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INTERNATIONAL ENVIRONMENTAL LAW: A CANADIAN PERSPECTIVE

USUAL COMPLIMENTS - PLEASURE TO BE AT THE PACE UNIVERSITY LAW SCHOOL

THANKS TO ROBERT APPLEGATE, PRESIDENT OF THE INTERNATIONAL LAW SOCIETY, FOR PROVIDING THE OPPORTUNITY.

MY INTENTION TODAY IS FIRST, TO REVIEW DEVELOPMENTS IN INTERNATIONAL ENVIRONMENTAL LAW AND SECOND, TO CONSIDER THE LEGAL ASPECTS OF CANADA-UNITED STATES ENVIRONMENTAL ISSUES, PARTICULARLY ACID RAIN. OBVIOUSLY, THESE ARE VERY BROAD TOPICS AND MY PRESENTATION WILL OF NECESSITY BE RATHER GENERAL AND SELECTIVE IN NATURE. I WILL BE HAPPY, HOWEVER, TO ENTERTAIN ANY QUESTIONS YOU MAY HAVE AT THE END OF MY REMARKS.

ONE OF THE STRIKING POLICY PHENOMENA OF THE LAST TWO DECADES HAS BEEN THE EMERGENCE OF ENVIRONMENTAL PROTECTION AS A MAJOR PUBLIC ISSUE AND THE INCREASINGLY RAPID EVOLUTION OF A SEPARATE BODY OF INTERNATIONAL ENVIRONMENTAL LAW. DURING THIS PERIOD CANADA AND A NUMBER OF OTHER COUNTRIES HAVE SOUGHT TO KEEP THE ISSUE OF ENVIRONMENTAL PROTECTION ON THE AGENDA OF THE INTERNATIONAL COMMUNITY AND HAVE PROMOTED THE DEVELOPMENT OF LEGAL PRINCIPLES IN THE AREA OF THE ENVIRONMENT.

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CANADA'S APPROACH TO INTERNATIONAL ENVIRONMENTAL LAW HAS NOT CHANGED MARKEDLY OVER THE PERIOD IN QUESTION. IT IS THE CANADIAN VIEW (A) THAT WHILE PROGRESS HAS BEEN MADE, THE EXISTING BODY OF INTERNATIONAL ENVIRONMENTAL LAW REMAINS INADEQUATE; (B) THAT SUCH A BODY OF LAW MUST CONTINUE TO BE DEVELOPED ON THE BASIS OF THE PRINCIPLES THAT ALL STATES HAVE A DUTY TO PRESERVE THE ENVIRONMENT AND THAT STATES MUST ACCEPT RESPONSIBILITY FOR ANY SIGNIFICANT DAMAGE THEY CAUSE TO THE ENVIRONMENT OF ANOTHER STATE OR THE ENVIRONMENT BEYOND ANY STATES JURISDICTION AND; (C) THAT THE LAW MUST BE DEVELOPED SO AS TO ENABLE THE EFFECTIVE APPLICATION OF THESE PRINCIPLES EITHER THROUGH EXISTING INSTITUTIONS OR NEW INSTITUTIONS TO BE ESTABLISHED. IF THE CANADIAN LEGAL POSITION HAS REMAINED CONSISTENT, SIGNIFICANT CHANGES HAVE TAKEN PLACE BOTH IN TERMS OF THE APPROACH TAKEN BY INDIVIDUAL STATES TO THE QUESTION OF ENVIRONMENTAL PROTECTION AND IN THE DEVELOPMENT OF ENVIRONMENTAL LEGAL PRINCIPLES SINCE THE RISE OF ENVIRONMENTAL AWARENESS IN THE 1960s.

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THIS AUDIENCE DOES NOT NEED TO BE REMINDED OF THE "CLASSIC" FOUNDATIONS OF INTERNATIONAL ENVIRONMENTAL LAW, YET A RETURN TO THEIR PRINCIPLES CAN BE ILLUMINATING. THE TRILOGY OF THE TRAIL SMELTER, CORFU CHANNEL, AND LAC LANOUX CASES ESTABLISHED THE PRINCIPLES THAT STATES HAVE AN OBLIGATION TO AVOID TRANSBOUNDARY HARM, THAT ENVIRONMENTAL HARM MAY BE WRONGFUL, AND THAT VICTIM STATES HAVE THE LEGAL RIGHT TO INSIST ON THE PREVENTION AND ABATEMENT OF SUCH HARM. THESE CASES ARE OFTEN CITED FOR THE SIC UTERE PRINCIPLE, I.E. THE OBLIGATION NOT TO USE YOUR PROPERTY IN SUCH A WAY AS TO DAMAGE YOUR NEIGHBOUR'S. BUT THERE IS ANOTHER BASIC PRINCIPLE WHICH IS PERHAPS EVEN MORE RELEVANT TO MANAGEMENT OF THE GOLBAL ENVIRONMENT, WHICH WAS ONE OF THE BASES OF THE CORFU CHANNEL CASE - THAT IS, "ELEMENTARY CONSIDERATIONS OF HUMANITY", WHICH, IN THAT CASE, IMPOSED A DUTY TO WARN OF THE DANGER OF MINES. IN THE CONTEXT OF THE ENVIRONMENT, THIS PRINCIPLE SUGGESTS THE DUTY TO AVOID INJURING BOTH PRESENT AND FUTURE GENERATIONS THROUGH MISMANAGEMENT OF THE ENVIRONMENT.

THE DIRECT DESCENDANT OF THESE CASES IS PRINCIPLE 21 OF THE STOCKHOLM DECLARATION, WHICH PROVIDES:

"STATES HAVE, IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS, AND THE PRINCIPLES OF INTERNATIONAL LAW, THE SOVEREIGN RIGHT TO EXPLOIT THEIR OWN RESOURCES PURSUANT TO THEIR OWN ENVIRONMENTAL POLICIES, AND THE RESPONSIBILITY TO ENSURE THAT ACTIVITIES WITHIN THEIR JURISDICTION OR CONTROL DO NOT CAUSE DAMAGE TO THE ENVIRONMENT OF OTHER STATES OR OF AREAS BEYOND THE LIMITS OF NATIONAL JURISDICTION."

THE PRODUCT OF LONG AND DIFFICULT NEGOTIATIONS, THIS PRINCIPLE SOON FOUND ACCEPTANCE AS A PRINCIPLE OF "HARD LAW" THROUGH BEING BUILT INTO TREATY INSTRUMENTS SUCH AS THE LONDON DUMPING CONVENTION OF 1972 AND THE 1982 ~~LOS~~ LAW OF THE SEA (LOS) CONVENTION.

