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**Discussion Following the Speech of the Rt. Hon. Herb Gray  
Session 9: Canada and U.S. Approaches to the Great Lakes -  
Environmental and Economic Aspects**

Discussion

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DISCUSSION FOLLOWING THE SPEECH OF THE RT. HON.  
HERB GRAY

MR. ROBINSON: I am going to sneak in a comment before Henry King asks the first question. I think you probably already picked up on that.

Thank you, Mr. Gray. I think he has answered my question about what the uppity states and provinces are doing trying to make these agreements on their own by pointing out that in 2000, the IJC said, "We don't think diversion is a very good idea," and hopefully, they will come back with whatever new text is going to be released in May and ask for the IJC's comments.

And I understand, Mr. Gray, from what you mentioned, that the ultimate hammer in the U.S., legally, is that any diversion – any treaty, which could affect diversion, might be negotiated and signed by the states with the provinces, but Congress has still got to approve it.

RT. HON. GRAY: Well, it wouldn't be a treaty. They have good-faith agreements, memorandums of understanding between Ontario and various states on environmental – I'm sorry – on air pollution issues. So, they are for joint notification; joint action. If there is legislation, it can only be on a mirror basis. There can't be any binding agreement in international law. On the American side, because of the different regime, the U.S. Congress, as I understand it, has delegated to the states – the Great Lakes States, not every state, the eight Great Lakes States, the ability to ban any diversion of water from the Lakes.

And if, as I said, any individual governor doesn't want to see it happen, even if it is in some other state, it won't happen. Now, there are those who say that law won't stand up because there is no procedure for appeal or fair hearing, but there are others who disagree, and that law has been around since 1986, and nobody has challenged it, and in any event, that law gives us breathing space on the American side to legislate at the state and federal level, a compact banning diversions.

MR. ROBINSON: Right.

RT. HON. GRAY: So that's basically the situation.

MR. ROBINSON: He is a heck of an international lawyer, isn't he?

DR. KING: Very good. That's because we are allergic to trees.

(Laughter.)

DR. KING: Okay. This is a model for cooperation between two countries that are very disparate in strength. I think it is a wonderful model. But also we have the problem of whether we could apply it in other areas. Say the Atlantic fish disputes, you know, so the fish are not deleted to the extent there is no cod there, or the Pacific salmon, what about the application of this

model, which is an ideal model, to other areas where there is controversy, particularly in the fish area?

RT. HON. GRAY: Well, there are people like Tom d'Aquino, a colleague at the Association of Canadian Chief Executives who said we should give the IJC an expanded role, or we should use the model to have many IJCs, either on many topics, or topics like fish. I think if that were to be done, the IJC would need more financial resources, a larger expert staff, and maybe more commissioners.

But I repeat something I said, which most people don't realize: if the two governments want to give the present IJC the task of looking into recommendations on how to deal with a problem, they don't have to change the Treaty. The way Article 9 is written, the way the preamble is written, the Commission, as it is today, can be given a reference to look into and report on anything of concern to the people on both sides of the border, and, as I've said, I am aware of at least two occasions when this has happened. Now, just to add this point, generally what we do involves fresh water, although I guess we get into estuaries, but if the government wanted us to look into fish in salt water and they sent along a check to cover the cost of the reference, we could look into it.

MR. ROBINSON: And as you said, Henry King, it is a nice model, but the U.S. is adverse to treaties, so you would have to do it Mr. Gray's way.

David Crane had the next question.

MR. CRANE: Well, the 1909 experience certainly illustrates the kind of forward thinking that people in our two countries had a long time ago, which is less evident today.

I just want to tell a very quick story, and this would be of direct interest to you, Mr. Gray, because it concerns Lake Erie. And when I was a young reporter in the press gallery, there was a report indicating excessive levels of mercury in Lake Erie, and I was dispatched to interview your fellow M. P. (Member of Parliament) Eugene Whalen on this matter, and asked him how concerned he was, and he said he was not concerned at all. And so my next question was, "Why not?" And he said, "Now we can build a thermometer factory." Now, I don't think you get that kind of reaction today.

