The International Joint Commission:

A Case Study in the Management of International Waters

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EXECUTIVE SUMMARY

Created by the Boundary Waters Treaty of 1909, the International Joint Commission serves to prevent and resolve disputes relating to the use and quality of boundary waters and to advise Canada and the United States on related questions. The two governments have turned to the Commission on more than 100 occasions for assistance, including such issues as navigation and power generation in the St. Lawrence River, pollution in the Great Lakes and apportionment of water in the St. Mary and Milk River watershed. The IJC has largely been successful in its dual roles as regulator of projects that affect levels and flows on both sides of the boundary and as a nonbinding advisor to the governments on controversial issues relating to both water quantity and quality. Several examples of the IJC's work are cited, including recommendations that have resulted in new treaties or binational agreement, resolving longstanding issues of concern between the two countries. Reasons for the success of the IJC are categorized into two types. First, those that are contextual and cannot be affected by the Commission; and second, those that are procedural and within their control. Contextual reasons include the provisions for equality in the Treaty; the importance of water; geography; the relatively comparable affluence of the parties; social, economic and cultural ties; and the fact that only two countries are involved, making consensus easier to achieve. Procedural reasons include the IJC's commitment to consensus; the bi-nationally balanced joint fact-finding process based on science; the independence of the Commission-appointed study teams; cross-border relationships built up over the years; the focus on public engagement; the skills and experience of the commissioners; the ability to depoliticize issues out of the limelight; and the capacity to take the time needed to reach consensus without outside pressure. Under the right conditions, the IJC model may have the potential to work in other contexts.

INTRODUCTION

When you think of success and how it is achieved, the first step is defining success. Without a definition, you can't measure it and you won't know if you have achieved it or why. Sometimes defining success is easy. For example, in the corporate world, success might be defined in terms of market share or profits. To a politician, success might be defined as being elected to higher office, or making it on "Meet the Press" or "The O'Reilly Factor."

In sports for example, success is measured in games won and championships claimed. Recently, I was struck by the comments of a relief pitch pitcher for a very successful major league baseball team. After just giving up a home run in the bottom of the ninth inning to lose a critical game against a key rival, he put it very simply. He said: "Sometimes you're the windshield and sometimes you're the bug." Measuring success couldn't be any simpler than that.

But in the case of the IJC, what is success and how do you measure it? What are the performance measures?

Is it the number of disputes averted? But if they never happened, how would you measure disputes that never happened?

Is the absence of complaints a measure of success? Indeed, to our knowledge no one has ever advocated abolition of the IJC. That is certainly an indicator of success.

Is the fact that the U.S. and Canada have not gone to war – at least not while the IJC has existed – reflect success?

Is success measured by popular perception? As some say, perception is reality nowadays. And certainly, our very presence here today is evidence of a widely held public belief that the IJC is an extraordinarily successful transboundary organization.

But what is the reality? Is the IJC truly as successful as its reputation would have us believe? If so, what are the reasons for that success? And is the IJC model one that can be transferred or translated to other contexts?

MEASURING THE SUCCESS OF THE COMMISSION

Not surprisingly, my fellow Commissioners and I believe the IJC has been a resounding success. The best way to measure that success, I think, is in the context of our various functions, so let's look at them one at a time.

First, applications. As my colleague noted, our most concrete work is done in approving and regulating dams in boundary waters or in transboundary rivers to the benefit of people in both countries.

[Figure 1 -- Chart showing status of applications]

In this regard, the Commission has been quite successful. Since 1909, there have been 61 applications and 49 were approved. In six cases, no action was taken or a decision was deferred, usually at the request of the applicant. The balance were either withdrawn by the applicant or

dismissed for technical reasons. In 40 cases, the IJC retained jurisdiction by creating a board of control to manage or oversee the particular structure or by assigning the work to an existing board. In the rest, no board was necessary.

[Figure 2 -- Map showing several applications]

These projects range from a structures on the St. Marys River that are managed by our International Lake Superior Board of Control to the Grand Coulee Dam on the Columbia River, the third largest hydroelectric dam in the world.