ENVIRONMENTAL LAW HAS NOT STOOD STILL IN RECENT YEARS. ONE CRUCIAL ACHIEVEMENT, WHICH MAY EVEN BE DESCRIBED AS A BREAKTHROUGH, IS PART XII OF THE LOS CONVENTION. PART XII OF THAT CONVENTION IS BASED FIRMLY ON THE STOCKHOLM PRINCIPLES 21 AND 22, AND LAYS DOWN POSITIVE OBLIGATIONS ON THE PRESERVATION AND PROTECTION OF THE MARINE ENVIRONMENT. WHILE CERTAIN LOS CONVENTION PROVISIONS REMAIN CONTROVERSIAL, NO STATE HAS REJECTED PART XII. ON THE CONTRARY, EVEN NON-SIGNATORY STATES HAVE DECLARED THAT IT REFLECTS EXISTING CUSTOMARY INTERNATIONAL LAW.

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IT IS WORTHWHILE TO EXAMINE SOME SPECIFIC PROVISIONS IN PART XII OF THE CONVENTION.

ART. 192, AT THE BEGINNING OF THE PART, EMBODIES THE BASIC PRINCIPLE THAT "STATES HAVE THE OBLIGATION TO PROTECT AND PRESERVE THE MARINE ENVIRONMENT."

ART. 193 REFLECTS IN TREATY FORM PRINCIPLE 21 OF THE STOCKHOLM DECLARATION, PROVIDING THAT "STATES HAVE THE SOVEREIGN RIGHT TO EXPLOIT THEIR NATURAL RESOURCES PURSUANT TO THEIR ENVIRONMENTAL POLICIES AND IN ACCORDANCE WITH THEIR DUTY TO PROTECT AND PRESERVE THE MARINE ENVIRONMENT".

UNDER ART. 194, STATES ARE OBLIGED TO "TAKE, INDIVIDUALLY OR JOINTLY AS APPROPRIATE, ALL MEASURES CONSISTENT WITH THIS CONVENTION THAT ARE NECESSARY TO PREVENT, REDUCE AND CONTROL POLLUTION OF THE MARINE ENVIRONMENT FROM ANY SOURCE...". ONE OF THE SPECIFIC SOURCES DEALT WITH, IN ART. 212, IS "POLLUTION FROM OR THROUGH THE ATMOSPHERE". IN THAT ARTICLE, "STATES SHALL ADOPT LAWS AND REGULATIONS TO PREVENT, REDUCE AND CONTROL POLLUTION OF THE MARINE ENVIRONMENT FROM OR THROUGH THE

ATMOSPHERE". THIS PROVISION IS CLEARLY APPLICABLE TO AIRSPACE UNDER STATE SOVEREIGNTY. ARTICLE 222 FURTHER PROVIDES FOR THE ENFORCEMENT OF ART. 212 BY STATES, IMPOSING A CLEAR LEGAL OBLIGATION ON STATES TO ENFORCE THE LAWS AND REGULATIONS ADOPTED IN ACCORDANCE WITH ART. 212. SIMILAR PROVISIONS DEAL WITH POLLUTION BY DUMPING, POLLUTION FROM VESSELS, AND POLLUTION FROM LAND-BASED SOURCES. FINALLY, ART. 235 DEALS WITH RESPONSIBILITY AND LIABILITY, PROVIDING THAT "STATES ARE RESPONSIBLE FOR THE FULFILMENT OF THEIR INTERNATIONAL OBLIGATIONS CONCERNING THE PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT. THEY SHALL BE LIABLE IN ACCORDANCE WITH INTERNATIONAL LAW." THE ARTICLE FURTHER PROVIDES THAT "WITH THE OBJECTIVE OF ASSURING PROMPT AND ADEQUATE COMPENSATION IN RESPECT OF ALL DAMAGE CAUSED BY POLLUTION, STATES SHALL CO-OPERATE IN THE IMPLEMENTATION OF EXISTING INTERNATIONAL LAW AND IN THE FURTHER DEVELOPMENT OF INTERNATIONAL LAW RELATING TO RESPONSIBILITY AND LIABILITY..."

THUS, THE LAW OF THE SEA CONVENTION IS NOT MERELY A LANDMARK INSTRUMENT IN THE DEVELOPMENT OF THE LAW APPLICABLE TO THE MARINE ENVIRONMENT - IT LAYS DOWN GENERAL PRINCIPLES APPLICABLE ALSO TO THE ATMOSPHERE.

ONE POTENTIAL SOURCE OF LAW THAT HAS, UNTIL NOW, BEEN UNDER-UTILIZED, BUT COULD BE OF GREAT SIGNIFICANCE IN THE AREA OF ENVIRONMENTAL LAW IS THE INTERNATIONAL LAW COMMISSION, WHICH IS ADDRESSING TWO TOPICS, LIABILITY FOR INJURIOUS CONSEQUENCES ARISING FROM ACTS NOT PROHIBITED BY INTERNATIONAL LAW AND THE LAW OF NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES, BOTH OF WHICH RELATE DIRECTLY TO THE LAW OF THE ENVIRONMENT. DEVELOPMENT OF THE LAW IN THESE AREAS BY THE COMMISSION IS RELEVANT, TOPICAL AND OF IMPORTANT LEGAL SIGNIFICANCE IN THAT THE WORK OF THE COMMISSION IS WIDELY CITED FOR ITS AUTHORITY BY LEGAL EXPERTS, INCLUDING FOREIGN MINISTRY LEGAL ADVISORS, ACADEMICS, PRIVATE INTERNATIONAL LAWYERS AND OTHER PUBLICISTS. THE COMMISSION'S WORK NORMALLY PROVIDES THE BASIS FOR MULTILATERAL CONVENTIONS (AS WITH THE 1958 LAW OF THE SEA CONVENTIONS, AND THE VIENNA CONVENTION ON THE LAW OF TREATIES). THE TOPIC OF INTERNATIONAL LIABILITY FOR INJURIOUS CONSEQUENCES ARISING OUT OF ACTS NOT PROHIBITED BY INTERNATIONAL LAW HAS DEVELOPED AN INCREASINGLY ENVIRONMENTAL ORIENTATION, WITH SOME COMMISSION MEMBERS NOW CALLING FOR A SET OF PRINCIPLES ELABORATING THE POSITIVE DUTY TO PRESERVE AND PROTECT THE ENVIRONMENT, AS WELL AS THE PRINCIPLES OF PREVENTION AND COMPENSATION APPLICABLE IN CASES OF TRANSBOUNDARY ENVIRONMENTAL HARM.

