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**Making a Policy Problem of
Water Export in Canada:
1960-2002**

By Saule Bakenova

**A dissertation submitted to
The School of Public Policy and Administration
Carleton University
Ottawa, Ontario
Canada**

**In partial fulfillment of the requirements
for the degree of
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Abstract

The dissertation analyzes the process through which the international trade of water, and the export of Canadian water in particular, has played out in the past and the ways in which this issue arose on the Canadian policy agenda. The specific objectives are to understand the politics at stake in the creation of the water export issue and its transformation into a public policy problem; to account for the shifts in attention to the issue over time; and to explain its historical development. The general objective is to understand what it takes for a national government to pay attention to an issue and mobilize its resources to respond to it. This is because governments continue to be chief policy decision makers in their countries, responding (or not) to pressure from multiple stakeholders.

This dissertation is the first comprehensive longitudinal analysis of the water export issue in Canada from a public policy and politics perspective. Conceptually it builds on agenda setting theory but seeks to complement and augment it with a focus on larger forces. The central thesis of the dissertation is that understanding the creation of the water export issue and its transformation into a public policy problem requires an approach which foregrounds a particular set of combined forces: economic pressure of international and global scale, perceived security threats and changing nature of federal-provincial relations.

The dissertation demonstrates that despite its relatively low position on the overall national agenda, the water export issue has had a persistent pattern of presence. The contention of this thesis is that the government has never fully precluded the possibility of water export. The forces of economic pressure have been affecting and spurring government response toward the issue despite the ambiguous indicators of economic feasibility of water export from Canada. Even though the perceived security threat led the government to adopt policy that it claims safeguards Canadian water, that policy in fact provides weak protection against the rising influence of international and global trade regimes. Furthermore, resource ownership in Canada is vested in provinces and the policy process is generally affected by the federal-provincial sharing of powers and responsibilities. Thus, it makes it far more difficult for Canada to “hold the line” on the issue since conflicting interests with respect to water export are prone to generate disputes in intergovernmental relations.

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List of Abbreviations

CCREM:	Canadian Council of Resource and Environment Ministers
DFAIT:	Department of Foreign Affairs and International Trade
FTA:	Free Trade Agreement between Canada and the United States
FTAA:	Free Trade Agreement of the Americas
GATS:	General Agreement on Trade in Services
GATT:	General Agreement on Tariffs and Trade
IBWTA:	International Boundary Waters Treaty Act
IJC:	International Joint Commission
HTS:	Harmonized Tariff Schedule
MC:	Memorandum to Cabinet
MP:	Member of Parliament
NAFTA:	North American Free Trade Agreement between Canada, the United States and Mexico
PM:	Prime Minister
WTO:	World Trade Organization

Chapter 1

Introduction

The Objective and the Argument

The dissertation will analyze the process through which the international trade of water, and the export of Canadian water in particular, has played itself out in the past and the ways in which it arose on the Canadian policy agenda in recent history.

The specific objectives are to understand the politics at stake in the creation of the water export issue and its transformation into a public policy problem; to account for the shifts in attention to the issue over time; and to explain its historical development.

The general objective is to understand what it takes for a national government to pay attention to an issue and mobilize its resources to respond to it. This is because one of the main implications of the thesis is that governments continue to be chief policy decision makers in their countries responding (or not) to pressure from multiple stakeholders.

The central thesis of the dissertation is that the creation of the water export issue and its transformation into a public policy problem requires an agenda setting approach with a particular focus on the combined influence of the forces of economic pressure of international and global scale, perceived security threats, and the changing

nature of federal-provincial relations. Although there are excellent accounts of the water export issue by economists, legal scholars, experts, and engineers, and in the popular media, the subject matter still remains a “scarcely explicable affair” waiting to be unbounded from its present constraints and requiring alternative modes of thinking and ways of presenting available evidence. This empirically driven dissertation contributes to filling this gap in policy research. Its main contribution is that it is the first comprehensive longitudinal analysis of the water export issue in Canada from a public policy and politics perspective.

Conceptually this thesis builds on agenda setting theory but seeks to complement and augment it with a focus on the larger forces that have ultimately contributed to “Making a Policy Problem of Water Export.” This approach is necessary because the water export issue has persisted on the policy agenda at a fairly low level for a period of more than forty years, only gradually reaching the point of significant legislative action in 2002. Thus the elaboration of the event-history framework for the analysis of the water export issue as a public policy problem is the second contribution of this research.

Schattscheider in his classic work “The Semisovereign People,” argued that, “The stakes in making an issue are incalculably great. Millions of attempts are made, but an issue is produced only when the battle is joined.”¹ The title of this dissertation, “Making a Policy Problem of Water Export,” is meant exactly to draw upon this argument. With respect to water export there are powerful vested interests at work on

¹ Schattscheider (1960): p.74

both sides of the battle line. On one side there are those who decry the potential detrimental impacts and risks, both environmental and ecological, of water export, and suggest that one day many Canadians could find themselves priced out of the market for this life sustaining resource. They hope to ensure for Canadian water the status of a national heritage which is “not for sale.” On the other side of the debate, there are those who believe that the abundance of fresh water is a strong bargaining chip for Canada and in a world of looming water shortages Canada’s water may fulfill dreams about untold economic riches. For the proponents of this approach, water is no different from any other natural resource which Canada readily trades on the international market. Moreover, from an ethical point of view, they suggest water export is one of the ways to solve concerns about Canadian responsibility in sharing water abundance with others who are less fortunate.

However, there are also those who claim that the issue should not qualify as a public policy problem at all, or that the undue attention that it currently commands is merely a meaningless blip on the radar screen of history. They assume that the policy agenda is occupied with issues of immediate importance, and yet water export has never had that sort of pressing nature. There have never been any significant water exports from this country, either in the form of long distance diversions through canals or pipelines, or in ocean bound container shipments (tankers, barges, plastic bags).²

² The only exception is the existence of short pipelines across the border with the U.S. that supply treated water between neighboring communities, like St. Stephen, New Brunswick and Calais, Maine or interbasin diversion of shared boundary waters by Canada and the U.S. as at Ogoki and Chicago. See Day & Quinn (1992): p.35

Indeed, such initiatives are still, from a practical standpoint, on a distant horizon given the apparent infeasibility of water exports from Canada and the contention that there have been few, if any, formal demands for Canadian water from water stranded countries. Furthermore, the Canadian public overwhelmingly opposes water export and the government has repeatedly indicated it has no intention of selling the country's water.

Despite the apparently decisive factors against the possibility of water export, the issue has had an increasingly important place on the Canadian policy agenda over the past forty years. In the early 1960s it started with the promotion of various mega schemes for massive diversion of Canadian water supplies to solve water shortage problem across the North American continent. It reached the point of legislative change on December 10, 2002 when the federal *International Boundary Waters Treaty Act* (IBWTA) prohibited the bulk removal of water for any purpose, including export, from the boundary basins (principally the Great Lakes) between Canada and the United States. In prohibiting bulk water removals and therefore regulating water in its natural state, before it has become a commercial good or saleable commodity, the government appeared to have acceded to the express wish of Canadians that water should not be commodified and that the government should take responsibility as steward and trustee of this "life-supporting, beauty enhancing, heritage-defining" resource. This measure, the government argued, protects water before the issue of export arises, is consistent with Canada's international trade obligations, comprehensive, environmentally sound, and respects constitutional responsibilities.

However, appearances can be deceiving. As the thesis will show, there is great uncertainty about what exactly constitutes water exports, or whether water might be seen as a tradeable good under current free trade agreements. Furthermore, the government found that a ban on water exports and an exemption of water from trade agreements, the measure that many Canadians demanded, was too “quick” and “simplistic” a solution, and contrary to Canada’s trade obligations. On a larger scale, the question could be asked whether the government indeed was against water exports or whether it actually considered exports a possibility? The contention of this thesis is that despite periodic shifts in the attention that is paid to the issue, the government has always considered water export a serious possibility. Moreover, the government has *never* intended to preclude water exports for all time. In hindsight it is now possible to see that through much of the earlier decades of the issue’s existence, the government spent its energies determining the exact size of Canada’s water reserves and then debating the degree to which water exports should be encouraged. By doing so, the government was stalling for time while ensuring water could become a commodity on the international market while also acceding, not so much to the popular demands of the Canadian public, but to international rules and conventions that slowly but surely are penetrating the domestic policy process.

In the dissertation I argue that economic pressures, mediated by a neoliberal ideology, have increasingly become the driving power for policy change in the contemporary world and an agenda setting force within sovereign states. Conditions in water markets, I argue, affect and spur the government response toward the water

export issue even despite the ambiguous indicators of economic feasibility for such trade at the moment. Furthermore, a perceived security threat over access to Canadian fresh water stocks affects interstate relations and the relative power positions of the states involved. This, in turn, affects the agenda dynamics of the issue's policy formation. The perceived security threat leads the government to adopt policy that it claims safeguards Canadian water. However, I argue, the adopted policy (amendments to IBWTA) provides weak protection against the rising influence of international and global trade regimes. The fact that resource ownership in Canada is vested in Canada's provinces and the policy process is generally affected by the federal-provincial sharing of powers and responsibilities, inevitably implies that water exports will become a contentious intergovernmental issue. That is, it makes it far more difficult for Canada to "hold the line" on the issue since provinces, not to mention the territories, may have different aspirations with respect to the proposed solutions, either opposing or on the contrary supporting water export from this country.

Explaining the Development of the Water Export Issue

My aim is to present an analysis following the premise that satisfactory understanding and explanation of the water export issue's development requires more than just a historical account. Therefore, in this thesis I try to explain the process by which issues become recognized by a government as problematic and how, among an

array of issues demanding attention, one particular issue may stand out and command it.

While attending any issue, governments are influenced by opportunities and constraints in the domestic and international arena. For researchers then it becomes imperative to understand what constraints and opportunities. However, researchers are limited in their analysis by assumptions derived from theoretical modes of thinking. When answering the question, “How was the water export issue transformed into a political issue and into a policy problem?” what one sees and accepts as important and relevant and then derives conclusions about, depends on which theoretical lenses are chosen.

Agenda setting is one of the most specific approaches dealing with policy’s “pre-decision” stage, a period that often plays a critical role in determining how issues become or fail to become the focus of serious concern and attention by the public and the formal centers of decision-making. Depending on the interest, the focus of the research could be on the role and characteristics of political actors (either the policy’s advocates or its opponents), the resources available to them, and their commitment to the issue. These political actors could be, for example, interest groups, bureaucrats, politicians, professionals, or mass media. Some agenda researchers choose to concentrate on the nature of the problem itself, its definition and potential for expansion, or focus on the rhetoric, symbols and language of the policy actors who help to bring the issue onto the agenda. With respect to water export, the attention of the media, legislature, interest groups and other policy actors and institutions has been

important in stimulating public interest and pressuring governmental officials to respond to the problem.

However, the tendency in the agenda literature is to focus on micro forces that are presumed closest to the issue under study, that are susceptible to quantification and measurement. These forces are predominantly expressed as a function of the dynamics of their occurrence (level, density, frequency of attention and mentions), as well as the correlation of occurrences among them. Thus the quest to comply with rigorous positivist methodology and quantitative data explication in policy analysis is done at the expense of more interpretive methodology and explicit acknowledgement of underlying political, economic or social variables that condition the development of micro forces. The focus on the explanatory power of micro forces may appear justifiable because in many cases agenda students study types of issues that achieved agenda status in a short span of time, or achieved prominence and then declined in policy salience without anything substantial happening, or that never “made it” and died an early death. However, this approach would be insufficient in the case of the water export issue which shows long-term persistence of several decades, yet with relatively low level presence on the national agenda.

Elaborating and deepening the discussion of the agenda setting process by considering larger underlying (hereafter referred to as macro) forces will provide researchers with the tools to understand the broad parameters that shape the terms of this political discourse, condition the attention of the policy community and influence the frequency of events normally recorded on the agenda setting radar.

In order for the government to adopt a new policy in response to public interest in an issue, there have to be conditions simultaneously conducive to such adoption. If this is not the case, transformation of an issue into a public policy is unlikely, despite the fact that the issue is on the public agenda. Alternatively, if macro forces are conducive but the micro forces are lacking then neither agenda setting nor policy adoption is very likely. When the water export issue is on the public agenda at the same time as the influence of the larger forces are present, the water export issue is transformed into a public policy problem.

During the course of field study (through data analysis, interviews with policy actors, and examination of water export literature), three prominent macro forces emerged as having profound effects on development of the water export issue: the pressure of economic forces, perceived national security concerns, and the evolving intergovernmental relations among different levels of Canadian government. These three forces have conditioned the policy innovation process and, properly examined, they cast light on strands of the historical tapestry of the water export issue. The push for water export transformation into a public policy, in other words, is driven not only by intensified work of micro agenda forces -- density and level of attention, or changing attitudes and beliefs of policy actors and institutions with respect to the issue and government's capacity to deal with it -- but also by political-economic transformations on the global, international and domestic levels. Each one of these forces provides a set of assumptions that can guide the search for an explanation of the complex process of the issue's transformation into a public policy problem.

The pressure of economic/market forces suggests that issues become policy problems due to the signals exerted by markets on governments which may, in turn, consider an "issue" as problematic and adopt "new" policy or change "old" policy in response to this pressure. Thus, in part, the transformation of issues into public policy problems may be understood as a product of market conditions and international/global trade regimes. Underlying market conditions are demand, supply and the quest toward commodification of water. If water resources were abundant in all countries of the world, then the problem of water export from Canada would not be an issue. This is not the case, however. It is the growing shortage in certain countries that triggers the increasing demand for this resource which in turn promotes the idea of export to the water stranded countries as a policy solution. Demand encourages the idea of water trade, overseeing contractual agreements between buyers and sellers and enforcing property rights.

If in the economic pressure perspective the basis of analysis is markets and market interests, then in the discussion of national security the main stress is on the behavior of independent states. The transformation of issues into public policy problems could be understood as responses to the interests of states and their ability to pursue those interests within the realm of perceived national security concerns. Dramatic changes in world power relations, together with growing concerns over global and regional ecological problems, have been encouraging greater attention to environmental security. Fresh water is unevenly distributed around the world and only a few "lucky" states, like Canada, have water in abundance. This situation creates

tension between states because water becomes the focus of contemporary geopolitics as water-poor states seek to gain access to this resource. This acquisition could come in one of two forms: either the water could become an internationally traded commodity, or states could resort to the use or threat of force to satisfy their needs.

Another macro force concentrates not on markets or security but on the intergovernmental politics within the Canadian state. Recognition of an issue's existence and its transformation into a policy problem in this context is presented as a result or as a by-product of the relationship, behavior (positions, maneuvers) and decisions between different levels of Canadian government. The crucial placement of Canadian natural resources under provincial jurisdiction suggests that the question of water export may become a litigious federal-provincial issue. The federal-provincial structure is important because it affects the development of the water export issue by creating conditions of tension within which intergovernmental solutions to the rising problem of water export must be resolved.

The objective in applying this elaborated framework is to use it as a reminder of the multiplicity of forces that influence the emergence of an issue and its transformation into a problem that requires policy solutions. The contention of this study is that the examination of only micro agenda forces fails to provide a complete or adequate picture of the reasons why the water export issue has become a policy problem, especially given its overall low level but long term persistence on the Canadian agenda. Analysis of macro forces helps us not only to appreciate the multiplicity of points of view but also to identify a broader underlying spectrum of

factors that influenced the issue's development, and understand the different motives of a government that chose to act upon, or to neglect, the issue. Furthermore, the implication of this framework is that bringing macro-level forces forward along with an agenda setting discussion does not necessarily mean adding completely new variables that are not implicitly present within the agenda setting process. However, elaboration of the macro-level forces in this thesis nevertheless seriously modifies the agenda setting framework because of that approach's overwhelming tendency to focus mainly on the interplay of micro-factors while leaving macro-factors simply as part of the background.

Methodology

In this dissertation I use three methodological approaches. The first is a detailed examination of documents and reports, and of records of parliamentary debates. A great amount of information has been derived from the study of unofficial documents in the files of the governmental agencies and archives. Several key thesis informants (interviewees) also provided me with personal notes as well as memoranda and letters pertaining to the history of the water export issue. In total I reviewed more than 500 documents, both official and unofficial, published and unpublished. These documents provided the main source of information for the empirical part of the dissertation.

The second method is based on the review and analysis of secondary sources. These include recent research studies and general publications on international water resource issues and on water trading. Among these are statements and publications by public interest and business groups, individuals who undertook studies of water issues. The media was another important source of information for the thesis.

The third method uses interviews with representatives of government, public interest and business groups who are part of the water policy community on the domestic (Canadian) and international level. Interviews were conducted based on a structured and semi-structured set of questions. However, most of the interviewees spoke freely and were generous with their information, their own ideas, and their scarce time. These long interviews served primarily to provide a better understanding of events spanning more than 40 years as well as confirming or clarifying information obtained through the written material. The content of these interviews varied according to the timing and nature of the interviewee's involvement in the issue. With a few exceptions, interviews were conducted with the promise of confidentiality and on a 'not for direct attribution' basis. The water export issue is still in process and some of the information obtained is fairly recent. Thus I use the interview evidence in a way that meets scholarly standards while protecting the confidentiality of the interviewees based on the special consent form signed by each interviewed individual and by me as a researcher.

Format of the Dissertation

The thesis is organized in two parts. Part One consists of Chapter 1 and Chapter 2. Chapter 1 is an Introduction which discusses the purpose, objectives and contribution of the thesis. Chapter 2 discusses the theoretical approaches that contribute to understanding the developing water export issue and sets out the dissertation's analytical framework.

Part Two of the dissertation (Chapter 3 through Chapter 9) addresses the presentation and analysis of the data. These chapters are organized on a variable by variable (case by case) basis where each presents the water export issue from the vantage point of an analyst concerned with the agenda setting process and individual forces under consideration. The emphasis in each chapter is placed on the interplay of the individual underlying force that pushes the issue onto the agenda and adds to the realization and understanding of the complexity of the water export issue. The three macro forces offer differing perspectives on a historical account of the water export issue in Canada. Each is set in the same time frame, from 1960 to 2002, and each arrives at the same historical event – adoption of IBWTA. However, these forces are entangled in different ways and certain facts could be repeated from case to case, albeit with adjustments necessary for the context.

In Chapter 3 the water export issue is recalled from the agenda setting vantage point. The elements of agenda setting such as media, legislative and executive

branches of national government, as well as other elements of agenda setting, are presented here as important empirical evidence that helps to keep the water export issue on the agenda and that ultimately influenced the government's decision to take certain measures and to transform the issue into a public policy. This chapter sets the foundation, not only for Chapter 4, which is also part of the agenda setting process, but for the rest of the chapters as well. The chapter outlines the five most intensive 'periods of interest': 1965-1967; 1973-1977; 1983-1988; 1991-1994 and 1998-2001. These periods culminate in four "pinnacles of attention" to the issue on the agenda, respectively in 1967; 1988; 1992 and 1998-1999. The periods will serve as important anchors for the subsequent contextual analysis of the agenda setting process and of the transformation of water export into a public policy problem.

Chapter 4 presents the analysis of the issue from the perspective of the agenda setting stream model and highlights the importance of media, interest group pressure and the zeal of policy entrepreneurs in pushing the water export issue onto the formal agenda.

Chapter 5 and Chapter 6 are devoted to the analysis of economic forces and how the government has been responding to changing international water market conditions and how these impeded or promoted movement of the water export issue onto the policy agenda. Specifically Chapter 5 covers the period from the 1960s to 1988, while Chapter 6 covers the period from 1988 to 2002 and is fully devoted to the discussion of the free trade agreements, contemporary water market conditions and subsequent governmental policy initiatives.

Chapter 7 presents an analysis of the forces of national security and environmental change. It shows how the protection of its water resources becomes more challenging for Canada as a nation-state since domestic and international political developments are such that they pose a number of dilemmas in terms of the country's sovereign right to manage its resources.

In Chapter 8 the story is told from the perspective of intergovernmental relations. The emphasis is on the changing character of the relationship between federal and provincial levels of government and how these affect management of the water export issue in Canada making it a policy problem for both levels of the government.

Chapter 9 discusses agenda setting findings, compares and contrasts the three macro forces drawing attention to the differences in the interpretation of evidence and examining how these differences on a larger scale contribute to the overall understanding of the transformation of the water export issue into a public policy. Further, it reflects on the implications of the water export issue policy agenda process and what trends policy analysts may expect with respect the issue's future development.

Chapter 2

Towards an Explanation of the Transformation of the Water Export Issue into a Public Policy Problem

Back in the 1960s Schattschneider in his widely cited book wrote, “Some issues are organized into politics, while others are organized out.”³³ In other words, the formation of the policy agenda is itself a political process that filters a variety of issues at every level. One early level is the question of whether an issue actually reaches the agenda at all. The assumption of this thesis is that the water export issue belongs to the category of those issues that are “organized in.” But how and why? How does one make sense out of the factors around this issue, identify and organize from their array those which are more and less useful in the analysis? Drawing on Barbara Nelson, the larger aim of the thesis is therefore to understand the initial step of the policy making process, “the step where those issues which *will* receive governmental attention are chosen from among those issues which *could* receive governmental attention.”⁴

In policy analysis, agenda setting is the most commonly used framework for studying how issues are recognized as problems and how they come to receive serious

³³ Schattschneider (1960): p.71

⁴ Nelson (1984): p.3

attention by the public and by policy makers. However, this thesis also argues that the basic micro variables of the agenda setting process are not sufficient to this end. They have to be elaborated and deepened if we are to understand the persistent presence of the water export issue on the Canadian agenda over four decades and its eventual transformation into a public policy problem. Complementing the agenda setting process with the influence of macro variables/forces that affect state decisions to adopt new policies, allows for a more profound analysis of the water export issue. Through an intrinsic connection with each other these forces become important for projecting various degrees of precision on the issue's policy outcome and ultimately on its future destiny.

The chapter begins with a consideration of the concepts of agenda setting with specific focus on the stream model elaborated by John Kingdon. Then it examines some of the theoretical and empirical reasons underpinning the need for a modification of the agenda setting approach for the study of the water export issue. The final section concludes by outlining an elaborated framework for the analysis of the transformation of water exports into a public policy problem.

Agenda Setting

The literature on agenda setting is directly concerned with investigating where it is that new policies come from. On a more general level the concern is, “how issues are created and why some controversies or incipient issues come to command the attention and concern of the formal centers of decision-making, while others fail?”⁵ The process by which certain problems enter the public domain and are selected for active consideration by public and decision-making elite is called agenda setting. An agenda can be very concrete and expressed in actual parliamentary bills, or it can be expressed as a set of ideas and beliefs about problems and how they should be addressed by all levels of society.⁶ There are different levels or types of agenda. Most scholars of agenda setting routinely differentiate between the *systemic* (also known as discussion agenda) and *formal* (or governmental agenda).⁷ If an issue reaches the systemic agenda, it means that it is being recognized and discussed in the political community, e.g. by the mass media, interest groups, parties, and general public. Reaching the systemic agenda presumably would help push an issue onto the formal government agenda which has a much narrower institutional focus and only includes those issues that are “explicitly up for the active and serious consideration of

⁵ Cobb & Elder (1972): p.14

⁶ Birkland (1997): pp.8-9

⁷ Cobb & Elder (1972); Anderson (1997)

authoritative decision-makers.”⁸ Agenda setting is a relatively recent area of policy study which emerged in the 1970s out of the postwar elitist-pluralist debates about whose and which preferences were to be heard in a democracy, and with what results.⁹ The originality and usefulness of this specific area of policy analysis for understanding the development of the water export issue lies in the agenda setting literature’s focus on the *very initial* stage of the policy process, namely the emergence, recognition and formulation of some political policy problems, as opposed to the later stages of policy adaptation, implementation and evaluation.

Before entering into a discussion of factors that elevate previously “obscure” issues on to systemic and formal agendas, it is important to discuss the conceptual framework of the agenda setting debate.

Agenda Setting Models

The agenda setting literature offers a diverse range of conceptual frameworks.¹⁰ There are four key variants that will concern us here: interest/actor based, chorological or process-based, issue characteristics and definition, and the stream model.

