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Mr. Alan Tonks

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• (1530)

[English]

The Chair (Mr. Alan Tonks (York South—Weston, Lib.)): Good afternoon, members of the committee, ladies and gentlemen, and welcome to the Right Honourable Herb Gray and his associates, Murray Clamen, the secretary for the Canadian section of the International Joint Commission, and also Nick Heisler, senior advisor to the chair.

Gentlemen, on behalf of the committee, we welcome and thank you for being here this afternoon. I'm sure there is a huge interest that will be demonstrated through the questions that will be asked, in particular on matters related to Devils Lake and the cross-boundary water agreement and international treaty and also on other associated water quality issues.

I understand, Mr. Gray, that you wish to make a statement first, and that will be distributed. It hasn't been distributed yet.

Right Hon. Herb Gray (Chairman, Canadian Section, International Joint Commission): Mr. Chairman and members of the committee, I'm delighted to be with you today.

I apologize for having copies of my statement for you, at this point, only in English, because originally I was going to appear at your request on Thursday, and then the clerk contacted my office and asked if I would mind coming earlier, today, so that put a bit of pressure on us getting organized.

I also want to say that I'll be delivering my statement in English, but I'll be happy to respond in both languages.

[Translation]

I will make my presentation in English, but I would be happy to reply to your questions and comments in English or in French.

[English]

I was invited particularly to talk about the upcoming review by the U.S. and Canadian governments of the Great Lakes Water Quality Agreement. However, before I plunge into this topic, to start off with a bad pun, I should first give you some words of context about my organization, the International Joint Commission, the agreement itself, and the current state of the Great Lakes. Of course, during the discussion period I'd be happy to touch on other topics of the kind mentioned by your chairman.

The International Joint Commission of Canada and the United States was created by a treaty involving the two countries signed in 1909 called the Boundary Waters Treaty. It created the commission to carry out its basic purpose, to prevent or resolve disputes about the

boundary waters, waters that form or cross much of the boundary between Canada and the United States, and the air above them. So it operates in the waters all along that boundary from one ocean to the other and in the north between B.C., the Yukon, and Alaska, 8,000 kilometres in all, 40% of which I am told is water.

The Great Lakes obviously are boundary waters, and my commission plays a part in preserving their quality and quantity. Now, how does it do this? It's done through a special role assigned to it in the Great Lakes Water Quality Agreement originally signed in 1972. The agreement is between the Canadian and American governments.

Its purpose, spelled out in its article 2, "is to restore and maintain the chemical, physical, and biological integrity of the waters of the Great Lakes Basin Ecosystem". In the agreement the Great Lakes basin ecosystem is described as "the interacting components of air, land, water and living organisms, including humans, within the drainage basin of the St. Lawrence River at or upstream from the point at which this river becomes the international boundary between Canada and the United States". That's another way of describing what you and I would call the Great Lakes.

Now, in the agreement the commission is charged both with assisting the two national governments in achieving the purpose I've just outlined and also with assessing and reporting on their progress in doing so. As required by the agreement, we issue a major report every two years, the biennial report, on the progress or otherwise of the two governments in meeting their obligations under the agreement. These biennial reports are addressed to the governments but are also released at the same time to the public. In addition, we can report on any and all aspects of the agreement whenever we wish to do so.

The terms of the agreement require the governments of Canada and the United States to undertake a review of its operation and effectiveness following every third IJC biennial report. This requirement was formally triggered by the release of the IJC's 12th biennial report on September 13 of last year, 2004.

Earlier this year the two governments therefore set up a committee of officials to develop a plan for this review. A draft was posted on the Internet for comment, and the governments have not yet responded with their final plan. However, they've told us they will do so by December of this year, 2005.

The two governments have asked the International Joint Commission to hold formal consultation meetings and activities to find out what the people of the Great Lakes basin think the governments should consider when they carry out their review of the agreement. They say this review will begin in March of 2006, next year.

The commission has been involved with the agreement since its inception. In fact, the original 1972 agreement in large part came out of a 1970 IJC report on the poor quality of the waters of the Great Lakes that called for action to deal with the problem.

- (1535)

So when the Great Lakes were suffering from heavy loads of conventional pollutants, the government signed the original visionary agreement of 1972. It focused on reducing pollution from municipal and industrial sources and in particular on controlling the input of phosphorus.

In subsequent years the governments recognized it would be necessary to adapt to new challenges, so in 1978 they signed a new agreement, and it took an ecosystem approach that focused on persistent toxic substances. A protocol added to the agreement in 1987 identified 42 geographic areas of concern, or AOCs, where beneficial uses were impaired by pollution. These are environmental hot spots that require remedial action plans, or RAPs, to clean them up.

Now, I do have to tell you that since 1987 only two areas of concern have been completely delisted, Collingwood Harbour and Severn Sound, both in Ontario, but a number of others on both sides of the border are becoming closer to being delisted. The 1987 protocol also introduced lakewide management plans, or LaMPs. Their purpose is to reduce loadings of critical pollution in the open lake waters in order to restore the same beneficial uses required for the areas of concern.

Under the agreement the two countries have set common objectives for a variety of pollutants and have agreed to implement a range of research, monitoring, and pollution control activities. Efforts in both countries have resulted in dramatic reductions in discharges of nutrients and toxic pollutants, particularly from municipal and industrial sources, and investments in sewage treatment facilities and stormwater handling facilities around the lakes have improved the situation. However, there is still much more to be done.

Canadians and Americans have set the same limits on total phosphorus loads, which cause, as you know, eutrophication for each lake, and they have agreed that approaches to arrest persistent toxic substances will be guided by a philosophy of zero discharge. Also, both countries have made major advances in understanding the dynamics of this complex ecosystem, so the agreement does provide a framework for binational goals and cooperative efforts to restore and protect the Great Lakes. However, the governments have not made any changes to it since the 1987 protocol, and as I've said, there is still more to be done.

There is now widespread recognition that parts of the agreement are out of date. Targets and objectives have been met or surpassed, and our scientific understanding of the level of concentration at

which a chemical harms the ecosystem has advanced beyond the goals stated in the agreement. At the same time, there are new issues that require binational cooperation and action to be dealt with, either under the agreement or through separate processes. Examples are: preventing the introduction of new aquatic invasive species and dealing with those already here; reducing the impacts of land use activities, for example, urbanization and factory farms; and also the need to conduct sufficient research programs to enable us to understand large-scale ecosystem changes like the effects of climate change or global warming.

Currently other domestic policy initiatives are under way that will frame Great Lakes restoration efforts in each country. The President of the United States has issued an executive order to carry out what is called the Great Lakes Regional Collaboration in that country. Under the President's executive order, U.S. federal, state, local, and tribal agencies are coordinating domestic programs to restore water quality and address issues such as aquatic invasive species and habitat restoration. The order states that this is intended to support U.S. implementation of the existing Great Lakes Water Quality Agreement.

- (1540)

Now, on the Canadian side, to match this, we have the existing Canada-Ontario Agreement Respecting the Great Lakes Basin Ecosystem, and soon it will also be coming up for renewal. This makes the forthcoming review of the Great Lakes Water Quality Agreement a timely endeavour.

In particular, I want to tell you that in preparation for that review, the two federal governments have asked my commission to hold 15 meetings around the basin. In the material you have received or will receive, you'll find details about this. We have held meetings to date, the first in Kingston; our biennial meeting was held there in June. We met last week in Montreal, and we have met in Duluth.

There will be a meeting in Thunder Bay tonight, and over the next three weeks we will hold meetings in Sault Ste. Marie, Green Bay, Chicago, Bay City, Detroit and Windsor, Cleveland, Toronto, Midland, Rochester, and Quebec City.