SIMILARLY, THE LAW RELATING TO NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES IS BEING CODIFIED AND DEVELOPED WITH PARTICULAR EMPHASIS ON POLLUTION PROBLEMS AND HOW TO DEAL WITH THEM. THE 4TH REPORT OF U.S. MEMBER OF THE COMMISSION, STEPHEN MCCAFFREY, DEALS SPECIFICALLY WITH POLLUTION AND ENVIRONMENTAL PROTECTION, AND CONTAINS SUCH ELEMENTS AS A BROAD DEFINITION OF POLLUTION IN WHICH, TO QUOTE FROM THE REPORT, "THE INCREASINGLY SERIOUS PROBLEM OF POLLUTION OF WATERCOURSES BY "TOXIC RAIN", OR ATMOSPHERIC DEPOSITION OF TOXICS WOULD ALSO BE INCLUDED". THE REPORT NOT ONLY RECOGNIZES A DUTY TO AVOID CAUSING APPRECIABLE HARM TO OTHER STATES, BUT ALSO MANDATES THAT WATERCOURSE STATES, "INDIVIDUALLY AND IN CO-OPERATION, TAKE ALL REASONABLE MEASURES TO PROTECT THE ENVIRONMENT OF AN INTERNATIONAL WATERCOURSE, INCLUDING THE ECOLOGY OF THE WATERCOURSE AND OF SURROUNDING AREAS, FROM IMPAIRMENT, DEGRADATION OR DESTRUCTION, OR SERIOUS DANGER THEREOF...", AND, IN EVEN STRONGER TERMS, "WATERCOURSE STATES SHALL, INDIVIDUALLY OR JOINTLY AND ON AN EQUITABLE BASIS, TAKE ALL MEASURES NECESSARY, INCLUDING PREVENTIVE, CORRECTIVE AND CONTROL MEASURES, TO PROTECT THE MARINE ENVIRONMENT...". PERHAPS SURPRISINGLY, THESE PROVISIONS HAVE BEEN WIDELY ACCEPTED, AND HAVE NOT REALLY ATTRACTED MUCH CONTROVERSY.

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FURTHERMORE, EVEN MEMBERS OF THE ILC NOT TRADITIONALLY OVERLY CONCERNED WITH THE ENVIRONMENT HAVE BEEN PREFACING THEIR REMARKS WITH A RECOGNITION OF ITS IMPORTANCE. IT IS NOT YET POSSIBLE TO PREDICT THE OUTCOME OF THE COMMISSION'S DELIBERATIONS ON THESE MATTERS, BUT IT IS ENCOURAGING THAT THE ATTITUDES DISPLAYED AT THE MOST RECENT SESSION ARE FAR MORE KNOWLEDGEABLE AND POSITIVE THAN WAS THE CASE AT PREVIOUS SESSIONS.

YOU WILL HAVE NOTED THAT THE DEVELOPMENTS OUTLINED THUS FAR ARE RATHER GENERAL IN NATURE. THIS IS NOT TO SUGGEST THAT MORE SPECIFIC PROGRESS HAS NOT BEEN ACHIEVED AT THE MULTILATERAL LEVEL.

THE CONVENTION ON LONG RANGE TRANSBOUNDARY AIR POLLUTION (LRTAP), ADOPTED IN 1979, HAS BEEN HAILED AS THE FIRST MULTILATERAL CONVENTION IN THE FIELD OF AIR POLLUTION CONTROL, WHILE ITS SULPHUR PROTOCOL, ADOPTED IN 1985, IS UNDOUBTEDLY THE FIRST MULTILATERAL INSTRUMENT TO PRESCRIBE REDUCTIONS IN THE EMISSION OF POLLUTANTS. IN THE SAME VEIN, THE 1987 MONTREAL OZONE PROTOCOL TO THE VIENNA CONVENTION FOR THE PROTECTION OF THE OZONE LAYER WILL, IN THE WORDS OF ONE COMMENTATOR, GO DOWN IN HISTORY AS THE FIRST EVER GLOBAL AGREEMENT TO PROTECT THE EARTH'S

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ATMOSPHERE FROM POSSIBLE DAMAGE CAUSED BY HUMAN ACTIVITY. IT IS ALSO PROBABLY THE FIRST GLOBAL TREATY TO MANDATE CONTROLS IN THE ABSENCE OF ANY CLEAR PROOF OF SUBSTANTIAL DAMAGE OR ECONOMIC LOSS. SCIENTIFIC UNCERTAINTIES NOTWITHSTANDING, ACTION WAS INITIATED BEFORE TOTAL DAMAGE HAD BEEN DONE. DESPITE THE FACT THAT THE ONE IS REGIONAL RATHER THAN GLOBAL, THE TWO CONVENTIONS AND ACCOMPANYING PROTOCOLS SHARE A COMMON APPROACH THAT MAY PROVIDE A USEFUL MODEL FOR ACHIEVING PROGRESS IN OTHER RELATED AREAS.

THE CONVENTIONS SHARE A NUMBER OF COMMON ELEMENTS. NEITHER CONVENTION IMPOSES A SPECIFIC OBLIGATION TO REDUCE BY A FIXED AMOUNT EITHER LRTAP EMISSIONS OR THE PRODUCTION OF SUBSTANCES THAT DEPLETE THE OZONE LAYER. THE GENERAL LANGUAGE ON THE NEED FOR REDUCTIONS SUPPLEMENTED BY THE PROVISION OF A MECHANISM FOR ACHIEVING CONSENSUS ON REDUCTIONS IN THE FUTURE INDICATES, RATHER, THAT THE CONVENTIONS SHOULD BE VIEWED AS A FIRST STEP. THE LRTAP CONVENTION SIMPLY PROVIDED THAT THE PARTIES SHALL ENDEAVOUR TO LIMIT AND, AS FAR AS POSSIBLE, GRADUALLY REDUCE AND PREVENT AIR POLLUTION AND SHALL DEVELOP POLICIES AND STRATEGIES AS A MEANS OF COMBATING THE DISCHARGE OF AIR POLLUTION. THE VIENNA CONVENTION IS A LITTLE MORE SPECIFIC.