⁸ Cobb & Elder (1972)

⁹ Pateman (1970)

¹⁰ Some students of agenda setting argue that there is no agenda-setting theory but rather an analytical vocabulary in terms of which propositions about the world might be formulated and suited to agenda setting. The most skeptical views inclined to think that agenda setting depends on unpredictable factors and personalities, political jockeying, policy entrepreneurs. See Brinton & Laird (1996); Pal (1997)

The interest/actor based variant mainly emphasizes individuals and groups trying to gain agenda access to decision makers to ask them to deal with certain issues. This approach mainly stress the importance of the resources available to the actors (e.g. number of people involved, intensity and strength of commitment to an issue, and issue visibility via public awareness of the dispute). This variant includes, for example, the *public arena model* that treats public attention as a scarce resource, allocated through competition in a system of public arenas.¹¹ Using this approach, Cobb et al developed three early agenda setting models: the *outside initiative* model, that focuses on nongovernmental sources of innovation; the *mobilization* model, with its main focus on the initiative of political leaders; and the *inside-initiative* model, with a primary focus on private decision with little public attention.¹²

A second frequently identified variant of the agenda setting approach is chronological or process-based, of which there are several examples. The Baumgartner and Jones's *punctuated equilibrium* model is based on the assumption that during periods when issues emerge, new institutional structures are often created that remain in place for decades, structuring participation and creating the illusion of equilibrium.¹³ More recently, some scholars have developed *event history models* that study the adoption of single particular types of policies in areas like taxation, education or health. Presumably these models can explain the adoption of a policy more effectively than general models designed for aggregate analysis of many

¹¹ Hilgartner & Bosk (1988)

¹² Cobb, Ross, & Ross (1976)

¹³ Baumgartner & Jones (1993)

different types of policy issues.¹⁴ The *natural history* model (very much resembling certain models of sociology for the study of social problems) identifies the sequence of stages in the career of any policy problem, from its inception, to coalescence, to institutionalization, to fragmentation, and finally demise. The most exemplary models within this variant were elaborated by Downs (1972) who described an “issue-attention” cycle with five stages, starting with “highly undesirable social condition”, its alarmed discovery with the final post-problem stage “twilight of lesser attention or spasmodic recurrence in interest” (a prolonged limbo stage); and by Nelson (1984), who conceptualized agenda setting as having four stages : issue recognition, adoption, priority setting, issue maintenance. Some agenda setting students even turned to the biological theory of natural selection and to Darwinian notions of gradualism and “fitness,” in conceptualizing the evolution of political policy issues as a kind of “organic change.”¹⁵ The “natural history” framework, with its orderly succession of stages in the life of an issue, has sometime been called an idealistic and crude description of the agenda setting. Presently those who argue that most of the problems exist simultaneously in several “stages” of a policy problem’s development, patterns of progression from one stage to the next, vary sufficiently to call into question any claim that a typical issue career exists.¹⁶

The third variant concentrates not on participants or on chronology but on the type of issue, its characteristics and the definition of what is problematic in it and how

¹⁴ Berry & Berry (1990); Wood & Peake (1998)

¹⁵ Carmines & Stimson (1993)

¹⁶ Hilgartner & Bosk (1988): p.54

the problematic side of it is constructed, defined and presented. The most prominent exponents of this particular approach are Baumgartner and Jones, Dery, Stone, Portz, Rochefort and Cobb.¹⁷ These researchers argue that agenda setting is primarily about “competing interpretations of political problems and the alternative worldviews that underlie them.”¹⁸ Agendas are therefore seen as arenas for the adjudication of different problem definitions preferred by various political actors seeking to characterize the nature and occurrence of the problem in certain ways. Problem definition expresses inevitably dissatisfaction with existing circumstances and used to explain how certain conditions came about and what strategies might be used to solve those conditions. for a solution.¹⁹ Persuasive arguments (expressed in rhetoric, modes of expression, language, story telling, metaphors) also may potentially bring attention and recognition to issues.²⁰

The fourth variant of agenda setting is represented by the so called “stream model” developed by John Kingdon in 1984.²¹ The stream model combines the first three variants of agenda setting with all of their conceptual elements, while adding its own specificities. Baumgartner and Jones acknowledge the importance of Kingdon’s work by pointing out that he “reinvigorated agenda research” by providing a “close-up” view of the infusion of new ideas into the policy process and convincingly arguing

¹⁷ Baumgartner & Jones (1993); Derry (1984); Stone (1989); Portz (1996); Rochefort & Cobb (1971)

¹⁸ Cobb & Ross (1997): pp. 3-4

¹⁹ Rochefort & Cobb (1994)

²⁰ See Fischer & Forester (1993) for an account of use of language in public policy making.

²¹ Kingdon (1984)

that problems and solutions “ought to be analyzed separately in order to understand governmental decision-making.”²² Kingdon’s model is built on a revised and elaborated Cohen-March-Olsen garbage can model of organizational choice,²³ and is concerned, in the words of Charles Levine, with “systemic rationality.” That is, it asks how the federal government copes with public problems, as opposed to “political rationality” (e.g. how does a president decide on what issues to work and what policies to push).²⁴

Kingdon identified 23 case studies and presented a well structured analysis of qualitative data and an innovative interview process conducted with people close to decision theoretical synthesis. From the gathered systematic data Kingdon was able to trace the development of ideas, the rise of problems, the roles of participants inside and outside of government in the agenda setting process. He also was able to explain the complex process through which problems, ideas, and politics combine with opportunity to produce a public policy.

²² Baumgartner & Jones (1993): pp. 5-11

²³ Cohen, March & Olsen (1972): pp. 1-25. The garbage can model applies to the term of “organized anarchies” or organizations with problematic preferences (e.g. absence of clearly defined goals), unclear technology (e.g. lack of understanding of the organization’s process by its own members) and fluid participation (e.g. participants drift in and out of decision making on an issue-by issue basis, contributing to the fluidity of organization’s boundaries). As a result, such organizations are characterized by ‘a collection of choices looking for problems; issues and feelings looking for decision situations in which they might be aired, solutions for issues to which there might be answers, and decision makers looking for work. Kingdon in his revision of this model makes stress not on the “anarchy” but on “organized” as far as he finds structures and patterns in the governmental decision making process.

²⁴ Levine (1985)

Given the Kingdon model's close ties to governmental decision making process and the formal political system, as well as combination of elements from other agenda variants, the application of it toward the water export issue maybe feasible and advantageous. Thus, in the following section I will consider in a more detail manner the main underpinnings of this model.

Stream Model

Kingdon is specifically interested in the question of issue recognition and attempts to discover an answer to the puzzle of what makes people in and around government attend, at any given time, to some subjects and not to others. For Kingdon the most important aspect in understanding policy change is not where the policy ideas come from, but what makes them "take hold and grow." It is critical that "an idea starts somewhere and that it becomes diffused in the community of people who deal with a given policy domain."²⁵ Whereas the origins of an idea may come from anywhere and it is difficult to determine whether "an event at an earlier point in time was more important than an event at a later point." All in all, for Kingdon tracing origins of a problem is futile and generally not an important exercise. Drawing on the above assumption, Kingdon identifies three independent "streams" flowing through the system: problems, policies, and politics.

The first stream is *problem recognition* that may occur due to some kind of dramatic events (e.g. crises, or disasters). Here Kingdon strictly differentiates

²⁵ Kingdon (1984): pp.76-77

between a condition and a problem. All kinds of conditions are dealt with in every day life such as, for example, disease or poverty or, in our case, water scarcity in some parts of the world. However, these conditions are not necessarily defined as problems and do not necessarily rise to a prominent place on the policy agendas of particular governments. The transformation of conditions into problems happens only when people in and around government come to believe that something has to be done in order to change these conditions e.g. when those conditions violate important social values, or when they are “unacceptable” compared with similar conditions in other places (e.g. countries, regions or organizations, departments), or when they are redefined from one classification to another (e.g. a public transportation problem for handicapped people was once simply a transportation problem but then became a civil rights problem).

Issue has to have a viable *alternative solution* attached for decision makers to consider it. This aspect comprises the second stream of Kingdon’s model. This stream consists of the generation of policy proposals based on the gradual accumulation of knowledge, the development of new technology, and changing perspectives among specialists in a given policy area. According to Kingdon, while the origins of policies are somewhat obscure and hard to understand, their selection process is subject to logical and analytical criteria. For example, policy proposals that are not economically or technically feasible, or that do not meet generally accepted values (e.g. concepts of equity and efficiency), or that would face opposition from the general public and/or from elected politicians, are more likely to be discarded. The chances for a problem to

rise onto the governmental agenda, are therefore dramatically increased if a feasible, implementable and generally acceptable solution has been developed.

Political developments comprise a third independent and powerful stream of the Kingdon model. This stream consists of swings in the national mood, reflecting the general climate in the country, the vagaries of public opinion, recent election results or changes of administration and shifts in the strength of organized political forces, or interest groups based on political mobilization and the behavior of political elites. As Kingdon observes, governmental participants' sense of the national mood will serve to promote some items on their policy agendas and to restrain others from rising to prominence. Politics is important for the assessment of whether there is fertile ground, or initial receptivity, for the problem and its solutions. Governmental officials estimate the degree of consensus among organized political forces and if, for example, there is widespread disagreement or conflict among those forces, officials either try to go along with them, or at least know what they are up against and judge the balance of the strength among them. For Kingdon, the political stream is an important promoter or inhibitor of high agenda status because all relevant actors in the system (not only politicians) must judge whether the balance of forces in the political stream favors action.

Kingdon assumes that problems, policies, and politics streams each have lives of their own (e.g. problems are recognized and defined according to their own processes, policy proposals are developed according to their own incentives and selection criteria). Nevertheless, the probability of an item arising on a decision

agenda is dramatically increased if all three streams are linked in a single package because “none of the streams are sufficient by themselves to place an item firmly on the decision agenda.”²⁶

This specific assumption brings into play another critical concept of the agenda setting model - the *policy window*. At some crucial point the three streams are joined, and the greatest policy changes grow out of that coupling of problems, policy proposals, and politics. As Kingdon emphasizes: “A pressing problem demands attention...and a policy proposal is coupled to the problem as its solution. Or an event in the political stream ... calls for different direction. At that point, proposals that fit with that political event, such as initiatives that fit with a new administrative philosophy, come to the fore and are coupled with the ripe political climate.”²⁷

Windows may open due to events in either the problems or political streams thus creating related problem windows and politics windows. The role of the policy stream is a bit different in that context. If decision makers become convinced that a problem needs solution, they turn to the policy stream for an alternative. In a similar manner, politicians reach into the policy stream for proposals if they subscribe to a certain theme for their administration. Because the three “streams” are largely independent of each other, their joining could be in many cases unpredictable. One of the examples of unpredictability could range from sudden disasters (earthquakes, droughts or airplane crashes) or unforeseen election results. In any event, Kingdon

²⁶ Ibid., p.187

²⁷ Ibid., p.211

points out that windows do not stay open long, they are “small and scarce” and if a chance to push for a certain issue by its advocates is missed while a window is open, those advocates may have to wait for another time to move the package of the three joined streams up on decision agendas. The waiting period for such a new opportunity may be so long that the pressure for change may subside in the meantime transforming what was once a problem, back to a mere condition. Windows may close for different reasons: participants may fail to get action and lose the will to invest time, energy, and other resources in the cause; the events that fostered the window to open may gradually fade from public attention. Thus, according to Kingdon, it is important to “strike while the iron is hot.”²⁸

In the stream model the sequential “natural history” model is replaced by the “postulate of simultaneousness.” According to this model, political actors promoting certain type of solutions in the policy stream are looking for problems and political commitment, while politicians are simultaneously looking for problems and solutions with which they can “score.”²⁹ That is, agendas are set by problems or politics, while alternative solutions are generated in the policy stream. According to some reviewers, Kingdon’s model is innovative because it uses policy making as resembling “a process of biological natural selection rather than the more traditional mechanistic models of interest groups politics.”³⁰

²⁸ Ibid., pp.178-179

²⁹ Tiesman (2000): p. 942

³⁰ Levine (1985)

However, the model's assumption of independent streams that may or may not merge to produce a policy outcome, is questioned by some researchers who argue that in many ways, it suffers from ahistoricism. In developing his Advocacy Coalition Framework model Paul Sabatier therefore assumes that the policy and political streams are closely related.³¹ Similarly, Margaret Weir argues that a more historical perspective would show that the streams are linked over time.³² However, the historical link between the three streams does not mean to suggest, as Weir further points out, that the past uniquely determines what is possible at any given time. Rather it shows how action taken at one time can make some future perceptions and decisions more plausible than others. Kingdon himself recognized the problem associated with this assumption of stream independence which led him to make the following amendment to this assumption in the second edition of his book: "There are some links between these streams at times other than the open windows and the final couplings. Policy entrepreneurs anticipate political constraints as they develop proposals, for instance, or politicians seek the counsel of policy specialists as they work up campaign themes. Couplings are attempted often... But the independence of the streams is still noticeable in the real world, and postulating that independence in building theories still has its uses."³³

³¹ Sabatier & Jenkins-Smith (1993)

³² Weir (1992)

³³ Kingdon (1995): p.229

Application of the Stream Model in Different Case-Studies

Despite the criticism, the stream model has proved useful to those who are interested in how governmental agendas. Many scholars have applied Kingdon's model to research directed at broader policy issues.

Thus, Nikolaos Zahariadis and Christopher Allen, have extended the logic and conclusions of multiple streams across countries.³⁴ Focusing on Kingdon's view of the specification of alternative solutions, the authors have examined the privatization issues in Great Britain and Germany and this has led them to suggest some refinements to the original framework. Specifically, their findings indicate that policy alternatives/ideas gestate in each stream and then bubble to the surface through institutional whirlpools. Moreover, the structural complexion of these whirlpools conditions the trajectory of ideas over time, slowly softening some up (e.g. as in Britain), or swiftly solidifying them (e.g. as in Germany). This kind of image, the authors believe, better reflects the structural dynamics of the policy stream. Another refinement to Kingdon's model by Zahariadis and Allen is that their research showed that predecision processes are intimately linked to the decision-making process despite being treated as separate stages of the policy process.

Douglas Lober accepts that Kingdon's model is applicable to a broad range of policies and collaborations.³⁵ However, for a more rigorous explanation of the creation of multi-party initiatives in response to environmental turbulence, crisis, and

³⁴ Zahariadis & Allen (1995)

³⁵ Lober (1997)

complexity, Lober suggests a modified stream based agenda setting model that he calls a collaboration forming approach. In his work on the Paper Task Force, Lober, finds that the window of opportunity opens when four process streams – problem, policy, organizational, and social/political/economic – converge.

Denise Scheberle applied Kingdon's stream model to an analysis of the process by which public concerns about radon and asbestos rose to the governmental agenda.³⁶ Scheberle's study identifies elements of stream theory in the cases of both radon and asbestos, although with different degrees of importance. She found that the agenda setting model was relevant to applied cases addressing policy formation.

Geert Teisman, in his study of the complexity of the decision making process, employs three distinct models, one of which is Kingdon's stream theory. The three models are then tested against his analysis of the decision-making process behind the controversial construction the Netherlands' Betuwe line, a new freight railway line between Europe's largest port, Rotterdam, and Germany.³⁷ In this study one could see not only application of Kingdon's model beyond the United States political system but also the model itself is viewed in a favorable comparative setting. "Favorable" in this context means that despite the fact that each analyzed model in Teisman's study highlights the importance of different variables, ultimately the stream theory receives its empirical application.

³⁶ Scheberle (1994)

³⁷ Tiesman (2000)

Michael Howlett have employed Kingdon's model to the Canadian public policy system in testing the extent to which agenda setting process in Canadian governments is routine, predictable or unpredictable, and the extent to which it is influenced by events and activities external to itself.³⁸ According Howlett, the findings of the study support the appropriateness of the application of Kingdon's theory of agenda-setting to the Canadian context. Furthermore, Howlett points out that there is evidence that policy windows of different types exist in Canada, and that the frequency of the occurrence of various window types is related to the level of institutionalization.³⁹

As one could see, Kingdon's work remains the broadest study to date of agenda-setting because of "an impressive combination of evidence across a range of issues and explicit attention to theory building."⁴⁰ However, various students of agenda setting who have utilized Kingdon's framework in their respective analyses have made certain refinements to the original model by extending its applicability to other western political systems including, Canada. Moreover, the stream theory has been tested and proved robust in comparison to other models of governmental decision-making and in relation to various public policy issues.

³⁸ Howlett (1998). See also Kamieniecki (2000) on study of agenda building and development of forest policy in British Columbia.

³⁹ See Soroka (1999) on critique of Michael Howlett's studies.

⁴⁰ Baumgartner & Jones (1993): p.48

The Water Export Issue Within the Agenda Setting Frame

In this study of the water export issue I employ Kingdon's stream theory because it provides a good foundation from which to address emerging policy issues. However, Kingdon's framework is not suitable "as is" for this undertaking. It requires further elaboration, particularly with respect to general types of variables, and to level and unit of analysis e.g. whether actions of individuals or institutions are the focus of the investigation. Therefore I begin by examining the agenda-setting forces likely to stimulate the agenda process.

Focus Events

Kingdon suggests that problems often reach the formal agenda as a result of some special event (e.g. crisis, election) as the accompanying public interest creates a "window of opportunity." Through this window the problem is then pushed to new heights and it captures the attention of policy makers who support and adopt policy.⁴¹ Almost all students of agenda setting emphasize the role of such events that range from major disasters (natural or man-made- earthquakes or droughts, floods, air catastrophe) to less impressive and dramatic events such as administrative turnover in the government or organizational change. Other important triggers could include technological and demographic changes, or dissatisfaction with the existing distribution of resources. These trigger events, according to the agenda literature,

⁴¹ Kingdon (1995)

signify a readiness to change because they make people notice certain conditions that were virtually unnoticed before the event.

Participants

A majority of agenda researchers, assuming that agenda-setting in democratic states is largely a matter of governments responding to social pressures, focus on the identities and characteristics of political actors or the institutions they represent, and the resources and opportunities available to them. Political actors, by forming a policy community around an issue, are thus considered strategy builders in the process of agenda setting: as actors building such coalitions, they try to anticipate resistance, to gain attention for an issue and to secure commitment to policy choices. Walker (1977) studied specialized elite, public and congressional attention, and the severity of problem for a number of public policy issues in the 1960s and 1970s. However, his findings indicate that problems movement onto the agenda could be due to focusing events, new statistical reports, spillover from other areas of policy. Birkland (1997) emphasized the role of sudden calamities, focusing events (e.g. earthquakes, hurricanes, oil spills, nuclear accidents), in agenda setting process. Nelson (1984) focused on the role of professional community mobilization. Bosso (1987) drew attention to the role of networks composed of environmentalists and other critics of government policy as well as agricultural groups supportive of government policy. Kingdon developed the idea of a policy community composed of legislators, bureaucrats, academics, think-tank participants, and interest groups who debate the

policy options related to a particular issue. Kingdon's findings indicate that the chances of a subject rising onto the agenda are enhanced if it is promoted by a visible cluster of high-level elected officials rather than only by legislators, career bureaucrats, political parties, or interest groups. The power of bureaucrats is mainly in implementing policy; legislators' power is in their ability to generate huge publicity, gain information access and promote discussion of many policy initiatives; parties may influence agendas through their platforms, and through their impact on legislators and the general public. However, according to Kingdon's findings, the primary influence each of these actors has is in their impact on the implementation stage of the policy process. Furthermore, Kingdon points out that issues generally obtain serious governmental consideration due to a complex set of factors, and not simply due to interest group pressure. Indeed he argues that interest groups are primarily important as blocking factors, rather than as agenda agents, or as people who get alternative solutions considered once the agenda has already been set. However, even if interest groups do raise an issue, this does not necessarily control the debate.

A special role in Kingdon's model is attributed to the policy entrepreneurs in and out of government (e.g. in elected or appointed positions, in interest groups or research organizations). Their main characteristic, according to Kingdon, is in their willingness to invest their resources – time, energy, reputation, and money – in the hope of a future return. Policy entrepreneurs could be found in any of the streams: pushing their concerns about certain problems, advancing their political solutions, or watching developments in the political stream in order to take advantage of and/or to

couple their proposals, with emerging windows of opportunity. In the analysis of the water export issue, it is important to identify the existence of such entrepreneurs, given they can greatly enhance the chances of an item moving up on an agenda, or dampen those chances by their absence at the crucial point of coupling, when a policy window is opened.⁴²

Agenda Setting Function of Media and Public Opinion

Almost all agenda research focuses on the frequency with which an issue is mentioned in the mass and professional media because this is taken as a measure of the degree to which an issue is in the public spotlight. This in turn, is thought to attract the attention of lawmakers.⁴³ Downs (1972) argued that the media legitimates problems to the public in such ways that overshadow fundamental conflicts of value. Baumgartner and Jones (1993) focused on the images (negative and positive) of problems in media coverage as critical for understanding problem evolution, rise and fall. Nelson (1984) demonstrated how an issue appears first on various professional agendas, and this leads to coverage in the mass media and broader public awareness.⁴⁴

However, the role of media in agenda setting always has a special and contradictory role. Most researchers find that its effects on agenda setting are rather subtle, ephemeral and unpredictable.⁴⁵ Kingdon, for example, argues that media

⁴² Kingdon (1984): p. 214

⁴³ McCombs & Shaw (1990)

⁴⁴ Nelson (1984)

⁴⁵ Birkland (1997)

attention to an issue does affect legislators both because they follow the mass media, like other people do, but also because the media also affect their constituents. There is thus a clear acknowledgment of the media's instrumental role in stimulating public attention and in shaping public opinion. However, Kingdon's findings also suggest that the media mostly cover what is already going on in government, rather than having an independent effect on governmental agendas, because the most newsworthy or dramatic stories tend to arise towards the end of a policy-making process, rather than at the beginning. Still, despite its less expected impact on governmental policy agendas, the media is deemed important as a channel of communication within policy communities allowing people in different institutions to be informed about course of events. In this process, media can affect agendas by magnifying certain movements or events that have started elsewhere, as opposed to originating them.

Public opinion, according to the agenda setting literature ⁴⁶ is important but has severe limits in policy formation because many important subjects are not visible to the general public. Some researchers argue that the general public has neither the expertise, nor the time, nor the inclination to be active participants in a policy community and the role is reserved for a policy elite. However, governmental officials may pay attention to public opinion on certain subjects partly because those subjects are on the minds of a fairly large number of ordinary people. Besides, public opinion may set certain limits on the range of feasible strategies and may by these affect the agenda in a general way. Some scholars even assert that it is likely that governmental

⁴⁶ Kingdon (1984); Sabatier & Jenkins-Smith (1993)

officials and other activists affect the mass public more than the other way around. Despite these general conclusions I include a national public opinion factor in the analysis even though the research of the public opinion on the issue of water export is spotty at best.

Policy Widow and Issue Legitimation

Given the above constellation of forces what might it tell us with respect to an opportunity for action when a “policy window” is open? According to Baumgartner and Jones “raising a problem to the public agenda does not imply any particular solution.... Reaching agenda status does not disclose how that issue is likely to be handled.”⁴⁷ In similar fashion, Kingdon himself noted that “the balance of organized forces does not always determine outcomes. Indeed, powerful interests are sometimes overcome, and change occurs despite their opposition.”⁴⁸

That observation suggests the utility of adding to the agenda setting framework a hypothesis elaborated by David Dery that “*legitimizing an issue is not the same as legitimizing demand.*”⁴⁹ Another words, mobilization of forces around an issue may not necessarily determine its outcome. From Dery’s perspective, it is important to be aware of the possibility that variables that enhance the likelihood of agenda success and issue expansion may become a hindrance at the crucial stage of problem definition. It seems that there is a gap between the political process at the time of

⁴⁷ Baumgartner & Jones (1993): pp. 28-29. See also Dery (2000)

⁴⁸ Kingdon (1984): p.171

⁴⁹ Dery (2000)

determining whether or not an issue deserves government attention, and the moment when that same issue is analyzed for subsequent action or when that action is legitimized as an appropriate response.

Dery himself explored this hypothesis in the context of social protest in Israel, the 1990 “tents movement” which focused on government reaction toward the problem and how the broad concern was “successfully” translated by the government into a narrowly defined policy problem, contrary to popular demand.. A movement that proved strong enough to put the housing problem on the national agenda, and to keep it there for a few months, ultimately had no influence on the subsequent treatment of the issue. Even though the context of the water export issue is different, Dery’s hypothesis could still be tested. Use of the stream model helps me to reconstruct a history of the water export issue agenda dynamics. However, Dery’s hypothesis may help to explain what happens and what possibly may happen after the agenda setting stage has been reached.

Conducive Conditions/Forces and Policy Adoption

Enhancing Agenda Perspective with Macro-Forces

As the review of the agenda literature indicates, the major focus is on factors or forces capable of influencing an item's success in reaching the agenda, including focus events and the mobilization of policy communities customarily comprised of politicians, interest groups and media. None of the empirical findings, however, could measure the "influence or say when one or another of the influences would carry the day or fail in the case of a particular proposal."⁵⁰ Moreover, it is argued that the agenda-setting process in most cases depends on "unpredictable factors and personalities, political jockeying, policy entrepreneurs."⁵¹

It also has to be noted that a majority of the agenda setting studies focus on either cross-sectional analyses of different policy issues or on tracing an issue over time, usually within the range of a decade or so. Kingdon's own empirical findings are based on case studies covering policy processes in health and transportation extending over less than a decade, on average lasting for three years (1976-1979). There have been interesting case studies over longer periods of time. Nelson's (1984) study of child abuse, for example, covered many years and demonstrates one issue, once considered outside the realm of government action, later came to achieve high status

⁵⁰ Sharkansky (2002): p.21

⁵¹ Pal (1997): p.81

on the national political agenda. In any event, longitudinal single issue case-studies, as Baumgartner and Jones point out, have serious drawbacks in generalizability and comparability since each author adopts a slightly different theoretical approach to guide the research.⁵²

These particular observations with respect to agenda setting studies raise concerns as to whether an agenda setting framework could be used “as is” (without modifications) for understanding the water export issue and its long term persistence on the Canadian political scene.

In response, some agenda researchers have attempted to enlarge the spectrum of factors to be considered, examining determinants outside the immediate sphere of agenda setting. For example, Hays and Glick elaborated a model that includes political (interparty competition), economic (level of income), ideological (ideological liberalism) factors within the state which together create an environment conducive to the adoption of new policy.⁵³ Lober, in turn, modified Kingdon’s stream model with the introduction of a social/political/economic stream instead of the original political stream.⁵⁴

This trend suggests researchers realize that the transformation of issues into public policy cannot be sufficiently explained by the interaction and struggle of micro forces alone. In fact, Hays and Glick argue that stimulating public and governmental

⁵² Baumgartner & Jones (1993)

⁵³ Hays & Glick (1997)

⁵⁴ Lober (1997)

interest in an issue is *rarely* enough to spur policy adoption.⁵⁵ For a government to adopt a policy in response to a crisis event, or interest group pressure, or media attention there have to be certain macro conditions/forces that, acting simultaneously with the agenda forces, could be conducive to an issue's transformation into a public policy. If these conditions are not ripe or forceful enough, or are absent completely, the issue's transformation is unlikely, even if the issue is on the discussion (public) agenda. The converse is also true, according to Hays and Glick, that is, if conditions/forces are conducive to policy adoption in the absence of galvanizing events, media intensive coverage, or public interest, neither agenda setting nor issue's transformation into a policy is very likely.