My question is this: Is there any interaction at all between the Commission for Environmental Cooperation, the NAFTA entity that was set up, and the International Joint Commission? Have you had occasion where there has been any interaction getting involved which might affect –

RT. HON. GRAY: Well, first of all, the agreement between the three countries setting up the NAFTA Commission on Environmental Cooperation, has a clause there saying it should not overlap or conflict with the work of any other group. And, we have established a working relationship with them on individual matters that we agree on. We are working on a project on environmental health issues involving children, and we just finished a consulta-

tion on something that was discussed this morning, and that is the pollution from coal-fired, electrical generating plants. And so we are in touch with them from time to time on matters of joint interest, and at least once, when the NAFTA Environmental Commissioners, who are the Ministers of the Environment of the three countries, met in a plenary session, we met with them as well as our Mexican counterparts.

There is a U.S.-Mexico Commission involving the Rio Grande and Colorado Rivers. They have other issues they deal with, like they build bridges themselves. So, yes, we do have cooperation, but they (the NAFTA Commission) do not have a hands-on role in dealing with levels and flows along the international boundary, and having control boards report to them and so on. They do a very interesting job of analyzing three-country trends and pollution. If you have complaints, you can petition them, and they can issue a report. So they do useful work, and on some of it, we cooperate with them.

MR. ROBINSON: But the IJC, of course, has a great deal more power, real power than that NAFTA Commission.

Is that right?

RT. HON. GRAY: Well, if we get an application, and once we make an order, that's it. Now, I might mention – I don't want to smuggle in too much here – but as happened with the Columbia River Treaty, if the governments want to set up a separate bi-national arrangement, then the role of the IJC on dealing with applications for structures does not apply. That's what, in effect, the Columbia River Treaty was.

MR. ROBINSON: Next question. At the back and then –

MR. LEVEY: David Levey. I admire very much your long view, both in your comments and your conclusion, in terms of the importance of the IJC and the Great Lakes and treaties and activities that have taken place over the years – your conclusion in terms of the importance of the IJC and the Great Lakes and treaties and activities that have taken place over the years.

My question to you is a broad one, which is: Over the next 10 to 15 years, which are some of the major issues you will be dealing with within the IJC's current purview and, I am thinking in particular, perhaps, of the expansion of the St. Lawrence Seaway, or ocean going vessels, or perhaps the use of – increased use of ferry services and things like that we have been talking quite a bit about here in Cleveland.

Thank you.

RT. HON. GRAY: Okay. Well, one issue I mentioned very briefly is alien invasive species. As we learned with the sea lamprey, once the species gets into the Lakes, you could never get rid of it totally. It took 50 years to reduce the sea lamprey down to about 10% of what it was when it first started eating up the native species.

So there has to be, as I say, eternal vigilance dealing not only with the existing species, but working – and this is a whole other topic about keeping

species out of the Lakes, to prevent them from coming in on ballast water, oceangoing ships, or in the bait boxes, and on the hulls of fishermen's boats, tailored from one basin outside the Great Lakes into the Great Lakes. Second of all, I don't think there will ever be a time when you can say, "The Great Lakes are cleaned up, fine, that's it, go on to something else." Unfortunately, it is a dynamic situation.

When the Agreement was written, there were lists of chemicals – but fire retardants were not on the list, and they are a major source of chemicals turning up in the Lakes. Now, to show how complicated this is, fire retardants at one level are very useful. Thank God they are on your furniture, or kid's crib, and fires are prevented or mitigated. But they get into the water, they start building up on the tissues of fish if they are not screened on, maybe directly on people's human tissues, they are not a good thing. So you have to be eternally vigilant about matching up changes in technology, especially chemical and biological science with threats to the Lakes.

Now, some things I don't think will happen: There is a Canada-U.S. working group looking into the future of the Seaway. From what I understand, they are not looking at expanding it. The idea of panamax vessels is not on the table, but they are looking at how they can make the existing Seaway work better, using basically vessels of about the approximate size. So, looking ahead ten to fifteen years, I mentioned alien species, I mentioned new chemicals getting into the Lakes, and I mention also the issue of urban sprawl. The array of urbanization around the Great Lakes, and the runoffs from hardened surfaces in urban areas, are a tremendous problem. The growth of factory, farms – phosphorous getting back into the Great Lakes from intensive farming operations are an ongoing problem; a growing problem. So I won't say that there are going to be some totally new problems we can't even foresee, but just dealing with the newer manifestations of existing problems will keep everybody busy for years. Also, I didn't get into the effects of global warming. If global warming reduces lake levels, the biota, and micros, and pathogens, in the Great Lakes might become more concentrated. So we have to assess the effects of global warming. I think I will stop there.