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ARTICLE 2 OF THAT CONVENTION PRESCRIBES AS A GENERAL OBLIGATION THAT THE PARTIES SHALL TAKE APPROPRIATE MEASURES IN ACCORDANCE WITH THE CONVENTION AND ANY PROTOCOLS TO PROTECT HUMAN HEALTH AND THE ENVIRONMENT AGAINST THE ADVERSE EFFECTS OF OZONE DEPLETION. TO THAT END, THE PARTIES, IN ACCORDANCE WITH THEIR MEANS AND CAPABILITIES, SHOULD COOPERATE AND ADOPT MEASURES TO CONTROL, LIMIT, REDUCE OR PREVENT HUMAN ACTIVITIES UNDER THEIR JURISDICTION OR CONTROL, SHOULD IT BE FOUND THAT THESE ACTIVITIES HAVE OR ARE LIKELY TO HAVE ADVERSE EFFECTS. MANY STATES WERE THEN UNWILLING TO GO FURTHER. THE FACT THAT THE PROTOCOLS FOLLOWED SO RAPIDLY ON THE HEELS OF THE CONVENTIONS IS A POSITIVE SIGN THAT SHOULD NOT BE UNDERESTIMATED.

THE VIENNA CONVENTION IS ALSO FAR MORE EXPLICIT THAN THE LRTAP CONVENTION AS TO THE POSSIBILITY OF NEGOTIATING SPECIFIC FUTURE AGREEMENTS OR PROTOCOLS ON REDUCTION, AND THE MECHANISM FOR DOING SO. ARTICLE 2 PROVIDES THAT STATES SHOULD COOPERATE WITH A VIEW TO ADOPTING PROTOCOLS TO FULFILL THE ENDS OF THE CONVENTION. THE GENERAL MECHANISM PROVIDED FOR THE NEGOTIATION OF PROTOCOLS WAS THE "CONFERENCE OF THE PARTIES". IN ADDITION, THE FINAL ACT OF THE CONVENTION SPECIFICALLY CALLED FOR WORK TO CONTINUE ON AN OZONE PROTOCOL AND CALLED FOR A FURTHER

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DIPLOMATIC CONFERENCE. THAT CONFERENCE, HELD IN MONTREAL IN SEPTEMBER 1987, ACHIEVED NOTABLE SUCCESS IN THE ADOPTION OF A PROTOCOL TO CONTROL THE PRODUCTION OF OZONE DEPLETING SUBSTANCES.

AS I STATED A MOMENT AGO, THE MONTREAL PROTOCOL IS THE FIRST GLOBAL ~~ENVIRONMENTAL~~ TREATY ON THE ENVIRONMENT, WITH CONTROL MEASURES, THAT ADDRESSES A SERIOUS ENVIRONMENTAL PROBLEM BEFORE THE WORST EFFECTS OF THAT PROBLEM HAVE BEEN FELT. IT PROVIDES FOR A PHASE DOWN IN THE PRODUCTION AND CONSUMPTION OF OZONE DEPLETING CHEMICALS BY 50% BY 1999.

THAT'S WHAT THE PROTOCOL SAYS. WHAT CANADA PREDICTED AT THE TIME AND WHAT IN FACT IS ACTUALLY HAPPENING IS THAT INDUSTRY -- BOTH PRODUCERS AND USERS -- HAS RECOGNIZED THAT THE PROTOCOL REPRESENTS AN UNEQUIVOCAL REJECTION OF CHLOROFLUOROCARBONS (CFCS) AND IT HAS, ON ITS OWN, BEGUN TO PHASE THEM OUT FASTER.

SECOND, THE PROTOCOL INCLUDES A MECHANISM TO MODIFY THE REDUCTION SCHEDULE. IN OTHER WORDS, TO INCREASE THAT 50% REDUCTION IF THE SCIENCE OR PUBLIC PRESSURE DEMANDS IT. IN FACT, WORK TOWARD SUCH A FURTHER REDUCTION HAS ALREADY BEGUN.

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THIRD, IT INCLUDES SPECIAL PROVISIONS FOR LESS DEVELOPED COUNTRIES. IN ESSENCE, IT EXEMPTS LDCS THAT BECOME PARTIES TO THE PROTOCOL FROM ITS CONTROLS FOR 10 YEARS.

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FINALLY, IT INCLUDES TRADE SANCTIONS WHICH PROVIDE THAT PARTIES TO THE PROTOCOL WILL NOT EXPORT CFCS TO, OR IMPORT CFCS FROM NON-PARTIES. IN OTHER WORDS, IF YOU DON'T PLAY BALL, WE WON'T BUY YOUR PRODUCT, AND WE WON'T SELL YOU OURS. INFORMATION EXCHANGE ON NEW TECHNOLOGIES WILL ALSO BE RESTRICTED.

THE SULPHUR PROTOCOL WAS ADOPTED IN 1985 TO CARRY FORWARD THE INTENT OF THE LRTAP CONVENTION THAT PARTIES REDUCE THEIR NATIONAL ANNUAL SULPHUR EMISSIONS OR THEIR TRANSBOUNDARY FLUXES BY AT LEAST 30% AS SOON AS POSSIBLE AND AT THE LATEST BY 1993. THE REDUCTION IS TO BE BASED UPON 1980 PRODUCTION LEVELS. THE PARTIES ALSO AGREED TO STUDY THE NECESSITY FOR FURTHER REDUCTIONS AND CALLED FOR CALCULATIONS OF ANNUAL SULPHUR BUDGETS AND TRANSBOUNDARY FLUXES.

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WORK HAS ALSO PROCEEDED ON INTERNATIONALLY AGREED MEASURES AIMED AT THE REDUCTION OF NITROGEN OXIDES (NOX) OR THEIR TRANSBOUNDARY FLUXES.

ON OCTOBER 31, 1988 THE NOX PROTOCOL OPENED FOR SIGNATURE. CANADA HAS SIGNED AND THE UNITED STATES HAS STATED THAT IT WILL SIGN THE PROTOCOL, MAKING IT THE FIRST INTERNATIONAL AGREEMENT INCORPORATING SPECIFIC OBLIGATIONS TO CONTROL TRANSBOUNDARY AIR POLLUTION TO WHICH BOTH CANADA AND THE UNITED STATES WILL BE SIGNATORIES. THE PROTOCOL ALSO MARKS THE FIRST TIME THAT THE U.S. ADMINISTRATION HAS ACCEPTED THE CONCEPT OF ESTABLISHING EMISSION CONTROL TARGETS AND SCHEDULES TO ACHIEVE TRANSBOUNDARY ENVIRONMENTAL QUALITY OBJECTIVES.

THE PROTOCOL WILL, AS A FIRST STEP, COMMIT SIGNATORIES TO ENSURING THAT, BY 1994, THEIR TOTAL NATIONAL EMISSIONS OF NOX OR THEIR TRANSBOUNDARY FLUXES DO NOT EXCEED THEIR 1987 LEVELS, AND TO BEGIN NEGOTIATING FURTHER MEASURES, TO COMMENCE IN 1996, TO CONTROL NOX EMISSIONS AT THE LEVEL REQUIRED TO ACHIEVE AGREED UPON ENVIRONMENTAL QUALITY TARGETS.