Each of these meetings is chaired by a Canadian and an American commissioner, and will be opened by the mayor of the city where the meeting is going to take place. We can give you the dates. If any of you will be in those areas, other than being here in Ottawa for parliamentary responsibilities, you'll be welcome to attend and listen, or even to speak.

The governments want us to get the views of the public on how well the agreement has been working and what, if anything, needs to be changed. The two national governments and my commission believe it is very important for the Great Lakes community to be heard at this stage, so that they—the two governments—can get a sense of the priorities of the Great Lakes population.

The two governments have said there will be additional opportunities for public input once they begin their review of the agreement. They also have said they will consult directly with first nations on a government-to-government basis. This is why my commission is not holding any specific meetings with first nations, although they are welcome to attend our consultation meetings, as is any group or member of the public.

As you can see in the printed materials distributed to you, the public has several other ways to provide comment to us: by e-mail through www.ijc.org; by fax at 613-993-5583; or by toll-free telephone at 1-866-813-0642.

Furthermore, for the first time, there will be a live web dialogue to be held from November 29 through December 2. This will be the first time that a bilingual, bilateral consultation will enable a live dialogue on the Internet to take place between people from both countries, and from all five lake basins and the connecting channels.

When the consultations end on November 30, the IJC will write a report synthesizing all the views it has heard. We will send it to the two governments. We will also send with it all the documents we have received, along with the transcripts of these meetings, and, of course, as with all IJC reports, it will be released to the public.

As well, I should note that the IJC will be making its own recommendations to the governments next year.

I conclude with a suggestion for this committee that perhaps your committee would consider doing the same thing—issuing a report recommending to the governments how the Great Lakes Water Quality Agreement should be modified or updated.

After all, the Great Lakes are very important to Canada and the United States. There are 40 million people living around its boundaries. It's not only a major entry to the continent for shipping; it's important for recreational boating and sports fishing, it's a source of drinking water, and it's a source of water for industrial purposes. I hope that if you can fit it into your schedule, your committee—and I don't say today, I think next year would be adequate—may want to make its own recommendations as a committee.

This completes my statement. I'll be happy to try to respond to your questions or comments.

Thank you very much, *et merci beaucoup*.

• (1545)

The Chair: Thank you very much, Mr. Gray.

You know the drill here. We have ten minutes through the parties, in a rotation, and then we come back for five-minute questions.

We'll start with ten minutes for Mr. Mills.

Mr. Bob Mills (Red Deer, CPC): Thank you.

Welcome, Mr. Gray.

I look at the IJC's map of all the rivers that cross between Canada and the U.S. It's rather amazing when you look at that map and you see just how many there are. Every province has them, and they go every which way.

A voice: Mostly north and south.

Mr. Bob Mills: Then I think about the Devils Lake situation and how the IJC was not able to get involved with that, largely because the U.S. government didn't call for you to be involved. I wonder how we can make it more effective. I just met with the environment minister from Manitoba—as some of the other members here probably did. They're about to come up with an agreement, a mitigation process, after about a two-month ecological study of the nature of Devils Lake.

Certainly from my background, I can't imagine doing an ecological study in two months to understand the effects of seasons, cycles, levels of pollution—you know, there are just so many temperature variations. There are so many things that would affect this. Yet a minister said, "Well, you know, that's better than nothing."

Well, I guess if we pollute Lake Manitoba, or whatever the potential might be, that could be a serious effect. I don't think a two-month ecological analysis is even credible. So I wonder, how do we get you more involved? How do we make sure we come up with an agreement between the two national governments?

• (1550)

Right Hon. Herb Gray: Well, it's true that for a formal reference to be made to the commission, which would result in an inquiry with a binational fact-finding scientific basis and a report with recommendations for actions to the two governments by the commission, the convention is that the request has to come from both governments.

An agreement on this was not reached by the two governments before the outlet from Devils Lake into the Cheyenne, and eventually into the Red River of the north, was opened.

However, if you look at the joint press statement on Devils Lake flooding and ecological protection by the United States and Canada, North Dakota, Minnesota, and Manitoba, you'll see that the understanding between the parties I've listed is that a number of steps will be taken. One of the steps will be an ongoing role for the International Red River Board of the International Joint Commission in monitoring the water quality of the Red River, in particular with respect to things that might be coming out of Devils Lake.

This hasn't begun yet; we're awaiting the formal request or reference from the two governments. In the meantime, as you may know, the state of North Dakota closed down the outlet because one of its departments said the level of sulphates in the lake discharging into the Cheyenne and the Red River exceeds the limits permitted in the state's own permit of operation.

The treaty doesn't envisage parties making direct bilateral arrangements between themselves. This is what the Columbia River Treaty is. They have a direct arrangement between Canada and the United States for managing the Columbia, although we're involved with the Grand Coulee Dam. Now, that's a long way from Devils Lake, but I give you that as an example.

If you read the joint press statement, you'll see it's intended that the International Joint Commission have an ongoing role in monitoring the water quality of the Red River, extending well beyond this two-month effort you've mentioned. We're waiting for the formal reference.

I understand the two governments are discussing how to turn this understanding into a formal agreement.

Mr. Bob Mills: I guess once the water starts flowing next spring, they still won't have completed the study. If they find something after, I'd put it to you that that might be a little late.

Another area I'm sure you're aware of is Sumas II. Again, the Sumas River is going to be draining the sewage out of Washington State into Canada. Again, the Canadian government was not involved. Again, the IJC was not involved. The Sumas project and 11 other projects proposed in Washington State will pollute the second-most-polluted airshed in Canada. Of course, with the mountain ranges there, that becomes an area that will hold that pollution. Again, the Canadian government was not involved and the IJC was not involved.

I guess I was an intervenor in the U.S. I was an intervenor in Canada, and had the opportunity to find a total lack of federal government...nowhere was there any federal representation. Except that Mr. Anderson said, "Well, I know the governor and I'm going to play golf with him and maybe we'll..." whatever.

I guess I'm pretty frustrated with the IJC and with international agreements that seem not to really... I mean, they're bureaucracies but they don't really seem to do anything. I can list project after project where nothing seems to be happening. We have lots of reports and so on, but....

I guess I bring this back to the Great Lakes. If you talk to people in the southwest U.S., they tell you that there are those big lakes up there that certainly have a lot of water and there are engineering feasibility studies that have been done to drain some of that water into that water shortage area. Again, I wonder, if it's going to come out of the U.S. near Chicago, will the Canadian government be involved, or will they simply say no, that's maybe Ontario's problem? I guess I'm not very confident that your organization will in fact hold up the rights of Canadians, Canadian interests.

• (1555)

Right Hon. Herb Gray: First, I should point out to you that the International Joint Commission of Canada and the United States is not an agency of either the U.S. or the Canadian governments. It's an international organization created by a treaty, the Boundary Waters Treaty. What it does and how it operates is set by the terms of the treaty and the other international agreements that give it a role, like the International Air Quality Agreement. So I can't comment, except to provide factual information on how the Canadian government is responding to any issue.

I can tell you that where we are given a formal reference to look into matters, it will not be in the interest solely of Canada and not in the interest solely of the United States, but in the best interest of the populations of both sides of the international boundary. That's what the treaty in effect asks us to do, and we've been doing it, I think fairly successfully, for almost a hundred years.

An example of how our activities have resulted in concrete action, as I mentioned in my statement, is the Great Lakes Water Quality Agreement itself, which arose out of a report of the International Joint Commission calling attention, with alarm, to the state of the Great Lakes. I can mention a smaller matter, which Mr. Paradis is very familiar with: the pollution problems of Lake Champlain, Missisquoi Bay. We turned around and reported in nine months, basically saying that certain causeways should be removed. A few months ago, the government of Vermont announced it was agreeing with the International Joint Commission and proceeding to remove the causeway.