[Figure 3 -- Examples of references]

Second, references. Since 1909, there have been 57 references, on topics ranging from the "Pollution of Boundary Waters" in 1912 to the Alburg-Swanton Bridge and Causeway and its impacts on water quality in Mississquoi Bay of Lake Champlain in 2005.

[Figure 4 -- Number of applications and references by decade.]

As you might imagine, given the advanced stage of development in the transboundary region, the number of applications that might have an impact on levels and flows on the other side has declined steadily over the years. In fact, there has been only one such application since 1990 and there have not been many applications since the 1960s. On the other hand, the number of references seems to ebb and flow with the times, reaching a peak in the 1960s and 70s when the environmental movement was growing and concerns over water levels were also high.

Looking at both applications and references, over more than 118 "dockets" the Commission has rarely failed to reach agreement, that is, at least four of the six Commissioners

willing to sign their names to a record of decision. Indeed, over nearly one hundred years, the Commission has only divided along national lines and submitted separate reports to governments in two instances. Both relate to the same dispute – the apportionment of the St. Mary and Milk Rivers and the related Waterton and Belly Rivers.

The dispute over the allocation of St. Mary and Milk Rivers, shared by Montana, Alberta and Saskatchewan was one of the original reasons the U.S. and Canada signed the Boundary Waters Treaty in 1909. Article VI of the Treaty sets out how the water was to be apportioned, but it was not until 1921 that the IJC issued orders to put that provision into effect. The state of Montana and the U.S. government have from time to time objected to the fairness of the order, most notably in 1927 when the U.S. asked that the order be reopened. Canadian Commissioners did not concur and separate reports were submitted to the governments. Furthermore, a related 1948 reference to study the use and apportionment of the Waterton and Belly Rivers again resulted in division of the Commission along national lines and submission of separate reports. The controversy over the allocation of the St. Mary and Milk continues to this day, though some argue that the IJC orders have at least provided some certainty and allowed the parties the ability to know their allocation of water and to plan accordingly.

It is interesting to note the adjudicatory function provided to the Commission in Article X in which the two governments can refer questions for a binding decision has never been used. Apparently, this is one tool in the Canada-US toolbox that the two countries have not found useful. On some occasions, they have chosen to avoid the IJC altogether, signing treaties that

create other arbitral bodies. Even so, the parties have consistently turned to the IJC to address some of the thorniest issues that have arisen over the past century.

Everyone is familiar with the old adage regarding the three most important factors in valuing real estate – location, location, location. When it comes to the determining the success of the IJC, the three most important factors are timing, timing, timing. A perfect example of this was a reference to the Commission in 1920 to study the potential for improving the St. Lawrence River between Lake Ontario and Montreal for deep water navigation and power generation.

[Figure 5 -- Map from 1922 report]

In response to IJC recommendations, in 1932, the U.S. and Canada signed the Great Lakes St. Lawrence Deep Waterway Treaty, also known as the Hoover-Bennett Treaty. However, in 1934, the treaty was defeated in the U.S. Senate and in 1941, an agreement for development of navigation and power in the Great Lakes-St. Lawrence Basin was signed by the two countries but not approved by the U.S. Congress. Clearly, the timing was not right, but after World War II, conditions changed and the project gained new life.

This time around, the issues were broken into three parts. First, the Niagara Treaty of 1950 set the minimum amount of water that flows over Niagara Falls at different times, and the IJC was given a reference to investigate and make recommendations concerning the nature and design of remedial works necessary to enhance the beauty of Niagara Falls, while at the same time permitting the production of added power. Second, in 1952, application was made to the IJC by both governments for approval of works to generate electric power in the international section of the St. Lawrence River. And third, governments enacted legislation and entered into

an agreement to construct the St. Lawrence Seaway through an exchange of diplomatic notes. Construction of the Moses-Saunders Dam was completed in 1958 and the Seaway was completed in 1959. All in all, the two projects employed 25,000 people and costs more than one billion dollars. The IJC continues to maintain a control order on the dam.

