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Introduction to a Special Issue of the Canada-United States Law Journal

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INTRODUCTION TO A SPECIAL ISSUE OF THE CANADA- UNITED STATES LAW JOURNAL

It is both a privilege and a pleasure to be given the opportunity to write an introduction to this issue of the *Canada-United States Law Journal*. It contains what are probably the two most important reports of the Joint Working Group composed of representatives of the Canadian and American Bar Associations and joined latterly by representatives of the Barra Mexicana. The Committee functioned for some thirty years and I was co-chairman with Henry King during that extended period. The Joint Working Group produced several other reports on specific aspects of dispute resolution which I believe would be worthwhile to consolidate or at least summarize in another issue of the *Journal*.

The Joint Working Group had its origin in a proposal from the International Law Section of the American Bar Association in 1975 of which section Henry King was then Chairman. He took his inspiration for the proposal from Professor Louis Sohn who sought to promote a legal agenda for peace which would be a follow-on from much earlier bar associations' conjoint work. At the time I was Chairman of the Constitutional Law Section of the Canadian Bar Association. Henry, Louis, and I met in Toronto and planned a joint cooperative effort although at that stage we did not foresee the extent of the work that we would undertake or the lengthy history and legacy of the Joint Working Group.

Besides those persons whose contributions as members of the original group are recognized in the reports, there were over the years a large number of other individuals of both of our associations and later of the Barra Mexicana who contributed significantly to the work of the Joint Working Group. I need not identify them all, but I would be remiss were I not to acknowledge the important contribution over the years of Professor George Alexandrowicz, Louis Sohn's co-rapporteur, who participated throughout the life of the Joint Working Group. If I were to mention others from memory, I would undoubtedly miss out on some of the many others who contributed equally and whose very significant contribution I can, without current benefit of all my records, only acknowledge generally, be it very sincerely.

I would also be remiss were I not to acknowledge the support and encouragement we received from executives and staff of the American Bar Association and the Canadian Bar Association throughout the process. As well, we had the benefit of the views, and from time to time the participation, of representatives of the United States and Canadian governments. I do not doubt that Henry and Louis would join whole-heartedly in such recognition as they

would in recognizing the valuable individual contributions of the Canadian and United States participants together with those of the Mexican contingent.

Without minimizing the subject matter or significance of subsequent reports, the original thrust of the Joint Working Group centered on two themes which are found in the reports published in this volume, namely a mechanism for a resolution for legal disputes between Canada and the United States and recourse for private parties in the case of transfrontier pollution. These themes were winnowed out from the original broader context suggested by Louis Sohn for a legal agenda for peace. To his enormous credit, Louis Sohn accepted without demur the limited approach adopted by the Group so that the ensuing reports could aim at practical solutions that stood some chance of eventual implementation.

The first of these areas was, as noted, a proposal to deal with discrete legal issues arising in the Canada-United States relationship. It was felt that the law could make a contribution over and above diplomatic negotiations in circumstances where a legal issue could be isolated and dealt with outside the give and take characterized by diplomacy. That the contribution of the Joint Working Group on this point was of some significance was confirmed to me a number of years ago by Simon Reisman who was in charge of Canada's participation in the negotiations for the Canada-United States Free Trade Agreement. The essence of this aspect of that accord was carried forward in the North American Free Trade Agreement. The rationale and supporting arguments for the approach advocated by the Group are, of course, contained and developed in the attached materials.

The other area on which the Joint Working Group focused was a practical solution for private parties harmed by pollution the source of which was across the international border and who otherwise might lack any recourse. The original proposals were taken up by the uniform law bodies of Canada and the United States and, with the cooperation of the representatives of the Joint Working Group, a model law was subsequently developed and enacted in a number of provincial and state jurisdictions. Again, this aspect of the initiative had real, concrete, and beneficial consequences.

The publication of the two most significant reports of the Joint Working Group is a tribute to the work of its Canadian, American, and Mexican members and specifically to the contributions of Louis Sohn and Henry King, who regrettably are no longer with us and unfortunately cannot support or embellish this short outline of the background of the Group's work. Their important involvement in what was a very collegial process is appropriately recognized by the publication of the two reports, suitably annotated. I know that I can say with confidence what enormous respect the various members of the Joint Working Group from the American Bar Association, the Canadian Bar Association, and the Barra Mexicana had for the intellectual and organizational contribution to its work of Louis Sohn and Henry King. Be-

cause of my close and personal association with them over the years, I am delighted that their important contribution to international law and hemispheric relations through their participation in the Joint Working Group is so suitably recognized by this issue of the *Canada-United States Law Journal*.

T. Bradbrooke Smith, Q.C.