Perhaps I can deal more fully with some of the very interesting comments that you made. When it comes to water being removed from the Great Lakes, the International Joint Commission found in 2000, and confirmed that with an update report in 2004, that the Great Lakes have no surplus water to be exported in bulk. Only one percent of the water of the Great Lakes is restored each year by snowmelt and rain. We said it was not a good idea to allow water to be removed in bulk from the Great Lakes. This led to the Canadian federal government passing Bill C-6, which went into effect in 2002, and banned removal of water in bulk from the Canadian side of the Great Lakes and other boundary basins. The United States federal government is discussing a compact with the eight Great Lakes states to achieve the same results.

Now, bear in mind that so far none of the Great Lakes states want to see water removed in bulk from the Great Lakes to the southwest of the United States or anywhere else. Under a U.S. federal statute at the present time, if one governor of one of the Great Lakes states objects, no water diversion project in bulk can take place.

There may have been engineering studies, as you pointed out, but there is no project currently on the table for removing water in bulk, either by tanker or by canal or pipeline, from the Great Lakes.

• (1600)

Mr. Bob Mills: Are you confident, though, that we could in fact, if they came up with such a plan and had it approved by the Great Lakes states, tell the Americans...? Are you confident enough that we could simply say no, you're not? After all, the water is on both sides.

Right Hon. Herb Gray: You're asking a question that is actually a question of interpretation of a treaty. As I say, I think it's encouraging that just as the people of Ontario and Quebec, for that matter, do not want to see water removed in bulk from the Great Lakes, either by tanker or by canal or pipeline, this is also the view of the eight Great Lakes states on the American side. They want to and are discussing with the United States federal government a binding compact that would mean that water could not be removed in bulk from the American side. This is what's called discussions under Annex 2001.

A second draft of the document is now being looked at by the United States and by Ontario and Quebec. If it's adopted, it will have standards that will be basically similar to those of the federal legislation in Canada.

I will say that once there is agreement at the negotiating table between the federal government and the eight Great Lakes states, with the assent of Ontario and Quebec, each of the states' legislatures have to vote in favour of it, as will the U.S. Congress. That will take some time. But I think it should be noted that there is no active proposal on the table to remove the water in bulk from the Great Lakes. As to what will happen if there is, I don't want to speak about hypothetical questions. I prefer to talk about what's going on right now.

The Chair: We'll have to wrap it up there, because we really have exhausted that ten-minute period, and Mr. Cardin has the next ten-minute parcel. But I'm sure we'll come back to that part of it. The committee, Mr. Gray, did ask for a moratorium on any diversions until that final report was put out.

Mr. Cardin.

[Translation]

Mr. Serge Cardin (Sherbrooke, BQ): Thank you, Mr. Chairman.

Good afternoon, Mr. Gray.

I am the member of Parliament for Sherbrooke. In early 2004, the project to expand the Coventry dump site was drawn to our attention. The Regional Municipality of Memphremagog and the City of Sherbrooke get their drinking water from this lake. When we heard about the project to expand the dump, it was clear to us that there was a risk, because the drinking water for some 200,000 people comes from Lake Memphremagog. In the past, leach water from the dump had been discharged into the lake. Water is not only a natural resource, it is also an essential one.

As we know, municipal dumps are no longer built along rivers. There is a risk that materials will be discharged into Memphremagog, so there is a risk to the drinking water supply.

I told the Department of Environment and the Department of Foreign Affairs and International Trade that it was necessary to act quickly, because I assume that the situation regarding Lake Memphremagog and the Sherbrooke region is not unique. There must be many places in Quebec and along the Canadian border where water seeps from one country to another. People therefore have full responsibility for this.

There has been no follow-up. The ministers refused to inform you and the International Joint Commission about this situation. This would have been an opportunity to draft an agreement to provide that there be no further expansion or that there not be any new dump sites located along rivers or lakes which are the source of drinking water.

Recently, we heard that the Department of the Environment had drawn the Coventry matter to the attention of the Minister of Foreign Affairs and International Trade, so that the International Joint Commission could look into it.

Have you been informed about this situation? Have you undertaken any projects in this regard? Do you try to reach an agreement in cases such as this?

•(1605)

Right Hon. Herb Gray: We are aware of the Coventry dump site issue. If we get a mandate from the government to do so, we are

prepared to produce the same type of report we prepared for Missisquoi Bay on Lake Champlain, in an effort to solve the problem.

For the time being, we were told that cities on the Canadian side of the lake and the American side were holding discussions, as are the State of Vermont and the Province of Quebec. I think there are negotiations taking place. However, just as we did in the case of Missisquoi Bay and Lake Champlain, we are prepared to do what we can to solve the problem. However, in accordance with the Boundary Waters Treaty, we must have a mandate in the form of an official request from the two national governments to do what we can to solve the problem.

Mr. Serge Cardin: Is it really necessary that both governments make the same request jointly? One government could not act alone and make such a request?

Right Hon. Herb Gray: That is a very good question. If you look at the treaty and do some research, you will find that in the almost 100 years that the International Joint Commission has existed, the two governments have always acted together to give the commission a mandate. In fact, this makes a great deal of sense, because if a report were issued by the International Joint Commission at the request of only one government, the other government could refuse to take action.

We begin all of our investigations by bringing together a bi-national task force made up of public servants and academics from both countries. In this way, the governments cannot refuse to cooperate with the International Joint Commission.

Since the International Joint Commission was established almost 100 years ago, it has always received its mandates from the two governments jointly, for the reasons I have just set out.

Mr. Serge Cardin: I see.

Despite that, has the government asked you to intervene on the condition that the U.S. participate as well? Has this been drawn to your attention without any real effort being made or any political pressure being applied in order to have this request accepted? After all, there are U.S. representatives on the International Joint Commission.

Right Hon. Herb Gray: As I just said, we are aware of the problem. We have received some letters from cities located around Lake Memphremagog, on the Canadian side of the border. We have received letters and requests from members of Parliament. I believe Mr. Paradis got in touch with me. You may have done so as well. It would be very easy to do the same sort of thing as we did in the case of Missisquoi Bay. We could intervene quite quickly, in a comprehensive way, and achieve the same degree of success if we were given the mandate to investigate and the budget required to do so.

It is not helpful to have this mandate from only one government, even in a conditional way, because we need funding to do the work. We have to start by assembling a bi-national task force to establish a data base that will be accepted by the two countries.

•(1610)

Mr. Serge Cardin: Given the importance of an issue of this type and the fairly high number of similar situations along the border, can the International Joint Commission not do something to reach some type of agreement with the United States—either as regards the establishment of new dump sites or the expansion of new sites located along waterways?

Right Hon. Herb Gray: In the House of Commons, you function under the Standing Orders. In our country, we operate under the Constitution. Our constitution is the Boundary Waters Treaty, and a few other agreements in which we are mentioned. We do not have the authority to go beyond the provision of these documents.

I would be very pleased if the treaty were to be amended. However, that would require the agreement of the United States and its Senate. Before that happens, we have to work within the framework of the documents we have.

[English]

The Chair: I'll have to interrupt, because we're out of time. We can come back to some of these things on the five-minute follow-up.

We'll go to Mr. Paradis, and then Mr. Scarpaleggia.

[Translation]

Hon. Denis Paradis (Brome—Missisquoi, Lib.): Thank you very much, Mr. Chairman.

