

V. Overview of Domestic Authorities in the Field of Air Pollution

A. Introduction

This chapter contains an overview of domestic authorities in Canada and the United States in the field of air pollution. Domestic law and regulatory practice in both countries are relevant to transboundary air pollution because they establish the legal authority available now to control air pollution, and because they can be expected to affect the manner in which commitments undertaken in an eventual bilateral agreement are implemented.

Most existing legislation in both countries is designed primarily to address the local impact of air pollution, rather than the interjurisdictional questions presented by the long range transport of air pollutants. The report does not attempt to deal with the adequacy of the legislation in either country, but rather summarizes what this legislation is.

Also, the report does not attempt to compare the laws and regulations of the two countries. While Canadian and United States environmental legislation is generally similar in purpose, in the sense that it is designed to produce and maintain an acceptable level of environmental protection, it naturally varies for a number of reasons. The development of government structures in the two countries has followed divergent paths leading on the one hand to a system of parliamentary government, and on the other a system of separation of powers. This fundamental difference in the constitutional arrangements of the two countries is reflected in their legislative philosophy and the style in which the legal systems are applied to deal with environmental problems. In Canada, generally speaking, much of the effective action is taken by means of specific regulations passed pursuant to legislation with broad application. In the United States more emphasis is placed on detailed provisions in the legislation itself and on private litigation. Another distinction is that while the provinces and states both play significant roles in implementing air pollution controls, provincial jurisdiction in environmental matters under the Canadian constitution is broader than the corresponding state jurisdiction under the US constitution.

Further, it is noted that the laws and regulations in each country have been designed to respond to different problems, since the major domestic pollution sources vary considerably. For example in Canada the major need has been to control the non-ferrous smelting industry, whereas in the