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WHILE THE NOX PROTOCOL IS NOT DISSIMILAR TO THE SULPHUR DIOXIDE PROTOCOL, THERE IS NO REQUIREMENT THAT PARTIES REDUCE THE NATIONAL ANNUAL NOX EMISSIONS OF THEIR TRANSBOUNDARY FLUXES BY A FIXED AMOUNT. REDUCTIONS ARE TIED TO THE DEVELOPMENT OF GREATER CERTAINTY OF THE CONCEPT OF CRITICAL LOADS, A CONCEPT WHICH MEASURES THE TOLERANCE OF ECOSYSTEMS OR MATERIALS TO POLLUTANTS. THE RELEVANCE OF THIS DIFFERENCE MAY BE TO HIGHLIGHT THE DELICATE BALANCE BETWEEN THE CERTAINTY OF THE SCIENCE AND THE GAINS ACHIEVABLE IN AN ENVIRONMENTAL AGREEMENT. THIS SHOULD NOT BE SEEN AS A HINDRANCE TO THE PROGRESSIVE EVOLUTION OF ENVIRONMENTAL AGREEMENTS BUT AS AN ILLUSTRATION OF THE FACT THAT, TO THE EXTENT POSSIBLE, ENVIRONMENTAL INTERESTS SHOULD START WITH A SOUND BASE.

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BOTH THE LRTAP AND VIENNA CONVENTIONS RECOGNIZE THE NEED FOR FURTHER STUDY OF THE PROBLEMS OF ATMOSPHERIC POLLUTION, BOTH HAVE EMPHASIZED A NEED TO COORDINATE FURTHER STUDY AND EXCHANGE OF INFORMATION AND BOTH HAVE PROVIDED SECRETARIAT FACILITIES TO ASSIST IN MEETING THESE NEEDS. IN THE CASE OF THE VIENNA CONVENTION, PARTIES HAVE ALSO AGREED UPON A COORDINATED PROGRAM OF RESEARCH WHICH WAS ANNEXED TO THE CONVENTION. FURTHER RESEARCH PROGRAMS MAY BE INITIATED AS A RESULT OF DECISIONS TAKEN BY THE CONFERENCE OF THE PARTIES.

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THE LRTAP AND VIENNA CONVENTIONS ARE ACKNOWLEDGED TO BE SUCCESSFUL INTERNATIONAL APPROACHES TO THE PROBLEMS OF ATMOSPHERIC POLLUTION. UNDOUBTEDLY, SOME WOULD HAVE PREFERRED TO HAVE SEEN LESS HORTATORY AND MORE BINDING LANGUAGE IN THE ORIGINAL LRTAP CONVENTION, AND OTHERS WOULD HAVE LIKED FASTER PROGRESS ON THE SULPHUR AND NOX PROTOCOLS, BUT THE ACHIEVEMENT THEY REPRESENT SHOULD NOT BE IGNORED.

CANADA HAS MAINTAINED A LEADING ROLE IN EFFORTS TOWARD DEVELOPING THE LAW FOR THE PROTECTION AND PRESERVATION OF THE EARTH'S ATMOSPHERE.

MOST RECENTLY, IN JUNE 1988, TORONTO WAS THE VENUE FOR THE INTERNATIONAL CONFERENCE ON THE CHANGING ATMOSPHERE: IMPLICATIONS FOR GLOBAL SECURITY.

PARTICIPANTS AT THE TORONTO CONFERENCE HEARD A CALL FOR ACTION FROM MRS. GRO HARLEM BRUNTLAND, THE PRIME MINISTER OF NORWAY, WHO WARNED THAT "THE IMPACT OF CLIMATE CHANGE MAY BE GREATER AND MORE DRASTIC THAN ANY OTHER CHALLENGE THAT MANKIND HAS FACED WITH THE EXCEPTION OF THE THREAT OF NUCLEAR WAR".

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THE PRIME MINISTER OF CANADA, THE RIGHT HONOURABLE BRIAN MULRONEY, AT THE OPENING OF THE CONFERENCE, SPOKE STRONGLY IN FAVOUR OF A CONCERTED INTERNATIONAL EFFORT TO ACHIEVE CONCRETE PROGRESS IN DEALING WITH THIS MOUNTING ENVIRONMENTAL CONCERN. HE CHALLENGED THE INTERNATIONAL COMMUNITY TO DEVELOP, BY 1992, AN UMBRELLA FRAMEWORK CONVENTION FOR THE PROTECTION OF THE ATMOSPHERE.

ONE OF THE MAJOR CONCLUSIONS OF THE TORONTO CONFERENCE WAS TO URGE THE INTERNATIONAL COMMUNITY TO:

"INITIATE THE DEVELOPMENT OF A COMPREHENSIVE GLOBAL CONVENTION AS A FRAMEWORK FOR PROTOCOLS ON THE PROTECTION OF THE ATMOSPHERE. THE CONVENTION SHOULD EMPHASIZE SUCH KEY ELEMENTS AS THE FREE INTERNATIONAL EXCHANGE OF INFORMATION AND SUPPORT OF RESEARCH AND MONITORING, AND SHOULD PROVIDE A FRAMEWORK FOR SPECIFIC PROTOCOLS FOR ADDRESSING PARTICULAR ISSUES, TAKING INTO ACCOUNT EXISTING INTERNATIONAL LAW. THIS SHOULD BE VIGOROUSLY PURSUED AT THE INTERNATIONAL WORKSHOP ON LAW AND POLICY TO BE HELD IN OTTAWA EARLY IN 1989, AND AT THE SECOND WORLD CLIMATE CONFERENCE, GENEVA, JUNE 1990, WITH A VIEW TO HAVING THE PRINCIPLES AND COMPONENTS OF SUCH A CONVENTION READY FOR

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CONSIDERATION AT THE INTER-GOVERNMENTAL CONFERENCE ON SUSTAINABLE DEVELOPMENT IN 1992." THESE ACTIVITIES SHOULD IN NO WAY IMPEDE SIMULTANEOUS NATIONAL, BILATERAL AND REGIONAL ACTIONS AND AGREEMENTS TO DEAL WITH SPECIFIC PROBLEMS SUCH AS ACIDIFICATION AND GREENHOUSE GAS EMISSIONS.