Certain agenda researchers point out that an issue's transformation into a problem in society at large depends on a "structural readiness for change," that elusive but essential combination of political, social, and organizational preparedness which makes the consideration of a problem – and particularly "this" problem- possible."⁵⁶ Not surprisingly, the very early works in the field of agenda setting started from the assumption that socio-economic and political conditions led to particular sets of problems to which governments eventually responded.⁵⁷ It is a rather recent tendency in the policy analysis field to study agenda setting as a "scientific" and value neutral way of thinking about the emergence of policy issues using methodology based on the

⁵⁵ Hays & Glick (1997)

⁵⁶ Smelser (1962)

⁵⁷ Howlett (1997)

dense statistical analysis of time series data, level, density and frequency of attention to an issue.

It could be suggested that underlying socio-economic and political conditions are always implicitly present in the agenda setting discussion and specifically in the stream version of this approach. In fact Kingdon's concept of the policy window allows interaction between agenda-setting initiatives and macro-level economic and political forces beyond those that have been suggested and listed by Kingdon himself. However, because the majority of the contemporary agenda-setting literature, including Kingdon's variant of it, do not explicitly consider those larger, macro-level political and economic forces, these appear to play only an implicit or passing, and/or schematic, role in the agenda setting process. Thus, it is this thesis's argument that the analysis of agenda setting could be seriously elaborated and deepened by giving greater importance to the macro-level forces. Further, this modification of the agenda setting approach is necessary because the water export issue has persisted at a fairly low level on the overall national agenda for more than 40 years, never going away and only gradually reaching the point in 2002 at which legislative change regarding a part of the issue took place.

By giving greater importance to the macro-level forces the ahistoricism of the stream model can be partly overcome because the transformation of an issue into a public policy is now considered as resulting not only from the workings of specific agenda setting factors but also for the underlying political and economic determinants. In turn, these determinants/conditions/forces could also be conceived as *policy venues*

that are subject to the influence of different interests. In Baumgartner and Jones definition, policy venues “are the institutional locations where authoritative decisions are made concerning a given issue.” They argue that policymaking authority “is not automatically assigned to particular venues, (because) ...how an issue gets assigned to a particular arena of policymaking is ... a puzzle,” and an issue may fall “within the jurisdiction of several venues.”⁵⁸ For example, issues assigned to the market in one country may be controlled by the state in another and these differences in issue assignment create differences in policy, as different groups are favored or disadvantaged by each institutional arrangement. Moreover, according to Baumgartner and Jones, dramatic changes in policy outcomes are often the result of changes in these institutional venues and are associated with their interests and control.

In the following sections of this chapter I outline macro forces that may affect governmental decisions to adopt new policies and then discuss the relevance of those forces with respect to the water export issue (Figure 2.1). It is important to note that the set of forces to be considered is not a random choice but a result of preliminary research (through data analysis, interviews with policy actors, and examination of water export literature) showing that they have been explicitly addressed and identified by people in the water export policy community, as being of fundamental concern for issue development. Specifically three prominent macro forces emerged as having profound effects on development of the water export issue and its long term persistence on the Canadian political scene:

⁵⁸ Baumgartner & Jones (1993): p.32

- changing economic pressure
- perceived national security concerns, and
- the evolving intergovernmental relations within Canada

Figure 2.1 Stream model and influence of macro-level forces

Forces of Economic Pressure

If all countries had plenty of fresh water, international market pressure for water exports would be virtually non-existent. However, the actual situation is that fresh water around the globe is scarce in many countries and as a result there are two groups of states, those with sufficient fresh water on their territory (including countries like Canada, which have more water than they use), and those which lack sufficient fresh water resources and may have to look elsewhere for water.⁵⁹ The uneven distribution of the world's water supplies presents policymakers with certain problems. Decision-makers may appear to be in the situation of either "caving in" to mounting economic pressure to export water or responding only partially if at all to these forces in the design of public policies. That is a water rich state like Canada may not wish to sell its water but may be inclined to restrict or prohibit such exports for a variety of reasons, including a concern to protect its water resources from over-exploitation by the working of market forces. The question is, what are the specifics of the relation between economic forces and the emergence of the water export issue in Canada?

The economic forces concept in the thesis helps bring into play a discussion of evolving water markets, decision-making processes used by a government under

⁵⁹ Scott (1994); de Haan (1997)

pressure to respond to market signals, and the character of the economic interests struggling over the water export issue.

The discussion of economic forces may appear to overlap with that of interest groups (business and public). However, examining economic forces allows us to bring into the analysis a more profound consideration of the ideological underpinnings of markets and the interests behind them. This is something that the agenda-setting framework cannot adequately address. Thus, the apparent overlap is no overlap at all.

It also becomes imperative to consider the state's role in public policy making under the influence of these economic forces. Economists have developed a variety of economic models within their own discipline that presume different level of state involvement in public policy making. Among these approaches are classical, neoclassical, Marxian, Keynesian versions of economics.⁶⁰

In what follows, I do not express a preference for one kind of market approach over another. Rather, I try to present a general vision of markets that is common in contemporary discourse. As Slater and Tonkiss point out, the variety of market histories and the different ways in which markets have been instituted and analyzed, "brings into question the inevitability of market "imperatives," the specific forms in which markets currently operate, and the role of market values within political rhetoric and economic ideology."⁶¹ Thus in the following section I consider one of the variants,

⁶⁰ It is important also to note that modern approaches to markets have frequently turned upon an opposition between pro-and anti-market positions- liberal versus romantic, capitalist versus socialist, populist versus conservative.

⁶¹ Slater & Tonkiss (2001): p.4

the market-centered agenda, that treats the state as an instrument and institution employed for the advancement of interests of private individuals or groups. In this assumption the degree to which the state's role is constrained by market forces varies depending on the particular economic approach, though among the many existing interpretations of these forces little exists that cannot be understood on the basis of private, essentially economic interests.

Market Centered Agenda

Unlike the agenda setting approach, the economic forces framework does not deal per se with the question of how issues become policy problems that command the attention of decision-makers. If in the agenda setting framework a policy emerges as the result of problem recognition by policy actors informed by dramatic events, then in the economic forces framework an issue is understood to rise onto the agenda as a result of the pressures of market conditions. What is the role of government in this market context?

The state's role within a market-centered framework is to serve as an instrument or "dependent variable" to satisfy those economic forces and their private needs which are at the center and which have a primary role. The roots of this radical market centered view of the world go back to the classical liberal tradition of Hume, Smith, Ricardo, Mill and the notion of self-regulating markets as primary driving forces and the state as a subsidiary responsible for the promotion of private economic

interests. The arguments of classical economics later gave an impulse to the assumptions of neoclassical economics which, on the basis of the idea of market failure, brings the state into the economic realm as a way of solving market problems/failures (provision of public goods, correction of externalities, solving collective action problems).

If policy analysts try to understand the policy making process using a market-centered framework, the “appropriate” role for the state could be either in readjusting its existing policies or creating new ones that would enable the market to operate freely. The problem then lies not so much in those market imbalances but in finding the form of state participation which is most productive in any given situation. Government, if rational, will yield to market forces because it is economically irrational for it not to do so if not in the short run then definitely in the long run. However, any government intervention to deal with market imperfections should be minimal, just enough to create favorable conditions for otherwise self-regulating market mechanisms. Government may readjust controlled prices in accordance with market demand or supply. Government may also make regulations less restrictive creating conditions for free trade, widening markets by transferring more power to the supranational institutions. In that case, liberalization and privatization should be encouraged, otherwise actual effects of government intervention can exacerbate market failure “leading to so-called ‘policy-induced’ distortions which are more

serious than any of the supported distortion of the imperfect economy it was designed to cure.”⁶²

The market-centered forces promote the free interplay of markets as the best way to allocate and expand a society’s material wealth. This claim is based on the assumption that markets are more natural, more non-discriminatory, and more capable of optimizing scarce resources than any other means of allocation.⁶³ Adam Smith described the market process as an “invisible hand” which uses price signals to guide self-interested individuals and profit-maximizing firms to buy, sell and pursue those activities in which they have a comparative advantage. If allowed to proceed unhindered, unregulated exchange between buyers and sellers gives rise to natural forces leading toward equilibrium and an efficient allocation of resources.

Clearly, the concepts of market exchange and efficient allocation of resources are central to a market-centered approach because they promote the reorganization of resources to achieve their most desirable use in the voluntary market exchange process. Once this view of the world is in place, it invites a particular way of thinking about the role of the government, namely as a mere instrument for correcting market failure and with an otherwise limited capacity to participate constructively in the public policy making process.

⁶² Lal (1983)

⁶³ Shipman (1999)

Economic Pressure and Canadian Water Export Policy

From the perspective of classical liberal philosophy it follows that any situation of scarcity should be addressed by seeking to take advantages of the potential gains from trade. This is because the unrestricted right to trade, at prices agreed between trading partners, and accompanied by a free flow of information about the resources being traded, will outperform any other allocation methods in terms of maximizing the quantity and choice of goods made available to those who value them most. The simplified assumption that governments will eventually be dragged along by market conditions is what some water market advocates have in mind when talking about the water export issue. Their vision of government yielding to market forces is incorporated as an implicit assumption into their prescriptions for free trade. Thus, their proposal that governments should adopt rules prohibiting them from intervening in the free flow of goods and services across borders assumes that in fact governments should obey such rules, just as being part of free trade treaties, presumes that there should be no export or import restriction on water. According to this view, complete free trade in water would be in the interest of both water importing and water exporting states since the forces of supply and demand would result in a real international price for water that would enable importing states to buy water for a fair price and exporting states to sell water at a reasonable price. Markets would thus allocate scarce water resources by compelling buyers to evaluate the benefits of acquiring additional quantities of water, at the expense of foregoing something else of

value.⁶⁴ If trade barriers were reduced the result would be an increasingly efficient allocation of resources and increased wealth for Canadian citizens since Canada depends heavily on a comparatively large export sector and specifically on trade in natural resources i.e. softwood lumber, uranium, grain.⁶⁵

The protagonists of economic, or for that matter market, forces, usually argue that the risk of harm to the environment from the overexploitation of resources due to trade, could be minimized if subsidies were removed and clear property rights were established. Since this would give the right signals and incentives to private entrepreneurs to gain from trade and to protect their assets in the environmental arena. In other words, from this perspective, the basic precondition for the further development of water markets is legal, meaning that sellers must have clear legal title to their water and the freedom to sell. In addition, there must also be the physical means to make such water transfers feasible and economic.⁶⁶ In general, the treatment of natural resources, including water, as private goods, would extend their production and increase the wealth gained from their exploitation. In sharp contrast, with governmental allocation of water, the supply is monopolized and government, instead of just controlling certain externalities, becomes a poor substitute for private property rights and common law.⁶⁷ Such governmental interference into market activity and resource allocation suppresses the price signals of self-regulated markets and

⁶⁴ See Saliba & Bush (1987); Frederick (1986); Winpenny (1994); Anderson & Snyder (1997) on water markets.

⁶⁵ Saunders (1987)

⁶⁶ Winpenny (1994)

⁶⁷ See Anderson (1994); Desai (1997); Esty (1994) on markets.

contributes to misallocation and, in this view, to chronic over consumption of this scarce resource generally making people worse off in the long run. To prevent this outcome, liberalization, free trade and privatization should be encouraged.

Many modern political and economic orthodoxies treat markets as self-evident, permanent and incontestable “policy venues” to the point that it is difficult to imagine a different alternative. The universal commodification of almost all levels of life becomes then the bench-mark against which many would prefer to approach and judge the public policy making process. Thus, one element that may have crucial impact on the development of the water export issue could be conceptualized in terms of the influence of the neoliberal philosophy that has taken hold in so many national contexts since the 1970s.⁶⁸ The empowerment of economic forces promotes commodification and a worldview that tends to conceive of everything that people may value as a scarce commodity with a price. Policy analysts thus tend to monetarize tradeoffs about the length and quality of life in order to allocate health care resources; or they tend to value life in terms of dollars in order to find out the “right” level of occupational safety, argues Margaret Radin.⁶⁹ When water is approached as a universally tradable commodity like any other resource, then its commodification will be deemed useful for conserving and efficiently allocating all fresh water resources. Recognizing water as an economic good that should be subject to the law of supply and demand can help solve the problems of fresh water scarcity in many parts of the world. In general,

⁶⁸ See Slater & Tonkiss (2001); Sen (1999) on the growing dominance of neoliberalism.

⁶⁹ Radin (1996)

market forces can serve as an efficient deterrent to the overuse and misuse of this scarce resources since, in this view, market forces and the environment are closely intertwined.⁷⁰

Public Policy Making: Market Objectivity versus Market Interests

From the above discussion of the market-centered view, it sees markets as impersonal, dispersed structures of sellers and buyers operating independently of each other. From this perspective, economic pressure leads to “improving exchanges” as voluntary contracts replace authority and disperse power and as the economic realm is separated from politics. In fact, according to the defenders of market capitalism, power and political interests should not exist in the market. It is, as Caporaso and Levine point out, “something to be forestalled.”⁷¹ Or as Galbraith argues, the market is both “an effective solvent – and concealment – of the power of industrial capitalism” and “Nothing is so important in the defense of the modern corporation as the argument that its power does not exist – that all power is surrendered to the impersonal play of the market.”⁷²

For those who support such market rhetoric, theorizing the world in terms of a pure market domain and a pure non-market domain is quite attractive and convenient. However, there are also those who question this world view and who deny that the

⁷⁰ Gleick (2000)

⁷¹ Caporaso & Levine (1992): p.160

⁷² Galbraith (1983): p. 119-120 in Caporaso & Levine (1992): p.160

state's role is to yield to "objective" markets and to an economic calculus. They are skeptical of the myth of laissez-faire. With respect to water resources and water exports, there could be added at least two points. The first derives from the fact that markets do not allocate resources in response to need, but in response to effective demand. As a result, the effective and ethical performance of markets depends on the distribution of income in the society within which those market allocation rules are to be applied. In a world with a highly unequal income distribution when market rules are applied to such resources as water, the effect could be dramatic and devastating, endangering access to this basic life-sustaining resource for large numbers of income-disadvantaged people. In fact that is what has been happening in recent years in Bolivia, Paraguay, South Africa, and the Philippines when water resources have been privatized.⁷³ The second aspect concerns the time horizons of market (investors) in the real world. The assignment of property rights can, in theory induce environmentally responsible behavior. However the positive effect of this process is feasible will only materialize if the owners do not have short time horizons, looking to drive up short term share values or to maximize short-term returns, in anticipation of a quick sale at the right moment, when long term problems have not yet become evident. However, since this is often no the case and since water has vital social, cultural, and ecological roles, it follows these cannot be left to the pure market forces. For both reasons, it is therefore argued that, direct and strong government involvement is crucial to ensure equitable access to water to the poor and to ensure that preservation of ecosystems.

⁷³ Gleick et al (2002)

Sunstein calls the notion of the “objectivity” and effectiveness of markets as “a grotesque misdescription of what free markets actually require and entail,” because markets should be understood “as a legal construct to be evaluated on the basis of whether they promote human interests, rather than as a part of nature and the natural order, or as a simple way of promoting voluntary interactions.”⁷⁴

In contrast the belief in market “objectivity,” there is the so called state-centered view held by those who differentiate between the realm of politics, which is the state’s sphere and the realm of economics, which is a private sphere. The central focus of this view is on the assumption that the state is free and independent of economic forces. Strong states are those that are simultaneously capable of resisting the pressure of private interests and are able to generate public policy initiative on their own. Weak states are those that “cave in” to pressure from economic interests.⁷⁵ According to Stephen Krasner, the utility of the community must not be confused with a sum or other aggregate of the private utilities of its members. The state is defined in terms of the national interest and the capacity to define (and to defend) that national interest, in turn defines the state. Thus without national interest there is no state. In Krasner’s terms, the national interest is distinct from the world of private preferences and policymaking should be protected from the demands of private interests.⁷⁶

However, as in the case of assumed market objectivity, there are some problems with respect to the state’s complete independence of any type of interests.

⁷⁴ Sunstein (1997): p.5

⁷⁵ Caporaso & Levine (1992)

⁷⁶ Krasner (1978)

As Caporaso and Levine argue, the casual superiority of state over economy, for the most part violates certain principles of democracy which presuppose responsiveness between ruler and ruled. If this responsiveness is damaged, democracy is compromised because “by and large, the less responsive the state is to private interests, the more suspect it is on grounds of democratic theory.” Moreover, they continue, “a state that takes little account of society would have to present its own actions as pure willfulness, as preferences [would be] arbitrarily formed and not socially grounded.”⁷⁷

The relation between state and economy has various alternative conceptions that go beyond those outlined above.⁷⁸ Indeed, the state-economy relationship is part of a complex theoretical debate and furthering the discussion of this subject is not an immediate task of this section, nor the task of the thesis as a whole. However, even in its limited way, the outline of the two opposing views (as presented above) with respect to the state’s role in shaping public policy within the realm of economic pressure, is useful because it they may serve as a bench-mark on which to base the analysis and to derive conclusions from the actual case findings. The importance of the above discussion is also lies in the attempt to present a balanced analysis of the subsequent case-study rather than an attempt to justify or to defend either the market-centered, or the state-centered, view. By “balanced” analysis I mean that the state is not apart from the private sphere, nor does it necessarily exert leverage against it. At

⁷⁷ Caporaso & Levine (1992): pp.191-192

⁷⁸ See Evans, Rueschemayer, & Skocpol (1985); Katzenstein (1978); Gourevich (1986)

the same time, neither does the economy exist as a fully formed entity, as a fundamental given, existing prior to the state. Theorizing the social world in terms of a pure market domain (agenda) or a pure non-market domain, though still attractive to many, is “at best oversimplified” and at worst “it may tempt us to overlook the way in which market and nonmarket conceptualizations of social interactions can and do coexist, and it fails to give us a theoretical handle on how to evaluate these cultural crosscurrents.”⁷⁹

More specifically, economic pressure is linked to politics. In the case of the transformation of the water export issue into a public policy problem, transnational institutions are ultimately political forces that promote markets in order to achieve their own economic and political ends. The influence of these institutions in a way becomes part of the structural economic forces, especially in the recent two decades. Here we are talking about the power and global influence of the World Trade Organization (WTO), or the regional influence and power of the North American Free Trade Agreements (NAFTA) or the Free Trade of Agreement of Americas (FTAA). These international institutions exert power influencing and directing domestic and foreign policies. However, as Odell points out, dealing with these transnational institutions is significantly more difficult than dealing with the “objective” market forces of classical theory, because they are protected by powerful political forces. In a way, these institutions become non-market actors. This is therefore a phenomenon for

⁷⁹ Radin (1996): p. xiii. See also Sikkink (1991) on discussion and critique of state-autonomy and market-centrism.

which the notion of pressure of economic forces becomes inadequate unless supplemented with the more political concept of the transnational actors.⁸⁰

The analysis of economic pressure is useful for bringing into play the historical evolution of water markets and considering the changing influences of such factors as international demand and supply of, fresh water. The concept also helps to highlight the effect of economic interests on government policy and specifically the role of interstate institutions in encouraging market values and in promoting a certain version of Canada's capitalist economy. It also helps to reveal the effects of government policies and actions on economic resources and on water resources specifically.

Forces of Perceived National Security Concerns

In this section I delineate national security concerns as another set of driving forces that contribute to the creation of pressure to bring the water export issue to the formal governmental agenda. This directs attention to external pressure arising from interstate political discourse dealing with potential security concerns arising out of the "inequitable distribution" of global water.

The roots of this concept go back to the classical realist theory of international relations and the intellectual heritage of Thucydides, Machiavelli, Hobbes and

⁸⁰ Odell (1982): pp.28-29

Rousseau, and on a more contemporary scale, to the works of (among others) Hans Morgenthau and Kenneth Waltz. The realist paradigm emphasizes at least a few basics. One is that the international system is fundamentally anarchic and political life is dominated by states not subject to any authority superior to their own sovereignty. Thus, states' relationships are governed by power, and the national interest is defined in terms of the power to ensure survival and security. Tomas Hobbes in the seventeenth century, most coherently and forcefully presented the view that the desires of men, in competition with each other and in face of resources scarcities, or of shared desires for the same things, must lead to an intolerable and unfruitful existence in a state of perpetual fear of conflict or violent death. Because power is always in flux and its assessment is always uncertain, in such a world governments will constantly strive to increase their power, and since all governments will do this, state relationships will necessarily be conflict relationships.⁸¹ Later this assumption was "contested" by John Locke who argued that despite the absence of a common sovereign, people could develop ties and make contracts, and therefore anarchy is less threatening. However, still the idea that states behave in a rational way by trying to achieve the greatest possible individual gain, emphasizes the potential zero-sum nature of international relations, and remains the dominant conceptual approach in the field.

Since the Second World War the international relations field has been preoccupied with the traditional notion of security, that is, with military threats to the security of the nation-state. This tendency was long reinforced by the threat of nuclear

⁸¹ Reynodls (1971)

warfare and by the Cold War. Initial moves to broaden the notion of “security” in academic discussions, have started during the last 20 years and have gained in importance since the end of the Cold war. The debate over a broader definition of “security,” has its origins in the Club of Rome’s 1972 “The Limits To Growth” report that called attention to the risks associated with natural resources scarcities, the continuing deterioration of environmental quality and the close connection between social and economic problems, demographic trends, urbanization, migration.⁸² Richard Ullman in the late 1970s and early 1980s, Jessica Tuchman Mathews in the late 1980s and early 1990s, became the most articulate and influential advocates of broadening the concept of security by including a wide range of environmental threats ranging from resources to environmental and demographic issues.⁸³ In 1994 *Atlantic Monthly* published an article by Robert Kaplan “The Coming Anarchy” that presented a dark picture of growing human misery, population displacement, violence, and conflict - all related to environmental degradation. Its main argument was that the national security issues of the early twenty-first century would be rooted in environmental problems.⁸⁴ The article was broadly discussed in the U.S. where the principal concern was to identify threats to its national interest.

Because environmental threats are often transboundary by nature they create a link between environmental problems and national security that closely corresponds to the traditional threat images. As Daniel Doudney points out, it become natural to think

⁸² Lietzmann (2001): p.21-30

⁸³ Brown & Ulman (1983); Tuhchman (1989)

⁸⁴ Kaplan (1994). See also Dalbay (1996) for a detail critique.

about the environment and security link because “the institutions and ideologies of nation-state and interstate conflict are so hegemonic in both politics and international relations, and because violence historically occurred over competition for environmental scarcities...”⁸⁵

Environmental issues were brought to security studies by focusing on the link between environmental scarcity, the uneven distribution of valuable renewable and the non-renewable resources and national security threat implicit in the inevitable conflict between independent states over access to, and distribution of, those limited resources. Such events as the oil crises of 1973 and 1979, followed by the rapid rise of prices in oil and other minerals, the protectionist policies of trading powers and the formation of commodity cartels, exacerbated fears of resource wars. And thus, in turn, stimulated concerns about how resource scarcity might jeopardize the economies of advanced industrial states and further promote conflict. According to Arthur Westing “Global deficiencies and degradation of natural resources, both renewable and nonrenewable, coupled with the uneven distribution of these raw materials, can lead to unlikely-and thus unstable-alliances, to national rivalries, and of course, to war.”⁸⁶ David Haglund and Fillmore Earney among others were concerned with the geopolitics of natural resources, the politicization of economic relationships followed by rapidly evolving changes in the use of force and economic power to maintain, gain, or deny access to

⁸⁵ Deudney (1999): p.188; See also Käkönen (1994)

⁸⁶ Westing (1986) in Deudney (1999): p.202. See also Soroos (1977)

natural resources.⁸⁷ In the same vein, Ronnie Lipschutz points out that virtually any standard text on foreign policy or international politics published since World War Two assumes that adequate supplies and control of raw materials is essential to national security and that, as a result national power and national wealth go hand –in– hand. He identified at least 200 articles, books, and studies on the topic written between the end of World War I and the present time.⁸⁸

Another hypothesis links environmental security to ecological stress caused by environmental degradation and population growth, which may also cause interstate conflicts, including armed conflict and/ or political instability. Thomas Homer-Dixon argues that violent conflicts caused, or exacerbated, by resource scarcities are likely to increase as the pressure of environmental change overwhelms the capacity of institutions to adjust and to respond, creating conditions for political fragmentation or to the emergence of authoritarian government.⁸⁹ Environmental change is mainly identified with the degradation of water, deforestation, decline in fisheries, global warming and stratospheric ozone depletion. Further, it is widely argued that if these atmospheric problems do eventually have an impact, they will most likely operate not as individual environmental stresses, but in interaction with other, long-present resource, demographic, and economic pressures that have been gradually eroding the buffering capacities of certain societies.⁹⁰

⁸⁷ Earney (1981); Haglund (1986)

⁸⁸ Lipschutz (1989): pp.1-2

⁸⁹ See Homer-Dixon & Blitt (1998); Homer-Dixon (1999;1994); Gleick (1991)

⁹⁰ Homer-Dixon (1999)

An extremely important dimension of environmental conflict is state sovereignty. Within the framework of international relations, sovereignty has come to mean “the existence in a polity of a final and undivided authority over particular territory, which only states can possess, and the reciprocal recognition of this authority which states extend to one another.”⁹¹ The aforementioned perceived threat to security tend to make states highly protective of their sovereign prerogatives because they fear that loss of sovereignty will leave them more subordinate and vulnerable. The link between national sovereignty and environmental problems raises a certain line of concerns especially among those who stand for a globalist environmental perspective. The perceived fears for national security and environmental problems, Deudney argues, causes in many instances the application of worst-case scenarios during the governmental decision-making process. In other instances concern for the sovereign prerogatives could impede environmental cooperation. It may foster nationalism in a sense of “us versus them” and the stronger the nationalism the weaker transnational bonds. This privileging the nation goes against the concept of the “one world” and “global village” sensibility of environmental awareness.⁹²

However, the national security mentality and approaches to environmental politics need not always be negative. For example, it has been stressed on many occasions that one dimension of national security has been underappreciated even though it has many possibilities for reconstructing national identity in “ecologically

⁹¹ Deudney (1999): p.198

⁹² Deudney (1999): p.199. See also Stern (1999) on globalist critique.

appropriate ways.” Identification with a particular physical place, in geography known as “geopietty” and “topophilia,” has been an important component of national identity.⁹³ This refers to a sentimental attachment to a place and a physical environment, which is among the most elemental and powerful forces, both in humans and in animals. With the growth of environmental problems this particular concept becomes a powerful way to conceptualize environmental protection as a kind of national security and at times as a pretext for it.⁹⁴

However, the concept of “sovereignty” is very broad and cannot be discussed solely within the environmental conflict framework because it forms the basis for the discussion of economic pressure as well. Moreover, there is an inevitable connection between forces of economic pressure and sovereignty expressed through the rise of economic interdependence and the power of international/global trade agreements. The latter are specifically designed to reduce the degree to which “national sovereignty” can be used to stand in the way of applying “market solutions” to problems of resource scarcity and security. This aspect is extremely important and will be raised in the analysis of the water export issue with respect to free trade and in the discussion of perceived security concerns.

