

II. Executive Summary

This Report is intended to provide the Coordinating Committee with a general description of the state of international and domestic law and practice relating to transboundary air pollution. It is not exhaustive of all aspects of this field, nor does it attempt to analyze from a legal perspective the current air pollution problems between the United States and Canada. Rather it is a drawing together of basic information which may be of assistance in commencing the negotiation of the transboundary air pollution agreement called for in the August 1980 Memorandum of Intent.

Air pollution is a relatively new international problem, and international environmental law is still in the process of development. There is nonetheless an important body of international law and practice which relates to the basic responsibility of States to prevent significant transboundary pollution damage, and to procedures for avoiding potential environmental problems. Some of this specifically concerns air pollution; other aspects are broader in nature.

The bilateral basis for addressing environmental issues is generally much firmer because of the long experience shared by the United States and Canada in dealing effectively with pollution problems. Central to the two countries' ability to manage such issues has been active implementation of the 1909 Boundary Waters Treaty. This establishes the fundamental obligation of each country not to pollute boundary waters or waters flowing across the boundary to the injury of health or property on the other side, and sets in place an agreed system for resolving water related problems. In addition, the two countries have become firmly committed to the practice of advance notification and consultation on activities having potential transboundary impact. They have also made active use of bilateral institutions to promote common understanding and agreed solutions. Some specific commitments by the two Governments to begin dealing with air pollution were advanced in the 1978 Great Lakes Water Quality Agreement. The 1979 Joint Statement and the 1980 Memorandum of Intent constitute the most recent expressions of the two countries' commitments to further develop the means of preventing and reducing transboundary air pollution.

Domestic environmental legislation in both countries is relevant to transboundary air pollution because it establishes the legal authority now available to control air pollution, and because it can be expected to affect the manner in which commitments undertaken in an eventual agree-