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Discussion Following the Remarks of Mr. Knox and Mr. Elgie

Discussion

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DISCUSSION FOLLOWING THE REMARKS OF MR. KNOX AND MR. ELGIE

COMMENT, MR. MONAHAN: Just to pick up on the last speaker's suggestion, the provinces and states working cooperatively. In the last couple of years I was involved with an organization in the U.S., Great Lakes Protection Fund, that is working to preserve the Great Lakes and, in particular, to prevent water exports or diversions of water from the Great Lakes.

We worked with the fund, which is tied to the eight Great Lakes governors, and the approach we developed was to work directly with the provinces of Ontario and Quebec. We did this to avoid all of these federal/ provincial disputes. We went directly to the provincial level, and, in fact, what we developed was an accord, which was signed by all the eight governors and two provincial premiers last year, which commits those governments to enact legislation to prevent diversion of water from the Great Lakes.

There are discussions in Ottawa now, looking at whether to permit the export of water. There are some provinces that want to export water.

In Ontario we have committed ourselves to not allowing the diversion of water from the Great Lakes.

I am just throwing that out as a suggestion, but it seems to me that you are more optimistic about the possibility of solving concrete problems through direct, state-to-province discussions and agreements.

One of the big problems was the question: Did the provinces have the authority to enter into this type of agreement? This is how I got involved in this. We eventually said, "Yes, we think there is a way you can do it." It seems to me that is something that might we will be more usefully explored in the future. I wanted to know if you have any comments about that.

COMMENT, MR. ELGIE: I think that is a great idea. I think it will only take you so far. I think, from a bargaining-dynamics viewpoint that will work when the individual state and province both see it in their best interest. The Great Lakes are a good example because they are all in the same boat. A different example might be Ontario and the Midwest with air pollution emissions.

It is clearly in Ontario's interest to reduce air pollution emissions from the coal belt in the Midwest U.S. It is clearly not the interest of the coal belt to reduce those emissions there.

Often times you are dealing with issues where the individual interests of a particular state or province may not line up, but the collective interest of the two nations may dictate a different solution.

I would suggest that would be half if not the majority of the result. International problems usually tend to end up in the lap of the federal government.

I agree with you; when states and provinces can solve it themselves, why use a chainsaw when a scalpel will do.

COMMENT, MR. KNOX: The only thought I have about that is: On the U.S. there is a question as to the legal effect of state/provincial agreements. On the U.S. side there is a question of whether they are constitutional.

It is unclear to me what the compliance pull is in a legal sense state/provincial agreement that does not have some kind of federal imprimatur.

QUESTION, MR. ROBINSON: I thought the International Joint Commission (IJC) had some authority to originate its own actions and did not have to wait for a referral. Why cannot the IJC do something about your problem on your Alaska border, and, indeed, I think it has recently done something about water exports generally on trans-border waters without having to wait for a referral from either government. Can you help me on that?

ANSWER, MR. KNOX: Just briefly, I think one of the reasons the IJC has been so successful is it has been careful not to get too far out in front of the federal governments.

The U.S. could unilaterally refer this problem to the IJC. Unilateral reference has almost never been done either because of the same reason, and that is the IJC has been successful in large part because it has encouraged, move the governments along but not at a pace much faster than the governments were willing to go. At least that is my take on why the IJC would not want to get involved in this without some kind of government referral.

QUESTION, MR. KING: Could the IJC play a greater role on the trans-boundary environmental assessments?

ANSWER, MR. KNOX: This is really off the top of my head, but the thing about environmental assessment is that it is enormously time consuming and expensive.

I am not sure what the IJC could do in terms of doing the assessments itself. You almost would have to think in terms of a much greater degree of resources devoted to it to get it into this.

The question would be could the IJC help you facilitate a series of state/provincial agreements or something like that.

One thing I think that the federal governments could do to try to facilitate state/provincial agreements, is try to come up with a system of templates or options on to which the states and provinces would sign.

In other words, here are the options we are allowing you to choose from. We are not going to allow you to choose from anything you want. Here are things you can chose from; one from Column A and two from Column B, in that sense the IJC could be useful.

There is always a risk with the IJC, or any institution that works well, of overloading it, and thereby undermining the very reason it works so well. That might be a risk here, as well.

ANSWER, MR. ELGIE: When the IJC does in fact do a study; it is doing a trans-boundary environmental assessment. Normally the problem you face is not finding a forum to actually do the joint assessment, it is creating the political will in the first place to do that assessment. There may be cases where each country just does not trust the other one to do the right environmental assessment; in that case it probably would be good to have one joint forum. More often there is the problem of actually creating the political will to do the assessment on one or the other side of the border.

I would add that Canada's Act, this discretionary power, does actually make allowance for the creation of a trans-boundary environmental assessment panel, jointly with another government. That power has never been used and that is the alternative recommendation being floated in the Tulsequah Chief scenario, too; that if you do not go to the IJC, do it jointly. The day has already passed for that one to be done. That would be another option.

COMMENT, MS. DALLMEYER: Thank you all very much.