WITH THIS IN MIND, CANADA WILL HOST A MEETING OF LEGAL AND POLICY EXPERTS, IN OTTAWA, IN FEBRUARY 1989. THE GOAL OF THIS MEETING WILL BE:

FIRST, TO DEVELOP THE LEGAL AND INSTITUTIONAL FRAMEWORK FOR DEALING WITH EXISTING AND EMERGING ATMOSPHERIC PROBLEMS INCLUDING, WHERE POSSIBLE, AGREEMENT ON THE PRINCIPLES THAT MIGHT FORM THE BASIS OF A CONVENTION FOR THE PROTECTION OF THE ATMOSPHERE;

SECOND, TO IDENTIFY AREAS WHERE, FOR LEGAL, TECHNICAL OR SCIENTIFIC REASONS, A CONSENSUS MAY NOT BE ACHIEVABLE AND TO SUGGEST WAYS FOR OVERCOMING SUCH OBSTACLES; AND

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THIRD, TO DEVELOP A SERIES OF RECOMMENDATIONS FOR FUTURE ACTION, INCLUDING ONE TO THE EFFECT THAT THE REPORT OF THE MEETING AND DRAFT PRINCIPLES, IF AVAILABLE, BE FORWARDED TO A QUALIFIED MULTILATERAL ORGANIZATION FOR FURTHER CONSIDERATION.

THIS, THEN, IS WHERE MATTERS STAND TODAY. IN CANADA'S VIEW, ENVIRONMENTAL LAW IS TOO IMPORTANT TO BE LEFT TO DEVELOP BY A LAISSEZ-FAIRE APPROACH WHICH, IN PRACTICE, CONSISTS OF RESPONDING TO CATASTROPHES ON AN AD HOC BASIS, WHILE LEAVING URGENT AND CRUCIAL AREAS VIRTUALLY UNREGULATED. THE TIME HAS COME FOR CONCERTED INTERNATIONAL ACTION AT THE GOVERNMENT LEVEL. THE TIME HAS COME TO DEVELOP BASIC NORMS THAT CAN BE APPLIED TO SPECIFIC PROBLEM AREAS WHILE AT THE SAME TIME REFLECTING THE NEED TO PROTECT AND PRESERVE THE ENVIRONMENT FOR FUTURE GENERATIONS. THE MONTREAL PROTOCOL IS PROOF THAT, WHEN THE POLITICAL WILL IS MUSTERED, IT IS POSSIBLE TO IMPROVE THE ODDS IN THE INCREASINGLY RISKY GAME THAT MANKIND HAS BEEN PLAYING WITH ITS OWN FUTURE.

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I WOULD SUGGEST THAT, AS INTERNATIONAL LAWYERS, WE FACE A UNIQUE CHALLENGE AND A TREMENDOUS OPPORTUNITY. THE LEGAL FOUNDATIONS FOR OUR WORK HAVE BEEN LAID; THE MEDIA AND THE PUBLIC ARE SENSITIZED TO THE PROBLEMS FACING US; GOVERNMENTS ARE INCREASINGLY DISPOSED TO SEEK SOLUTIONS. I FEEL CONFIDENT THAT WE HAVE REACHED THE POINT WHERE MOMENTUM WILL NOT BE LOST AND THAT WE WILL SUCCEED IN OUR TASK.

IF YOU WILL PERMIT ME TO "SHIFT GEARS" NOW, I'D LIKE TO TAKE A FEW MINUTES TO DISCUSS ENVIRONMENTAL LAW IN THE CONTEXT OF CANADA-USA ISSUES.

IT IS HARDLY SURPRISING THAT WATER HAS ALWAYS BEEN AN IMPORTANT ISSUE IN CANADA-UNITED STATES RELATIONS. OF OUR 5500 MILES OF COMMON BOUNDARIES, ALMOST 2200 MILES PASS THROUGH RIVERS AND LAKES, WHILE, ELSEWHERE, MANY RIVERS CROSS THE BOUNDARY.

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THE BOUNDARY WATERS TREATY OF 1909 ESTABLISHED THE PRINCIPLE THAT NEITHER COUNTRY SHOULD POLLUTE BOUNDARY WATERS TO THE INJURY OF THE OTHER. THAT PRINCIPLE HAS GUIDED BOTH STATES FOR EIGHTY YEARS, OFTEN WITH THE INVOLVEMENT OF THE INTERNATIONAL JOINT COMMISSION, AND TODAY FINDS EXPRESSION, FOR EXAMPLE, IN THE GREAT LAKES WATER QUALITY AGREEMENT OF 1978 AND ITS SUBSEQUENT SUPPLEMENTS.

CANADA AND THE UNITED STATES ALSO HAVE A LONG RECORD OF COOPERATION IN THE PROTECTION OF ENDANGERED SPECIES, DATING BACK TO THE MIGRATORY BIRDS CONVENTION OF 1916.

LESS PROGRESS HAS BEEN MADE IN REDUCING THE TRANSBOUNDARY FLOW OF AIR POLLUTION THAT LEADS TO "ACID RAIN", AS THE RETURN TO EARTH IN RAIN, SNOW, FOG OR DUST OF SULPHUR DIOXIDE AND NITROGEN OXIDES THAT HAVE BEEN RELEASED INTO THE AIR IS COMMONLY KNOWN.

BEFORE EXPLAINING CANADA'S LEGAL POSITION, A FEW COMMENTS MAY HELP YOU TO UNDERSTAND THE EXTENT OF THE ACID RAIN PROBLEM AND WHY CANADIANS ARE SO CONCERNED ABOUT IT.

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OPINION POLLS CONSISTENTLY SHOW THAT PROTECTION OF THE ENVIRONMENT IS A TOP PRIORITY OF CANADIANS AND THAT ACID RAIN IS CONSIDERED ONE OF OUR MOST SERIOUS ENVIRONMENTAL PROBLEMS.

CONSIDER THE FOLLOWING:

- SOME 14,000 CANADIAN LAKES ARE ALREADY DEAD, 150,000 OTHERS ARE TODAY BEING ACIDIFIED, AND 150,000 MORE ARE VULNERABLE.

- NINETEEN SALMON-BEARING RIVERS ARE DEAD IN ONE PROVINCE ALONE.

- ALMOST 85 PERCENT OF THE BEST AGRICULTURAL LAND IN EASTERN CANADA RECEIVES UNACCEPTABLY HIGH LEVELS OF ACID RAIN.

- MORE THAN 50 PERCENT OF FORESTS IN EASTERN CANADA GROW IN AREAS WHERE RAINFALL IS ACIDIC. EVEN CANADA'S MAPLE SUGAR INDUSTRY IS IN JEOPARDY.