⁹³ See Yi-Fu Tuan (1976)

⁹⁴ Deudney (1999)

The Water Export Issue Within the Context of Environmental Security

How specifically can the environmental security concept contribute to an understanding of the emergence of the water export issue to public prominence and its transformation into a policy problem? For the purposes of this research, I argue that the environmental security factor affects interstate relationships and relative power positions of states which, in turn, affects the dynamics of agenda formation. The hypothesis derived from this analytical approach suggests that a rise in perceived external security threats can lead a state to adopt precautionary policies which may run counter to the logic of market signals. Most frequently the literature on environmental security draws a parallel between oil and water as the two resources that are most prone to trigger an escalation of international conflict. However, because of its form and its status as an essential element of life water poses different and potentially more difficult problems for strategists. Thus, it will be important to operationalize the working of the hypothesis with respect to Canadian water in order to see to what degree it can be applied to the particular case of water export.

Implicit in the argument of environmental security is the notion that local or regional scarcities or problems, arising from a combination of environmental, resource, and political factors, may lead to conflicts at international level and these may become violent. In this context, the security analysts must focus, as Gleick argues, on *when* and *where* such resource-related conflicts are most likely to arise and,

not *whether* environmental concerns can contribute to instability and conflict. Klare, for example, identifies three factors related to environmental security that are most likely to introduce new stresses into the international system: the relentless expansion in worldwide demand for most resources, the emergence of significant resource shortages which are the marrow image of the demand, and the proliferation of ownership contests.⁹⁵ He further argues that each of these factors will reinforce the destabilizing tendencies of the others: as resource consumption grows, shortages will intensify and governments will come under mounting pressure to solve the resulting problem at any cost. This, in turn, will heighten the tendency of states to seek maximum control over contested sources of supply, thereby increasing the risk of conflict between the countries that share or jointly claim given resource deposits.

Because water is scarce and geopolitical reality is such that, for example Canada possesses nine percent of the world's fresh water, competition for limited supplies could lead nations continue to see access to water as a matter of national security. Given assumed population growth, changes in climatic conditions, and the imbalance of water resources, water will become a source of tension and, thus, the determinant variable in future international conflicts between states.

The environmental security of Canadian water can be seen not only as a function of threats due to expansionist politics of other states trying to access fresh water supplies but also as a result of concern about environmental change caused by water withdrawals and of hydronationalism that tries to preserve fresh water resources

⁹⁵ Klare (2001): p 23

for consumption by Canadians only. All these analytical dimensions assist in delineating the dynamics of water export and how it came to be a policy issue. What is more, a focus on environmental security may assist in predicting what the policy outcome could be in the next round of the water export issue.

In the literature we find that conflict over access to natural resources and specifically to water can occur at different levels and to various degrees, from regional disputes at the village level, to disputes within national subdivisions, to border disputes between nations or to friction between many nations that may not even share borders. Such conflicts may be diplomatic or violent, economic or political. In the case of the water export issue, at least three levels of conflict are relevant. The first which arises at the sub-national level is discussed in the section on federal-provincial relationships. The second is that between the U.S. and Canada, which tends to be of primary importance given Canada's proximity to, and shared border with, the U.S. The third level deals with demand for Canadian water from other countries regions of the world. At the international level, the relative water scarcity of other countries presents Canada with two potentially dire outcomes: that they may take Canadian water one way or another (whether through trade or military force) and that they may become dependent on Canada's water.

The expansion of security studies to include environmental threats has been criticized from several perspectives. Orthodox realist international relations theorists a more restrictive definition of security in order to protect the integrity of security studies as a distinctive discipline of international relations. Others criticize the idea of

environmental security on the grounds of the inappropriateness of “securitizing” nonmilitary social issues. For example Daniel Deudney calls into question the utility of the concept of environmental security and the claim that environmental change tends to generate conflict. He insists that environmental problems are conceptually different from traditional security problems which focus on external aggression.⁹⁶ A third group suggests that environmental problems should be considered within the framework of conflict studies, rather than at the level of “high politics.”⁹⁷

Despite the relevance of the critiques of this approach, I argue that the general notion of the environmental issues can give rise to security concerns has value and it turns out to be important analytically later on in this study. Back in the mid-1990s U.S. President Bill Clinton referred to the linkage between security and environmental problems quite vividly by stating that:⁹⁸

Not all security risks are military in nature. An emerging class of transnational environmental issues are increasingly affecting international stability and consequently will present new challenges to U.S. strategy.

As this statement demonstrates, environmental-security linkages are not simply theoretical debates, but they have found their way into the arsenal of arguments of

⁹⁶ Deudney (1999; 1991)

⁹⁷ See Stern (1999) on detail account of these criticisms.

⁹⁸ President William Clinton, National Security Strategy of the United States: 1994-1995.

global policymakers. This is an important indication of the relevance of this particular force and its potential to influence the policy process.

Impact of Changing Intergovernmental Politics Forces

This section focuses on the forces arising out of changing intergovernmental political positions which delineates another important dimension of the water export issue's historical development and helps to explain its ultimate transformation into a public policy problem. This dimension is relevant to a discussion of the water export issue in Canada because in this country the policy process is always significantly affected by the federal-provincial sharing of power and responsibilities. Specifically with respect to water exports, the analysis of intergovernmental politics is crucial because resource ownership is constitutionally vested in Canada's provinces and this inevitably implies that the question of water exports must become a contentious federal-provincial issue. Moreover, there is a crucial connection between intergovernmental politics and the forces emanating from economic and security pressures. Thus, provincial attitudes to federal water export initiatives, and their rising interest in this issue, have been deeply affected by the developments of potential markets for water because of the possible economic benefits that the provinces could gain. Intergovernmental politics also affects and is affected by the existence of

perceived security concerns. Specifically at stake is the preservation of national unity in a federal state like Canada, where the federal government has to hold the line against forces of decentralization and this is a difficult task when there are 10 provincial governments each trying to stand by its own interests. Because of the interlinked nature of water resources, and the contingent need for close coordination of provincial policies, a strong federal presence becomes important and even desirable.

Thus, in short, the basis of the relevance and impact of the forces emanating from intergovernmental politics is that the issue's transformation into a policy may be affected by the shifts in the bargaining positions among leading policy players within the nation itself, not just the security and power of the state relative to other states, forces of economic pressure, or agenda setting factors.

The discussion of the intergovernmental politics framework is largely based on Richard Simeon's "Federal-Provincial Diplomacy" and to a certain degree on Graham Allison's "Essence of Decision."⁹⁹ What I am going to discuss in the following sections essentially represents a synthesis of the frameworks developed by these two scholars. This will later be combined with insights from other literature on Canadian federalism.

⁹⁹ Allison (1971); Simeon (1972)

The Essence of Intergovernmental Politics

According to Allison intergovernmental politics focuses not on one but on many policy players dealing with many diverse intra-national problems. These players do not have a single unified set of strategic objectives but operate on the basis of “various conceptions of national, organizational, and personal goals.”¹⁰⁰ These players do not make policy decisions according to one single, rational criterion but by using tactics of political games of “pulling and hauling.” Each player has an independent standing in the political game so that, as Allison emphasizes, the “separate responsibilities of each player encourage differences in “what each sees and judges to be important.” Thus, the important point of Allison’s approach is that government decisions and actions result from a political process which is spurred by the power and skill of proponents and opponents of the action in question. Differences in the standing of the players involved produce a “resultant” - a mixture of conflicting preferences, personalities and calculus of power.

Policy issues in this kind of political game emerge one at a time, “one lump in one context, a second in another.” Hundreds of issues compete for a player’s attention every day. Each player is forced to fix upon his issue for that day, deal with it on its own terms, and rush on to the next. The nature of emerging issues and the pace at which the game is played converge to yield government decisions and actions.

¹⁰⁰ Allison (1971): p.144

Thus, Allison insists that in order to explain why a particular governmental decision was made, or why one pattern of governmental behavior emerged, it is necessary to identify the games and players and to display the coalitions, bargains, and compromises. The intergovernmental politics approach is derived from this analysis of governmental action as political resultant. A resultant means that what happens is not chosen as a solution to a problem but rather results from compromise, conflict, and confusion of players who have diverse interests and influence.

Simeon in his framework identifies a set of interdependent actors who operate within a certain social and institutional environment with each being considered as a single unit. Simeon prefers to look at factors which shape the tactics available to these actors, including the norms and rules which define some tactics as legitimate and other as illegitimate.

Actors in Simeon's approach do not have fixed unified objectives but rather play a "mixed-motive" game, sharing some goals and diverging on others. Actors have an issue or set of issues on which they must negotiate without any hierarchical control over the others while employing different political resources that they use in deploying certain strategies and tactics. As in Allison's typology, Simeon assumes that issues do not arise alone in the political scene. However, they represent the stakes in the negotiation process. For Simeon because the nature of the issue affects the way the negotiation process will work, it is important to understand whether the issue is new or familiar, or recurrent of an older one, how they are raised and whether the process of bargaining over them entails the possibility of gain, or only a zero-sum outcome. What

is also important for the outcome, is the actors' previous experience, and the stability of their goals and arguments. Simeon also points out that for fruitful negotiations to take place there must be both a common interest and conflicting interests so that it is important to examine the basis and dimensions of conflict and consensus in the system. He also accepts that certain incidents and various background factors with certain social and cultural characteristics may greatly influence the process. Simeon emphasizes that the process is dynamic, and that it will not necessarily produce one specific outcome at the end of the day (e.g. adoption of a certain decision). Instead, the process develops around agreements and disagreements among the actors. According to Simeon, this dynamic process reveals the relationship between the federal and provincial structures in the policy-making process.

Allison's variant was initially developed to deal with the ways in which different players/processes "within" the U.S. federal government approached the events around the Cuban missile crisis, while Simeon's variant addresses federal-provincial dynamics in a Canadian federal system. For some these two variants would seem distant from each other because they refer to different types of federal systems in two different countries, focus on different types of issues and different levels of analysis (Allison's individual players vs. Simeon's units). Still, consolidation of these two variants could prove useful. There are elements within these two variants (as discussed above) that enhance the understanding the of general functioning of intergovernmental politics regardless of differences in specific details.

Contextualizing Federal-Provincial Discussion

According to the approaches discussed above each province within the federal system will be taken to represent a single independent unit so that the actors vary in size which is reflected in their respective economic power. The federal government provides the frame within which the provinces operate, and each province has its own governing institutions. These approaches reflect the fact that federalism is based on the premise that there are no higher or lower arenas of government, only larger or smaller units; also, that good fences make good neighbors, and at the same time, the premise that there must be interaction among the units if the system is to work.¹⁰¹ The objective of process analysis is “to arrive at an assessment of the effectiveness of the different actors as negotiators and the factors influencing such effectiveness.”¹⁰²

In Canada, provinces and federal government have conjoint responsibility for the federation. Canada’s parliamentary system establishes the country as the least decentralized federation resulting from a form of decision-making between distinct governments which have relatively few links with each other except through direct contracts between their political leaders.

At the same time the Canadian federation is more decentralized than, some say, the confederal European Union. The features of this decentralization could be seen in the operation of the Canadian economy in relation to the mobility of people,

¹⁰¹ Elazar (1994): pp.143-144

¹⁰² Schultz (1980): p.4-5

goods, services and capital. It also could be seen in the scope of responsibilities and autonomy exercised by the provinces, e.g. premiers dominate their legislatures which allows them to have an opportunity “to speak for their communities with the confidence and knowledge that they are in control of the public agenda.”¹⁰³ Canadian equalization provides even poor provinces with the opportunity to defend their own interests, operate independently and resist changes that come from central government. Within the federation the provinces require equal treatment yet with the perfect understanding of the fact that each is different and that “policy circumstances are different in different policy fields.”¹⁰⁴

Acrimonious federal-provincial confrontation is one of the most frequently discussed domestic political factors in the Canadian federal state. Federalism is the continuous struggle between conflict and cooperation, a tendency that constantly threatens to weaken the national union. Some students of Canadian federalism suggest looking for the sources of this conflict in the structure of Canadian political economy. Characteristically the Canadian resource-based economy has divided jurisdiction with respect to resources where provinces are the owners of the resources, resulting in economic fragmentation and the over-specialization of some regions in particular sectors.¹⁰⁵ There is also a fierce competition (especially in times of economic difficulties) among federal and provincial governments and resource industries

¹⁰³ Tomblin (2000)

¹⁰⁴ Doern & Phidd (1983): p.64. See Savoie (1992) on Canadian regional policy.

¹⁰⁵ Burgess & Gagnon (1993): p.28

because of the nature of revenue sharing.¹⁰⁶ However, because of the Canadian system of power sharing, as Schultz points out, it becomes essential for policy-makers at one level of government to “influence, bargain with and persuade” those at the other levels.¹⁰⁷ Federal and provincial governments are in a continuous search for compromise in order to overcome inherent problems and conflicts due to this distribution of power. Because decentralization conflicts are channeled “through to cabinets and senior central officials of the governments, with the result that conflicts over policy become expressed as conflicts between governments and institutional status and prestige concerns become merged with more substantive program differences.”¹⁰⁸ This is viewed as an “interstate federalism.” Horizontal relationships between ministers and officials with similar interests will be inhibited by central officials and their goals and values.¹⁰⁹ All in all this fosters an environment in which obtaining a political consensus among territorial players is rather challenging. Thus under normal circumstance, federalism constitutes a balancing act. However, certain vested interests may challenge this *modus operandi* by varying the balance between forces of centralization and decentralization. This threatens unity and allows one order of government to take precedence over the other and potentially “render federalism a fiction.”¹¹⁰

¹⁰⁶ Romanow (1986)

¹⁰⁷ Schultz (1980)

¹⁰⁸ Simeon (1972): p.38

¹⁰⁹ Ibid., p.36

¹¹⁰ Bugess & Gagnon (1993): p.28

It has been suggested elsewhere in the literature on federalism that the decentralization trend in a federal system inevitably raises the political concept of transnational relations. Those who are inspired by these notions hold that we are in the midst of a paradigm shift when nation-states are changing while subnational political activity and regional confederations consisting of provinces and states across national borders are on the rise.¹¹¹

Various critics have argued that new socio-economic realities will eventually reinforce and nurture region-building in North America, just as regionalism and cross-border co-operation is increasing in Europe. Indeed, regionalization, continentalism and even “glocalization”¹¹² are not scholarly inventions but the terminology widely used by politicians and bureaucrats. Using Elzar’s metaphor, regional free-trade areas such as the North American Free Trade Area (NAFTA) or even Free Trade of Americas (FTAA) “are upon us for good in a lasting manner or also for ‘better or for worse’.”¹¹³

However, some students of federalism have a different perspective on this dimension of federal-provincial development. They argue that despite the fearful predictions about continental and regional forces replacing national ones and the inevitable degradation of the moral and political traditions of Canadian federalism, such changes would have to overcome the strong resistance of established interests and stakeholders who benefit from the old system of ideas, processes and institutions.

¹¹¹ Tomblin (2000): pp.152-153

¹¹² Courchene & Telmer (1997)

¹¹³ Elzar (1998): pp.5-6

This resistance is built deeply into Canadian federalism, which is about balancing opposite forces and promoting cultural and economic diversity. The fact that there has never been a regional or national center strong enough to act as an agent of change has added to the challenge of achieving effective regional integration.

Usefulness of the Discussion

The intergovernmental politics framework focuses on what happens between individual actors united within a federal system and how the bargaining game of intergovernmental politics affects the development of the water export issue. Based on this approach, further explanations are developed by analyzing the resources, the constraints, the strategies, and the tactics of individual actors. As Simeon suggests, at the “end” of the process it is important to ask the question, “Who won?”, “Which actors achieved their goals and which failed?” and was the result a creative solution which all participants found mutually satisfactory?

Some observers are quite critical of the intergovernmental forces framework finding it too narrow. For example, Doern and Phidd argue that Allison’s approach requires overly careful digging into the governments as a whole, understanding of inter-organizational conflict, including “to-ing and fro-ing” of personalities. The data required for this type of analysis is too difficult and costly to obtain (in time and resources). They also criticize Allison’s assumption that policy issues arrive on the

policy agenda in a convenient way, “one at a time.”¹¹⁴ Schultz, while acknowledging the fact that intergovernmental negotiation is one of the most popular modes of analysis in Canada, argues that this approach does not provide a good understanding of the entire complexity of the political process that occurs within the federal government system. To overcome these shortcomings, Schultz in particular points to another approach that could be used for the analysis, the bureaucratic politics model. However, in my research I intentionally omit this model because of time and resource constraints, but I keep in mind this omission as one limitation of my study. One of the most valuable comments with regard to the analysis of intergovernmental forces by Schultz is that Simeon’s approach is more concerned with analyzing the intergovernmental system than explaining the outcomes of specific negotiations in that system. Whereas other studies, and my study specifically, are more “interested in the impact of the negotiations on the specific policy or policy area examined than on the outcome *per se*.”¹¹⁵ This is an important point which must be taken into consideration in order to understand the effect of intergovernmental bargaining on the development of the water export issue.

¹¹⁴ Doern & Phidd (1983): p. 157

¹¹⁵ Schultz (1980): pp.178-179

Conclusion

The aim of this chapter was to identify variables that could help to explain the process of issue transformation into a public policy problem. The agenda setting literature was first singled out as the most relevant framework for the study of the particular policy process phenomenon. The stream model elaborated by John Kingdon was then identified as the most comprehensive, well researched, vigorously applied, and broadly utilized approach for examining how issues come to receive serious attention by the public and policy makers. The stream model conceptualizes the policy formation process as consisting of three streams -- policy, problem, and politics -- flowing independently of one another. General research into agenda setting has established the links between focus events, media coverage and growing public attention which create pressure on public officials to respond to a problem by adopting a new public policy. According to the stream model these agenda setting micro factors ultimately may create a “window of opportunity” that pushes public and elite support to new heights making it possible for policy makers to support and adopt a given, politically controversial, policy.

Clearly, the analysis of an issue’s rise within the framework of the stream model, and of the interplay of conventional agenda setting factors, are instrumental for, understanding the process by which an issue come onto the formal agenda. However, the stimulating effect of these micro factors is rarely enough to explain

policy adoption. In particular, these factors are not sufficient for understanding the long-term persistence of the water export issue at a fairly low level on the Canadian political scene in comparison to the overall national agenda. Applying macro explanatory factors to enhance the framework is necessary to develop an adequate explanation of this long-term, low-level persistence and the gradual ascendance of the water export issue to the policy agenda.

For an adequate and more profound explanation of this issue and its gradual reach of the formal agenda at which significant legislative change regarding a part of the issue reaches fruition there is a need for delineating macro explanatory forces that could enhance the framework. For the government to adopt a new public policy there have to be certain stimulating conditions in place that would work simultaneously with the “traditional” agenda setting factors and indicators (Table 2.1). I argue that if this had not been the case, then it is unlikely the issue would have reached the policy agenda. Likewise, if those conditions had been conducive, but the agenda setting factors had been absent, that transformation into policy would also have been unlikely. Together, these specific macro conditions and agenda setting factors, created a favorable environment for the issue’s successful transformation into a public policy. Within this framework the dependent variable is the transformation of the water export issue into a public policy problem, not merely its accession on to the policy agenda. Furthermore, while agenda setting process is accounted for as part of the overall framework, each explanatory macro-level force is discussed and grounded within a specific framework attributed to that particular force.

In this thesis I further argue that, pressure from economic forces, perceived national security concerns, and interactions among different levels of Canadian governments condition the policy innovation process, that is, they profoundly affect the adoption of public policy.

The pressure of economic forces derives fundamentally from the uneven distribution of fresh water resources around the world, the evolution of commercially viable water markets and the tendency toward universal commodification that is affecting almost all aspects of life, including such vital resources as water. Conditions in water markets, I argue, affect and spur the government response toward the water export issue despite the ambiguous indicators of economic feasibility for water export from Canada. This effect has been especially strong due to the rising power of international economic structures and interests.

Forces that create perceived national security concerns are understood within a framework of environmental scarcity and depredations, growing population and the resulting potential for conflicts between independent states over access to and distribution of valuable natural resources. The notion of a perceived security threat over access to Canadian fresh water stocks, I argue, has affected interstate relationships and the relative power of the states involved. This, in turn, has impacted on the dynamics of the issue's journey to agenda status and then to policy formation. In the end, these perceived security threats led the government to adopt precautionary policy that run counter to market signals. However, the policy that was adopted

provides rather weak protection against the rising influence of economic forces within the context of current international and global trade regimes.

The impact of changing relations within different levels of government in Canada is considered in the thesis within a framework based on the constitutional interdependence of the governments, the importance of natural resources endowments and the nature of the Canadian federal system, which is too frequently characterized as a locus of struggle between the forces of centralization and decentralization. I argue that these intergovernmental rivalries have impacted the water export issue, creating conditions where no intergovernmental solution to the rising problem of water export has been achieved as of today, and when things remain in continuous flux. This is largely due to the fact that Canadian intergovernmental relations tend to generate interjudicial disputes and unilateralist sentiments, leading either to an unwillingness to give up particular political positions, economic priorities or political benefits from the export of “their” water resources.

Thus, within this framework I propose to focus on the hypothesis that when micro factors in the agenda setting sphere have put the water export issue on the public policy agenda, it is the complimentary influence of certain macro forces that allow the water export issue to be transformed into a matter for public policy. This is what I will seek to demonstrate. The next challenge is to explore how this framework can be applied in the actual analysis.

Table 2.1 Perspective on agenda setting and influence of macro-level forces

	<i>Agenda-Setting</i>	<i>Economic Forces</i>	<i>Security Forces</i>	<i>Intergov. Forces</i>
<i>General concept</i>	Focus on the initial pre-decision stage in policy formation and development of independent streams: problems, solutions and politics	Impact of the market system on behavior of society	Impact of the power relationship between independent states	Impact of the interaction and conflicts between actors within a unified system
<i>Focus</i>	Increase in attention and activities of policy actors accelerates building public and official interest in a problem	Change in market conditions may put pressure on governments to change policy	Shifts in the relative power of foreign states in the struggle for influence may affect policy formation on domestic level	Change in actors behavior, interaction, goals and interests impacts policy process and the issue at stake
<i>Water exports: organizing Concepts/ Interests</i>	public opinion, media, interest groups, policy entrepreneurs, bureaucracy, legislators	“objective” pressure exemplified by effective demand, technological factors (cost of water), and investors	environmental security, military threat vs. commodification of water, hydronationalism vs. water as a global commons	federal and provincial governments, national unity, resources ownership
<i>Water export issue transformation as a result of government reaction to</i>	confluence of streams of problems, solutions and politics	changes in “objective” pressure and the rise of international and global trading regimes	rising concerns over environmental security and the national integrity of Canadian fresh water	interactions and conflicts between fed.-prov. governments over jurisdiction in water resources, economic benefits, political interests

Chapter 3

Identifying Dynamics of the Water Export Issue

Content of the Perspective

Those who devoted some of their time to understanding the development of the water export issue quite frequently characterized the problem in such terms as: “the issue faded away,” or “the issue has been revived,” or “re-surfaced,” or “re-emerged.”¹¹⁶ Foster and Sewell, in their book “Water: The Emerging Crisis in Canada” looked at the water export issue through the prism of the issue-attention cycle advanced by Anthony Downs in his seminal work “Up and Down with Ecology: the Issue-Attention Cycle” published in 1972.¹¹⁷ Foster and Sewell pointed out that characteristically the issue of water diversion and export has received very varied degrees of attention since the mid-1960s and observed in 1981 that after laying “dormant for almost a decade” until the end of the 1970s “another cycle may now be underway.”¹¹⁸

¹¹⁶ For example, Quinn (1992), Keating (1986), Linton (1993) used this terminology with respect to water export issue.