FOCUS ON RESULTS -- EXAMPLES

As the foregoing example proves, the IJC has played a critical role in the development of transboundary region. The results of the Commission's work evaluating and approving applications can be seen in walls of concrete, rivers diverted and reservoirs created. However, with respect to references, what have been the results? Have our recommendations been implemented?

In this regard, it must be remembered that the IJC does not have the authority to implement its recommendations. The IJC is not a program manager or a regulator for references, simply a recommender and adviser to the governments. The responsibility for implementation belongs to the governments of the U.S. and Canada, so it is somewhat unfair to judge the Commission based on the action or inaction of the two governments.

To my knowledge, a comprehensive assessment of the status of IJC recommendations has not been attempted, and maybe that assessment should be part of an overall look at the work of the IJC as we approach our 100th anniversary in 2009. Sounds to me like a great project for a hungry graduate student with an interest in transboundary water issues. Lacking that analysis, however, the anecdotal evidence seems to indicate a solid record of success. In addition, when

we have assessed implementation efforts in specific cases, i.e. our recommendations regarding flooding of the Red River, the outcomes have been generally positive.

Other examples include the IJC's very first reference – on levels in Lake of the Woods –which resulted in a consensus report and recommendations in 1917. In response, the U.S. and Canada signed a treaty known as the 1925 Lake of the Woods Convention and Protocol which established elevation and discharge requirements for regulating Lake of the Woods based on IJC recommendations. Another controversial issue resolved by the IJC involved the apportionment of the Souris River shared by North Dakota, Saskatchewan and Manitoba. Responding to a 1940 reference, the IJC provided recommendations in 1941 that were implemented by the governments as were further revisions in 1958, 1992 and 2000.

A capstone achievement of the IJC was our report to the governments in response to their reference in 1964 on "Pollution of the Lower Great Lakes." The Commission recommended urgent remedial action to arrest the degradation of Lakes Erie and Ontario and the international section of the St. Lawrence River. We also recommended that the governments work together to set water quality objectives and to authorize the IJC to serve as a "watchdog" to monitor the effectiveness of government efforts to clean up the lakes. To implement these recommendations, President Nixon and Prime Minister Trudeau signed the Great Lakes Water Quality Agreement in 1972. Again, the times were right and the Agreement coincided with a whole range of other environmental measures in both countries, including the U.S. Clean Water Act.

The success of the Agreement makes it a landmark in transboundary water cooperation and management. For example, it has resulted in steps by the governments of the U.S. and Canada to stop direct point-source inputs of pollutants into the Great Lakes and has worked to stop and reverse eutrophication. And the Agreement has worked to encourage the two countries to work together to protect their shared waters. I should note, however, that the Agreement was replaced by the governments in 1978, then subsequently updated in 1983 and 1987, but has not been revised since. Substantial gains in water quality made in the 1970s and 80s have slowed, and new threats – such as invasive species – have emerged. In this regard, the IJC will soon be providing advice to the governments on the review of the Agreement, providing some ideas on what a new water quality pact should look like.

Much like the previously cited story of the St. Lawrence Seaway, I must mention a notable example in which the timing for the IJC's involvement just wasn't right. For example, from 1913-14, the IJC undertook what might be the largest water quality study in human history, sampling boundary waters from Montana to Maine and Saskatchewan to New Brunswick. Nearly 1500 sites were sampled and 17 laboratories were installed to analyze the nearly 18,000 samples. The study found that water supplies in the Detroit River, the Lower Niagara, the St. John River, the Rainy River and Lakes Erie and Ontario had the highest levels of bacterial contamination, making the water unfit to drink even with treatment. The science was flawless and the recommendations were visionary and far reaching.

[Figure 6 – Recommendations of the 1914 Report

• Install collection & treatment facilities for waste

- Treatment of sewage before discharge
- Fine screening or sedimentation + disinfection

• Disinfect vessel sewage

• Develop regulations for protecting water intakes

• Prohibit discharge of garbage & sawmill waste

• Restrict discharge of industrial & other waste]

In 1920, at the request of the two governments, the IJC even submitted a draft treaty for implementing its recommendation. The treaty transformed the IJC from recommender to regulator and put itself in charge of implementing a new, regulatory wastewater treatment regime on both sides of the border. The treaty was never signed and it was not until after WWII that new references to the IJC finally resulted in the implementation of recommendations to address pollution in these boundary waters.