I would like to start by thanking and congratulating the commission for the fine work it did with respect to Missisquoi Bay in Lake Champlain. As my colleague was saying earlier, it took a long time before we got mandates from both governments—about six years, I think—but once that was done, the commission did an outstanding job. It met with people from many regions in Canada and the United States, held public hearings, studied expert reports, and so on. The people in our area are very satisfied with the great job you did.

We were also pleased to learn last August that the Governor of Vermont held a press conference in which he said that he was going to remove the fill blocking the circulation of water between Canada and the United States. That is another excellent piece of news.

There is another important issue as well, the Coventry issue, which my colleague from Sherbrooke was mentioning earlier. Lake Memphremagog is located in my riding. I went to walk at this dump site and when I came back, I was even more disturbed than I was when I had simply heard about it. In my humble opinion, if we do not take all the necessary precautions to correct this situation, we could be facing quite a dangerous problem in the future.

Coventry is located right beside Black River, which is the main waterway flowing into Lake Memphremagog. The entire population of Magog and the entire Sherbrooke region drinks this water. That is a population of some 150,000 people. The fact that New England Waste Management wants to triple the size of this dump site is of great concern to the people who live in this region.

At the moment, public hearings are being held by the offices in Vermont that issue the permits. Our region expressed its opinion in accordance with the rules and procedures in place in Vermont. The people said they wanted a joint commission made up of three

Canadian and three American representatives, in order to get the facts about this planned expansion of the dump. The Prime Minister discussed it with President Bush a little over a year ago. I sent a request myself to Ms. Condoleezza Rice, the American Secretary of State. As was mentioned earlier, the Canadian Minister of the Environment, Mr. Dion, has given his support—so the mandate must come from the Department of Foreign Affairs and International Trade, by asking the Minister of Foreign Affairs and International Trade to proceed with this matter. We have to work together. However, it is not always easy to convince both Ottawa and Washington to act simultaneously.

Mr. Chairman, do you think that some day the treaty might be amended to say something along the following lines? If there is something harmful to the water within 20 kilometres either side of the border, there could a provision that the joint commission must intervene automatically, without requiring a mandate from each party. Another possibility would be to say that neither country could undertake projects that would endanger the water or health of people living within a 20-kilometre radius, without seeking the agreement of the other country. I think that if they want to expand this dump, they could do it further away in Vermont. They do not have to do it along the shores of the lake that is partly in Canada and partly in the United States.

My first question is to you, since you know this field and you know how the system works. Do you think that such changes might be made to the treaty some day, or would it be easier, since the Great Lakes Water Quality Agreement is being reviewed, to enter into an agreement between Canada and the United States regarding lakes other than the Great Lakes?

•(1615)

Right Hon. Herb Gray: The treaty could be amended, but it requires the consent of both governments. Under the U.S. constitutional system, international treaties must be approved, not only by the President and his administration, but also by the Senate. One has to wonder whether in the current context it would be possible to amend the treaty between the governments with the consent of the American Senate. I am making no judgment, I am simply asking the question.

If Canada were to ask for certain amendments to the treaty, what would the U.S. ask in its turn? I think that if Canada were to ask for something, the United States would do the same.

If you would like to have a special agreement for the Great Lakes, you should realize that we already have one. The two governments agreed to review it together every six years, without having to get a special agreement.

We are here today to inform you about the status of these negotiations. They will be starting next March. In the meantime, the role of our commission is to gather ideas from the public regarding the Great Lakes.

Mr. Heisler reminds me that our report on Missisquoi Bay recommended an agreement on the water quality of Lake Champlain similar to the one we have for the Great Lakes. Such an agreement could be reached. Under Canadian constitutional practice, an agreement such as the one on the Great Lakes has the status of a treaty. In the United States, if it has not received the assent of the Senate, it is merely an agreement.

If the two governments wish to enter into an agreement without requesting the Senate's assent, they could do what they did in 1972 and agree on a document similar to the one on the Great Lakes for Lake Champlain or Lake Memphremagog.

I would suggest that your committee ask the two governments directly, through the ministers, to negotiate agreements of this type and that they be based on the Great Lakes Water Quality Agreement model.

● (1620)

[English]

The Chair: We may take you up on that suggestion. We'll hold that—

Right Hon. Herb Gray: I apologize for being a bit presumptuous here.

The Chair: There's no such thing as being presumptuous with this committee. It's your prerogative, and we welcome your bringing suggestions. We appreciate that.

Mr. Paradis, we're out of time, but Mr. Scarpaleggia, you'll be at the top when we come around, and then perhaps we can get something else on there.

Mr. Cullen, you're up now.

Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP): Thank you, Mr. Chair. It's good to know that I can't presume upon this committee; it's good to know that boundary is extended.

Thank you, Mr. Gray, for coming before us. I have a couple of fundamental and then some specific questions.

The IJC is often noted as having this extraordinarily long and mostly successful existence between our two countries. Based on the Boundary Waters Treaty.... We know we have a treaty established with the Americans with respect to water. Why has it been successful for so many decades?

Right Hon. Herb Gray: First of all, your very useful question gives me the opportunity to say that in spite of the name of the treaty, the commission is not limited to dealing with matters of water. Our authority to carry out references provided by the two governments, article IX of the treaty, says we can look into anything that is of concern to the people on both sides of the boundary. In the past, the commission, at the request of the governments, has looked into matters other than matters involving water.

Here are two examples. One is from your area, the matter of tidal power in the Passamaquoddy Bay. I think at least twice in the history of the commission we've held inquiries and made reports on the advisability of having tidal power projects in Passamaquoddy Bay. I was interested to see there's renewed interest in that. They have

asked Dr. Clamen to dig out the reports and bring them to the attention of the relevant authorities.

I think in those days my predecessors said it was technically feasible, but very costly. That's basically what they found. But today, in view of the price of crude oil, it may be a different story, so I mention that.

We also looked into the economic and social conditions of Point Roberts, Washington, being almost totally surrounded by Canada.

If governments ask us to do it, under article IX of the treaty we can look into any subject they ask us to look into.

I've perhaps gone beyond your question, but I think the history of the treaty indicates that it's been successful. I'm told that over the years most of the recommendations have been responded to positively by the governments—not all, but a very high proportion. I'll give you a couple of reasons.

I've been on this only four years—not a hundred years, contrary to what some may think—but I was struck by the basis of equality on which the treaty and the commission operates. There are three American commissioners and three Canadian commissioners. The Americans, in spite of the much greater size, population, and economy of the United States, don't have more weight or votes than the Canadians. There's complete equality. In fact, we in the commission have a history of not voting; we arrive at decisions by consensus. I think only twice in the history of the commission has there been an equal division of commissioners, which means that the issue gets bumped back to the governments. The basis of the way the treaty is written and the way the commission operates I think pushes the commissioners to come up with a decision and recommendations that both countries can look into.

● (1625)

Mr. Nathan Cullen: Allow me to interject for a moment, sir.

In your answer, the basis of the strength of this treaty and its act is by the interpretation and action of the governments once the decision is made. There seem to be two critical stages we seem to be struggling with in a number of the examples that were raised by Mr. Mills, both within Devils Lake.

Let's focus on Devils Lake for a moment. One party was unwilling for the reference to be made to your group. It seems to me that the basis of the spirit of the IJC is multilateralist in nature. It is contingent upon a certain relegation of sovereignty, in a sense, to achieve a greater good between the two countries, that one party cannot maintain total authority over a shared resource—let's focus on water, though I know your commission can go beyond that.

When this committee dealt with the Devils Lake issue and pressed the government to deal more firmly with it, to press the Americans to supply your committee with the necessary referral, we met wall after wall and were ultimately frustrated. I would suggest that the conclusion we've come to on Devils Lake remains unsatisfactory for many people in Manitoba.

