

### III. Multilateral Principles and Practices

United States and Canadian approaches to bilateral environmental problems have evolved against a background of principles and practices developed multilaterally in a variety of fora. These range from clearly established elements of international law to practices recommended by international organizations.

The established principle of notification and consultation involves countries informing each other in advance of actions which involve a serious risk of causing transboundary pollution, providing sufficient information for the other country to assess their implications, and allowing sufficient time for consultations before the activity begins. In this way adjoining countries are able to make sure they are carrying out their activities so as not to cause serious environmental injury to their neighbours. The practice also assists in avoiding disputes by ensuring that each country is aware of the intentions of the other, and by reducing the likelihood of "surprises" which can exacerbate bilateral problems. Commitment to this principle may be taken as a given in relations between the United States and Canada in environmental matters.

The area of general agreement on the content of international law relative to responsibility and liability is less broad. The principal case cited for the proposition that States are responsible and liable for significant harm done to the environment beyond their borders is the U.S.-Canadian Trail Smelter Arbitration of the 1930's. At the conclusion of that case, in which Canada had previously stipulated its liability for damage caused in the State of Washington by fumes from a smelter in British Columbia, the Arbitral Tribunal stated in dictum that:

"... under the principles of international law, as well as of the law of the United States no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties of persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence."

The International Court of Justice has dealt with the general question of State responsibility for actions with effects outside their territory in the Corfu Channel Case (1947), in which Albania was found internationally liable for the damage done to a British vessel in passage through a channel newly laid with Albanian mines, the presence of which had not been notified. (Albania rejected the Court's finding). The Court said that every State has