Were the IJC's 1920 recommendations ahead of their time or did the IJC simply overreach? Today, such a transfer of domestic regulatory authority to an international body appears unthinkable and should be considered as a reflection of the idealism and progressivism of the times. We will never know if different, less bold, recommendations for national action might have produced results sooner.

[Figure 7 -- Map of Pt. Roberts]

Some might consider another example of the IJC overreaching was the reference in 1971 to investigate and recommend measures to improve the lifestyle of residents in Pt. Roberts,

Washington. Residents of this community must travel through Canada to reach their homes, creating issues with the application of customs laws and regulations, delivery of health services as well as law enforcement and electric and telephone service. Instead of answering the specific questions of the reference, the binational board set up by the IJC to study the issue recommended the creation of an international park system and the establishment of an international conservation and recreation area extending from Gabriola Island to Whidbey Island in the San Juan - Gulf Islands Archipelago and from west to east from Vancouver Island to the mainland coast of Washington including Point Roberts and its environs. The reaction to these recommendations was so negative that any further opportunities for cooperation to resolve the original issues was foreclosed and work on the reference was halted by the Commission in 1977.

By and large, however, despite some blemishes, the IJC's record is dominated by successful resolution of dozens of issues that could have poisoned relations between the U.S. and Canada. Instead, the IJC has served as a vital link between the two countries, fostering good relations and promoting cooperation to the benefit of people on both sides of the border.

REASONS FOR SUCCESS

Having established, at least anecdotally, the success of the Commission, now we must delve into why it has been successful. In this regard, I divide the reasons into two basic camps: those that are contextual and beyond our control and those that are procedural and within our control.

Contextual Reasons

First, let's look at context. On this front, the reason for the IJC's success is the nature of water itself. Water is life. Water is essential. For some, water is a gift from God, as we see, for example in the Bible and the Torah, where it says in Deuteronomy: "For the Lord thy God bringeth thee into a good land, a land of brooks of water, of fountains and depths that spring out of valleys and hills." And the Koran says, "We have created every living thing from water." It may even be that the existence of water helped to create the first communities as people organized to share it, carry it and use it. As Jerry Delli Priscoli (U.S. Army Corps of Engineers senior advisor on international water issues) has noted, "Indeed, water may actually be one of humanity's great learning grounds for building community."

Throughout the ages, people have learned to share water because there is no alternative. One might even say that when it comes to water, the imperative to consensus is virtually absolute. Indeed, the alternative is war. This realization leads me to agree with researchers who believe that water is not a source of conflict but a source of agreement. For example, as Yoffe and Wolf conclude:

> Accounts of conflict related to water indicate that only seven minor skirmishes have occurred in this century, and that no war has yet been fought over water. In contrast, 145 water-related treaties were signed in the same period. War over water seems neither strategically rational, hydrographically effective, nor economically viable. Shared interests along a waterway seem to consistently outweigh water's conflict-inducing characteristics. Furthermore, once cooperative water regimes are established through

> treaties, they turn out to be impressively resilient over time, even between otherwise hostile riparians, and even as conflict is waged over other issues.
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> Yoffe, S. and A. Wolf. "Water, Conflict and Cooperation: Geographical Perspectives." *Cambridge Review of International Affairs.* Vol. 12 #2, Spring/Summer 1999. pp. 197-213.

So in our case, the resilience of the Boundary Waters Treaty of 1909 and the success of our Commission can in some measure be credited to nature of water itself.

I should also note that related to this point is the volume of water involved. My point here is that it is much easier to manage abundance than scarcity. For example, the volume of the Great Lakes is in excess of six quadrillion gallons. Yet, even with the seeming abundance of water, reaching final agreement on a management regime for using or diverting Great Lakes water has still proven elusive. For example, it has taken governors and premiers more than five years to sign the Annex 2001 agreements and it is expected to take at least that long for state and Congressional action to complete the deal. Such difficulty may be related to the fact that only one percent of Great Lakes water is renewed each year. And in regions where scarcity is the norm – such as in the St. Mary and Milk – conflict and controversy have bubbled for more than a century.