I see the reference that you've made to the joint release. This doesn't seem like a multilateralist approach that the Americans used. Does this not undermine the very foundation of the strength of your success these long years?

Right Hon. Herb Gray: I take a more optimistic view of what happened with Devils Lake. This comes from reading carefully the joint Canada-U.S. declaration on the Devils Lake diversion project. There was an understanding announced in the press release between the U.S. and Canada, North Dakota and Minnesota and Manitoba. They are going to work together to develop a more effective filter system than is generally understood to be the case with the North Dakota diversion. They're going to give my commission a new mandate to carry out ongoing water monitoring activities through our existing Red River board, which already carries out certain pollution monitoring activities at the border.

Having said that, I myself am more optimistic about what can come from this because they're working to turn this joint understanding into a formal agreement and they're working on the terms of reference to this for permanent monitoring, not just a two-month situation. I think your colleague made a good point, that two months may well not be long enough. So you get all the baseline data on ongoing monitoring—

Mr. Nathan Cullen: My question is more of a process one in the sense of why go through this formation of another monitoring group, particularly when the situation presented to this Parliament was that the taps essentially would be turned on, and mitigating effects would be sought afterwards? The filtration system presented initially was condemned by most on this side of the border, and our government seemed very keen on getting a referral to you in order for some sort of stability and certainty to be presented to the people of Manitoba. Yet we were presented a precedent, a unilateralist precedent, I would suggest, by North Dakota, which seemed to be willing to go its own, even though many other states around it expressed some concern.

We saw this issue touch across this country, and people in many of our ridings and others expressed some consternation with the American position, that we had in a sense a very successful body in yourselves prepared and willing to go on this particular issue because it was of such importance—and I would suggest this is both directions, both Canadian contamination and American contamination into our waters—and yet we've had to go through this process.

It seems to me, as Ms. Rice is here today, and others, the issue of Canada-U.S. relations has come to a new stage in which we can't seem to settle. Your commission is based upon some sound understanding of multilateralist international law that allows for the states to relinquish, as I said, some of their sovereignty in order to achieve a higher goal. Yet you remain optimistic. I'm curious as to why.

• (1630)

Right Hon. Herb Gray: First of all, I invite you to study again, as I know you've already done, the joint Canada-U.S. declaration on the Devils Lake diversion project. What they are asking the International Joint Commission to do does not involve another monitoring group; it involves giving the commission, through one of its existing boards already monitoring certain nutrients at the border, an expanded role to monitor water quality generally in connection with what is found in the Devils Lake area.

We are already there. We have been operating on the Red River for many years. In fact, I should mention, as far as the successes of the International Joint Commission are concerned, after there was the

devastating flood in 1997 the commission turned out a comprehensive report called *Living With The Red* with some 40 recommendations—I've got the number not quite right—for action to be taken on both sides of the border to mitigate the effects of floods on the Red River. You couldn't eliminate them, but you could mitigate their effects.

One of the major recommendations was a great expansion of the floodway around Winnipeg, an expansion and updating. And I had the pleasure a few weeks ago of participating in the groundbreaking ceremony with former Conservative premier Duff Roblin, who was responsible for the original floodway, along with the current Premier of Manitoba, Gary Doer, and the federal minister, Mr. Alcock. I took part in the groundbreaking for the expansion of the floodway along the lines recommended by the commission. This will involve some \$650 million to be shared, I think, equally between the provincial and federal governments. So it's another example of how we can have an effect.

I do want to mention that I think your committee should keep this matter under review. You should be asking questions about the progress of the understanding in this press release, how it's moving along to be turned into a formal arrangement, how things are coming along to give the International Joint Commission a new expanded mandate on monitoring water quality, and what the status is of this new filter project.

There was, as you know, another project—we're dealing with Devils Lake—originally to be built by the U.S. Army Corps of Engineers. They had dropped their project because they didn't get federal funding. But they had a very elaborate filtration system on their project. This could well be a model for the filtration system that the parties to this understanding have said they're going to work to develop.

I invite this committee, again being presumptuous, to keep this matter under review.

The Chair: Thank you, Mr. Cullen.

We'll now go to the top of the batting order. This is now five-minute rounds.

Mr. Watson.

Mr. Jeff Watson (Essex, CPC): Thank you, Mr. Chair.

Mr. Gray, it's good to see you again before the committee.

I wanted to shift gears a little bit to Great Lakes areas of concern. I'm wondering if you can give a brief update on the progress on the Detroit River area of concern, specifically.

• (1635)

Right Hon. Herb Gray: I don't have any data with me. I will get it and send it to you and the committee. I don't know if Dr. Clamen or Mr. Heisler have any fresh information. I'm sorry, we have some 40 to keep an eye on. I don't have the information with me, but I will get it for you and give it to you and your colleagues.

Mr. Jeff Watson: Okay.

In a general sense, I know remedial action plans have led to a number of improvements, shoreline erosion, the softening of shorelines, for example; increasing the breeding grounds for fish stocks on the Great Lakes. Among the 40 areas of concern, if you will, the urban.... Actually how many RAPs do we currently have in place out of the 40 AOCs? Do they all have a RAP, or something like that?

Right Hon. Herb Gray: They all have remedial action plans and they have local committees. Some are more active than others.

I think when it comes to the Detroit River one, for example, there has been a new infusion of activity on the part of the committee on the Detroit River. This is one of a handful of binational areas of concern.

The problem is much bigger on the American side than the Canadian side. There have been steps taken on the Canadian side, but the real problems remain on the American side, because there is a great deal of sediment buildup on the bottom of the river near various heavy industrial plants on the American side. Removing them will require very careful planning to avoid disturbing the sediment in such a way that the water gets polluted worse. It requires a lot of money. There, on the American side, they have the so-called super funds. I think work is going on to plan how this sediment will be attacked.

So I do have a few things to say about the Detroit River after all.

Mr. Jeff Watson: Okay.

I know you don't have a lot of specific information, but can you make any kind of statement on whether these remedial action plans have made any improvement in the quality of water? I've listed some of the other areas where we've seen some improvement, but is the actual water quality itself improving?

Right Hon. Herb Gray: I have to point out, as I did in my statement, that only two areas of concern, both in Ontario, have been totally delisted; that is to say, the beneficial uses mentioned in the agreement have been found to be restored. There's one on the American side that is close to being delisted.

But in fairness, as I said in my report, we can issue reports on any subject, not just every two years, on what's going on under the agreement. If you look on our website, you'll see a report we issued in the year 2003 giving information, which took us a lot of time to develop, on each area of concern. To be fair to other areas that have not been delisted, generally most of them not only have remedial action plans, but steps have been taken to move along the three stages in moving to delisting. So it's not fair to assume that since only two have been delisted, nothing has happened on the others.

With respect to water quality, there has been progress on just about all of them, I think—some more than others—and they are moving along to the delisting. For example, in Hamilton they're only at stage two, but they have a very serious sediment problem at what they call Randle Reef. They worked out a plan that will take them ten years to do. So some of these problems cannot be dealt with, even with an infusion of money, just in a couple of months.

Mr. Jeff Watson: Do we have any delisting criteria for the Detroit River AOC, and who is responsible for establishing those criteria?

Right Hon. Herb Gray: They're spelled out in the remedial action plan, which is a public document. Also, I think the relevant annexes of the existing agreement set out the beneficial uses the remedial action plans are supposed to restore.

• (1640)

Mr. Jeff Watson: I guess I meant the technical levels by which we achieve those things. Have those been established, so that we know when we've turned the corner on the Detroit River?

Right Hon. Herb Gray: I think so. The remedial action plan, read together with the relevant annex—I think it's Annex 2 in the agreement—will give you the kind of information you want. I'd be delighted to confirm that in writing to you.

