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Discussion

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Discussion After the Speeches of James G. Chandler and Michael J. Vechsler*

QUESTION, *Mr. Kirby*: What role, if any, does the Commission play in the solution of the zebra mussel problem, and also, what is the Commission's role, if any, in controlling pollution, including oil spills, coming into the Great Lakes through international shipping?

ANSWER, *Mr. Chandler*: On the zebra mussels issue, there was a joint report between our Commission and the Great Lakes Fishery Commission about a year ago. I don't have the specific recommendations in mind, but there were fairly strong recommendations that ships be required to flush their bows before coming into the system. This won't help with the zebra mussels that are in now, but it may forestall other exotic species from coming into the system.

In terms of controlling the current problem in the Great Lakes, the Commission has not been involved in that issue. This is more a matter of how much time, how many resources, and what are the priorities? Our focus is more on the toxic substance issue. There are many other people who are doing work on trying to control zebra mussels in particular areas.

With regard to the oil spill question, again, our Commission has not focused all that much on regulations for navigation in the basin, that I'm aware of.

QUESTION, *Mr. Janke*: The United States EPA is in the process of publishing water quality standards that would implement the agreement with respect to persistent toxics. Will the Commission have a role in the EPA's development of those standards or in reviewing them once they have been adopted in the United States?

ANSWER, *Mr. Chandler*: We do not get involved in proposals while they're underway. There are a whole variety of proposals at any given time. What we will do is try to assess the proof of the pudding, see what happens at the end of the day, and comment perhaps on improvements, identify shortcomings, that sort of thing. We feel that is the way we can be most effective, given the binational nature of our organization.

QUESTION, *Professor King*: I wanted to get your comments on whether the IJC-type of body could be extended to issues like trade, other controversial areas for the management and resolution of disputes.

ANSWER, *Mr. Vechsler*: First of all, insofar as the Commission

* The questions and answers presented herein have been edited by the *Canada-United States Law Journal* for the purpose of clarity, and have not been edited or reviewed by the respective speakers.

tries to or has to determine issues and make decisions, it's been given a set of fairly specific principles when approaching requests to approve works in boundary or trans-boundary waters, and I think the key to the success in that area has been the precision of the principles. Within the framework of an institution which has those principles, then, the concept of impartiality, I think, has grown in time, and certainly is reinforced and is a very strong element in the working of the commissioners today.

On the other hand, when you get into controversial issues, which the Commission normally now addresses in the context of advice giving, where it does not have clear-set principles established by the parties within which to work, it takes much longer, and the Commission's ability to deal with those questions is not as clear. Also, I think that it has not always been as successful without those clear-set principles.

QUESTION, *Professor King*: In the Boundary Waters Treaty, there is a provision for arbitrations by the Commission of international disputes. Could you comment on the feasibility of using that arbitration provision in settling disputes between the United States and Canada?

ANSWER, *Mr. Vechler*: I suppose one of the most telling factors on its feasibility is the fact that it's never been used. The other factor, of course, is that because you need Senate approval and, in effect, a new agreement to establish an arbitral body, it's really as difficult to use the Commission as it is to have an agreement for a specific arbitration.

QUESTION, *Mr. Brueckmann*: The concepts of virtual elimination and zero discharge of specific toxics are concepts that have not taken you very far. You seem to be running up against some very major problems in terms of implementation. Is there an exploration taking place of how you can arrive at more practical and useful concepts?

ANSWER, *Mr. Chandler*: I think it is too soon to say it's not going to work. We're just at the beginning. The language has been in the Water Quality Agreement since 1978. It has taken a long time for people to make the transition between understanding that a substance is toxic, but may be dispersed through our water and isn't going to cause a problem, to one that is both toxic and persistent, which is just going to bioaccumulate over time and is not something I can make go away. Most of the regulations now are geared towards substances that are toxic, but can be diluted. We are just coming to grips with those for which that doesn't work. The work of the virtual elimination task force will get into a whole range of possibilities towards changing processes. I think it's a little soon to say that we're ready to throw in the towel.

QUESTION, *Professor King*: We've had problems on the Mexico frontier with pollution. What about a group like this in the Mexico area?

ANSWER, *Mr. Chandler*: There is a U.S.-Mexican provision that deals primarily with water quantity, making sure that the boundary stays in place. They are being pulled kicking and screaming into the water quality issue. It's going to be tough to either impose another group on

that situation or bring them up to near where we are on the water quality issue, but it's something that needs to be pursued one way or the other.