A third contextual reason for success is rooted in geography. Simply put, rivers run north and south. Along the U.S. - Canada boundary, many rivers flow north from the U.S. to Canada,

while others flow south, from Canada to the U.S. – creating both upstream and downstream interests in both countries. At same time, from the Great Lakes east, the international boundary cuts right through the lakes and ultimately along part of the St. Lawrence River, making both countries equally concerned about upstream and downstream interests.

[Figure 8 -- Map showing rivers flowing north and south, etc.]

You might call this geographical state of affairs a great example of "what goes around comes around." Since both countries have downstream and upstream interests, there is often an incentive to reach agreement; otherwise, an offending upstream party could face problems in another watershed in which they are the downstream interest. Or maybe the guiding principle here is the Golden Rule: Do unto others as you would have them do unto you. So when it comes to water, following the Golden Rule is a great impetus for agreement.

Next on our list of contextual reasons for our success in water management is success itself. What I mean is that both Canada and the U.S. have been successful economically, they can afford to invest in a wide range of measures to improve the management and conservation of the transboundary environment. Our countries are affluent, have advanced technologies and have the expertise and human resources to keep the environment clean or to manage problems when they arise.

[Figure 9 -- Graph of Kuznets curve with respect to the environment]

Here, we reference the familiar inverted "U" of the Kuznets Curve adapted to an environmental context. As wealth, standards of living and economic development increase, so

do pollution and the health concerns associated with it. But above a certain threshold, once basic needs are met and resources become available, society seeks to enhance environmental quality, pollution declines and health improves. One might even argue that the inverted "U" is narrowed in free democratic societies such as the U.S. and Canada where the public can demand investment in environmental protection. On the other hand, the inverted "U" is stretched in totalitarian systems such as the old Soviet Union or in China today.

In more specific terms, more affluent nations can cook with natural gas rather than with wood or charcoal. Forests can be managed and replanted instead of simply cleared. Wealthy communities can recycle and reuse and the pay the costs of installing scrubbers and other pollution controls. And in the case of transboundary water, the important point is that the U.S. and Canada are at the same stage of development and thereby have similar abilities to invest in environmental protection.

The sixth contextual aspect also relates to the similarities between the U.S. and Canada. These are what might be called the "ties that bind." Our two nations share social, cultural and economic ties. And while some contend that U.S. values clash with Canadian values, on a very basic level, we are certainly more similar than we are different. Indeed, with more than $1 billion in goods crossing our border each and every day, the economic incentives for cooperation are obvious and continue to grow. Other ties include binational associations of mayors, governors and premiers as well as nongovernmental organizations.

The seventh reason may make me sound like a numerologist, but bear with me here. When looking at systems of governance, numbers make a huge difference. My point here is that

the number two inherently defines the notion of fairness and equality. Think of how we describe deals – fifty-fifty, even-handed, a marriage, etc. – when it comes to fairness, an equal division in half is the easiest way to get it done.

The bottom line is that if your operating rule is consensus, the bigger the number, the harder it is to reach agreement. At the IJC, with only two countries, we do everything in two's. This process may make take longer because a balanced and deliberate process takes time, but like the venerable tortoise, we achieve results superior to possibly speedier alternatives. However, when there are three or more Parties, reaching consensus is far more difficult. Larger numbers makes fair decision making more complicated, even more time consuming and has the potential of diluting the results.

The eighth and final contextual piece is the Boundary Waters Treaty itself. The IJC's success is rooted in commonality of interests in shared waters, and these are explicitly stated in the Treaty. For example, the IJC's role in dam management (levels and flows) is done in accord with specified water use priorities, in order of precedence: sanitation and drinking; navigation; and hydropower and irrigation. Over the years, the value of such clear direction is reflected in the fact that to our knowledge no decisions with respect to levels and flows have been successfully challenged in the courts of either country or even through the legislative process.