¹¹⁷ Foster & Sewell (1981)

¹¹⁸ Ibid., p.42

In April 1999 Lydia Miljan conducted a study regarding media attention to the issue of water export and published her findings in the article “Watered Down Debate.”¹¹⁹ On the basis of only 23 media stories in 13 major Canadian dailies and on CBC and CTV News over one year (December 1997 to November 1998), Miljan concluded that the issue of water export was in its infancy in terms of public attention since reports on the issue were so infrequent.

For some this is enough to conclude that the issue of water exports is a blip on the radar screen based on infrequent media reporting in a period of less than a year. For others it is necessary to see more evidence to make any kind of generalizations. However, the contention of this thesis is that Foster and Sewell were indeed correct. The water export issue “re-surfaced” in the 1980s and then after only a short lull, it came back again in the 1990s. Though the word “re-surfaced” is not exactly correct because the issue has never really vanished. Rather at certain times it has kept a low profile, but then came to assume a very high profile in the later 1990s and early 2000. Based on her limited sample, Miljan was perhaps too confident in her ability to suggest that the issue was “in its infancy,” and, therefore implicitly, not worth much concern at that time.

There are two objectives for this Chapter. The first is to support the contention that the water export issue has been a persistent presence on Canada’s systemic agenda, from where it has under certain circumstances periodically reached the formal agenda. The second is to establish the empirical foundations of the broader arguments

¹¹⁹ Miljan (1999)

to be elaborated in subsequent chapters, by showing when the political, the problem and the policy streams have converged to bring water exports onto the formal agenda.

Problem Expansion Forces

As demonstrated in the following sections of the Chapter, between 1960 and 2002, the issue of water export gradually made it onto the parliamentary agenda, after receiving highly variable amount of attention from the news media, the federal and provincial bureaucracy, business, environmental interest groups and the general public.¹²⁰

¹²⁰ To describe the rise of the issue, I employed a variety of research strategies. To measure attention in the Canadian in the mass media, bureaucracy, and parliament, I conducted quantitative analysis of material on the topic using the following resources: the *Periodicals Indexed in the Canadian Index, News Index* (from 1950 until 1980), computerized search of *Canadian Business and Current Affairs* (CBCA)- a database of citations to articles in 7 Canadian newspapers and magazines (from 1982 until 2002); *Canadian News Disc* – a database of the full text of articles, columns, and features from at least 15 sources (from 1994 until 2002); *Virtual News Library*; the files of the *Environment Canada* and the Hansard Index. To understand how the issue has been defined over time, I conducted content analysis of each entry in the Hansard Index and media and other relevant governmental and interest group reports. Finally, I interviewed a number of government officials and representatives of interest groups, researchers and professional community representatives.

Media

In figure 3.1 the life course of the issue is depicted within the news media (as exemplified by a content analysis of the *Canadian Periodical and New Indexes*, and a computerized search of different databases).

Figure 3.1 Attention to the water export issue by the media

At least 1179 articles and programs dealing with water exports appeared in major Canadian newspapers, magazines, and radio and TV news shows from the beginning of the 1960s until November 2002. During the 1960s and the 1970s media coverage of the issue had rather a low profile with the highest number of articles in the

leading national newspapers being 29 in 1967 and 12 articles in 1977. However, this changed in the mid 1980s, when the media began to devote sustained attention to water exports. Within that context, we can observe a number of significant peaks during the next two decades. The first occurred in 1988 with 129 articles, radio and TV programs devoted to the issue. Then, in 1999 and 2001 there were two surges of coverage with 252 and 232 articles, TV and radio programs respectively. Thereafter the number of accounts fell, although not quite to the low levels of the 1960s and the 1970s.

Attention Within the Government

Figure 3.2 records the attention paid to the issue within the bureaucracy. The study treats Environment Canada and its branches (e.g. Inland Water Directorate and/or Social Impact Division) as the leading department but also considers its interactions with the Departments of Foreign Affairs and Transportation. Attention to the water export issue is demonstrated by the number of reports, documents, and correspondences between departments and branches generated, as well as by the number of research studies undertaken.

Prime Ministerial and Cabinet-agenda-setting attention is presented as “specific” actions (indicated by a solid line in Figure 3.2), and deals with Cabinet

Memoranda (MC) and legislative preparation e.g. work on policy statements, regulations, coordination of interdepartmental task forces, and ministerial meetings.

Figure 3.2 Executive attention to the water export issue

As indicated in Figure 3.2, the issue never disappeared entirely from the government's radar over forty years, though the period was marked by a number of major peaks. The first occurred between 1966 and 1967 with 47 filed cases in total, and then subsequent surges appeared in 1973, 1985 and 1988 ranging from 13 to 31

filed cases. After this there was a significant increase in attention between 1992 and 1998 with 53 and 46 filed cases respectively. Specific actions toward the issue starting from the end of the 1970s became more consistent. The amount of MC's increased from 1 MC in 1966 to 7 during the period between 1983 and 1999.

Parliament

Figure 3.3 illustrates the course of the water export issue in the Canadian Parliament from the first mention of the issue in 1960, through 2002.

Figure 3.3 Parliamentary attention to the water export issue

The punctuated line shows the number of times the topic of water export was mentioned in Parliament in speeches or in legislative drafts. During the 1960s the highest attention to the issue was in 1964-1965 (in total 10 mentions), in 1966 (17 mentions) and in 1969-1970 (in total 14 mentions). During the 1970s the issue had been moderately discussed on the Parliamentary agenda with most attention being paid in 1970 (7 mentions) and 1974 (8 mentions). During the 1980s there were at least two significant peaks of attention in 1985-1986 (in total 15 mentions) and in 1988 (25 mentions). The 1990s and beyond were marked by a number of major peaks: 1991-1992 (24 and 37 mentions), 1999 (34 mentions) and 2001 (27 mentions). Parliamentary bills that address the water export issue (shown as a solid line) started to appear during the second half of the 1980s. The number of the bills proposed increased from 3 in 1986 and 1988 to 8 between 1990 and 2001.

The Throne Speech

One indication of an issue's acceptance on the formal agenda is its appearance in the Throne Speech, which occurs whenever a new session of Parliament is deemed to begin by the Prime Minister. It is to be noted that during the highest peaks of parliamentary interest in water exports, as indicated above, the issue was never mentioned in the Speech. It was never mentioned when the Throne Speech was exclusively used to indicate which bills would be brought before Parliament in the coming session. Nor was it mentioned during the last two decades when Throne

Speeches became increasingly thematic in nature, outlining the government's values and ideas at quite a broad level while "indicating where it wants to take the country."¹²¹ Though water resources *in general* were once mentioned as part of such a thematic presentations on January 29, 2001, during the opening of the 37th Parliament's Session. This Speech noted that Canada, as a steward of the largest supply of fresh water in the world, has to protect this resource and that this is a shared task of governments and businesses. Specifically, it was acknowledged that the Government of Canada has to protect the safety of the supply of this vital resource on reserves and federal lands.

The omission of water exports from the Throne Speech did not go unnoticed within Parliament by certain Members of Parliament (MPs) who expressed concerns about this official silence during periods when Parliament was showing great interest in the issue. The failure of the government to mention the issue in the Throne Speech is significant in part because it indicates their inability to find a way to resolve the controversy surrounding the issue at the time as will be shown in the following chapters. The omission of the water export was noted during:

- The 3d session of the 26th Parliament, 1965 and the 1st session of the 27th Parliament, on the 18th of January 1966 and the 8th of May 1967 respectively. The criticism was for making no reference to a national water resources policy or a water export strategy in the Speech, despite the existence of pressing engineering proposals such as NAWAPA, to export large

¹²¹ Doern & Rosenblatt (2001)

quantities of water and a general shortage of, and thirst for, fresh water in the U.S.

- The 1st session of the 35th Parliament, on January 17th, 1994. The criticism was for not mentioning water exports and free trade as these are “the first and foremost priority of the 21st century.”¹²²
- The 1st Session of the 37th Parliament, on January 29th, 2001 when the government was criticized for not prohibiting water exports with direct reference to the recently established trade agreements, including NAFTA and WTO.¹²³

Periods of Interest

Figures 3.1-3.3 show a summary of media, executive and parliamentary attention paid to the water export issue, and -- a recurring characteristic of the agenda-setting process -- attention lurches. Typically, during the 1960s and the 1970s, after an initial period of increased parliamentary attention, media and official attention begins to rise. Thus the activity of federal agencies appears to be mainly triggered by rising legislative attention, while media attention mainly seems to follow on from increase legislative and executive attention (Table 3.1.a):

Table 3.1.a Agenda peaks by source (1960-1980)

Parliament	1964-65	1966		1969-70		1973		
Executive		1966			1970		1974	
Media			1967					1977

¹²² Hansard (1994, January 17; 19-20)

¹²³ Hansard (2001, January 31; February 1 & 9)

However, the pattern of attention changes, as sequences become more blurred. Starting from the mid -1980s, all three sources- media, parliament and government- pay almost simultaneous attention to the issue, one virtually feeding from another as can be seen from the almost simultaneous peaks of attention (“pinnacles of attention”) on all three agendas (Table 3.1.b):

Table 3.1.b Agenda peaks by source (1980-2002)

Parliament	1985-86	1988	1991-92	1999	2001
Executive	1985	1988	1992	1998	
Media	1985	1988	1991-92	1999	2001

As government officials have become active in dealing with this issue over the years, media coverage has been affected both by the problem itself and by the reports of government activities to solve the problem. At the same time, media attention has led to increased parliamentary and government activities and this again has led to greater media (and public) attention. The self-reinforcing aspects of agenda setting and public policy thus become more evident during this period.

The cumulative pattern of all three agendas shows the appearance of “pinnacles of attention” in 1967, 1988, 1992, and 1998-1999. From an agenda approach the “pinnacles of attention” symbolize the *highest*, most intense attention to water exports in Canada as a function of: regularity of reference in Parliament; numbers of government documents, correspondence, memoranda and meetings; and frequency of press coverage of the issue. However, it is necessary to acknowledge the

importance of the general context within which these peaks occurred on all three agendas. This is because certain crucial events in the policy pre-decision process have a tendency to occur just prior to, or just after, the highest peaks of attention (Table 3.2).

Table 3.2 Federal government major water export initiatives (1960-2002)

Date	Initiative	Outcome
2002	Prohibition of the bulk water removal out of the Canadian portion of boundary basins between Canada and the United States	Amendments to the International Boundary Waters Treaty Act (IBWTA)
1999	Strategies to deal with bulk water exports	A comprehensive National Accord
1994	Free Trade	NAFTA is signed and enacted
1993	NAFTA creates no rights to the natural water resources of any party of the agreement	Joint statement by the Governments of Canada, Mexico and the United States
1991	Review process to update and improve some of the provisions of Bill C-156	Interdepartmental Committee on Water
1989	Free trade	The Canada-United States Free Trade Agreement Implementation Act is in effect
1988	Enhanced federal water export legislation	Bill C-156
1987	Approval of the inclusion of a statement on water export	Federal Water Policy
1985	Water exports is a part of the Inquiry	Currents of Change: Final Report Inquiry on Federal Water Policy
1977-1978	Inclusion and then omission of the water export issue	Vital Resource Federal Policy Statement on Inland waters, 1978
1966	Memorandum to Cabinet	International Conference Water for Peace, 1967

It could be argued that the off-peak events outlined in Table 3.2 ultimately pushed the water export issue onto the agenda. This is despite the fact that, for example, the number of documents produced during these off-peak events is less overall than during the pinnacles. Thus the contention of this thesis is that the consideration of general periods of interest will help to lay a foundation for the presentation of a broader argument in a more effective manner than just concentrating on the particular “pinnacles of attention.” Furthermore, the focus on macro forces elaborated in this thesis will show that the “interstices” between pinnacles are often just as important for understanding the developing water export issue as the pinnacles themselves. Thus, taking this logic into consideration, five rough periods of interest emerge (Table 3.3):

Table 3.3 “Periods of interest”

Periods of interest		Significance of the period
V	1998-2002	Escalation of political events that produce governmental legislative change regarding a part of the issue
IV	1991-1994	The water export issue becomes a subset of a larger governmental policy – free trade
III	1983-1988	Governmental endorsement of water exports and rise of free trade
II	1973-1977	Lack of “feasible” solutions to the problem
I	1965-1967	Rise and acknowledgement of the water export problem

Although these five periods will serve as an important anchor for the subsequent contextual analysis of the agenda-setting process and of the transformation

of water export into a public policy problem, at times the analysis will require a momentary break from the chronological presentation in order to address particular issues.

In the following sections of this chapter the discussion will focus on other elements of the self-reinforcing agenda-setting process: interest groups (business and public) and public opinion.

Interest Groups

The “periods of interest” and “pinnacles of attention” in part were clearly a reflection of pressures created by interest groups that lobbied government and the media to shape the public opinion environment. Two types of interest groups were especially important for the water export issue, namely business interests and public interest groups. In general, the role of these groups in the agenda-setting process focuses on the promotion of new agenda items and the advocacy of particular proposals by means of persistent “messaging.” In many cases such groups are involved in negative blocking, seeking to preserve status quo prerogatives and benefits. In this process they generally mobilize support, write letters, organize campaigns, or stimulate allies to do the same, in order to get government officials to pay attention to their chosen issue. The following section lists the main groups that are known to have organized around the water export issue.

Business Interests

As has been widely noted, Canadian natural endowments in fresh water have a certain quality in that too many rivers appear to flow the “wrong” way to the Arctic Ocean, away from the millions of people living in warm but dry regions such as the Canadian Prairies, the U.S. southwest or Mexico who need more water. While Canada does not have current plans to launch significant water export schemes, the Government is being periodically approached with increasing frequency to clarify its policy on water exports, or even to approve water export licenses or large water diversion schemes. The types and magnitude of these proposals has varied over time starting with a number of megaschemes in the 1960s, followed by numerous small-scale business propositions in the 1980s and the 1990s. More specifically, the large-scale diversion proposals cluster around the 1965-1967 period of interest, while the small-scale water exports proposals cluster around the 1983-1988, 1991-1994 and the 1998 periods.

While none of these export proposals have yet been realized, their mere existence has triggered controversy and political debates that have revealed just how sensitive Canadians are about the country’s water resources, which have apparently become a dimension of their national identity. Water export proposals, both megaschemes and small scale, easily become the subject of media headlines, which in

turn become a part of the agenda setting process.¹²⁴ The publicity that these would-be schemes have received has been a catalyst for the government to address the seriousness of the water export issue.

This study has identified nine large-scale water export proposals from Canada to the United States,¹²⁵ as shown below (Table: 3.4)

Table 3.4 Large-scale water export proposals (1959 - 1969)

PROPOSAL (AUTHOR AND APPROXIMATE DATE)	YEAR PROPOSED	WATER SOURCE	WATER DESTINATION	ANNUAL DIVERSION (KM ³)	ESTIMATED COST IN BILLIONS OF \$
Grand Canal Plan (Kierans) Canada	1959 & 1984	James Bay dyked, rivers "recycled" southward	Great Lakes region of both countries; possible further transfer southward	347	100
Great Lakes-Pacific Waterways Plan (Decker)	1963	Skeena, Nechako, Fraser of B.C., Peace, Athabaska, Saskatchewan of Prairies prov.	Great Plains and Great Lakes Region of United States	142	Not Available
North America Water & Power Alliance (NAWAPA) (Parsons), U.S.	1964	Primarily the Pacific and Arctic drainage of Alaska, Yukon and B.C.; also tributaries of James Bay	United States (Western States, Texas, Lake States), Canada Northwest Mexico	310	80-100

¹²⁴ There are problems with pinpointing the exact number of all water export proposals since it fluctuates depending on the sources. Only the number of large-scale proposals is known with some confidence having been identified by Quinn (1973) in a 1960s studies of past proposals for interregional and international water diversion. Meanwhile the list of small-scale water export proposals is far less reliable. For example, Holm & Linton (1993) note that in the late 1980s more than 30 companies applied for licenses to export water from British Columbia alone.

¹²⁵ Quinn (1973); Currents of Change (1985)

Magnum Plan (Magnusson), Canada	1965	Peace, Athabaska & N. Saskatchewan in Alberta	United States, via Souris River in North Dakota	31 at border	Not Available
Kuiper Plan (Kuiper), Canada	1966-1967	Peace, Athabaska & N. Saskatchewan in Alberta, Nelson and Churchill in Manitoba	U.S. (all Western States), Canada	185	50
Central North American Water Project or CeNAWP (Tinney), Canada	1967	Mackenzie, Peace, Athabaska, N. Saskatchewan, Nelson and Churchill	U.S. (Great Lakes States, Western States), Canada, Mexico	185	30-50
Western States Water Augmentation Concept (Smith)	1968	Primarily Liard & Mackenzie drainages	Western States	49 at border	90
NAWAPA-MUCHEC or Mexican-United States Hydro-Electric Commission (Parsons), U.S.	1968	NAWAPA sources+ lower Mississippi and Sierra Madre Oriental Rivers of S. Mexico	Virtually all occupied North America	195+159 NAWAPA + MUCHEC	Not Available
North American Waters, A Master Plan or NAWAMP (Tweed)	1968	Yukon and Mackenzie Rivers, drainage to Hudson Bay	Prairies, Great Lakes and all of United States	1850	Not Available

In addition, according to the available data, 30 companies applied and received licenses in Canada, the majority of them from British Columbia. Some companies applied a few times for licenses to export water on a smaller scale from different water sources and the names of these companies could be listed during different years. The

year next to the company's name constitutes the approximate date of its applications for the water export licenses (Table 3.5).¹²⁶

Table 3.5 Small-scale water export proposals (1980 - 2002)

COMPANY'S NAME	YEAR PROPOSED	SOURCE OF WATER	MARKET	AMOUNT OF WATER
Bourassa Falls Water supply Ltd, B.C	1972; 1985; 1990	Racine Creek Homfray Creek and Homfray Channel	United States or Mexico	200 AF/ year 200 AF/ year
Hong Kong Department of Aquatic Affairs	1977	Canadian rivers on the West Coast	Not Available	Not Available
Exxon Corporation	1982- 1983	St. Lawrence by tanker	Aruba	capacity for 20,000-30,000 cu.
B.C. Ltd. , B.C.	1983; 1989	Unnamed Creek, Dean Channel Humback Creek , S. Bentinck Arm, Cascade Inlet	Not Available	200 AF/ year
Central Coast Power Corp, B.C.	1983; 1989	Link Lake	Not Available	24, 500 AF/ year & 200/ AF year
Coast Mountain Aqua Source Ltd. (Aquasource) B.C.	1983 1990; 1996	Stream draining Freil Lake, B.C.	Southern California or Mexico	1,125 AF/ year 13,547 and 1,517 AF/ year
Canwatex Inc.	1984-1985	Sept-Iles, Quebec	United Arab Emirates	4,000 m3/day
WCW Western Canada Water Enterprises Inc. B.C.	1985; 1990	B.C	United Arab Emirates and to Mexico	Not Available
Pacific Rim Water Resources Ltd, B.C.	1985-1987	Woran Creek	Not Available	266 AF /year
Ministry of Crown Lands, B.C	1985; 1990	Link Lake	Not Available	20,00 - 22,635.3 AF/ year 57, 364.7 AF/ year
Snowcap Water Ltd., B.C.	1985; 1990	Tzela Creek and Toba Inlet Unnamed Creek and Bute Inlet	Not Available	200 AF /year 200 AF/ year
Bourck International Ventures, B.C.	1989	Unnamed Creek and Bute Inlet	Not Available	200 AF/ year
Kermode -H2O, B.C.	1989	Whalen Lake	Not Available	5,840 AF/ year
Dubois, Robert R.	1990	Alpine Creek, and Racine Creek	Not Available	200 AF/ year 200 AF/year

¹²⁶ Keating (1986); LeMarquand (1983; 1984); *Maclean's* (1985, June 17; 1999, May 17); *Globe & Mail* (1985, June 4 & July 8); *Ottawa Citizen* (1985, May 29).

Glacier Waterfalls Export Ltd, B.C.	1990	Alpine Creek Racine Creek and Unnamed Creek	Not Available	30,000 AF/year 200 AF / year
26 Investments Ltd, B.C.	1990	Unnamed Creek and Knight Inlet	Not Available	200 AF /year
Great Pacific Water C., B.C.	1990	Link lake	Not Available	200 AF/year
No-Cents Holding Ltd., B.C.	1990	Unnamed Creek and Bentinck Arm,	Not Available	736 AF/ year
Warner Pacific Dev. Ltd, B.C.	1990	Woran Creek	Not Available	266 AF/ year
Sunshine Village Corporation, Alberta	1996	Rock Isle Lake and ground water within Kootney National Park, Alberta (at the border of British Columbia and Alberta) by pipeline	Not Available	Not Available
Les Enyedy Oilfield Services , Alberta	1996	City of Dawson Creek at Dawson Creek by tankers	Not Available	Not Available
Scott's Water Service from Pouce Coupe, B.C.	1996	City of Dawson Creek at Dawson Creek by tanker	Not Available	Not Available
Westcreek Springs from Cres Langley, B.C.	1996	Ground water near Langley by tanker	Not Available	54,750,000 gallon/day
Sunshine Village Corporation, Alberta	1996	BC/Alberta border within Kootenay National Park, Rock Isle Lake/Ground water, by pipeline	Not Available	Not Available
Les Enyedy Oilfield Services, Alberta	1996	City of Dawson Creek, by tanker	Not Available	Not Available
Clearly Canadian Beverage Corporation, B.C.	1996	Ground water near Vernon, by tanker	Not Available	Not Available
Maple Leaf Springs Water Corporation, B.C.	1996	Freil lake, Hotham Sound, marine transport	Not Available	Not Available
Nova Group, Ontario	1998	Lake Superior by tankers	Unspecified Asian markets	Stream draining Freil Lake, B.C.
McCurdy Group of Companies, Newfoundland	1998	Gisborne Lake bottled and by tanker	Middle East	500,000 cubic meters /week
Frontier Center Public Policy, Manitoba (general proposal)	2001	The Nelson River at Hudson Bay by pipeline	Not Available	7 trillion litres /year

Public Interests

Public interest group formation around the water export issue dates back to the beginning of the 1980s. The most intense periods of such group activities fall within the following periods of interest: 1983-1988; 1991-1994; 1998-2001.

Many of these groups feel that Canada's sovereignty and environment are threatened by potential water exports under free trade rules. Most environmental groups strongly support more protective water resource legislation, as many feel that government should play a more decisive leadership role in water management. Specifically there were at least three prominent interest groups that had a profound effect on getting water exports on to the public policy agenda.

The Rawson Academy of Aquatic Science, an independent national, non-profit association began its activities in 1978. In 1979, it was officially chartered, and named after Donald S. Rawson, an internationally recognized Canadian scholar and a pioneer in aquatic science. The primary objective of this organization was the study of all economic or legal matters related to water resource management in Canada. Professional staff and fellows of the Academy (scientists and resource professionals) conducted work related to water policy, education and information. The Academy published a newsletter and activities, organized a 3-year study on Great Lakes freshwater resources relevant to Canada-United States negotiations, held a National Symposium on "Canada Waters: State of the Resources," presented briefs to the MacDonald Commission on the Economic Union and Development Prospects for

Canada, and to the Pearse Inquiry on Federal Water Policy. The Academy took a strong positions on government policy issues, especially in its critique of the federal government during the free trade negotiations with the United States and the water export possibilities that fall under this agreement. The Rawson Academy ceased operations at the end of 1994 having been unable to sustain the funding needed to support its activities.¹²⁷

The most prolific opponent of water exports in the 1980s was Wendy Holm, a Vancouver-based resource economist, policy analyst and journalist. Holm was Executive Director of the B.C. “Small” Small Business Group, Chair of B.C. “Small” Small Business Foundation and a founding member of WaterWatch Canada. The “Small” Small Business Group was a union of small business operators that overtime became concerned about the water export issue advocating federal regulation of water trade in order to ensure that Canadian resources would be managed and developed in the interest of Canadians. Although because of funding problems the “Small” Small Business Group has been less visible since the early 1990s, Wendy Holm continues to write and speak extensively on the policy implications of water’s inclusion in the trade agreements on behalf of Canada’s farmers.¹²⁸

Since the mid 1990s the leading opponent of water exports has been the Council of Canadians which was established in 1985 in order to build opposition to free trade (FTA / NAFTA and WTO). It is the largest citizens’ watchdog organization

¹²⁷ Mitchell & de Loe (1997)

¹²⁸ See Farmers’ Resolution to Exempt Water from NAFTA: www.farmertofarmer.ca

with a membership of over 100,000 individuals and 70 local chapters, the activist bodies of the Council of Canadians, which stretch across the country (Yukon, British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, prince Edward Island). The Council runs national campaigns, petitions, organizes demonstrations, hosts public events, lobbies Members of Parliament, facilitates discussion groups, works with local coalitions, writes letters to editors and commissions research. The Council does not receive money from government, corporations, or any political party. Almost all the funds come from individual citizens through monthly donations. The Council is led by Maude Barlow – who is chairperson and the co-author of “Blue Gold: The Battle Against Corporate Theft of the World’s Water” and the author of many articles on the subject. The Council believes that water is a public trust that belongs to everyone and no one should have the right to appropriate it or, to profit from it, at someone’s else expense. In early 1999, the Council launched its campaign to ban the bulk export of Canadian water and to head off what it saw as the gradual commodification and privatization of this priceless, public resources.