MR. ROBINSON: One wag in Toronto recently was heard to say that the leakage of pharmaceuticals into the Lakes may have a positive impact with the tremendous upsurge in the taking of Prozac and Zoloft, and it might make everybody much happier all around the Great Lakes; less depressed.

Yes. Representative of the Government of Quebec?

MR. LAFLEUR: Hi. It is not a question. I would like to add a comment, talking about the model of cooperation between Canada and the U.S. It is certainly true on the national level, but I think that we can also say that it is also very true on the regional level. For instance, we have the Council of Great Lakes Governors, in which you have the eight border states, but you have also, as an associate member, the provinces of Quebec and Ontario, that

are really working together, especially in that diversion project, and also, we have the Great Lakes Commission, including, again, the same ten jurisdictions, the eight states and the two provinces, also working together and meeting frequently. And in addition to that, at the municipal level, you have the Association of the Mayors, the Great Lakes and St. Lawrence Rivers mayors that – who are really working together, and they will meet shortly next month in Quebec City. So that's just a demonstration that it is a regional collaboration. We have some common interests in that field, and it works pretty well.

RT. HON. GRAY: Thanks for your comments.

In the interest of time, I didn't talk about the agreements between Canada and – Ontario and Canada, that is, the federal government and Quebec, for cooperation, because in areas like water quality and quantity, there are overlapping jurisdictions, so there is very good cooperation under the Canada-Ontario Agreement, which basically covers – as Ontario covers all the Canadian shores of the Lakes as such, and then, of course, Quebec, once you get past the international area between Kingston and the Quebec border, the St. Lawrence goes into the ocean through Quebec. And, of course, there is overlapping jurisdiction because under the Constitution, the federal government controls navigation, and navigable waters, and fisheries, but the waters are going out through the province of Quebec, and there are issues involving clean water for drinking and for municipalities, and so on, and sewage treatment. So there is a Canada-Quebec Agreement where they don't have AOCs – I forget the acronym – but that's something which is worthy of another discussion about cooperation.

Oh, about mayors, this is a spark plug. There has been a long time Association of Great Lakes Mayors. Mayor Daily of Chicago felt it should be a more powerful, better funded group with a permanent secretariat. He set up a new group. The administrator is Mr. Ulrich, many of you may know, who was deputy administrator of Region 3 of the U.S. Environmental Protection Agency. And they are meeting for two days, May twenty-fifth and twenty-seventh, in Quebec City. Hopefully, Mr. Lafleur will be there to finalize the integration of the two mayors' groups, and I think that will be a very good move.

MR. ROBINSON: This proliferation of organizations cooperating together in this area is just extraordinary. Maybe this should be the model that replaces Chapter 19 of NAFTA, which is, as we heard all day yesterday, doesn't seem to work.

Question in the back? Colin McLaughlin.

MR. McLAUGHLIN: I am a student at Case Law School here. My name is Colin McLaughlin. I am actually from Michigan. I live right on Lake Michigan. And my question is: To what extent, and how important is it not just to look at what's going on in the Great Lakes themselves, but also the

streams and rivers that may be, you know, 100 miles, 200 miles inland in territories that are all leading to the Lakes, and pollution that occurs there?

RT. HON. GRAY: You are definitely right. The Boundary Waters Treaty deals only with – doesn't deal with all the tributaries, if you look at the complicated definition, but that's why you can't do things without involving the provinces like Quebec and Ontario, and the Great Lakes States themselves. It can't be just a matter of the two federal governments. The constitutional arrangements are a reality. They may not correspond 100% to the geography, but they are there, and when you deal with the tributaries that go into the Great Lakes, you are getting far back from the shores of the Lakes themselves. And what gets into those waters, and from there it gets into the Lakes, is something very important. That's why the Areas of Concern generally involve municipal boundaries, and there have to be committees developing remedial action plans and working together. Then there are other related issues of ground water, and so on and so forth. So what you said is very important. That's why, I repeat, whether it sounds like a lot of organizations and a lot of different levels of government being involved, it is not just creating business for lawyers, which I don't object to, I am a lawyer myself, but these are realities, and they have to be accommodated in working out cooperative arrangements in dealing with the issues that we have been talking about.