The Boundary Waters Treaty says "equal use" and certain uses are enumerated, but not all possible uses of shared waters are listed. For example, missing are uses of shared water for recreational swimming and boating, riparian enjoyment and protection from floods, and of

course, conservation of the environment. Clear direction allows IJC to benefit other uses only where enumerated ones are not significantly harmed. Indeed, Article VIII of the Treaty stipulates that "no use shall be permitted which tends materially to conflict with or restrain any other use which is given preference over it…" In this case, we need to assume that drafters of the Treaty intended that uses not listed would certainly fall below those that are specified. In addition, the Commission must require, as a condition of its approval, provisions protecting and indemnifying all interests from damages that might result from changes in levels and flows.

Most importantly, the Treaty created our Commission based on complete equality, despite the difference in population and size of our economies. At the same time, while providing for equality, the Treaty also protects national sovereignty and the ability of the respective governments to make decisions affecting their side of the boundary. For example, Article II guarantees each side "exclusive jurisdiction and control over the use and diversion, whether temporary or permanent, of all waters on its own side of the line which in their natural channels would flow across the boundary or into boundary waters." It is only when such use or diversion results in injury on the other side that rights arise on that side – rights equivalent to those if the injury were on the same side as the diversion. Setting this balance in the Treaty has been a key to its effectiveness. And while some believed the Treaty didn't go far enough and didn't give the IJC enough authority or jurisdiction, the IJC's first century has, by most measures, been a success.

Procedural Reasons

Turning from context that is out of our control to factors that we control, let's dive into how the IJC actually operates. First and foremost, I think the IJC's success lies in the imperative

to reach consensus. While it may not be written into our rules of the procedure, we endeavor at all costs to avoid minority reports or "split decisions." Indeed, the Commission, as I have known it, never votes on questions before it. We collect information and discuss issues until consensus is reached. This may take a long time, but the result is worth the effort. I should also note that prior to the current Commission, I am aware that there have been, on occasion, minority reports, but these have not detracted from the effectiveness of the Commission.

Second, the process by which we reach consensus is vitally important. For example, in response to a reference from governments, we normally start by appointing a board or a task force to conduct joint fact-finding. This investigative body includes equal numbers from each country and also attempts to pull in officials from the various levels of government with interest in the field of study. This same composition of members holds for our control boards that manage structures under the IJC's continuing jurisdiction and for specialized work such as the allocation of water in the St. Mary and Milk Rivers. In addition, both section offices of the IJC have liaisons to the boards who work together to facilitate progress and help build consensus.

[Figure 10 -- Photo of reps measuring flows in the Milk River]

Joint fact finding based on scientific analysis is the core method employed by the IJC, giving our recommendations weight and credibility. As part of the process, study team members agree upon what is to be measured, how it is to be measured, and for how long. Just as important is the ability to look over each other's shoulder, to review published literature and to benefit

from experiences on both sides of the border. The result is one set of science-based facts, arrived at in an agreed upon way.

Most typically, the experts who serve on IJC boards work for their respective governments and are highly respected in their fields. Yet they do not represent their governments. They serve in their personal and professional capacity as experts in a given field of study but not as government officials. This construct is sometimes hard to understand and sometimes it is hard for such individuals to take off their hats as government officials and put on their hats as independent experts, but the IJC affords them this opportunity to put governmental interests aside. Similarly non-governmental members also do not represent their organizations.

Another benefit of this arrangement is that government officials, even though they are not serving in that capacity, bring to the table knowledge and experience regarding the kinds of recommendations that will realistically be implemented by their governments. This "reality check" helps to ground the recommendations that the Commission itself ultimately submits to the governments and enhances the prospect for their implementation.

All along the boundary, IJC control boards create a mechanism by which issues can addressed binationally at the local and regional level. Over time, and with a very small investment, much is accomplished through these boards. When issues arise, board counterparts are able to pick up the phone and call someone they know in the other country. The issues may not be even within the specific jurisdiction of the board but the personal connection is more important.

A third factor within our control is the IJC's commitment to engage the public. The Boundary Waters Treaty affords "all interested parties a convenient opportunity to be heard." In this regard, once we have received a report from our board or study team, the Commission will hold hearings in order to hear from the public. Recently, we even held the first bilingual web dialogue in which 250 Great Lakes residents were able to offer their views, ask questions and interact with various experts with full translation in near real-time.

