potentially put someone in the urban area of Detroit with an RCMP officer or in the urban area of Windsor with a U.S. law enforcement officer with a lot of different dynamics and as well as the legal systems that will follow on,

⁴⁴ See generally *id.* (Discussing the United States Coast Guard's many successes and plans for maritime security collaboration).

and I think that becomes a challenge. But that only is a challenge to describe how we formulate that common border, land border area may be in a way that makes more sense and is more effective and efficient.

The other similarity is that this is part of the value I would offer in the Department of Homeland Security on the U.S. side and in having CBP and ICE all working with the Coast Guard under the same secretary. So that when we start having boarding differences on the water, I have called ahead Jay Ahearn has asked Todd Owen, Todd go to Cleveland, sit with Admiral Crowley, bring all the respective sector commanders, the OFOs all together, and talk about your respective issues. And so you have that opportunity to share some of the values of the partnership and the lessons learned, and there is part of the department, there are part of the negotiations that are ongoing between both governments and the Department of Justice, Ministry on the Canadian side, to deal with the arms carriage issues.

And so I think that there is a different future in the future for the land side. But it is not quite the same, and it is not quite as easy.

MR. MCCREERY: I think we have time for about one more.

MS. PRIGGE: Hi. I am Amy Prigge. I have a question about invasive species. I am interested in your thoughts on the proposed legislation on ballast water in the U.S. Congress, and not to speak of the legislative activity in U.S. states on the ballast water?

ADM. CROWLEY: Can I ask you to put a finer point on your question? I mean, I am certainly aware of the issue.

MS. PRIGGE: I would really like you to concentrate on what is going on in Congress, especially in the Senate in terms of some legislation that they put forward which could really potentially really hurt Canadian shippers as well as the difficulties in pertaining these proposed measures into practice from a operational standpoint.⁴⁵

ADM. CROWLEY: Okay. I think I know well where your question is going then. Let me say at the outset that the Coast Guard is proceeding with regulations through the proposed rule-making process,⁴⁶ and we talked about that a little bit this morning. There are the same sort of challenges with economically significant rule-makings and things of that nature. And I own the regulatory process for three years in Washington, so that is a challenge.⁴⁷ But the Coast Guard is pressing ahead. Unfortunately from my operator

⁴⁵ See generally Edward Alden, *The Great Wall of the United States*, THE GLOBE AND MAIL, Oct. 4, 2008 available at <http://www.cfr.org/publication/17452> (last visited Oct. 12, 2008) (discussing how much United States legislation can positively or negatively affect Canada).

⁴⁶ See generally United States Coast Guard, <http://www.uscg.mil> (last visited Oct. 11, 2008) (providing links to various resources which indicate the Coast Guards policies and procedures).

⁴⁷ See generally Biography: Sean T. Connaughton Maritime Administrator, *supra* note 41.

standpoint, we do not have regulations yet in place, and a lot of the challenge in getting regulations is the standard.

The solution in a short matter for legislation is to cut to the quick on a policy level and provide us a level through the legislature as to what the right standard is, and then we will still complete that with the regulations to enforce it. There will still be regulations required to enforce the law.

What you address specifically is the legislation that had been put forth in draft, and I quite frankly and honestly do not know the current status of what is being considered and when it might or might not get to the floor of the Congress, but what you have addressed is a provision within the evasive species, the ballast water discharge law that would consider Canadian vessels that transit between the river system and the lake system, though not outside the system as I described it from a security standpoint, but outside the pure fresh water kind of lake system to be subjected to the ballast water requirements.

There is dialogue and discussion. I had a discussion with your embassy officials in Washington earlier in the year on this matter in helping understand a little bit the process for our legislative process so that all voices and ramifications might be heard.

And so beyond that I am not sure what happens out of the Congress. Depending what Congress provides, then we would take a look at the regulatory project and undoubtedly work with our colleagues on the Canadian side to formulate an enforcement solution.

MR. McCREERY: Admiral, I think we are out of time. Thank you so much.

(Session concluded.)