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CANADA'S LEGAL POSITION IS BASED ON A PRINCIPLE OF RESPONSIBILITY IN INTERNATIONAL ENVIRONMENTAL LAW THAT WAS FIRST ENUNCIATED DURING A PREVIOUS CANADA-U.S. DISPUTE OVER DAMAGE DUE TO SO_2 EMISSIONS. IN THE 1941 TRAIL SMELTER CASE, HOWEVER, THE SHOE WAS ON THE OTHER FOOT. IN ADDITION TO ADMITTING LIABILITY AND PAYING SOME $390,000 TO THE U.S. IN DAMAGES, CANADA ACCEPTED THE ARBITRAL TRIBUNAL'S FINDING THAT:

> "NO STATE HAS THE RIGHT TO USE OR PERMIT THE USE OF ITS TERRITORY IN SUCH A MANNER AS TO CAUSE INJURY BY FUMES IN OR TO THE TERRITORY OF ANOTHER WHEN THE CASE IS OF SERIOUS CONSEQUENCE AND THE INJURY IS ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE."

AS I NOTED EARLIER, THIS SPECIFIC PRINCIPLE OF RESPONSIBILITY FOR INJURY BY FUMES WAS BROADENED IN TWO OTHER INTERNATIONAL DECISIONS DEALING WITH STATE RESPONSIBILITY: THE 1949 CORFU CHANNEL AND THE 1975 LAC LANOUX CASES. THE MODERN STATEMENT OF THE PRINCIPLE, NOW GENERALIZED TO COVER ALL ENVIRONMENTAL DAMAGE, HAS BEEN INCORPORATED INTO THE CORPUS OF CUSTOMARY INTERNATIONAL LAW, AND IS FOUND IN PRINCIPLE 21 OF THE STOCKHOLM DECLARATION, ADOPTED AT THE 1972 UN CONFERENCE ON THE HUMAN ENVIRONMENT. THE PRINCIPLE GENERALIZED BOTH THE LATAR AND OLDER LATER CONVENTIONAL

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I'D LIKE TO ADDRESS A NUMBER OF SPECIFIC LEGAL ISSUES THAT FLOW FROM PRINCIPLE ~~21~~ of [illegible].

FIRST, IT IS A WELL ESTABLISHED ~~PRINCIPLE~~ THAT THE INTERNATIONAL LIABILITY A STATE MAY INCUR FOR ACTS OF PRIVATE PERSONS -- IN THIS CASE U.S. COAL-FIRED ELECTRIC POWER PLANTS -- IS A FUNCTION OF THAT STATE'S CONTROL OVER THE ACTIVITIES CONCERNED.

THERE IS A CONVINCING ARGUMENT TO BE MADE THAT AS REGARDS ACID RAIN, THE U.S. GOVERNMENT IS THE ONE ACTOR THAT HAS BOTH THE KNOWLEDGE OF THE PROBLEM AND THE ABILITY TO REGULATE IT IN AN EFFECTIVE WAY.

SECOND, CANADA CAN ESTABLISH BOTH THAT SIGNIFICANT DAMAGE TO OUR ENVIRONMENT HAS OCCURRED AND THAT THE FAULT IS DUE, IN PART, TO THE U.S. WITH REGARD TO THE DAMAGE, THE EXAMPLES CITED ABOVE SPEAK FOR THEMSELVES. ON THE QUESTION OF FAULT, THE U.S. KNOWS ITS EMISSIONS ARE CROSSING THE BORDER. INDEED, IN ENDORSING THE REPORT OF THE SPECIAL ENVOYS ON ACID RAIN, RELEASED IN JANUARY 1986, THE U.S. WENT FURTHER AND ADMITTED THAT ACID RAIN REMAINS A SERIOUS TRANSBOUNDARY ENVIRONMENTAL PROBLEM.

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WHAT THEN IS LEFT IN DISPUTE? TWO THINGS I WOULD SUGGEST. FIRST, THE U.S. QUESTIONS THE CAUSE AND EFFECT LINKAGE BETWEEN U.S. ORIGIN SO_2 EMISSIONS AND THE DAMAGE IN CANADA. THIS APPEARS TO BE THE BASIS FOR U.S. ARGUMENTS THAT MORE RESEARCH IS REQUIRED BEFORE ACTION CAN BE TAKEN. SECOND, THE U.S. HAS BEEN UNWILLING TO SUBSCRIBE TO ANY PARTICULAR CONTROL PROGRAM UNTIL IT IS SATISFIED, AGAIN ON THE BASIS OF CLEAR SCIENTIFIC EVIDENCE, THAT THE REMEDY WOULD BE EFFECTIVE, BOTH FROM A TECHNICAL AND ECONOMIC POINT OF VIEW.

ON THE FIRST ISSUE, WE BELIEVE THAT A SIGNIFICANT BODY OF EXPERT SCIENTIFIC EVIDENCE ALREADY EXISTS TO THE EFFECT THAT ACID RAIN POLLUTION IS CAUSING DAMAGE TO NATURAL RESOURCES AND PUBLIC HEALTH IN CANADA AND THAT MUCH OF THE DAMAGE CAN BE TRACED TO SOURCES IN THE U.S. MANY CANADIANS AND U.S. REPORTS SUPPORT THIS VIEW.

INDEED, SCIENTISTS AT ENVIRONMENT CANADA VERIFY THE FOLLOWING:

- ACIDIC DEPOSITION IN MUCH OF EASTERN CANADA IS AT LEVELS CAUSING SIGNIFICANT DAMAGE TO THE ENVIRONMENT;

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- THE DAMAGE IS GETTING <u>WORSE</u> AT CURRENT LEVELS OF EMISSIONS AND DEPOSITIONS;

- IT IS POSSIBLE TO IDENTIFY THE LEVELS OF EMISSIONS AND DEPOSITION AT WHICH SIGNIFICANT DAMAGE WILL <u>NOT</u> OCCUR; AND

- IT IS POSSIBLE, BOTH IN SPECIFIC AND IN GENERAL CASES TO IDENTIFY, BY ATMOSPHERIC MODELLING, THE EXTENT TO WHICH CANADIAN AND U.S. SOURCES ARE CONTRIBUTING TO THE LEVELS OF DEPOSITION.

WHAT SCIENTIFIC EVIDENCE HAS THE U.S. RELIED ON THEN, WHEN THEY REJECTED, AS THEY DID IN JANUARY 1988, CANADIAN DEMANDS FOR TARGETTED REDUCTIONS OF SO_2 EMISSIONS OVER A SPECIFIC TIME PERIOD?

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IN SEPTEMBER 1987, THE U.S. NATIONAL ACID PRECIPITATION ASSESSMENT PROGRAM, OR NAPAP, ISSUED A REPORT. IT CONSISTED OF 4 VOLUMES OF SOME 1,200 PAGES. THE SCIENCE IN IT WAS GOOD SOLID WORK, AS FAR AS IT WENT. I SAY "AS FAR AS IT WENT",FIRST, BECAUSE THE REPORT WAS AN INTERIM REPORT AND, SECOND, BECAUSE IT DID NOT INCLUDE CANADIAN INFORMATION THAT THE AUTHORS CHOSE TO IGNORE.