Fourth, and I say this with all modesty, are the skills and experience Commissioners bring to the table. Indeed, presidents and prime ministers choose Commissioners because of their high level of confidence in them. Instead of feeling under the thumb of their governments, this confidence actually frees Commissioners to be independent. But let me be clear – independence does not necessarily mean that national interests will be disregarded or not considered; it means that decisions are made free of pressure from government interests.

The fifth controllable factor sometimes conflicts with the previous two and that is the ability of the IJC to keep a low profile – to fly under the radar. Our work and the work of our study teams is conducted in drab conference rooms and workshops, not under the glare of the media. This is not to say that Commissioners shun publicity, but we only seek it to raise the awareness of the public about critical water quality and water quantity issues. Our Commissioners are not running for any office and do not seek the limelight. This approach that focuses on depoliticizing issues encourages the development of consensus, prevents positions

from hardening and gives the governments the opportunity to accept and implement the recommendations of the Commission on its own terms.

[Figure 11 – list of references and the time taken to complete them]

The sixth factor is the ability of the Commission to take its time. But the value of being deliberate and setting your own timetable cannot be discounted. When asked to be expeditious, the IJC has been able to respond to the needs of governments, completing references within a specified time frame. Our latest reference, to solicit public comment on the review of the Great Lakes Water Quality Agreement, for example, was completed on time in about six months and included comments from more than 4,100 people.

In the past, the process for completing study and reaching agreement has taken several years. Sometimes, conditions have changed and the question being addressed is no longer an issue. But in others, the passage of time allows for positions to soften, for science to provide new evidence and for political and other pressures to ease. As I noted earlier, timing is everything. Currently, though, references are typically concluded within a year and we are committed to expeditious consideration of any future references.

Finally, IJC is successful because we don't have to address every problem. Indeed, under the Treaty, governments retain the right to resolve disputes between themselves. This is a right they exercise on occasion simply with an exchange of diplomatic notes, with examples including the construction of the St. Lawrence Seaway and most recently, an agreement for a Canadian company to pay $20 million for a US EPA led study of heavy metal pollution in the Columbia

River and Lake Roosevelt in Washington state. Such notes might even expand the role of the IJC as did recent notes giving the IJC additional responsibilities in the Souris River.

This is another example of the power of two because such deal-making is much easier between two countries than it is among three or more. Over the years, many issues have been settled this way without engaging the IJC, but at the same time, the very existence of the IJC facilitates such resolutions because the parties want to avoid elevating the issue to the Commission.

CONCLUSION

Is the IJC model transferable to other contexts – to the Middle East or to the African Great Lakes? Based on the preceding analysis, you can certainly surmise that I believe the IJC is not a model for everyone. Not every treaty can be born to be successful the way the Boundary Waters Treaty has been. In particular, as I have noted, consensus is much more difficult with three or more parties and the realities of geography can usually trump any particular process that is successful elsewhere. But given the right circumstances, I do believe strongly that the processes I have outlined here can work.

For example, a new agreement regarding the sustainable development of Lake Victoria was recently signed by the governments of Tanzania, Kenya and Uganda. The pact creates a Lake Victoria Basin Commission that could serve in a similar capacity there as the IJC does here. These developments hold great promise and the IJC is investigating ways to help the Lake Victoria Basin Commission find its own path to success.

Looking forward to the IJC's second century, how do we maintain our record of success? I believe the key is thinking small and local, watershed by watershed, strengthening local capacity to address and resolve issues. Our success or failure in the future will depend on how well we pursue this agenda. That is, we can avoid issues reaching our desk by helping local bodies solve problems at the early stages before they become full blown international disputes.

For the IJC, this watershed initiative is a new approach to dispute prevention, and if we are successful, it will mean fewer references to the Commission. But that's good, because it means problems are resolved before they boil over and demand national and international attention. The preventive approach is new and important because all disputes are local in nature and so is the capacity to resolve them.