MR. ROBINSON: It is interesting. It is quite specific in the definition of Boundary Waters: "...not including tributary waters which in their natural channels would flow into such lakes, rivers, and waterways," – that's the boundary ones – "or waters flowing from such lakes, rivers, and waterways, or the waters of rivers flowing across the boundary."

So again, you'd have to have a special agreement between the two federal governments to ask the IJC, I guess, to say something about that kind of thing, or maybe that would be even beyond the jurisdiction of Article 9.

RT. HON. GRAY: I repeat, if you read Article 9, and also look at the preamble, without changing a word of the existing Treaty, we could be asked to look into anything.

MR. ROBINSON: As long as it is liquid.

RT. HON. GRAY: No, no. That's my point. I am not preaching for a call, but if you look at the wording, it says, in effect, "any problem of concern to people on both sides of the border."

MR. ROBINSON: Well, definitely this should replace Chapter 19 then.

I'm not sure where the next question was from. I think it was at the back. Jim Phillips.

MR. PHILLIPS: Mr. Gray, I recently had heard that in Washington within the last eight or nine months, there had been a hearing before a Senate committee and the senators asked who spoke for the Great Lakes, and there were some twenty-six organizations that all claimed to be the spokespersons.

I would just want to comment, the IJC is really the key model between the two countries, and is there any concern when it gets down to the mat as to who – are we being pushed and tugged and pulled by too many organizations that are claiming to speak for the Great Lakes?

RT. HON. GRAY: Well, I don't think we will ever get to a time when any one organization will speak for the Great Lakes. I repeat what I said about different jurisdictions. There are cities and towns. There are rural municipalities. There are provinces. There is the federal government role. So I think the best thing is, frankly, if there are a lot of organizations, it means a lot of people are concerned or involved. There is an attempt to have an umbrella group, Great Lakes United, but if the Sierra Club wants to say something, or the Legal Defense Fund, or the Council of Great Lakes Industries, or your group, well, more power to them. I mean, that's one of the beauties of our system – our systems of government. So I don't think one can worry about – that there isn't one voice. Maybe they will come together, as has been the case with the Sierra Legal Defense Fund and the Environmental Defense Fund in Canada and so on, on particular issues. So the more the merrier. That's what I say.

MR. ROBINSON: And as Mr. Gray said initially, the IJC is a particularly useful organization because it is transparent. All of its reports are automatically available to the public. We have time for just one more question at the front here.

MR. GREENSPAN: Thank you. My name is David Greenspan. As a bit of a corollary to what my colleague Mr. McLaughlin was asking earlier, in terms of upstream effects and how the IJC approaches them, I am also curious as to some of the downstream effects.

For example, I am a Seattle native, and just recently, within the last couple of years, the zebra mussel has appeared in Washington State; we suspect from the Great Lakes area somehow, but we don't know for sure. I wonder what the IJC's particular policy towards containment is? Obviously, one of the primary goals is to keep bad things out, but once you have an invasive species present, how do you act to keep it from spreading?

RT. HON. GRAY: Well, the Zebra mussel is also in the lake system between Ottawa and Kingston. I think it is already in lakes in Wisconsin. I think there will have to be scientific cooperation through groups like the Great Lakes Fisheries Commission and university researchers to see the best way to prevent the mussels from reproducing, whether it is biocides, or ultra-violet light.

There isn't one answer, but here is a whole field for researchers. There are some things that you can do, like keeping the Asian carp out of the Great Lakes through the electric barriers on the Illinois River. So there isn't one answer. I mean, you should research what's been done with the Great Lakes Fisheries' Commission and the sea lamprey. I'm afraid there are about 116 new alien species that have gotten into the Great Lakes in the past twenty

years. Some are less worrisome than others. So there is no single magic bullet that I am aware of.

There will have to be a lot of things done, starting with a lot more research and a lot more coordination, and particularly with respect to things like ballast water and the control of private fishery – private fishing boats, and so on, and also things like live sale of species in certain types of fish markets in urban areas.

MR. ROBINSON: Well, Mr. Gray, thanks for coming, and everybody has kept to their time, and now, you will be able to make your plane. I think we owe a vote of thanks to Herb Gray for coming here, and we will now make room for the others.

(Session concluded.)