In Canada special mention must also be made of the activities of its aboriginal people who seek to control all types of development, including water exports, within their territories and reserves. Aboriginal opposition to water exports also dates back only to the 1980s. Even though some aboriginal communities are always interested in developing an economic base for their people, they also recognize that any debate about water export must, in the view of the First nations people, address the issue of

the settlement of Aboriginal Land Claims and of native concerns in respect of the environment.

General Public

John Kingdon pointed out that people in and around the government sense a national mood and that the changes in mood or climate have important impacts on policy agendas and policy outcomes.¹²⁹ It has to be noted though that national mood could be comprised of various sources (e.g. public interest groups, state legislature, professional associations). Certainly public opinion polls are one of the indicators of a national mood in a pluralistic society and, as some argue, play an important role in influencing policymakers.¹³⁰

In terms of the general Canadian public's attitude toward water exports, this has seemed to be a "valence issue" which from the beginning has "elicited a single, strong, fairly uniform emotional response and does not have an adversarial quality."¹³¹ As some have pointed out, reaction to diversion proposals and generally toward water export "has been swift and with exceptions, negative."¹³² In 1967, General A.G.L. MacNaughton, a former Canadian co-chairman of the International Joint Commission,

¹²⁹ Kingdon (1984): p.153

¹³⁰ Baumgartner & Jones (1993)

¹³¹ Nelson (1984): p.27

¹³² Quinn (1973): p.60

appeared to capture the essence of these feeling when he referred to water exports as “a monstrous concept – a diabolical thesis.”¹³³

As the following accounts show, the majority of public opinion polls cluster around the following periods of interest: 1984 and 1988; 1998, right at the time of important governmental policy decisions and solutions, as will be shown in the next chapters.

In 1984 the first public hearings were conducted as part of the Inquiry on Federal Water Policy. A total of 64 public hearings across Canada addressed the issue of water export. The participants in the debate, especially from those jurisdictions where water export schemes have been focused (e.g. Ontario, the northern and western jurisdictions of Alberta, and British Columbia) were overwhelmingly negative about the issue. Only six of the hearings resulted in approval of water export as an opportunity to be exploited, while the majority rejected consideration of export “out of hand” or added restrictive conditions to make water export approval unlikely for at least many years. Some participants suggested amending federal policy and legislation to protect Canadian rights.¹³⁴

In 1988 a Gallup poll found that at least 69 percent of Canadians opposed inclusion of water in a free trade deal.¹³⁵ On May 5, 1998 the *Toronto Star*, after publishing three stories on the Nova Groups proposal to extract water from Lake Superior, conducted a phone-in “Question of the Day” survey that focused on the

¹³³ Foster & Sewell (1981): p.34; Keating (1986)

¹³⁴ Quinn (1985): pp.5-6

¹³⁵ *Globe & Mail* (1988, July 21); *Toronto Star* (1988, July 21)

water exports . Readers were asked to answer the question: “Should Canadian water be sold to other countries?” Of the 935 calls, 95 percent said “No.”¹³⁶

In summer 1998 DFAIT and Environment Canada sponsored a one-day public policy symposium in Toronto on the export of fresh water. This symposium brought together small groups of experts from varied backgrounds to provide advice to the federal government on water management and policy. During this event, the main emphasis was on the fact that Canadians do not consider fresh water in the same way as they do other resources, instead they tried to define it as a “national heritage.”

In 1998 Environics Research Group conducted a series of national focus groups in Toronto, Montreal, St. Johns and Calgary regarding attitudes towards the export of Canada’s fresh water.¹³⁷ The survey had a few objectives, among them understanding the attitude of Canadians toward the idea of exporting fresh water and finding out what people think about exporting water to the U.S. and other countries as part of the free trade agreements. In all cases, participants strongly objected to any obligation to export water on the basis of the free trade agreements.

¹³⁶ Miljan (1999)

¹³⁷ Environics (1998)

Conclusion

This chapter provided empirical support for the argument that the water export issue has been a persistent presence on Canada's systemic agenda from where it has periodically reached the formal agenda. The overall findings presented in this chapter show that, taking account of periodic shifts in attention, there has been a general interest in the water export issue among the three agenda-setting bodies (as depicted in Figures 3.1-3.3). Within the period from 1960 through 2002, the salience of the issue of water export rose and fell on the agenda of Parliament, and the same is true for media and government agendas. The importance of the water export issue is also exemplified in the special concerns of interests groups, and public opinion.

The chapter also established the five key "periods of interest" which will anchor, in various ways, the overall analysis of the agenda setting process and the forces underpinning it, in each of the remaining chapters. Thus the next chapters will present a contextual analysis of the water export issue and its transformation into a public policy problem.

Chapter 4

Setting the Agenda for the Water Export Issue

Content of the Perspective

The previous chapter showed the growing attention to the water export issue by different segments of Canadian society – media, parliament, government and the public as a whole. This Chapter addresses the legitimization of the water export issue and the creation of opportunity for government action. Kingdon's agenda setting model is applied to explore how the problem of water export came to be recognized, how political tensions developed around the issue, and how policy solutions and alternatives to the problem were offered. It offers answers to two questions: What factors were important in putting the issue onto the agenda? And how did the political environment influence the timing of its appearance on the agenda?

The historical examination of the water export agenda setting process begins with the conditions that led to its initial emergence on the agenda in the 1960s. However, although water export reached the formal agenda after a lengthy period of being denied serious consideration, its ascension to agenda status merely tells us that there might exist a "policy window," an opportunity for action, but it does not disclose

how that issue is likely to be handled. The government adopted a policy solution consistent with assumptions prevalent at the time and acceptable among elected decision makers. However, the solution was contrary to the expectations of those who demanded a complete water export ban in Canada.

The Rise of the Issue

The “Flurry” of Megaschemes: “Period of Interest “ I

Why did water export come to occupy the attention of the Canadian public and how did concerns arise among governmental officials? According to the stream model the answer lies both in the means by which those officials learned about certain conditions and in the ways in which these conditions became defined as problems.¹³⁸

The Means of Emerging Conditions

As to means, the initial appearance of water export on the Canadian agenda can be attributed to a strong private sector lobby composed of engineers and planners who advocated the advantages and possibilities of a diversion of Canadian rivers southward to the United States, starting back in the 1950s.¹³⁹ These proposals followed in the wake of a severe drought that had seriously affected the U.S. Southwest and mid-continent before spreading to the northeastern parts of the country in the 1950s

¹³⁸ Kingdon (1984): p.206

¹³⁹ Holm (1988)

and the mid-1960s.¹⁴⁰ At that time, conflicts in the Southwestern U.S. over the low flows of the Colorado River had led to speculation about more distant sources of available water. At the same time, drought conditions and low water levels on the other side of the country were creating problems for navigation and hydropower interests on the Great Lakes and for municipal water systems along the Eastern seaboard. It was a period when New York forbade restaurants to serve water unless requested by patrons, swimming pools and fountains were shut, car washing and lawn watering were banned and air conditioning was limited.¹⁴¹ The priority was to solve rising water shortages and to coordinate the “action of governments nationally and internationally for the purpose of conveying millions of acre-feet of water over distances of thousands of miles and pumping lifts of hundreds of feet for costs which climbed into billions of dollars.”¹⁴²

One of the first and better known of these proposals, the Grand Canal plan, came from Canadian engineer, Thomas Kierans. Kierans’s plan was conceived before the apparent water shortages and some of the ideas for the project were derived from his fascination with a water diversion scheme undertaken by the Netherlands in 1932 and with China’s Grand Canal, built about 2,500 years ago.¹⁴³ His continental project was to divert the “surplus” water from rivers that flow into James Bay, to the Great

¹⁴⁰ Riebsame et al (1991); Rosenberg (1978)

¹⁴¹ Keating (1986): p. 154

¹⁴² Quinn (1970): p.58

¹⁴³ The Netherlands in 1932 constructed a 32-kilometre-long dyke and closed off much of what had been the Zuider Zee, an arm of the ocean, and turned it into a freshwater lake called IJsselmeer. See Keating (1986): pp. 157-158

Lakes which would bring water to about 100 million people in Canada, U.S. and Mexico. The estimated cost was about \$100 billion, with half needed to get the water to the Great Lakes, and the other half to move the water south and west.

After its initial public submission in 1959, Kierans' Grand Canal scheme was formally rejected by the Canadian government in 1960, and again in 1965. The continental scheme was not attractive for Canadians at the time. However, the project was a mirror image of another diversion scheme, the North American Water and Power Alliance (NAWAPA), "the biggest public works program in history!"¹⁴⁴

The NAWAPA project was first outlined in 1963, after the United States Supreme Court imposed restrictions on Californian's use of the Colorado River earlier in that same year. A proposal was actually submitted in spring 1964 by the engineer Ralph Parsons owner of the multi-national corporation with headquarters in Los Angeles. Conceived on a very large scale, the project was touted as "a panacea for the continent's water problems."¹⁴⁵ The NAWAPA's main idea was the diversion of water from rivers in Alaska, the Yukon and British Columbia to serve the needs of the western and southwestern parts of the United States, Mexico, the Prairie provinces of Canada and the American Midwest. The water transfer proposed was massive in every respect and far greater than that proposed in the Grand Canal scheme. It would require the construction of 240 reservoirs, 112 irrigation systems and 17 navigation channels. Half a dozen dams about of 1500 feet in height, with the biggest rising more than 1700

¹⁴⁴ Bocking (1972): p.71

¹⁴⁵ Quinn (1968): p.119

feet, twice the height of any existing dam in the world.¹⁴⁶ Proponents of the scheme suggested that at least 33 of the states in the United States would gain benefits from the project, as would seven provinces and territories in Canada and eight northern states in Mexico.¹⁴⁷

NAWAPA attracted the interest of the United States government which organized a special sub-committee on western water development of the Senate Committee on Public Works. In turn, the sub-committee issued a report that advocated a thorough study of the plan and its chairman, Senator Frank Moss, asked in a written form, that the United States government invite Canada to join it in submitting the matter to the International Joint Commission (IJC).¹⁴⁸ The Mexican government more than enthusiastically greeted the scheme proposing in its turn to complement NAWAPA with a redistribution system of its own northward along the eastern coastal region. In exchange for NAWAPA water received in the dry Mexican northwest, Mexican planners would shift up to 37 billion cubic meters (30 million acre-feet) from their eastern coastal system across the Rio Grande into Texas.¹⁴⁹

¹⁴⁶ Bocking (1972): p.71

¹⁴⁷ Foster & Sewell (1981): p.31

¹⁴⁸ The International Joint Commission (IJC) is a binational organization established by the Boundary Waters Treaty of 1909. The Commission consists of three members appointed by the President of the United States and three appointed by the Governor-in-Council in Canada. Headquarter offices in Ottawa and Washington each have a small group of advisers and other staff to assist the Commission in fulfilling its treaty responsibilities to help prevent and resolve disputes, primarily those concerning water quantity and water quality along the boundary between Canada and the United States.

¹⁴⁹ Quinn (1968): p.20

The special significance of the Grand Canal and NAWAPA projects is that they were and still are examples of the most ambitious schemes for the reallocation of water resources and application of the modern philosophy that advocates the development and management of the water resources of North America on a “continental scale.” They both would utilize James Bay watershed runoff on the premise that there was plenty of unused water which could be better used if moved where people are. Because NAWAPA would add more than 40 million acre feet of water to the Great Lakes, it would appear to compete with the Kierans Plan.¹⁵⁰ However, the proponents of these plans presented them not as fixed plans but as ideas that required further study.¹⁵¹

Thus, the Grand Canal and NAWAPA diversion proposals “inevitably struck a responsive chord in water resource planners, dam building engineers, many politicians, and a wide assortment of dreamers. In considerable numbers they leaped to their drawing boards and before long a torrent of plans were published.”¹⁵² The interests behind those proposals were quite strong given the rapidly expanding population, agricultural and industrial base of the American southwest and, of course, droughts. However, the reaction of the Canadian government was cautious toward emerging private market interests.

There were many reasons for their reaction. As some suggest, most large-scale diversion schemes were technically feasible but clearly not economically viable.

¹⁵⁰ Bourne (1965): p.160

¹⁵¹ Moss (1967)

¹⁵² Bocking (1972): p. 73. See also Chapter 3, Table 3.4

Others believe that most schemes were simply hypothetical discussions of alternate engineering means of transporting water without linkage to a specific water-short regions or users.¹⁵³ Perhaps another explanation for the Canadian hesitation to yield to the new resource trade possibilities is that it was necessary to see how large a supply of water Canada actually had before it started to think about plunging into diversion schemes. In addition, the Canadian government did not want to deal with private interests only. It had been anxiously and fearfully anticipating “official talks” with the government of the United States.

As a result of intense media coverage, these events drew public attention in Canada. National media attention soon followed the perceived threat of Canada losing ownership over its water resources and generated headlines such as:¹⁵⁴

World's biggest pipedream and the Senator who's selling it to Canada;
Suddenly water becomes Canada's ace-in-the hole;
America thirsts for Canadian water;
U.S. again eyeing our water...

Problematizing Conditions

According to stream theory, these conditions came to be defined as a policy problem because water export proposals ran counter to Canadian national values that put water into a category of a special resource different from any other. Secondly, the

¹⁵³ Scott et al (1986)

¹⁵⁴ *Maclean's* (1964, July 25); *Financial Post* (1965, April 24), (1969, March 8); *Western Business* (1966, November)

conditions led to the recognition of different categories of problems that could be a result of water export. Specifically the parliament identified conditions as problematic because:

- Growing U.S. industries in the south may trigger annexation of Canadian water.
- It was important first to assess Canadian water needs before initiating any feasibility study for exporting water. In other words, it was important to protect the present and future water requirements of the Canadian people before selling water.
- Furthermore, it was acknowledged that Canadian water is not a continental resource but is solely and exclusively within the boundaries of Canada and is Canadian-owned.
- Water is not only a resource or commodity, but is part of the Canadian national identity. It is “everything that Canada is about.”
- It is imperative to define a National water policy and to elaborate a comprehensive water strategy before even entering into discussion of alienation or diversion of Canadian waters including its sale for immediate cash. Any water export should be illegal until parliament has ruled and made water export be subject to treaty.¹⁵⁵

More importantly, the conditions leading to the rise of the water export issue as a problem on the Canadian political scene evolved in the context of a perceived threat from south of the Canadian border. Proof of this can be seen from the Government of Canada’s reaction during the years of 1966 and 1967 when the Government of the United States decided to host an International Conference and Exposition on Water for Peace to be held in Washington, D.C. between May 23-31, 1967. The agenda of the

¹⁵⁵ Hansards: (1964, April, 3, 22, 29), (1965, November 4), (1966, January 27, 31), (1966, June 17, 28), (1966, September 6), (1966, October 2, 9), (1966, November 4), (1967, September 8), (1971, March 3), (1974, November 6)

conference was “to discuss and explore the world’s water problems, the opportunities and means available for attacking the problems, and international co-operation required to stimulate effective programs of water development on both the national and international levels.”¹⁵⁶

Reaction in the Canadian Government and in Parliament toward this event was swift. A Memorandum to Cabinet (MC) expressed alarm that Canadian participation in this Conference could lead to premature Canada-U.S. discussions on a “continental” approach to water resource management during the conference’s North American regional session. The MC stated that “if papers were to be solicited from the private sector at this late date, an enthusiastic response could be expected mainly from those interested in promoting major diversion schemes. This could result in a distorted picture of the Canadian position which can be extremely difficult to counteract.”¹⁵⁷ Indeed this fear was strongly reinforced because permission to submit a paper was requested by Mr. Kierans, the author of the Grand Canal scheme, and other private experts such as two consulting firms and two university professors. The names of the latter applicants are not disclosed in the MC. However, one could guess that among Canadian university professors advocating megaschemes were University of Manitoba professor Edward Kuiper (Kuiper Plan) and Dr. E. Roy Tinney (Central North American Water Project- CeNAWAP).

¹⁵⁶ MC (1966)

¹⁵⁷ Ibid., p.4

Thus, Canadian participation in such a session raised concerns that were expressed by the government as follows: the motivations behind the Conference were uncertain and the manner in which this international conference had been arranged and called was “not conducive to enthusiastic reception” in Canada; the conference, as the government argued, would “almost certainly touch on subjects on which Canada is not prepared to enter into “inter-governmental discussions.” These concerns were especially problematic because at the time Canada did not have an official water policy on which to base its position if the matter of water export were raised. As a result the request was made to the Government of the United State to postpone the conference for at least a year, in order for the Canadian Government to articulate such a policy, “to permit consultation among governments on the scope and arrangements for a Conference or alternatively change the character of the Conference to an initial preparatory conference at the expert level.”¹⁵⁸

Despite Canadian objections, the Conference took place as scheduled. The United States replied to Canada’s note and although it agreed that time was short to arrange for the Conference, it rejected both Canada’s suggestions and raised an entirely new proposal for a North American regional’ session. Specifically, the reply stated that: “ In case of North America, government of USA would be prepared to invite the government of Canada, if it so desired, to organize, coordinate, and preside

¹⁵⁸ Ibid., p.2

over that regional session.”¹⁵⁹ However, still for the Canadian Government it was imperative to make sure that Canadian representatives will not engage in policy discussions respecting such matters as export, “continental” planning, or disposition and use of Canadian water resources. Nothing that would drastically change the course of events happened during the conference. In fact, while it was in session, in private talks with U.S. Interior Secretary Stewart Udall and other senior American officials, the Canadian delegation were told emphatically that the United States had no current need for Canadian water.¹⁶⁰ In reports, the national newspapers tried to calm the anxiety of the Canadian public by running headlines like: “No threat,” “No fear of exporting our water,” “U.S. not after our water.”¹⁶¹

Nevertheless, the grand ambitions of the engineering proposals and the timing of the international Water for Peace Conference, laid a definite foundation for public visibility of the water export issue and created an aura of political sensitivity around it. And the confidential Memorandum to Cabinet was clearly an indication of the seriousness with which the higher echelons of the Canadian Government approached the matter. The Leader of the Canadian team at the Conference, was then Minister of Energy, Mines and Resources, Jean-Luc Pepin, who was regarded as a “continentalist,” or a “reasonable Canadian who does not get too emotional or chauvinistic about U.S.-Canadian water matters.” Mr. Pepin decided that one of the

¹⁵⁹ Ibid. Appendix III, U.S. Reply to Canadian Note, Washington, State Department, October 28th, 1966: p.2

¹⁶⁰ *Montreal Star* (1967, June 3)

¹⁶¹ *The Financial Post* (1967, April 22); *The Daily Star* (1967, April 26); *Globe & Mail* (1967, May 23); *Montreal Star* (1967, June 3 & 5)

major tasks facing the federal Government was “to assess in the shortest possible time how much water we have... so if the Americans knock at our door for water we will know what to do.”¹⁶² At this time, the official views did not include consideration of the potential social or environmental harm of such megaschemes and thus did not preclude the future possibility of large-scale water export. Rather the government’s initial response to the water export question was to insist on the need to begin by determining Canada’s own needs and to show how they could be satisfied, before meaningful international discussions could take place.¹⁶³ In other words, it was made clear that the question of water export and diversion to the south was premature for the time being but was not completely ruled out in the future.

In the aftermath of the 1967 Water for Peace Conference and the subsequent rejection of all of the megaschemes for Canadian water export and diversion that had been proposed by private business, the federal government initiated co-operative studies with provinces in each of the major regions of Canada to assess potential water supplies, to improve methodologies for water demand forecasting and to study water transfer schemes within Canada itself.

Meanwhile, water management in Canada was becoming a challenge with many dimensions in addition to the rising water export question. Water quality deterioration, pollution, and projected dislocations of established communities by new dam and diversion projects in the north were causing widespread public concern.

¹⁶² *Globe & Mail* (1967, May 24)

¹⁶³ Quinn (1973): p.64; Quinn (1977): pp.231-232

Thus, already during the preparations to the Conference between 1966 and 1967 there were undertaken a sequence of departmental transformations that established a water sector under the Department of Energy, Mines and Resources (the freshwater section of this sector later on became the Inland Water Directorate) and the Canadian Center of Inland Waters. For coordination of federal water programs there was also established an “interim” Interdepartmental Committee on Water chaired by the same Department in 1966.¹⁶⁴ In addition, the first important pieces of legislation on water resources after Confederation were introduced in the Parliament. In 1969 the Federal Minister of Energy, Mines and Resources introduced the *Canada Water Act* in the Parliament and this was followed by the *Arctic Waters Pollution Prevention Act*, the *Northern Inland Water Act*, and amendments to the *Canada Shipping Act* and the *Fisheries Act*. These departmental reorganizations and legislative trends with respect to water, however, did not have a direct impact on the subsequent treatment of the water export issue. In general terms, however, they were important indicators of the increasing scale of possible new water developments in Canada and the need for more active participation by the federal government given the rising challenges.

Within a relatively short span of time the water export issue received attention on both systemic and formal Canadian agendas.¹⁶⁵ According to stream theory, sometimes the recognition of a problem is sufficient to give it a prominent place on the policy agenda. However, “just as often, problem recognition is not sufficient by itself

¹⁶⁴ Quinn (1996; 1985)

¹⁶⁵ See Chapter 3.

to place an item on the agenda.”¹⁶⁶ In the case of water export, recognition alone was not enough. The ebb in the tide of megaschemes that occurred around the end of the 1960s brought a concurrent reduction in pressure for the development of a formal policy on water exports. However, the American attempts to reassure the Canadian government that it had no interest in Canada’s water appears rather implausible and contradicts the broader international approach that this country took toward water. Furthermore, Canadian government attention to the issue can be characterized as cautious given that public opinion was already against water exports and therefore the government had a reason to reassure Canadians in the face of their “fear” while not actually ruling out water export in the future.

Meanwhile by fall 1969 abnormally dry weather set in over southern California and parts of Arizona, spread across New Mexico, Central and South Texas, and returned to the Northern Plains in the early and mid 1970s.¹⁶⁷ For a period of almost three years between 1975 and 1978 the State of California experienced severe drought conditions that were said to be the worst since the beginning of the 20th century.

A Problem With No Solution: “Period of Interest “ II

Notwithstanding the emergence of water export as a public policy issue and despite the understanding of its importance and its potentially volatile nature by both

¹⁶⁶ Kingdon (1984): p.120

¹⁶⁷ Rosenberg (1978)

the legislative and executive levels of the Canadian Government, no formal attempt was made at this time to define a comprehensive public policy to deal with it. Indeed, none of the federal legislative acts focusing on water in 1960s or 1970s included mention of water diversion or export. The omission of the water export issue from the *Canada Water Act* and from other related pieces of fresh water legislation, was deemed “as good an indication as exists of how unprepared and indisposed the Canadian people and their governments are to make any decision on this subject.”¹⁶⁸

In several Parliamentary sessions in 1970 this omission was identified as a serious one when members pointed out that nowhere in the adopted bills did it say, “water export from this country is prohibited.”¹⁶⁹ In 1974 when one member raised the issue of why no firm government policy statement had been made in the House regarding water export and would the government do so, the answer from the government was simple: “...we have no policy for the export of water to the United States.”¹⁷⁰ What one could hear during the Parliamentary sessions were only verbal reassurances from the government that water would not be sold to the United States. For example, in 1970 then Minister of Energy, Mines and Resources, J.J. Green, stated: “I reaffirm in the strongest possible terms that no water could be sold to the United States without the approval of the government of Canada. No contemplation of such approval is under consideration by the government.”¹⁷¹ In 1974 on the member’s

¹⁶⁸ Quinn (1973): p.68. See also Foster & Sewell (1981)

¹⁶⁹ Hansards (1970, March 3), (1970, May 20-21)

¹⁷⁰ Hansard (1974, November 6)

¹⁷¹ Hansard (1970, February 24)

question whether the Minister of the Environment was in favor of the export of Canadian water to the United States and whether the government engaged in any discussions with the country regarding the use of Canada's water resources, the answer was "no."¹⁷² In 1977 on the question about the possibility of agreement with the United States on export of fresh water and whether the government supported in principle the concept of the export of fresh Canadian water the answer was rather evasive but suggested that no any negotiations had taken place.¹⁷³

The lack of initiative from the federal government to reflect on water export during this period stemmed from the fact that in Canada's history water was not a policy area. Rather, the government of Canada preferred to focus on nation-building sectors such as fisheries, agriculture, transportation and energy, and each one of these areas was administered by a different federal department.¹⁷⁴ Prior to the departmental reorganizations in the mid-1960s, there was no unified federal water sector but instead various technical, policy and research units scattered around different departments (Northern Affairs and National Resources, Mines and Technical Surveys). The initiation by the Canadian Government of a comprehensive survey of its fresh water resources in 1967 appeared not to be comprehensive enough; tools for future water needs evaluation were not that well elaborated, and the overall level of interest toward this undertaking diminished after the beginning of the 1970s. The water sector ceased to enjoy the brief moment of independence and weight it acquired while under the

¹⁷² Hansards (1974, November 19), (1974, December 2 & 18)

¹⁷³ Hansard (1977, April 5)

¹⁷⁴ Pearse & Quinn (1996): pp.329-331

jurisdiction of the Department Energy, Mines and Resources. In 1971 the water sector became part of the new Department of Environment and water came to be seen as part of the holistic approach of managing the environment (e.g. greater than the sum of air, water, land, forest, wildlife, fishery policies) rather than as a resource commodity.¹⁷⁵

At the end of the 1970s talks were in the air that water export was being considered under the review of the *Canada Water Act*, coinciding incidentally with the droughts of 1977-78 in U.S. As it were, there is no smoke without a fire. But the issue of water export was raised in a different kind of document. The Department of Environment initiated work on a Federal Policy Statement on Inland Water with the aim to publicize a number of agency practices, though this document was clearly not “the product of a systematic review of either individual programs or federal water policies as a whole.”¹⁷⁶ A positive effect of this document could have been that it would contain a firm government statement with respect to the water export issue.

