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# THE MANAGEMENT OF INTERNATIONAL BOUNDARY WATERS OF CANADA AND THE UNITED STATES: A COMPARATIVE STUDY\*

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Canada and the United States share a continuous boundary 3,600 miles in length. Since the Boundary Water Treaty of 1909,<sup>1</sup> the International Joint Commission (IJC)<sup>2</sup> has been actively engaged in helping to resolve water-related disputes in nearly 100 cases. Some of these cases were readily amenable to solution; others like the problems in the Columbia River Basin were more complex; and many of the problems of the Great Lakes have not yet been solved. During this entire period no substantial review has been made of the International Joint Commission, nor has substantial consideration been given to improving the management of the Great Lakes.

For over a decade, I have raised questions about the management of the Great Lakes.<sup>3</sup> In 1971 I organized a graduate seminar on problems of the Great Lakes. Together with Professor George Francis of the University of Waterloo, Ontario, we organized a twenty university seminar during late 1972 and 1973 to address the question of improving the management of the Great Lakes. The report prepared by the seminar and the succeeding implementation efforts have been aimed at encouraging and stimulating debate on how to improve the management of the lakes in order to make it more effective to meet current and emerging problems. A second objective was to attempt an inquiry into an international water and land resources

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1. Treaty with Great Britain [for Canada] Relating to Boundary Waters and Questions Arising along the Boundary between the United States and Canada, January 11, 1909, 36 Stat. 2448 (1909-11), T.S. No. 548 [hereinafter cited and referred to as Boundary Waters Treaty].

2. Created by Art. VII of the Boundary Waters Treaty, 36 Stat. at 2451.

3. G. McCullum & L. Dworsky, Great Lakes Development Program—Review and Prospects (Publication No. 11, Great Lakes Research Division, University of Michigan, 1964); L. Dworsky, Canadian-United States Water Resources Problems and Policies (seminar papers in Water Resources Problems and Policies (Civil Eng'g 2515), Cornell Univ., Fall Term, 1965); L. Dworsky, The Fresh Water of New York State: Its Conservation and Use (proceedings of a symposium held at the State University of New York at Buffalo, June 13-17, 1966); L. Dworsky & D. Allee, Goals and Perspectives in Water Resources Planning (paper presented at the Water Resources Planning Conference, sponsored by the New England Council of Water Center Directors, Boston, Mass., May 16-17, 1968); L. Dworsky, The Relationship Between the United States and Canada (seminar series on the Continental Use of Arctic-Flowing Rivers, Pullman, Wash., April 1-May 20, 1968).

problem with the hope that such an examination would prove a useful guide in resolving or alleviating other similar international questions.

The International Joint Commission, the only existing formal arrangement between the United States and Canada broad enough to consider comprehensive action on water and associated land resources, was formed in 1912 to carry out the purposes of the Boundary Waters Treaty. The purposes of the Treaty are: "... to prevent disputes regarding the use of boundary waters and to settle all questions which are now pending between the United States and the Dominion of Canada involving the rights, obligations or interests of either . . . along their common frontier, and to make provision for the adjustment and settlement of all such questions as may arise. . . ."<sup>4</sup>

The Commission consists of six members, three from each country. The United States Commissioners are appointed by and serve at the pleasure of the President. The presidential appointment of U.S. Commissioners is not subject to Senate confirmation. The Canadian Commissioners are appointed by Order in Council of the Canadian Government and serve at the pleasure of the Government.

The Boundary Waters Treaty gives the Commission responsibility in two general categories. The first of these responsibilities is to approve or disapprove of all proposals for use, obstruction, or diversion of boundary waters on either side of the boundary which would affect the natural level or flow of the boundary waters on the other side.<sup>5</sup> The second general responsibility of the Commission—which is becoming its major work—is to investigate and make recommendations on specific problems referred to it by either or both governments.<sup>6</sup> It is under this provision of the Treaty that requests—or "references"—by the two governments have been made on such varied subjects as water pollution, air pollution, regulation of the levels of the Great Lakes, preservation of the American Falls at Niagara, and others.

As of July 1972, the Commission had received a total of 94 dockets (58 applications and 36 references). As of July 1972, the Commission had fourteen boards of control, five boards of investigation, and nine surveillance boards under it. This does not include the new Great Lakes Water Quality Board established by the Commission

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4. Boundary Waters Treaty, Proclamation, 36 Stat. at 2448.

5. Boundary Waters Treaty, art. VIII, 36 Stat. at 2451.

6. Boundary Waters Treaty, art. IX, 36 Stat. at 2452.

pursuant to the Great Lakes Water Quality Agreement signed April 15 by President Nixon and Prime Minister Trudeau.<sup>7</sup> The new Water Quality Board will have responsibilities for both investigative and surveillance activities.