The Chair: Thank you very much, Mr. Grey.

Thank you, Mr. Watson.

We'll now go to Monsieur Bigras.

[Translation]

Mr. Bernard Bigras (Rosemont—La Petite-Patrie, BQ): Thank you, Mr. Chairman.

Good afternoon, Mr. Gray. People often think that the quality or quantity of water in the Great Lakes has no impact on Quebec. However, the flow is controlled at places such as Cornwall, at the Moses-Saunders dam, and I think it is in Quebec's interest to be concerned about what is going on throughout the system.

You have to make a decision in the next few months or weeks about regulating water outflows in Lake Ontario and the St. Lawrence River. You have submitted three consultation plans. You have visited the regions, you went to Montreal and elsewhere to test public opinion and consult with various groups. There seems to be a consensus emerging for a scenario that would provide environmental benefits for the entire system but not for Quebec, and that would cause a risk of flooding for the Greater Montreal Area.

Has such a scenario been chosen? Will it maximize the environmental benefit for the St. Lawrence, while minimizing the flood risks for the Montreal region?

Right Hon. Herb Gray: Thank you for asking this very important question, which gives me an opportunity to say a few words to the committee about the study we have undertaken about controlling the international portion of the St. Lawrence and Lake Ontario.

What you are talking about is not a plan put forward by the commission. Five years ago, we set up a study group, for which the two governments provided a \$15 million budget, to review the control order established by the commission 50 years ago, when the St. Lawrence Seaway was opened. The study involved 100 experts and there are some permanent officials who are drafting a public report. Our commission draws on these ideas to modernize the control order that we issued between 1958 and 1960, because there have been major changes since. There is now a recreational fishery, greater interest in the environment generally, and all the aspects that you mentioned as well.

Mr. Bernard Bigras: So a decision has not been made.

Right Hon. Herb Gray: No. No decision has been made, and the study group has not published any decision in a final report.

Mr. Bernard Bigras: I see. My other question has to do with the famous International St. Lawrence River Board of Control. In 1952, you started allowing the construction of hydroelectric dams on the network. This board now has discretionary authority over the management of water levels.

Some stakeholders want this discretionary authority to be taken away from the International St. Lawrence River Board of Control to allow for greater predictability in managing water levels. Others want the board to retain its discretionary authority, so that it can use it in emergencies.

How do you see the board's role?

•(1645)

Right Hon. Herb Gray: You are talking about the Board of Control that implements the control order issued by the International Joint Commission at the time of the construction project?

Mr. Bernard Bigras: Yes, the one referred to in your documentation.

Right Hon. Herb Gray: Under this control order, the Board of Control, which is an international commission, has some latitude. This is one of the issues on which we must rule, once we have received a report from our study group. We will have to decide whether to maintain, eliminate or change this latitude of the Board of Control.

Mr. Bernard Bigras: Based on your experience, which direction should we take? Should we withdraw its discretionary authority?

[English]

The Chair: That will be the last question.

[Translation]

Right Hon. Herb Gray: As the Canadian chair, I have to work with my five Canadian and American colleagues to reach a consensus on the need to amend the control order. Therefore, I cannot express my personal opinion. I must work in good faith with my colleagues on this very important issue.

That is why our commission's study has to do with the entire St. Lawrence River, up to Trois-Rivières, and not just the international portion of the river. The existing control order is very important for the Port of Montreal. This port depends for its very existence on water from the Great Lakes, and we are responsible for that.

[English]

The Chair: Thank you, Mr. Bigras, and thank you, Mr. Gray.

We'll go to Mr. Scarpaleggia.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): Thank you, Mr. Chair.

Welcome back, Mr. Gray. It's always nice to have you appear before us. We always learn a great deal.

You mention that the commission has been given a mandate to permanently monitor the runoff from Devils Lake. Did I understand correctly?

Right Hon. Herb Gray: The government said they had agreed that they would give us a mandate. We haven't formally received it. We have to receive it signed by the foreign minister of Canada and the Secretary of State of the United States. But if you look at this news release, you will see that there is an understanding—that's what they call it—to give us this mandate.

Mr. Francis Scarpaleggia: So when it comes to references to the IJC, it just requires a move by the administration in the United States. The legislators don't need to get involved in this.

Right Hon. Herb Gray: No, they don't need to get involved at all.

Mr. Francis Scarpaleggia: The message we've been receiving, which I guess we knew already, and also just by the fact that there are some things you won't comment on, understandably, is that the IJC is really constrained in what it can do. It really needs both governments to get behind something for the IJC to even issue an informal opinion.

Are there some things that you can do as an institution that do not require the prior approval or an impetus from both governments together? Can you commission research? To what extent are your hands bound?

Right Hon. Herb Gray: First of all, under the Great Lakes Water Quality Agreement, article VII, we can look into anything relevant to the agreement—and it's very broadly based—without any specific prior approval from the governments. That's why we bring out our biennial report, every two years. That's why we can look into anything we want, relative to the agreement, whenever we want. So we don't need prior approval under the Great Lakes Water Quality Agreement, which has a very large range of possible activity.

Secondly, under the agreement, we have five scientific boards reporting to us, including the Great Lakes Water Quality Board, the Great Lakes Science Advisory Board, the Council of Great Lakes Research Managers, and the Health Professionals Task Force. They can carry on their own research. We provide the secretariat.

By the way, these boards are binational, with equal numbers of people from both countries, and they make reports to us. We publish every two years a report of what work they've been doing. So they don't need fresh mandates from the governments.

In addition to that, we have what we call an alerting function, where if we see a problem that is not being looked at by the governments, we can firmly alert them—for example, the alien species, the huge Asian carp that looked like it was going to get into the Great Lakes via the Mississippi River and the Chicago canal. We alerted the governments, and this led to funds being provided by the U.S. Congress to the corps of engineers to develop electronic barriers to keep the massive Asian carp from getting into the Great Lakes. So we can do things like that because we have this alerting function.

I also want to mention, with your permission, Mr. Chair, a word of explanation to other members of the committee about the useful, very helpful exchange I had with your colleague from Quebec.

We have a quasi-judicial role. If anybody wants to build a structure that could affect the levels or flows of water involving a boundary water, they have to go to the two governments and make an application, and if they agree, they would send the commission the application. The commission has the authority to either issue an order approving the application for the structure, disapproving it, or—what usually happens—approving it with conditions. That's why we have the control board and the control order of the waters of the international section of the St. Lawrence, and so on.

• (1650)

Mr. Francis Scarpaleggia: Could I stop you on that point? I'd like to explore that.

You said if a province wants to build a dam or some sort of structure, they have to go to the IJC, or if both governments agree, it would be taken to the IJC.

Right Hon. Herb Gray: I have to be very precise on this. We're dealing with structures that involve the boundary waters, not any or every dam.

Mr. Francis Scarpaleggia: I understand.

A bridge, for example, across—

Right Hon. Herb Gray: Yes, if the bridge affects the waters. If you can design the bridge so as not to touch the waters, I guess we wouldn't get involved—which may be unlikely.

We have not made a major order since the building of the seaway, but you could speculate that in all this talk about additional crossings between Canada and the United States, which would go over water, if the design involves anything that might disturb the levels or flows that are presently there, the two governments would have to receive applications. If they approve, then they would still go to us.

Another interesting footnote is that these orders we make are not subject to appeal. It's up to us whether in due course we revise them or open them or something.

I repeat something that I said before: the two governments can always remove the commission's role by having a separate binational agreement, which they did when they signed the Columbia River Treaty. In the treaty, we are the dispute settlement mechanism and we have a grandfather responsibility to oversee the Grand Coulee Dam and reservoirs because we issue the order.