Federal Policy Statement on Inland Waters -1978

In February 1977 the Cabinet approved a formal Canadian position on water export in the Federal Policy Statement on Inland Waters. The Statement had a paragraph entitled “The federal government is opposed to the export of Canadian waters “which said that the federal government has consistently refused to entertain the prospect of water export on the grounds of an inadequate understanding of

¹⁷⁵ Quinn (1977)

¹⁷⁶ Quinn (1996): p.333

Canadian water supply and demand balance, particularly as it might apply in the future.

However, political considerations led to the withdrawal of this paragraph before the Statement was released publicly in April 1978. It was believed that the inclusion of the paragraph might appear provocative in the United States. It might present the issue as bilateral which was not the case as far as the United States had not approached the Canadian Government on this topic, neither had it endorsed any of the private schemes for sending Canadian water south of the border. The U.S., on the contrary, and as the 1967 Conference Water for Peace showed, denied any intentions or interest in even starting the discussions.

After release of the Federal Policy Statement in April 1978, the *Globe and Mail* reprinted an article by R. McGavin, "Water Shortages Are Coming," from *International Perspectives*.¹⁷⁷ The main argument of the article was that the Canadian government should explain clearly to Americans, before pressure builds much further on this issue, that exporting Canadian water is not a solution to America's future water supply problems. Ironically, the Canadian government backed again from the challenge because the final version of the brief Federal Policy Statement, under the heading "A Vital Resource" mainly emphasized areas of federal government responsibilities in regard to water and a number of practices such as commitment to

¹⁷⁷ Water Shortages are Coming (1978, October 4). *Globe and Mail*.

conservation of water, a cooperative federal-provincial approach, and restoration and protection of water quality.¹⁷⁸

It seemed that placing responsibility for water under the jurisdiction of the Department of Environment in 1971 implied that water was not to be regarded as a commodity but rather as an environmental resource. At the same time, not including a water export and diversion provision into the Statement also showed the cautious political thinking within the Canadian government concerned that inclusion might act as a trigger to raise tension between Canada and the U.S. and even put in jeopardy “expanding oil and gas sales to that country.”¹⁷⁹ These were seemingly contradictory indications and that is why the water export issue was fated to resurface on the public and formal agenda in the future.

According to stream theory, failure to solve a problem may result in its demise as a prominent agenda item. Otherwise, it takes time, effort, mobilization of many actors, and political resources to keep an item on the agenda.¹⁸⁰ The situation during the two decades discussed, the 1960s and the 1970s, appeared to be such that the Canadian government preferred to stall for time while offering only unofficial verbal assurances of protection of water resources. The “quiet” 1970s made an impression that the issue of water exports and diversion had faded away. However, to assume that a fall of interest in the issue of water export indicated its demise is to underestimate

¹⁷⁸ Environment Canada (1982). *A Vital Resource: Federal Policy Statement on Inland Waters*.

¹⁷⁹ Quinn (1992)

¹⁸⁰ Kingdon (1984): pp.109-110

the issue itself. Perhaps it is true that the novelty and unprecedented nature of the issue indeed played an important role in attracting attention to it – perhaps it was something of a policy fad. But it would be too problematic to suggest that the subject faded away simply because it lost its novelty and people turned away from it because it became boring. Little did anybody know that the relatively quiet period would end soon because the situation around water export would become increasingly tense by the mid-1980s.

The Currents of Change: “Period of Interest “ III

As Kingdon points out, people in and around government pay attention to changes in indicators while routinely monitoring various activities and events that abound in the political world. Even though, at times, the actual change in the indicator gets exaggerated in the body politic (e.g. as people believe the change is symbolic of something larger), policy makers may consider it to be a change in the state of a system.¹⁸¹ In the case of water export the change in contextual indicators played a crucial role for the subject’s ultimate recognition as a pressing problem that needs solution – government action. Whether the change in indicators had an exaggerated effect on the placement of water export on the agenda is the focus of the next sections.

¹⁸¹ Ibid., pp.95-97

The discussion of change in contextual indicators in the 1980s is conducted separately from the discussion of formal government solutions in the 1980s. The chronology of each of these areas overlaps. This apparent disjuncture in continuity is necessary for analytical purposes.

New Problem Indicators

A decade after enacting the *Canada Water Act* and several other pieces of legislation related to water resources the acknowledgement of the “policy vacuum”¹⁸² at the federal level become more evident, especially because environmental issues were placed squarely on the agenda of world politics throughout the 1980s. The cumulative effects of environmental change were now backed by sophisticated scientific research and the Canadian government now had to pay attention to “new” problems such as acid rain, climate change, and regional water shortages, but it could not neglect the persistence of the “old” issues such as water exports. The water export issue had to be addressed either by officially declaring in writing that Canada’s water is a priceless, non-negotiable heritage or by permitting water export on the basis of a comprehensive assessment of economic, environmental, legal and political conditions. The chain of events described below finally made the issue of water export a subject of open governmental discussions.

¹⁸² Filyk & Cote (1992)

The drought conditions of the end of the 1970s picked up again in the early and mid-1980s. The period of drought between 1984 -1988 was among the longest in the Southwest, the Pacific Northwest and California. In the Southwest U.S., problems emerged in dozens of local water systems and in two federally developed multipurpose systems. Reservoirs were below normal. Conditions were such that water supply for some users was eliminated. Midwest communities dependent upon surface water experienced growing shortages as 1988 ended and local conservation had to be done in some areas as dry conditions continued into 1989.

By the mid-1980s the drought concerns generated private proposals to export fresh water for which proponents sought to secure federal support or concurrence. Quite a few companies had indeed received water export licenses for symbolic fees. The private interests seemed very assertive about a good profit margin from a new type of business. The many small and large-scale water export schemes that appeared at this time received broad and intensive publicity. They were covered by all the leading Canadian media outlets, and the stories attracted attention and raised public concern. For example, in 1986, the WCW Western Canada Water Enterprises Inc. of Vancouver and British Columbia government signed a deal that gave the company the right to export up to 53 billion liters of water a year in exchange for royalty payment to the province. WCW became the first traded water export company in Canada and

the world. Its shares were traded on the Vancouver Stock Exchange, in the U.S. over-the-counter market (NASDAQ) and it had a listing on the Toronto Stock exchange.¹⁸³

The situation heightened even more so when water export became legitimized because several key officials and politicians spoke publicly about it and with the help of media, the most controversial remarks appeared on the front pages of the national newspapers. In 1983 an MP and a former chairman of Canada Steamship Lines Mr. Desmarais during one of the Parliamentary sessions called water “white gold” and said that it should be a continental rather than a national resource.¹⁸⁴

Then in 1984, Prime Minister Brian Mulroney became involved in a plan to export water from Sept-Iles,¹⁸⁵ a town 650 kilometers east of Quebec. The prime mover behind this plan was Lucien Perrin¹⁸⁶ who received support from the mayor of Sept-Iles at the time, Jean-Marc Dion, to ship water in converted oil tankers to the United Arab Emirates. These tankers would be dedicated to fresh water and would not carry oil or any other product. On top of all that, Mr. Perrin wrote to the Prime Minister’s Office, External Affairs and Environment for approval of the scheme. Subsequently he managed to raise more than \$600,000 from investors and to receive in 1984 a letter from Brian Mulroney that applauded the choice of Sept-Iles as the first base operation for the company’s export plans and pledged to extend every co-

¹⁸³ Noble (1991, May). *Water Follies. Report On Business Magazine.*

¹⁸⁴ Hansard (1983, December 12)

¹⁸⁵ Sept Iles had a water filtration plant which was developed for the iron company of Canada that closed down its mining operations in the area three years prior.

¹⁸⁶ Lucien Perrin, a Montreal accountant, also a president of Canwatex Inc. which went bankrupt in 1985 and later was taken over by its successor Canwex 2000 International led by Marcel Theriault, a Montreal oil company executive.

operation to assist, if possible, in bringing productive employment to the Sept-Iles area. Mr. Perrin also received endorsement from External Affairs Minister Joe Clark and Quebec Minister of International Trade, Bernard Landry.¹⁸⁷

During one of the parliamentary sessions, when questioned by a member about what exactly the PM meant when he told the company president that he would offer “every co-operation to assist” the company, Brian Mulroney answered:¹⁸⁸

...the letter to which the Honorable Member refers offers every co-operation to establish productive jobs [about 50 jobs] in the constituency on Manicougan. And that is perfectly normal.... I thought it [the project] was perfectly normal that I, as the Member for the riding, should support a job creation project, which I did, and I believe any other Member of this House would have done the same in similar circumstances.

Finally, in February 1985, the U.S. magazine *Fortune* reported that Prime Minister Mulroney was prepared to sell the country's abundant fresh water, and quoted him as saying, “If a proposition makes economic sense and would help relations between countries, why not?”¹⁸⁹ National newspaper headlines reflected the situation as follows:¹⁹⁰

¹⁸⁷ *Maclean's* (1985, June 17); *Globe and Mail* (1985, June 4 & July 8); *Ottawa Citizen*, (1985, May 29); Keating (1986)

¹⁸⁸ Hansard (1985, May 28)

¹⁸⁹ Hansard (1985, March 11); *Toronto Star* (1988, May 19)

¹⁹⁰ *Ottawa Citizen* (1985, May 29)

Mulroney has strong opinions about water export ..
PM defends backing plan investors say scam...

Another reason for concern was Mulroney's appointment in November 1985 of Simon Reisman, former deputy finance minister, former deputy minister of industry and former secretary to the Treasury Board, and senior negotiator of the 1965 Canada-U.S. Automotive Products Agreement, as chief negotiator for free trade talks with the U.S. Mr. Reisman was known as an advocate of water export. While serving as an advisor to the Grand Canal Company Limited (GRANDco) led by Mr. Kierans, the author of Grand Canal, Mr. Reisman had been lobbying on behalf of the company for the megascheme deal between Canada and the U.S. and claiming that Canada needed to offer water as a key resource to get the Americans seriously interested in a larger trade agreement. At a conference sponsored by the Ontario Economic Council in spring 1985, Mr. Reisman said that water export is "the playing card" for Canada and that it can secure long-term access to the U.S. market for Canadian goods. He also called water the "missing link" in trade talks and said of the Grand Canal, "This bargaining lever is so great we can get anything we want so long as it is reasonable."¹⁹¹ Given Reisman's background the comments caused an uproar in the Canadian

¹⁹¹ Keating (1986): p.159; *Toronto Star* (1988, May 19)

Parliament and resulted in demands for his resignation as well as accountability before the parliamentary committee.¹⁹²

Resurrection of the fact that Mr. Reisman was connected to Grand Canal was not accidental. After the Canadian government rejection of the Grand Canal scheme in 1965, Mr. Kierans returned to his idea in 1984 by creating GRANDCo, with himself as president. The main goal was to secure federal financial support (up to \$750,000, about half the cost of a feasibility study on the scheme) and subsequent recognition of GRANDCo. The application was made to the Department of Supply and Services and the National Research Council. Brian Mulroney, as well as some other members, was supportive of conducting studies to determine benefits of the plan to Canada. He said in one of the sessions that he viewed the prospect with enthusiasm.¹⁹³

During the same time Mr. Kierans was making presentations of the plan in 1984 at the "Future in Water" conference and later on, in 1989, in a paper about the project for the 42nd annual conference of the Canadian Water Resource Association, in Halifax. Despite Kierans' efforts to promote Grand Canal, the scheme never overcame public and political criticism in the parliament, because of its enormous costs, environmental consequences and possible political implications, nor were feasibility studies of the plan conducted. Environment Canada opposed GRANDCo's application for a technology - transfer grant since it was first circulated by the National Research Council in February 1985. Tom McMillan, the Minister of the

¹⁹² Hansard (1986, January 22- 24). Statements made by MPs Blakie, Caccia, Axworthy.

¹⁹³ Hansard (1984, June 1)

Environment, urged making no further commitments to GRANDCo and terminating any current assistance to it. Despite this, however, a revised proposal from GRANDCo had managed to reach the point of federal review in 1985. When the matter was discussed by the Interdepartmental Committee on Water in May 1985, none of the member agencies was in favor supporting the grant. On the contrary, most of them agreed that to fund a study promoting water export in the face of a long-standing federal policy opposing water export was properly an issue for Cabinet to decide.

The Implications

These particular events underscore tensions among policy makers that certainly should be taken into account for understanding the policy process and the conditions and context in which the water export issue resurfaced. This time, though, the consistency of an un-codified (verbal) “no” to water export policy had to be judged against the PM’s actions. The situation in the wake of Brian Mulroney’s public statement and actions suggested a drastic shift from the verbal government policy of the 1960s and 1970s that water was not for sale. However, because policy adoption has to go through the process of parliamentary deliberation the PM’s endorsement did not in itself constitute formal policy. Negative reaction in Parliament and government departments focused on large-scale diversions such as the Grand Canal scheme which, unlike small-scale schemes were perceived as environmentally harmful and irreversible.

Moreover, a new precedent was created because from now on the concern over the water export issue became associated with free-trade negotiations between Canada and the U.S. Even though, in many instances officials tried to emphasize that water “is a separate issue from trade...,”¹⁹⁴ the media’s coverage of the matter has reflected uncertainty and apprehension about the official’s claims:¹⁹⁵

Canada urged to use water as lever in US trade deals;
 Water seen as powerful tool in trade talks;
 Canada-U.S. trade at the crossroads: options for growth;
 Chief negotiator once advocated swapping fresh water for free trade;
 Trading our water seen as cornerstone in a free trade deal;
 Fears are mounting that free trade with the United States is setting up
 Canada for the biggest resource grab in history.

Changing Role of Media

The role of the media in stimulating attention toward the water export issue through the 1960s and the 1970s was important because initial consideration of the issue during Parliamentary sessions and bureaucratic activity drew some news coverage. Yet the media’s effect on the issue’s agenda placement was not necessarily crucial during these two decades, due to some extent to the small volume of coverage and also to topic differentiation. However, during the mid 1980s, first and foremost, coverage of the water export issue increased because the general problem of water

¹⁹⁴ Hansard (1986, January 22-23)

¹⁹⁵ *Globe and Mail* (1985, April 18); *Calgary Herald* (1985, April 19; October 2); *Winnipeg Free Press* (1985, November 9); *Toronto Star* (1985, November 23); *Vancouver Sun* (1987, January 16); *Toronto Star* (1987, October 11)

export was differentiated into more narrowly defined topics such as water export and environmental impact, or new categories of water export such as small-scale exports by tankers as opposed to large-scale diversions. Secondly, water export coverage increased during the 1980s because the issue was also linked with larger, more overarching concerns, such as the free trade agreement between Canada and the U.S. Thirdly, during the previous decades the media mainly provided general reports about the water export issue and what was going on in the government and it also mainly magnified the issue as opposed to giving it a specific point of view. By the mid 1980s the media had become more opinionated, playing a greater role in shaping and structuring the issue as opposed to merely reporting about it. Moreover, media coverage that promoted negative or inquisitive attitudes toward water export was more prevalent by the end of the 1980s, comprising approximately 40 percent of the coverage between 1980 and 1989 in comparison to only 11 percent between 1960 and 1979. Media coverage during the 1980s also continued to show sustainability to the issue which again could be explained by topic differentiations, new developments in the issue (e.g. PM's support of small scale water exports) or the return of "old" schemes (e.g. Grand Canal) and connection to other policy issues (e.g. free trade).

Thus the situation around water export appeared to be such that the Canadian government might be approached or perhaps had been approached to export Canadian water to the U.S. either via large-scale diversion or small-scale bulk exports because of:

- the consecutive droughts and water supply difficulties in the U.S.;
- the rising number of export proposals to ship water from Canada's Atlantic and Pacific coasts to foreign markets: the U.S. (California) or to Mexico, the Middle East or wherever a market could be secured;
- the dramatic increase of media coverage of the issue from eight stories in 1983 to 129 stories in 1988 as well as the issue's differentiation;
- the absence of a regulatory mechanism to control water exports;
- a shift in water export policy due to the PM's actions and statements;
- favoring of small-scale water export projects by the government.

According to stream theory, if a problem is put into one category rather than another it affects and structures people's perception about the problem in many important respects. Even if old categories and old means of classifying subjects into those categories tend to persist, eventually the fit between the categories and realities becomes weak allowing new categories to emerge. As Kingdon points out, "the emergence of a new category is a signal public policy event."¹⁹⁶ In the case of water export the key links in the chain of events were the rising apprehension that water export was a part of the free trade discussions and the emergence of small scale-exports as a feasible alternative to the unpopular large-scale diversions. An entirely new definition of the problem and conceptualization of the solution came into play because free trade appeared to be the category in which people in and out of the Canadian government started to look at the issue. Besides, small-scale exports did not seem to be such "monstrous" and "diabolical" concepts in comparison to the large-scale diversions. At the same time we could see the independent emergence of

¹⁹⁶ Kingdon (1984): pp. 117-119

political forces favoring and urging governmental action with respect to water export accompanied by the stream policy alternatives. All these became distinctive features of a time unlike the previous decades of the 1960s and the 1970s.

The period of governmental avoidance (or for that matter, not finding any specific solution that would openly address large and small water export) and of hope that the problem would not surface in a such dramatic fashion as it did in the wake of the megascheme proposals of the 1960s and during the “lull” period of the 1970s, was over. If Kingdon’s theoretical assumptions are to work in the water export case, the confluence of problem recognition, politics and solutions should push this issue onto the agenda producing a *formal* policy change. But is this what happened?

The Time of Solutions

Inquiry on Federal Water

Almost in parallel with changes in problem indicators as described above, the government started its policy solutions initiatives. The first in the array of these initiatives, a broad approach to water that included elements of the water export issue, was the creation of a Federal Inquiry (known also as the Pearse Inquiry). In January 1984 the Minister of the Environment appointed an advisory committee to inquire into and make recommendations concerning a wide range of problems relating to Canada’s water policy; to assess water supplies in Canada in relation to growing and changing demands; to substantiate emerging water problems, and to consult with the public.

After the initial refusal by the government of this initiative, and after a great deal of discussion and effort, the formation of a committee to study federal water policy was announced on 26 January 1984. The authority for the appointment was the 1970 *Canada Water Act*, section 26. The Inquiry, which was conducted in consultation with provincial and territorial officials and many federal agencies, held public hearings in seventeen locations across Canada, and received over 300 written submissions from individuals and organizations. The result of this first step in the Inquiry was 55 recommendations for improving federal water policy ranging from fundamental policy positions to administrative details.¹⁹⁷

One of the major contributions of this Inquiry was to undertake research into the water export issue. Moreover, this was the first informative federal government study that acknowledged the existence of the issue and proposed ways to approach it. The recommendation of the Inquiry with respect to water export was that the federal government should take a *cautious* approach in developing federal policy on water export. Moreover, Canada should be prepared for future proposals, neither the volume and frequency nor the benefit of which the government could predict. Because of these uncertainties, rejection of *all* export proposals would be rather *imprudent*. There is no reason for the federal government to oppose small scale (tanker) exports in general but they should be regulated by the federal government. Large-scale diversions (to the United States) should require careful consideration and the government should resist pressures to support any large international diversion scheme, at least until their proper

¹⁹⁷ Currents of Change (1985)

assessment in terms of benefits to Canada is determined. The Inquiry found that it would be unwise for the federal government to reject all exports out of hand while supporting exports of nonrenewable resources like minerals, coal and natural gas. Moreover, "... sustaining such a position, regardless of the opportunities and against private and provincial government interests, would be difficult."¹⁹⁸

Shortly after the submission of the final Inquiry report, at the end 1985, the Minister of the Environment submitted a Memorandum to the Cabinet to create an Interdepartmental Task Force comprised of senior officials from different federal departments to review the recommendations of the Inquiry, and start preparations for the new Federal Water Policy.

Federal Water Policy

Two years later, following the thorough consultations and review of the Inquiry Report, the Minister of the Environment, Tom MacMillan, tabled a new Federal Water Policy (the first of its kind) which incorporated most of the Inquiry's recommendations. Since the failure in 1978 to include the provision of water export in the Federal Policy Statement on Inland Waters, the government finally approved the inclusion of a statement on export in its new Federal Water Policy, presented in November 1987. The introduction of the Policy indicated that Canada has only a "fair share" of its renewable water and the rising problems with water pollution and droughts mean, contrary to popular belief, Canada is not a water-rich country. Based

¹⁹⁸ Ibid., p.130

on that conclusion, the government of Canada “emphatically opposes large-scale exports [because] the inter-basin diversions necessary for such export would inflict enormous harm on both the environment and society...” In section 8 *Interbasin Diversion* the government states that it will “take all possible measures within the limits of its constitutional authority to prohibit the export of Canadian water by interbasin diversions... and develop a mutually acceptable referral system to ensure that provincial licensing of small-scale transfers of water including containerized transfers take into consideration federal interests respecting navigation, fisheries, environmental protection, Indian Treaties and trade considerations.”¹⁹⁹

The federal government tried to ensure general support from key interested parties for its new policy. Aboriginal populations’ concerns had to be accounted for in the preparation of the policy. Environmental groups were anxious to see the federal government regulatory authority expand because of their general stand on an ecosystem approach to environmental management. Their concerns also had to be envisaged in the policy through such elements as ground water contamination, wetlands preservation, heritage river preservation and toxics management. Professional organizations and academics e.g. the Canadian Water Resources Association, had been supportive of the development of a new federal water policy. Private sector interests also had to be recognized especially because of their concerns over confusing distribution of licensing and regulatory authorities among plethora of federal and provincial agencies.

¹⁹⁹ Federal Water Policy (1987): p.24

Rise of Policy Entrepreneurs

The period just before and after the Inquiry was marked by the high level of activity of *policy entrepreneurs* willing to invest their resources, time and energy in hope of affecting water export policies. Their role was significant in promoting their proposals, in Kingdon's words, for "softening up" the agenda setting process for the water export issue. Among these entrepreneurs were Prime Minister Mulroney and Mr. Reisman, whose role was discussed in the early sections of this chapter. During the course of the Inquiry, Ministers of the Environment also acted as policy entrepreneurs. John Roberts was behind the idea for a study on water policy. The formal establishment of the Inquiry was announced under Charles Caccia. In 1984 Susanne Blais-Grenier became the Minister of the Environment in the Progressive Conservative government, however, by the time of the report's release, two years later, Tom McMillan held the position and tabled the policy.²⁰⁰ Members of the Inquiry itself, Peter Pearse, Francoise Bertrand and James MacLaren were undoubtedly central in moving the issue of water export closer to the formal agenda.²⁰¹ In addition, certain members of the Parliament also took great interest in the issue. Specifically,

²⁰⁰ Filyk & Cote (1992)

²⁰¹ Peter H. Pearse, a chairman of the Inquiry, was at the time of the Inquiry a professor of forestry at the University of British Columbia specializing in natural resource management and development; Francoise Bertrand was at the time of the Inquiry administrative dean at the University de Quebec a Montreal; James W. MacLaren was at the time of the Inquiry an engineering consultant in a private firm engaged in some of Canada's major projects of water supply and distribution, sewerage and sewage disposal, drainage and flood control. Currents of Change (1985): Appendix B

MP Charles Caccia, a liberal and a former Environment Minister, made the first legislative proposal, Bill C-257 *Water Export and Diversion Act*, in February 1986. In July 1988, NDP MP Nelson Riis, proposed Bill C-309 *Canada Water Protection Act*. Both bills contained a clause that would prohibit water export by interbasin transfers.²⁰² Despite the fact the members bills at the time were dropped from the order paper, Charles Caccia and Nelson Riis could be viewed as serious advocates of water export solutions who hoped to affect the shape of public policy in the 1980s as well as during the 1990s. Policy entrepreneurs were focal figures in the unfolding drama, because they started the initial process of softening up of the agenda for ascension of the issue.

Government's Solution: Bill C-156

After the release of the Federal Water Policy, during the parliamentary sessions members inquired whether the government was going to meet its commitment "to strengthen federal legislation to fully implement this [water export] policy."²⁰³ MP Iain Angus stated that, "In the opinion of this House, the government should enact legislation to prohibit the large scale export of water from Canada to another country because no legislative mechanism is available."²⁰⁴ The government, in its turn tried to reassure members that the process was under way.

²⁰² Hansard (1986, February 25; July 19)

²⁰³ Federal Water Policy (1987): p.24

²⁰⁴ Hansard (1988, June 21)

Indeed the preparation of the regulatory procedures on small-scale water exports and consideration of regulatory mechanisms for large-scale water transfers to the U.S. started after the completion of the Interdepartmental Task Force and submission of the Task Force's Report to the Minister of the Environment in summer 1986. In general terms the Task Force was supportive of the Inquiry recommendations to regulate small-scale water exports and postpone any major decision regarding large-scale water export. At the end of 1986 another Ministerial recommendation was submitted to the Cabinet to establish a moratorium on large-and small-scale water exports until the appropriate legislation and evaluation criteria are developed.

In July 1988 Cabinet approved the *Act for the Preservation of Canadian Water Resources* and on August 25th, 1988 the Minister of the Environment tabled the Act in the parliament under Bill C-156. The bill had two important clauses: *Prohibition of Large-Scale Exports* and *Licensing of Small-Scale Exports*.²⁰⁵ The proposed legislation was given a first reading in the House of Commons. Some members considered the bill as timely and important, especially those who demanded this type of legislation from the government. The media also positively emphasized that large-scale diversions were opposed by the government and would not take place as many Canadians feared.²⁰⁶

²⁰⁵ Bill C-156 (1988)

²⁰⁶ *Daily Commercial Report/News* (1987, November 9); *Calgary Herald* (1987, November 6); *Halifax Chronicle* (1987, November 6); *Globe and Mail* (1987, November 6)

Government "to stop large-scale water exports";
 Ottawa won't permit major water sales to US;
 Ottawa seeks to dam large water exports;
 Ottawa to ban export of water on large scale.