IN ANY EVENT, IT IS OUR VIEW THAT AMERICAN DECISION-MAKERS MUST RECOGNIZE THAT SCIENTIFIC INFORMATION CAN ONLY ASSIST IN PUBLIC POLICY-MAKING. SCIENCE CANNOT AND SHOULD NOT BE THE SOLE DETERMINANT OF PUBLIC POLICY. TO DO SO IS TO PUT SCIENTIFIC INVESTIGATION IN A ROLE FOR WHICH IT IS NEITHER DESIGNED NOR EQUIPPED. AS CANADA'S ENVIRONMENT MINISTER TOM MCMILLAN PUT IT NOT LONG AGO AND I QUOTE: "GOOD POLICY IS NOT DICTATED BY SCIENCE; NEITHER IS GOOD SCIENCE DICTATED BY POLICY."

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THE MONTREAL PROTOCOL OFFERS AN EXCELLENT EXAMPLE OF THE PROPER ROLE OF SCIENCE IN PUBLIC POLICY-MAKING. SCIENCE GAVE US AN INDICATION THAT WE HAD A SERIOUS PROBLEM WITH THE OZONE LAYER AND THE CFCS WERE THE CAUSE OF THE PROBLEM. IF U.S. DECISION-MAKERS CAN SUPPORT ACTIONS TO PROTECT THE OZONE LAYER, THERE IS NO SCIENTIFIC RATIONALE STANDING IN THE WAY OF A BILATERAL ACCORD ON ACID RAIN.

ON THE SECOND QUESTION STILL IN DISPUTE BETWEEN CANADA AND THE U.S., I.E. WHETHER THE U.S. HAS THE RIGHT TO REFRAIN FROM TAKING ACTION UNTIL IT IS SATISFIED AS TO THE EFFECTIVENESS OF THE CONTROL MEASURES, WE TAKE THE POSITION THAT THE ANSWER IS CLEARLY NO. I CAN PERHAPS BEST EXPLAIN THE CANADIAN POSITION BY PUTTING THE QUESTION ANOTHER WAY. SHOULD CANADA CONTINUE TO BE EXPOSED TO SIGNIFICANT ENVIRONMENTAL DAMAGE AND ITS ASSOCIATED COSTS FROM U.S. SULPHUR EMISSIONS BECAUSE THE U.S. IS UNWILLING TO ACCEPT THE RISK OF INVESTMENT DECISIONS REGARDING CLEAN-UP PROGRAMS THAT MAY TURN OUT TO BE LESS THAN 100 PERCENT EFFECTIVE?

LET ME CLOSE BY BRIEFLY SETTING OUT WHAT CANADA HAS BEEN DOING AND WILL BE DOING TO COMBAT ACID RAIN AND WHAT WE ARE ASKING OF OUR AMERICAN FRIENDS ON THIS ISSUE.

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BETWEEN 1970 AND 1984 CANADA REDUCED SO_2 EMISSIONS BY 41 PERCENT. THAT PROGRAM COST CANADIAN INDUSTRY $15 BILLION.

BY 1994, CANADA WILL HAVE REDUCED SULPHUR DIOXIDE EMISSIONS BY 50 PERCENT FROM 1980 LEVELS. THIS WILL COST CANADIAN INDUSTRY AND UTILITIES AND EVENTUTALLY CONSUMERS AND RATEPAYERS, $500 MILLION ANNUALLY.

WHAT ARE WE ASKING OF OUR AMERICAN FRIENDS?

FIRST, THAT THE TRANSBOUNDARY FLOW OF SULPHUR DIOXIDE FROM THE UNITED STATES INTO EASTERN CANADA BE REDUCED FROM THE 1980 LEVEL OF 4 MILLION TONNES TO ABOUT 2 MILLION TONNES PER YEAR. AGAIN A REDUCTION OF ABOUT 50 PERCENT OF THE 1980 LEVEL. SECOND, THAT WE CONCLUDE A BILATERAL AGREEMENT THAT WOULD INCLUDE DEFINITE TARGETS AND SCHEDULES FOR THAT REDUCTION.

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IN ALL FAIRNESS, IT SHOULD BE NOTED THAT, ON JANUARY 25 OF THIS YEAR, THE UNITED STATES RECOMMITTED ITSELF TO FULFILLING THE RECOMMENDATIONS OF THE JOINT ENVOYS AND AGREED TO NEGOTIATE A LIMITED AIR QUALITY ACCORD WITH CANADA. THE PROPOSED ACCORD WOULD PROVIDE FOR MONITORING, INVESTIGATING AND EVALUATING THE PROBLEM OF ACID RAIN. FURTHERMORE THE CLEAN COAL TECHNOLOGY PROGRAM, RECOMMENDED BY THE SPECIAL ENVOYS HAS BEEN LAUNCHED. A PANEL HAS BEEN ESTABLISHED TO REVIEW PROJECTS FOR FUNDING.

HOWEVER, WHILE THE AMERICAN DECISION TO NEGOTIATE AN ACID RAIN AGREEMENT IS WELCOMED, IT IS DEFICIENT. IT DOES NOT COMMIT THE UNITED STATES TO TARGETED REDUCTIONS OVER A SPECIFIED TIME PERIOD, AND IN LIGHT OF THE IMPACT OF ACID RAIN ON CANADA AND THE EXTENSIVE SCIENTIFIC INFORMATION PROVIDED BY CANADA TO THE U.S. ON THIS ISSUE, THIS DECISION IS DIFFICULT TO UNDERSTAND.

OUR POSITION IS CLEAR, SIMPLE AND REASONABLE. WE ARE ALREADY TAKING ACTION TO CLEAN UP OUR OWN HOUSE AND WE WANT THE U.S. TO DO LIKEWISE. WE KNOW THAT WHAT WE ARE ASKING FOR IS NOT EASY. WE ALSO ARE CONSCIOUS THAT IT IS NOT CHEAP. DELAY WILL, HOWEVER, NOT MAKE IT ANY LESS EXPENSIVE FOR EITHER OF US. INDEED, IT WILL ADD TO THE EXPENSE.

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THE UNITED STATES HAS A LEGAL OBLIGATION TO ACT. IT ALSO HAS A NEIGHBOURLY DUTY TO DO SO.

[CLOSING INSERT: REFLECTING USA ELECTION RESULT - BOTH CANDIDATES TOOK STRONG PRO-ENVIRONMENT POSITIONS DURING CAMPAIGN.]