The Chair: That's going to be the final question.

Mr. Francis Scarpaleggia: The Province of Ontario wants to build some kind of structure—I don't know what—in Lake Ontario that's not actually arching over the boundary. Does it have to get U.S. government approval to do this?

Right Hon. Herb Gray: It's not U.S. government approval, it's the approval of the commission.

Mr. Francis Scarpaleggia: But it has to go to both governments first?

Right Hon. Herb Gray: It depends on the structure. I mean, it's very difficult to deal with hypothetical questions.

First of all, it would have to be determined by expert advice whether the structure affected the level or the flows of water. Once that was the case, because of the size of Lake Ontario, there could be all sorts of things done to the Canadian side with no effect, but once there is an effect.... I've already described that.

• (1655)

Mr. Francis Scarpaleggia: That's right.

The Chair: Thank you, Mr. Gray and Mr. Scarpaleggia.

We're down to Mr. Cullen. Mr. Cullen, you have five minutes.

Mr. Nathan Cullen: Thank you, Mr. Chair.

I just have a quick question. The Suzuki Foundation released a report just recently looking at Canadian performance and the environment. One of the things they talked about with respect to water is that we have no national water quality monitoring data. In your view, is this accurate, and if it is accurate, does it affect any of the work that you folks try to do?

Right Hon. Herb Gray: It depends what you're talking about. There is monitoring of Great Lakes waters by the federal and provincial governments. There is a conference every two years called SOLEC, a state of the lakes environmental conference, where they look at indicators.

Have I got that right, Dr. Clamen? He says yes.

So there is monitoring, both by provinces and the federal government, of air and water quality.

Mr. Nathan Cullen: Is that just with respect to the Great Lakes, or is that beyond?

Right Hon. Herb Gray: Unless I'm wrong, and I don't deal with this, there is no single national system; there are individual programs for say the Great Lakes or the airshed involving British Columbia and Washington and so on. So I don't think there's any single national system.

Dr. Clamen, I'd like you to speak to that.

Mr. Murray Clamen (Secretary, Canadian Section, International Joint Commission): The federal government, in cooperation with the provinces, I think, has established national water quality guidelines. In almost every province, there are also monitoring networks, cooperative and non-cooperative, between federal and provincial governments. So it's hard to blanketly say there aren't any. There's quite a bit of water quality monitoring.

Mr. Nathan Cullen: There's no national perspective of that. That's a sharing that goes on potentially between the provinces?

Mr. Murray Clamen: Yes. The commission also has Canada-U.S. water quality monitoring responsibilities to meet certain objectives at the border itself in addition to those that are done just nationally or within its own jurisdictions.

Right Hon. Herb Gray: I can add to that. For example, in Ontario there is close cooperation between the federal environment department for the Ontario region and its provincial counterpart. I'm sure that's the case in the other parts of the country. The arrangements are discrete in the sense that they're between Ontario and the federal government. There is a Canada-Ontario agreement, which is the way Ontario was called upon to carry out its side of activities under the Great Lakes Water Quality Agreement.

Mr. Nathan Cullen: That's helpful.

To turn our attention just briefly again to the suggested bulk water exportation, as a former politician, I'm sure you can appreciate the sensitivity Canadians have towards any possibility of bulk water export sales or removal to the United States. It presents a hot button issue for Canadians across the country.

You mentioned Bill C-6. You also mentioned the compact in the United States and that at the present time none of these states that have signed on are interested in having any water leave the Great Lakes basin. Is that correct?

Right Hon. Herb Gray: Not as far as I'm aware, no.

Mr. Nathan Cullen: If one or two of these states were to go offside in a sense and be enticed to either sell or just simply remove water from the basin, what would that essentially do to the strength of the compact?

Right Hon. Herb Gray: First of all, under existing U.S. federal law, as I have been informed, if any of the other states say no, then it couldn't happen.

Mr. Nathan Cullen: Could a state with direct jurisdictional governance on some part of the basin independently decide to use the water that flows through its state in order to transport it in whichever means it sees fit?

Right Hon. Herb Gray: Not as far as I'm aware. There's a U.S. statute called WRDA, the Water Resources Development Act.

Mr. Nathan Cullen: What does that act do?

• (1700)

Right Hon. Herb Gray: It says that if there is a proposal to divert water out of the Great Lakes in bulk and any Great Lake state says no, it couldn't go ahead, even if the state where the diversion would take place wants it.

Mr. Nathan Cullen: You mentioned a dispute resolution system. The IJC in a sense represents a dispute resolution mechanism. It has

within its body and its direction a way to resolve disputes between the two countries. Is that a fair assessment of what the IJC does?

Right Hon. Herb Gray: Yes, that's right. It prevents or resolves disputes between the two countries.

Mr. Nathan Cullen: Again, this is contingent upon the willingness of both of those countries to honour and respect the decisions. In an earlier statement, you mentioned that by and large the recommendations that come out of the IJC are adhered to by both parties.

Right Hon. Herb Gray: That's my understanding. I haven't analyzed every report since 1911, when the commission started operating, but I think that's the result.

It may not happen immediately. For example, the report on how to mitigate the effects of floods on the Red River came out in 2000. The ground was broken only last month for an expanded and updated floodway, but the report did make a recommendation, which is being acted on.

The Chair: This will be your last question.

Mr. Nathan Cullen: Thank you, Mr. Chair.

I know that the transference isn't perfect, but as we struggle forward—I don't even know if “forward” is the right term—with NAFTA and our inability to resolve issues through dispute resolution, it's also contingent upon both parties to seemingly be able to agree and then adhere to the dispute resolution. Do you have confidence that the IJC will continue to have success, with what you've said is a requisite for both parties to agree to abide by the decisions made, when we have something even larger than the IJC not being able to arrive at a good result in NAFTA?

Right Hon. Herb Gray: We're really dealing with an issue of international law and the willingness of governments, whether through NAFTA, the World Trade Organization, or any international accord on which action is based, to live by that accord.

There are interesting questions on how one takes action under a treaty. Some treaties have provisions written into them, and others are silent, but international lawyers will tell you there are ways to press the other side to do things, and so on.

I'll raise a new topic that goes beyond this distinguished committee. There have been a number of organizations that have suggested the IJC model be expanded to deal with issues other than those involving water and the environment. In fact, they have noted that the treaty doesn't even have to be changed in order to do that. There only has to be a willingness by governments to give the IJC the task of looking into the matter. I will readily say that in order to do that, you might need different kinds of commissioners and different types of administrative structures.

But if you were to call Tom d'Aquino of the Canadian Council of Chief Executives, he would tell you that he has talked about the IJC being a model for broader dispute settlement, expanding the role of the IJC, and having many IJCs on specific topics.

By the way, the existing treaty article X says that if the U.S. agrees, the IJC can be asked to make a binding arbitral award that can only be appealed to the International Court in The Hague. Understandably, that section has never been used.

You raised a very interesting topic. The IJC model has intrigued people, like the director of the Canadian Council of Chief Executives, as a way of solving the problems we're wrestling with or at least as being a model for specific issue-oriented or geographically oriented bodies that operate like the IJC.

The Chair: Thank you, Mr. Gray.

We went a little over the time there. We'll have our last five-minute cycle now.

Mr. Richardson, do you wish to ask a question?

Mr. Lee Richardson (Calgary Centre, CPC): I don't have any questions, thanks.

• (1705)

The Chair: Mr. Bigras, from your side, or Mr. Cardin?

Then we'll go across to Mr. Scarpaleggia and Mr. Wilfert.