A summary assessment of the Commission would note:

1. It has been on the scene for sixty years;
2. The original purpose was to provide a rapid mechanism for the resolution of complications which would likely be delayed and lead to serious controversy if handled through diplomatic channels. The Commission has met this purpose, and it has persisted because it has successfully met a real need of both countries;
3. It has been important. Majority rule has been employed and respected;
4. It has been nonpolitical. New commissioners have not been appointed to follow new governments;
5. It was not granted a planning role by the Treaty: it has neither the authority nor resources to develop a planning function; its contribution has been to resolve problems case by case as assigned by the two governments;
6. It has no fiscal control or continuous supervisory control over the work done in its name by the agencies assigned to tasks;
7. It is not well known; it tries quietly and effectively to carry out its mandate in the presence of public apathy and government indifference.

The issue confronting investigators interested in the management of the Great Lakes is the character and adequacy of the institutions that manage the lakes. While technical uncertainties remain, there is a wide body of knowledge about the various uses for which the lakes are employed and about the natural systems of the lakes. Since the Great Lakes are international, it was not deemed productive to look at the several national institutions without first giving attention to the international body established by the two countries. Thus, from the beginning of the current inquiry, the IJC was of major concern.

A program of inquiry was initiated at Cornell University and was extended to a multiuniversity seminar involving, at one time, representatives of twenty universities in Canada and the United States and representatives of governments, federal-state, local, and international. Using a binational planning committee, background reports, discussion groups at three seminar meetings (organized to consider progressively more precise responses to the organizational question), and

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7. Agreement with Canada on Great Lakes Water Quality, April 15, 1972, [1972] 23 U.S.T. 301, T.I.A.S. No. 7312.

planning committee redrafting efforts between meetings, a final report was adopted in January 1973.<sup>8</sup>

Several actions have resulted from this report: (1) at the request of Congressman Dante Fascell (Florida), Chairman of the Subcommittee on Inter-American Affairs, House of Representatives Foreign Affairs Committee, Professor Francis and I testified before the Subcommittee in May 1973;<sup>9</sup> (2) several bills have been introduced in the House and Senate to require Senate confirmation of IJC Commissioners; (3) the Great Lakes Fishery Commission has acted to review its charter in relation to other activities on the Great Lakes; (4) a series of detailed reports on Great Lakes management matters were produced by an expanded graduate seminar at Cornell University under a simulated "Great Lakes Experimental Operations Office."<sup>10</sup>

The findings of this process resulted in two recommendations: (1) strengthen the IJC; (2) establish a new treaty for the Great Lakes apart from the IJC. These alternatives imply or provide for:

1. Establishing a joint Canadian-United States management body for the Great Lakes having surveillance and mediation functions;
2. Joint agency budget and administrative procedures;
3. Initiatory authority for such matters as planning, surveys, investigations and research under carefully specified guidelines established by the two countries;
4. Program responsiveness by requiring that the activities of the joint management body be subject to program and budget authorization and review on, for example, a biannual basis;
5. Facilitating joint planning on a multiple purpose basis;
6. Stressing intensive regional and transborder collaboration among state/provincial governments;
7. Developing a more comprehensive and systematic approach to the management of the Great Lakes;
8. Joint information collection and analysis; and
9. Public reporting.

The alternatives recommended do not provide for:

1. Changing the equality status of the two countries in matters concerning Great Lakes management;
2. Establishing a supranational decisionmaking authority;

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8. L. Dworsky, et al., *A Proposal for Improving the Management of the Great Lakes of the United States and Canada* (report by the Canada-United States University Seminar, Jan., 1973).

9. *The Great Lakes, Part I: The 1973 Floods and Activities of the International Joint Commission, United States and Canada, Hearings Before the Subcomm. on Inter-American Affairs of the House Comm. on Foreign Affairs*, 93d Cong., 1st Sess., at 112-248 (1973).

10. L. Dworsky, et al., *The Great Lakes of the United States and Canada* (April 1974).

3. Changing the basic authority of existing national, provincial, or state responsibilities; or
4. Displacing existing agencies.

Our comparative study is related to this symposium since it illustrates a problem similar in many, but not all, ways to the boundary problems confronting Mexico and the United States involving water and resources related to water. Universities in both countries, as clearly shown by this symposium, have substantial capacity to inquire into these problems and to provide independent and highly useful information to governments.

In conclusion, it would appear to be very useful to consider the formation of an appropriate group interested in Mexican-United States boundary water and related resource problems. Such a group would have the task of establishing its own agenda, its program of inquiry, and its own relations with governments. If such an action were to take place, the Canada-United States interuniversity group would be very pleased to develop cooperative activities with its southern counterpart and to exchange information both on study processes as well as substantive questions. It is probable, too, that the work of such groups could bring North American experience on international river basins into focus for participation in other discussions under UN or other auspices.