North American Diplomatic Initiatives

George Rejhon

Follow this and additional works at: https://scholarlycommons.law.case.edu/cuslj

Part of the Transnational Law Commons

Recommended Citation
Available at: https://scholarlycommons.law.case.edu/cuslj/vol5/iss/22

This Speech is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Canada-United States Law Journal by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.
I have to say at the start that some of the things we have heard today have once again given me great concern. I am afraid that this issue of so-called acid rain — and I do wish that we had thought of a less emotive title — leads excessively and unnecessarily to emotional and polarizing debate. And, as that happens, people have a tendency to overreach, to say what they mean to say and then go just a step further, and that's not always terribly helpful.

I would like to refer to a couple of examples. First of all, let me make it clear that we in Canada do not consider ourselves to be the good guys in a Grade B western movie with the United States playing the bad guys. We perceive a problem, one which, as Mr. Roberts told us this morning, we think is serious. We believe it is serious enough over the medium and long term that some action must start to be taken. But we are not suggesting that it ought to be done in such a way that it would produce economic and social dislocation in either Country. We are not demanding something of the United States which we are not prepared to do ourselves. If you think that this is just empty talk on my part, I would ask you to please take a look at the U.S.-Canada Great Lakes Water Quality Agreement, the history of how we negotiated that agreement and what we have done under that agreement.

Let me just make one comment, though, with regard to that agreement. What we decided and what we agreed to do bilaterally in 1972 and again in the renegotiated agreement of 1978 was to set clean-up goals in the Great Lakes. The amounts and figures were based not on what we felt was good for the environment, but what we felt was achievable without causing any economic or social dislocation, and history has demonstrated that thus far we were right.

Also, I would again like to make a point about some of the misperceptions, and to refer to one that has given us a lot of trouble; this unfortunate notation of the logarithmic pH scale. A reference was made today to the fact that some people like to think that natural rainfall has a

* Environmental Consular, Canadian Embassy, Washington, D.C.
pH of 7.0 or 5.6 and, in fact, it may be closer to 5.0. Well, let’s assume that’s true. I don’t think that in Eastern North America natural precipitation, if we had any, would have a pH of 5.0, but let’s assume that is so. It was also said that precipitation now tends to be around 4.5.

I would like to use an analogy here. Let us assume that natural background precipitation has a pH of 5.0, that it has been so for a long time and, therefore, that ecosystems presumably would have little, if any, short-term problems with it and certainly no long term problems. The analogy we could draw would be this: after this is all over, those of us who have the stamina would go out to a party and agree that each of us could have two martinis. That would have few significant short-term consequences and certainly no long-term consequences for us. And using the analogy that those two martinis are the equivalent of a pH of 5.0, what is a pH of 4.5? A pH of 4.5 would be ten martinis.

On the argument that we don’t know whether acid rain is increasing or decreasing, I suggest to you that that doesn’t really matter. If acid rain today is the equivalent of ten martinis, it doesn’t really matter whether next year it’s going to be eleven or twelve or nine or eight. The point is that our absorptive capacity is being exceeded.

Now, to get to what I was supposed to talk about, which is diplomatic initiatives.

When Americans and Canadians get together, and particularly when we get together to discuss bilateral relations generally, I suppose the most popular hackneyed and overworked truisms that we like to exchange are how we are such good neighbors sharing a continent and how we have the longest undefended border on earth. But then there is also the maxim that good fences make good neighbors.

Having such a long undefended border and one where so much can pass back and forth with so few impediments is the diplomatic equivalent of having a very bad fence. So how then do we remain good neighbors? On the environmental front, over the years Canada and the United States have developed a body of law, of commitment, and of cooperative practice which, in the words of your President, when he was in Ottawa recently, is “the envy of the world” and which has enabled us to deal with most such issues in a rational and responsible manner.

Beginning with the Boundary Waters Treaty of 1909 and the unique organization it created, the International Joint Commission, we have put in place a variety of administrative mechanisms and diplomatic processes intended to make us and keep us reasonably friendly neighbors, despite the absence of a good tight fence. That we have been largely successful is a matter of historical record. But the dynamics of two industrialized and democratic societies are such that new problems replace old ones and new challenges spring up to test our willingness and our ability to work actively at being good neighbors.

Bilateral consideration of the transnational implications of acid rain, the type of meeting here today, was first triggered by the decisions of the
Provinces of Ontario and Saskatchewan to build coal fired power generating plants near the border. Concern about their possible transboundary environmental impacts prompted the U.S. Congress, in 1978, to call for air quality agreement with Canada. It was that initiative by the U.S. Congress that first brought our two governments together to talk seriously about the general issue of transboundary air pollution on a continental scale.