Mr. Scarpaleggia, Mr. Wilfert hasn't been able to get a question in, so yours is short, I take it?

Mr. Francis Scarpaleggia: Yes.

What have you been hearing at the consultations on the Great Lakes Water Quality Agreement? Who is coming to the consultations—citizens, NGOs...?

Right Hon. Herb Gray: I've been to only one meeting, the opening meeting in Montreal, and it was very impressive. It was in the grand foyer of Montreal's city hall. The Mayor of Montreal came and spoke, and listened.

I might smuggle in another point. There's a new organization, the Great Lakes mayors initiative, fostered by Mayor Daley of Chicago, Mayor Miller of Toronto, and Mayor L'Allier of Quebec City. They have new permanent staff. It's a very useful initiative.

I haven't been getting reports on the other meetings. All the commissioners have to take their turn. I'm going to have to hit the road next week—on Wednesday, I think—but the comment so far is that the Great Lakes Water Quality Agreement has been very useful. They want to make sure that it's not weakened in any way and it's updated to include the kinds of issues I mentioned in my opening statement.

I think that's basically what I heard at the meeting in Montreal on the Monday of last week.

Mr. Murray Clamen: There was also the Kingston meeting.

Right Hon. Herb Gray: Oh, yes.

The government has asked that the meeting we had in Kingston, on the campus of Queen's University, be the opening session. In between each biennial report, we have a big biennial meeting. So the discussion we had on the campus of Queen's University in June pretty much was a precursor of what I heard in Montreal on Monday. I haven't had reports. There's a meeting taking place tonight in Thunder Bay, and there was one in Duluth.

But that's a good point. We should get running accounts from our colleagues on what comes out of each meeting. We could pass the information on to the members of the committee. We'll also be

posting on the Internet within 48 hours, which is probably better than me trying to tell you what's going on.

The Chair: Mr. Wilfert.

Hon. Bryon Wilfert (Richmond Hill, Lib.): Thank you, Mr. Chairman.

Mr. Gray, colleagues, as with so many issues in this country, there's a lot of grey and not enough black and not enough white.

Right Hon. Herb Gray: Are you getting personal?

Hon. Bryon Wilfert: The issue, obviously, is that water is a very complex issue, and it's a shared responsibility. I think when you were here before, on the Annex 2001 issue, the fact was that some viewed the Government of Canada as sort of being on the outside looking in, because of the provincial role and responsibilities. One of the things that I'm sure you know is that the government is working with the Canadian Council of Ministers of the Environment on a better management plan. What we need to do, and what we are doing, is a water information-gathering exercise, through 19 departments, which Treasury Board is leading, to find out what the federal government is doing in terms of activities, expenditures, and results to help coordinate federal activities. I wondered, Mr. Gray, if you could comment on how you see that interfacing in terms of your activities and in terms of assistance.

Secondly, because of the nature of this grey area, there often are gaps in federal-provincial policies. I understand and sympathize with my friend across the way, Mr. Cullen, with regard to this whole issue. It's clearly who's on first in terms of sometimes being able to respond. I wonder if you could comment, from your own observations over the years, and obviously in your current role, on whether you think we're getting it right in terms of addressing some of these gaps, and how that might assist you in terms of what you and the commission are doing with regard to addressing the issues before us.

Right Hon. Herb Gray: Well, first of all, I have to remind myself that I'm a neutral public office holder, heading an international commission jointly with American counterparts. So what I'm tempted to say I perhaps have to leave for my memoirs.

But I think it's impressive that governments at both levels are striving to work together to better coordinate their efforts. To the extent they do that, it makes our job at the commission easier. This is happening on the American side through the President's Great Lakes Regional Collaboration. This is taking place on the Canadian side through initiatives like the one you mentioned.

So to the extent that they're successful, and not only with recommendations but also in being acted on, it's good for the people of both countries and makes our job at the commission easier.

•(1710)

Hon. Bryon Wilfert: On the issue of the gaps, when we look at some of the gaps, some would say there was a policy gap in terms of the annex issue and the fact that the provinces and ten U.S. states are dealing with an issue. If we as a federal government became too involved, it would really trigger the Americans to say, well, we'll look at all water issues. Obviously, we didn't want to do that; we only wanted to deal with the Great Lakes, which is a problem. I think everyone around this table, I wouldn't like to say, would probably agree with me, but I think there's general agreement.

A voice: That would be presumptuous.

Hon. Bryon Wilfert: That would be very presumptuous, Mr. Chairman.

But when you talked about revising the treaty and that there are opportunities—with consent on both sides—to revise the treaty, do you see any mechanisms that do not exist but which could address some of those questions?

Right Hon. Herb Gray: First of all, revising the treaty means renegotiating it. I repeat, when you do that and you ask for something, the other side will ask for something as well.

Hon. Bryon Wilfert: Yes, it's always a risk.

Right Hon. Herb Gray: So you have to think about that carefully.

Second of all, there are other means of dealing with these kinds of issues. There are agreements that are formal in international law but aren't called treaties, such as the one we're discussing today, the Great Lakes Water Quality Agreement. There's another one, the international air quality agreement. So there's a willingness on the part of the two governments to update both of them, with the Great Lakes Water Quality Agreement covering a very big area geographically—a lot of people, a lot of activities. Here's an opportunity over maybe the next two years to do something significant to deal with what you call "gaps".

With respect to the issue of gaps, one has to bear in mind, as you point out, that we're dealing with overlapping jurisdictions. We're also dealing with jurisdictions of two sovereign countries and an international border. So that doesn't make things easier, but they're just part of the reality.

Now, the Americans have the same kinds of issues. They have state governments that feel they have roles to play in matters of the environment and water quality. There are mechanisms they have worked out, such as councils of governments, and councils with the President, such as the Great Lakes Regional Collaboration. So if it's any consolation, our American friends have the same kinds of problems.

Perhaps because of the way their constitution's written, they have to deal more preeminently through their federal level when it comes to the boundary, but the states are still there. So this is something you may want to have some hearings on, and have some of the international legal experts on these matters. But I think there's a lot of room, through what I came to talk about, as well as what you want me to respond on, to deal with the gaps where they're perceived to exist.

Hon. Bryon Wilfert: I appreciate that. That's certainly a concern that I think we all share.

Thank you.

The Chair: Thank you, Mr. Wilfert, Mr. Gray.

Just to remind the committee, on Thursday we will be having the officials from the foreign affairs department and the ministry of environment, and I take it that there will be some supplementary questions for them that were raised with Mr. Gray with respect to Devils Lake, Annex 2001, and other issues.

Are there any other questions from members of the committee for Mr. Gray?

Mr. Gray, we do appreciate your being here. There was just one little aside that you made with respect to Mr. Wilfert's comment or analogy on a grey area. I think I heard you ask if we were getting personal. I can assure you that we are now all very much aware of Mr. Wilfert's sense of humour, and I think he was trying to be somewhat on the lighter side.

•(1715)

Hon. Bryon Wilfert: It's ill-defined, Mr. Chairman.

The Chair: Yes, I just wanted to clarify that.

We do appreciate your being here—and your associates.

Right Hon. Herb Gray: I do want to thank you for your very important and insightful questions. You raised the issues that, in my view, should have been raised—although I do want to observe, with respect to Mr. Wilfert's sense of humour, that I have found over 40 years at the elected level that one of the most dangerous things for a politician is the issue of humour. Fortunately, Mr. Wilfert has been using it with tact.

The Chair: On that note, I can assure that you the chair has also been educated, and will not be making any statements with respect to what is presumptuous and what isn't.

Thank you very much for being here. We appreciate it.

Right Hon. Herb Gray: Thank you.

The Chair: The committee is adjourned.

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