The Ontario plant, in particular, is instructive in this matter. It was planned to be sited in a little town called Atikokan in northern Ontario. The diplomatic exchanges surrounding the Atikokan controversy are instructive in showing how our governments seek to deal with such issues.

As a result of the expressed concerns in the State of Minnesota the U.S. Government sought consultations and the Canadian Government agreed. The initial talks were rather inconclusive and there was some enthusiastic support of divergent positions.

The United States felt that there was a strong presumption and that there would be significant transboundary injury; specifically, acid rain damage to the sensitive lakes of the Boundary Waters Canoe Area.

On the Canadian side there was confidence that such transboundary injury would not take place.

The data upon which rested these rather firm convictions was at best meager and it was agreed that independent but coordinated studies should be conducted to try to improve the data base.

Well, these studies turned out to be rather inconclusive. They also had the extraordinary property of appearing somewhat different, depending on the geographic location of the analyst. When viewed from the south facing north, the study suggested a significant risk of transboundary injury. When viewed from the north looking south, they suggested that there was little, if any, risk.

The core of the U.S. position was that such a plant if located in the United States would be subject to New Source Performance Standards under the U.S. Clean Air Act and would have to be fitted with sulphur removal equipment. Further, it was the judgment of the U.S. experts that without such scrubbers, the plant might on occasion exceed the Class I standards specifically designed to protect such areas as the Boundary Waters Canoe Area.

The Canadian response essentially was that Canada had rather different strategies for dealing with air pollution; that the U.S. law did not apply in Canada; that the automatic and ubiquitous mandating of scrubbers was not part of the Canadian strategy; and that the issue was really whether there would be significant injury.

As a compromise proposal the United States suggested 50 percent scrubbing and Canada responded by saying that the plant would be constructed with retrofit capability if we later found that significant injury might or would be taking place.

This and other relatively small point source issues are important in
looking at the diplomatic initiatives because they show that the Governments of Canada and the United States, while often disagreeing on specific points of data and interpretation, could recognize the need to consult in advance about potential transboundary air pollution problems, including acid rain. The two Governments should also conduct, either bilaterally or through the International Joint Commission, studies to delineate the problem and to propose solutions which would avoid such transboundary injury.

While such an example is relevant to an understanding of this issue, it reflects relatively straightforward bilateral problems. This is so not just because they are point sources and that the data therefore is much easier to compile and interpret, but also because we managed to engage in bilateral dialogue before operations began. The latter point is more significant. The fact that transnational air pollution, including acid deposition, is taking place on at least a sub-continental scale and that the pollutants that produce acid rain come from a large number of existing sources injects into the diplomatic dialogue a series of daunting political, economic, social, commercial, scientific and environmental complications. It's for that reason that the Governments of Canada and the United States, while recognizing the seriousness and urgency of the problem, have begun to tackle it through a series of important and far-reaching, but nonetheless cautious steps.

When, at the urging of the U.S. Congress, we first sat down to look at this, we realized that the level of information was quite insufficient even for a proper definition of the problem. It was for that reason that our first tangible bilateral step was to set up what we call the Bilateral Research Consultation Group. This group of scientists from both Countries was charged not with carrying out additional research, but of collating, assessing and reporting on research that has already taken place in both of our Countries and elsewhere. They have twice reported to governments.

Our next step was to recognize that while the problem was a new one, we were really not starting from scratch when it came to tackling a transboundary environmental problem, notwithstanding that this one had a rather unique magnitude.

We, therefore, negotiated the joint statement on transboundary air quality which outlined the basic obligation of commitment and cooperative practice on which this would be based and went on to describe some of the things we ought to do.

The last activity pursued was our Memorandum of Intent and that was particularly significant because there we defined the tasks of five technical and institutional working groups that should spend quite a lot of time studying the problem before we even begin the negotiations which someday we hope would lead to a bilateral agreement.

Finally, I want to mention that we are now into the second phase of studies under the Memorandum of Intent with the intention, as you have heard, of beginning negotiations later this year. In the meantime, Ontario
has joined with the State of New York in opposing requests for relaxation of emissions on some sources in the Midwest. This is an administrative action which Ontario has begun. It has been followed up by a note from the Canadian Embassy to the Department of State requesting that this position be taken seriously. In fact, we are asking that what in the past has been looked upon as a strictly domestic administrative matter needs now to take into account the transnational implications.

Thank you.