At the same time, the fact that the government intended to allow small-scale water exports had not been neglected. The on-going Canada-U.S. free trade talks reinforced among those who opposed any type of water export from Canada the belief that the proposed Free Trade Agreement would give the United States unprecedented access to Canadian water resources, and that the governmental promise to fortify Federal Water Policy with legislation was simply a façade. Media headlines were saying the following:²⁰⁷

Free trade may start our water flowing South, expert was saying;
 Loopholes, exemptions in bill on water exports attacked by opposition;
 Water part of trade deal;
 Tories trouble on water exports won't wash away;
 Leave our water out of trade pact, opposition says.

The fact was that the Federal Water Policy took a similar position as that of the Inquiry, which in its recommendations to the Government "did not come down on one side or another."²⁰⁸ But with hindsight, it can be seen that it supported water exports. During one of the parliamentary sessions on the issue, then Minister of Foreign Affairs

²⁰⁷ *Toronto Star* (1988, May 19); *Globe and Mail* (1988, August 20); *Winnipeg Free Press* (1988, June 7); *Toronto Star* (1988, July 16); *Financial Post* (1988, July 6)

²⁰⁸ Quinn (1992)

and International Trade John Crosbie, stated that the relation of water and free trade is answered in terms of the new water policy of 1987 with the government saying “no” to large-scale exports and diversions.²⁰⁹ On tabling the bill, Minister of Environment Tom McMillan said, “Fresh water is the birthright of every Canadian. Our water is not for sale.... I am tabling legislation to give clear legal force to that commitment.”²¹⁰ These two statements contain a deep contradiction in the governmental rhetoric and views. Foremost the contradiction is in the fact that the government officially declared water “not for sale” and at the same time water is “for sale” albeit in a small-scale in containers as the content of the Bill C-156 indicates and as PM Mulroney endorsed back in 1984. Second, containerized export of water from Canada was not considered by the government as “sale” of this resource. However, for the critics the question remained: If containerized export of water does not constitute a “sale,” then what does?

The debates over the language of the proposed Canada- U.S. free trade agreement were in full swing. The opponents of free trade argued that fresh water was included in the agreement and that it was even listed in the Canadian Tariff Schedule. This fact alone, they claimed, makes a mockery of the Federal Water Policy, leaving it “without teeth” if the document is not fortified by the legislation. However, the proposed governmental legislative solution [Bill C-156], MPs Charles Caccia and Iain Angus argued, is “incomplete and not coherent,” and is not all what Canada needs.

²⁰⁹ Hansard (1988, May 19)

²¹⁰ Holm (1993): p.18

The Cabinet had power to allow export of water. The bill made no difference to the free trade agreement and could not stop export under free trade.²¹¹ Interest groups arguments were also on the rise. Back in a 1987 background paper entitled, “The Cream-Skimming of Canada’s Water Resource,” the British Columbia “Small” Small Business Group had called on the federal government to exempt specifically water exports from free trade. Two weeks before the November 1987 federal election Wendy Holm and 13 others²¹² released the book, “Water and Free Trade: the Mulroney Government’s Agenda for Canada’s Most Precious Resource,” in which they argue that despite the claims of the Mulroney government, free trade does open the door to large-scale water exports to the United States and, by creating a continental market for resources, free trade will have the effect of undermining Canadian control over its water. In May 1988 Mel Clark, a retired trade negotiator, and Don Gamble, the executive Director of the Rawson Academy of Aquatic Science, published a paper, “Water Export and Free Trade,” in which they claimed there was a direct connection between water and free trade.²¹³ They demanded rejection, or at least amendment of FTA and specifically exclusion of the large-scale export of water from Canada.

What followed after the bill’s introduction was characterized by Frank Quinn as “an indication of what almost happened at a time of heightened tensions over free

²¹¹ Hansard (1988, August 26)

²¹² Among others contributors to this book were: Don Gamble, Mel Clark, James Laxer, Sarah Miller, Andy Russell, Tony Scott.

²¹³ Clark & Gamble (1989)

trade and the pending election campaign.”²¹⁴ Before the terms of Bill C-156 could be considered by a parliamentary committee, it died on the Order paper when the 33^d Parliament was dissolved on October 1, 1988 as a result of the upcoming election. This situation certainly did not inspire optimism among the bill’s supporters nor among its critics as the water issue was still left without some formal resolution: large-scale diversions were not formally prohibited nor were small-scale exports regulated. Thus it could be said that Canadian water was, indeed, “for sale.”

In early December of 1988, following the convening of the first session of the 34th Parliament, newly reelected Mulroney’s government introduced Bill C-2, the *Canada-United State Free Trade Agreement Implementation Act*. In parliament the demands were made to strengthen the country’s policy by introducing water export *legislation* or by *banning* water exports once and for all, and by amending the free trade implementing legislation to confirm the exclusion of water exports from the Agreement.²¹⁵ Outside of parliament, some of the principal opponents of free trade had formed a “waterwatch” committee, to conduct public opinion polls and to lobby against the trade agreement, alleging that it jeopardized Canada’s water security. In response to this pressure, Bill C-2 had been amended to exclude water from the *Canada –United States Free Trade Agreement Implementation Act* that came into effect on January 1, 1989.

²¹⁴ Quinn (1992): p.116

²¹⁵ Hansard (1988, May-August)

Meanwhile, in the U.S. the cycle of droughts continued. This time California in 1989-1991 was struck again by prolonged drought conditions so that the municipalities had to undertake some measures to supply fresh water to their citizens and industries.

Toward A Policy Window

A series of events after 1988 proved that controversy over water export was not in decline. On the contrary, water export continued to be perceived as a problem outside and inside the government. The problem continued to require formal solution because even though the previous decade was fruitful in generating possible solutions and the politics around the issue were favorable for the placement of the issue on the formal agenda, the dynamics within and links between the streams (problems, solutions and politics) that, according to Kingdon's theory, determine major policy change, were not sufficient to produce formal policy. The transformation of water export into a formal public policy did not take place in the 1980s. However, as the analysis of the next decade shows, the issue of water export managed to sustained momentum and the opportunity for a confluence of streams emerged.

Growing Pressure: “Period of Interest “ IV

Attention to the water export issue was sustained through the 1990s for a number reasons, among them a prolonged drought in California to which Canadian and, specifically, British Columbia entrepreneurs have attempted to respond. The potential sale and shipment of water by supertankers to the coastal California city of Santa Barbara and the Goleta Water District in summer 1990, involving three Canadian water export companies,²¹⁶ was heavily publicized in the national newspapers. In the Atlantic provinces, various entrepreneurs contemplated Middle East markets. The number of firms that applied for water export licenses drew the attention of federal and British Columbia officials. Despite the fact that it had been assumed that small scale water exports were not as harmful as large-scale water transfers, new concern was raised because of the cumulative environmental impacts of the former. As a result organized protests by environmental and other interest groups started to exert pressure on British Columbia government. In March 1991, the government of British Columbia declared a three-year moratorium on all applications for marine tanker water export while the province sought to develop a comprehensive policy. All this was then overtaken by the onset of negotiations for the North American Free Trade Agreement and by unofficial expressions of interest by Mexico and the U.S. in continental water-sharing.

²¹⁶ Western Canada Water Enterprises Inc. (WCW), Snowcap Water Ltd. and Aquasource Ltd.

Role of Business Interests

Active policy communities are important for keeping an issue on the agenda. The last decade in Canada has witnessed the formation and rise of interest groups composed of private business interests, e.g. companies eager to export water, and public interest groups that lobby against water export. It was also a decade that gave rise to policy entrepreneurs (persons involved in politics and policymaking), among them both advocates and opponents of water export. It is among such networks that policy issues tend to be accepted or denied, the relevant evidence is debated, and alternative options worked out. However, business interests around the water export issue did not manage to develop into a cohesive community. As opposed to opponents of water trade, public interest groups, business interests were not well-organized in their support for water export, a situation that was just as true in the 1980s and 1990s as it had been in the 1960s. They constituted a very loose policy group, primarily acting as individuals working on their own behalf. However, this was not because of lack of available opportunities. In each period discussed, these groups found support within political circles and high echelons of the government because the government continuously kept an open mind on potential benefits from any scale of water exports. Some of the business interests managed to come back more than once. For example in early the 1990s media coverage once again focused on expressions of interest south of the border in Canadian water resources and on specific proposals for export, like the North American Water and Power Alliance (NAWAPA) and Grand Canal. These

grandiose water redistribution schemes were promoted by business interests again and even were joined by newer proposals such as Multinational's diversions of the North Thompson River via the Columbia to California, or Alaska Undersea Pipeline, or even by claims of some critics that regional dam projects like Rafferty/Alameda in Saskatchewan²¹⁷ and Oldman in Alberta are really intended to divert Canadian stream flow south of the border. The news headlines reflected the situation as follows:²¹⁸

Earlier projects spawned green movement water diversion to US;
 Back door water diversion (Rafferty-Alameda dam);
 River diversion proposal would send water to US;
 Study proposed on building pipeline to move water from Alaska to California;
 Old dreams revive: from James Bay to Rocky Mountains schemes to help; Americans litter the landscape, without drought firing the renewed interest;
 Diverting interests to keep the U.S. South wheat blooming, visionary engineers are proposing to re-plumb the water ways of Canada again.

Yet the people and companies representing these various business interests never joined forces in any meaningful and intensive way to lobby the government to ensure elimination of any policy impediments that would limit their business

²¹⁷ The Saskatchewan government signed an agreement with the U.S. Corps of Engineers on October 26, 1989, requiring that water from the Souris River in Saskatchewan be delivered to the state of North Dakota in accordance with U.S. needs for the next 100 years. The river is now controlled by two dams which have been the subject of controversy and litigations led by Canadian environmentalists, since review of their environmental effects were not conducted prior to construction. The U.S paid one-third of the construction cost of the dams, but will pay nothing for operation and maintenance costs for the next 100 years. Smith (1995)

²¹⁸ *Calgary Herald* (1991, November 23); *Winnipeg Free Press* (1991, September 22); *Daily Commercial Report* (1991, March 22 & June 11); *Vancouver Sun* (1991, March 16, 25); *Halifax Chronicle Herald* (1991, March 21); *Equinox* (1993, April 4)

opportunities. Instead, there could be observed a turn-over among the companies with interest in water export business accompanied by their sudden rise and sudden disappearance and then rise of another company or resurrection of the “old” scheme and then its disappearance again. There are many reasons why business interests may not have joined into an organized community. One reason could be attributed to the fact that water export or international fresh water trading was still largely a new business area, so the time frame was not sufficient for them to form a steady and cohesive group.

Another possible reason is that, although not completely against the water trade interests, the government still has not been clear where it could target the problem of water export and what policy alternative it would choose and if so how much impediments or opportunities would be created for the business interests. Being in suspense, as it were, companies continued to apply and receive water export licenses and their applications were still active in the files of respective provincial governments during the 1990s. Perhaps such measures as British Columbia’s moratorium have been understood as temporary and thus companies’ interest in well-organized, intensive lobbying of the government was lacking. Certainly those companies whose water export licenses were suspended as a result of these type of measures were more than dissatisfied, especially if they had made prior tangible commitments. However, their complaints did not go further than individual requests to various provincial and federal agencies to explain the situation with regulations or individual lawsuits against government decisions (these incidents will be discussed in

a later chapter). Perhaps they preferred to wait and see instead of organizing and coordinating activities to press for policy alternatives or advocate continued study of the problem.

In any event, the periodic rise and fall in water exports plans by private business played a crucial role in bolstering attention to the issue and sustaining it on the Canadian political scene. As one of the businessman described his role in the water export agenda setting process, when his water export permit was revoked and he was portrayed by the environmentalists and economic nationalists “as the advance man for an all-out corporate assault on Canada’s most precious resource,” “Maybe everybody made me out to be the bad guy. But at least I was a catalyst for the governments taking this stuff seriously.”²¹⁹

Intensified Pressure of Public Interest Groups

The developments of the early 1990s led to a strong reaction by interest groups opposing the export of Canadian water to a highest bidder. Driven by a deep concern that Canada could be losing its sovereignty over its resources, these groups were highly influential as opinion-leaders. Wendy Holm, executive director of “Small” Small Business Group has written and spoken extensively on the policy implications of water’s inclusion in the trade agreement since the 1980s. Specifically, in May 1991 she made a presentation to the “Water Export Review Expert’s Session“ on water and

²¹⁹ The reference is to the owner of the Nova Group Ltd. John Febbraro and his application to remove water from Lake Superior filed with Ontario Minister of the Environment in 1998. Geddes (2000). *Water Wars. MacLean’s*.

free trade; in May 1992 she presented “Liquid Assets – Continental Thirst for Canada’s Water” during the conference on “Water Export: Should Canada’s Water Be For Export?” and in spring 1993 she appeared before the House of Commons Subcommittee on International Trade and the British Columbia Select Standing Committee on Economic development, Science, Labor, Training and Technology. Ms. Holm testified that “under NAFTA, water will be treated as a ‘good,’ subject to the same rules as the other ‘goods and services’ under the FTA and the NAFTA.” Accordingly, she demanded that Bill C-156, which had been shelved by the Conservatives in 1987, should be reintroduced and passed in order “to establish a framework for a sound and sovereign water policy.”²²⁰

The Council of Canadians started to be instrumental in building opposition to free trade as well. Its profile on the issue increased in mid-1990s when the organization included in its agenda the connection between water export and free trade. The critics of government inaction claimed that the domestic legislation is not binding on NAFTA panels and that the Agreement itself would be given precedence over domestic legislation.

Aboriginal peoples also became more active in defense of their rights to control water export development within their claimed territories and reserves. In 1990 the Klahoose band of British Columbia was approached by Snowcap Waters Limited to become partners in a joint venture to export water from Toba Inlet to City of Santa Barbara, California. The Klahoose band launched a comprehensive terms of reference

²²⁰ Johansen (2001, February 20)

environmental impact assessment for Toba Inlet and after a thorough review declined the business proposition.²²¹ Media coverage reflected on the events as follow: ²²²

Native band looks at water exports to California;
Indians seek environmental review before water sale to US;
Natives block water sale;
BC band seeks environmental assessment of Snowcap plan,

The public interest groups pressure also was heightened due to the fact that the Fraser Institute in Vancouver, British Columbia, had linked up with western U.S. academics to research continental water marketing. The result of this academic collaboration was the book issued in 1994 titled "Continental Water Marketing."²²³ The impetus for this book came from Michael Walker, president of the Fraser Institute, who was concerned that the Canadian-U.S. Free Trade Agreement (FTA) and later the North American Free Trade Agreement (NAFTA) were ignoring the important potential of improving water use efficiency on this continent and the success of certain transborder water transfers²²⁴ the examples of which could be used to implement water marketing in the free trade environment under proposed agreements. Promotion of these activities certainly caused unrest among the general public as well, according to news reports and ministerial correspondence.

²²¹ Sector Environmental Resource Consulting (1991, April 30)

²²² *Calgary Herald* (1990, June 17); *Vancouver Sun* (1990, August 9); *Globe and Mail*, (1990, August 10)

²²³ Anderson (1994)

²²⁴ The reference is mainly to the U.S. water transfers.

Policy Entrepreneurs

“What makes the coupling of the streams? Enter again our already-familiar acquaintances, the policy entrepreneurs.”²²⁵

During the course of the 1990s policy entrepreneurs, especially members of the House of Commons, were important in maintaining the water export issue on the policy radar. They persistently reminded the government about the unresolved water export issue and the urgency to attend to it. As Kingdon pointed out, “persistence” is probably the most important trait of successful entrepreneurs. Though alone it does not carry the day, in combination with other qualities it is extremely important. “Many potentially influential people might have expertise and political skill, but sheer tenacity pays off.”²²⁶

Since the beginning of the 1990s some MPs proposed private members bills in the hope of obtaining a reassurance that water export was prohibited from Canada. It is important to emphasize the activities of MP Nelson Riis (NDP) who a prominent advocate of the legislative solution for the water export through the 1980s and 1990s. Of eight parliamentary bills put forward Mr. Riis proposed six of them with the other two proposed by MP Pat Martin (NDP) and MP Clifford Lincoln (Liberal).

- Bill C-221, *Canada Water Protection Act* to prohibit the exportation of water from Canada by interbasin transfer- 11 June, 1990 – MP Riis

²²⁵ Kingdon (1984): p.188

²²⁶ Ibid., p.190

- Bill C-202 *Canada Water Export Prohibition Act* to prohibit any company to divert water from Canadian basin to US for export purposes- 25 January, 1994 - MP Riis
- Bill C-232, *Canada Water Export prohibition Act* to prohibit water export by interbrain transfers- 11 March, 1996 - MP Riis
- Bill C-404, *Canada Water Export Prohibition Act*- 13 May, 1998- MP Riis
- Bill C-485 –*Canada Water Export Prohibition Act* to prohibit water export by interbasin transfer, pipeline, railway, tank car, tank truck, tanker, 11 March, 1999 - MP Clifford
- Bill C-249, *Canada Water Export Prohibition Act* to prohibit export by interbrain transfer from Canada to US and Mexico-19 October, 1999 - MP Riis
- Bill C-410 *Canada Water Export Prohibition Act* – 16 December, 1999- MP Riis
- Bill C-205 *Canada Water Export Prohibition Act* to prohibit water export by interbasin transfer - 2 February, 2001 – MP Martin

During the same period, but especially between 1991-1993, MP Riis and others (MPs Gardiner, McWilliam, Whittaker, Skelly, Kristiansen) presented petitions from their respective constituencies that reflected the public attitude toward water export. For example, some petitions conveyed requests to the government to ensure that water is made an exempt category from free trade as had been done for raw logs and unprocessed fish, or that the government should not permit water diversion to the U.S., or demanding legislation that would prohibit water export.

The policy entrepreneurs' role during the 1990s was crucial not only with respect to pushing for their proposals and solutions. They also, as Kingdon points out, “lie in wait” for a window to open, softening the process of the issue’s agenda accession.²²⁷ Without their presence in the process the linking of the streams would not be possible.

²²⁷Ibid., p.190

Media's Critical Coverage

Another significant micro factor is that media attention to the issue has grown steadily. As shown in Figure 3.1 (Chapter 3), by the end of the 1990s and the beginning of 2000 there were unprecedented levels of news coverage. Through the 1990s media continued to present general descriptive stories about water export with no clear argument in one direction or another. Overall Canadian newspapers provided more of the critical analysis that can be seen in coverage from the 1980s. Some coverage from the business press and other political commentators was critical about the “sudden fuss” being made over water and questioning why it should be treated differently than trade in other natural resources. For example, newspapers printed arguments of those who asserted that “Water is a resource that is entirely renewable, especially on the south of Newfoundland,” and “Most of the water in British Columbia is a renewable resource and it needs to be marketed before Alaska gets into the game,” or those who believe it is ironic that, while arguing against bulk water exports, Canada uses more water per capita than any other nation and in general “What is wrong with selling an even smaller fraction abroad?”²²⁸

However, even this type of coverage conceded the need for government regulation and control. These arguments, though, were outnumbered by those opposed

²²⁸ *Ottawa Citizen* (1998, May 16; November 7); *Edmonton Journal* (1998, May 9); *Hamilton Spectator* (1998, May 9); *Montreal Gazette* (1998, May 12); *Vancouver Sun* (1998, May 12); *Globe and Mail* (1998, June 23); *National Post* (2001, April 6)

to water exports as well as those who are concerned with environmental conservation, with anti-free trade concerns and other more emotional concerns about water.

In order to push the issue onto the agenda and compete for government attention, public interest groups and water export policy entrepreneurs inside and outside government tried to convey many of their ideas and arguments through the media. In this quest, they received considerable press coverage nation-wide. The media reflected most forcefully the intense hopes and fears present in policy arguments surrounding the water export issue and especially those concerning Canadian sovereignty over its precious resource.

As the analysis of the ministerial documents shows, the media has been also an important indicator of the public attitude toward the water export issue for the policy – decision makers. This tendency of the government to pay attention to media was especially prevalent during the 1990s when the criticism of the government grew and when media reporting reflected the public's call for action on the part of the federal government. Moreover, media's role has been also in stimulating bureaucratic attention toward the issue, not merely serving it as a barometer to measure public attitude. The increasing national media coverage of the water export issue through the 1990s indicates that this issue is far from being forgotten on the public agenda.

Overall it could be said that the agenda setting forces have been pushing the water export issue for a particular resolution by the government. The majority of those forces have been critical of the government's treatment of the issue and negative to the issue's affiliation with free trade.

Government Accedes to Popular Demands, But ...

Under the influence of the above mentioned factors, the federal government again considered delivering on its promise to legislate water export as reflected in the Federal Water Policy. In 1991 through the Interdepartmental Committee on Water the government launched a review process to update and improve some of the provisions of Bill C-156. The Committee consisted of several federal departments (Environment, External Affairs, Fisheries and Oceans Canada, Agriculture, Transport, Indian Affairs and Northern Development) and involved a series of consultations with the provinces, something that had not happened in the preparation of the original bill.²²⁹ These consultations were especially important in light of British Columbia's declared moratorium on water exports, and its continuing work on a provincial water export policy. The intent of the Committee was to make minor improvements and adjustments to the 1988 Bill, especially paying attention to the cumulative impact of many small export schemes based in a given stream or inlet.

However, the attempt to seek Cabinet approval to re-introduce legislation to deal with water exports in the House of Commons encountered a series of obstacles. The work of the Interdepartmental Committee did not go smoothly and not all those who were consulted were very cooperative. Indeed, some of the provinces, including Quebec and British Columbia, were non-committal toward this federal government

²²⁹ Quinn (1992).

initiative regarding water exports issue since they felt that this interfered in matters of provincial jurisdiction since they owned all resources, including water. This appeared to be a “new” dimension in the saga of water export development in that no province had criticized the federal initiative on this issue in 1988, nor had there been any adverse reaction against the first introduction of Bill C-156. However, in addition to this new provincial opposition, there was no consensus among the various federal departments that were represented on this Committee. Some departments felt that the benefits of water exports had not been evaluated properly and any commitment to the proposed legislative initiative would adversely affect the Canadian economy and possible revenues from water sales.

Accordingly, the initiative was put on hold in 1992, to allow various constitutional matters to clear the government’s agenda. It turned out that the House of Commons schedule was full for the remainder of the Session with other important policy issues, so it was doubtful whether there would be space to deal with any newly proposed legislation on water exports. Finally, this legislative initiative to revive Bill C-156 was dropped completely from the agenda due to changing political circumstances. Canada was about to sign a free trade agreement with the U.S. and Mexico (NAFTA) and any domestic legislation, like that under consideration, should have been reevaluated with respect to new international trade obligations. Bill C-156 was doomed from the very start.

However, to comply with the requirements of the democratic system, the government had to respond to the mounting criticism and satisfy at least some of the

concerns of those who steadily maintained the water export issue on the public agenda through all this time. Thus, in 1993 following the federal election and the coming into power of the new Liberal government, Prime Minister Chrétien announced that the government had made significant improvement in various areas with respect to NAFTA. And in response to concerns that NAFTA could force Canada to export water, the Prime Minister announced a declaration made by the Government of Canada, Mexico and the United States that NAFTA creates no rights to the natural water resource of any party to the agreement. During four years following the 1993 declaration, the government activities with respect to the water export issue could be characterized as being active but not producing much in terms of results. The federal departments were intensively communicating with one another and their provincial counterparts. Analysis of the interdepartmental correspondence shows that the majority of the communications focused on interpreting free trade agreements and their application toward water resources. The government seemed to be stalling for time, trying to find out the most feasible, convenient solution given the political circumstances: growing dissatisfaction among interest groups, policy entrepreneurs, media and the general public and pressure to meet international trade obligations.

However, the separate development of the streams by the mid-1990s had proceeded to the point where they each were ready for coupling at the same time. The water export issue was recognized as a problem, and solutions were available. In fact few solutions were prevailing: the government's solution of prohibiting large water exports and regulating small-scale exports; or regulating all types of water export.

Popular solutions embraced by the public were for prohibition or complete ban of all types of water export, or exclusion of water resources from any trade agreements. The political climate happened to be tight as well. However, the water export issue still needed some lever. What made its serious consideration by the government and its eventual transformation into a public policy problem possible could be connected to the following chain of events.

Confluence of Politics with Problem and Solutions: “Period of Interest “ V

In 1997 the federal government decided to introduce a Federal Fresh Water Strategy. The Strategy was presented as a truly “federal” initiative with the main objective to prepare the ground for revision of Federal Water Policy, which had not been reviewed since its adoption in 1987. The document also emphasized the importance of identifying and dealing with issues of national concern such as the export of fresh water from Canada.²³⁰ As part of this review, then Minister of the Environment Christine Stewart planned to meet with provinces in the summer of 1998 to set the federal government’s priorities²³¹ and “lay its strategy for a comprehensive approach to water export later this year...”²³²

The federal government initiative for a comprehensive solution to the water export issue came indeed in 1998. This initiative was triggered by export proposals

²³⁰ Government of Canada (1998). Fresh Water Strategy.

²³¹ Johansen (1999, March 8); Hansard (1998, May 15)

²³² Hansard (1998, November 16)

from Nova Group (Lake Superior, Ontario) and McCurdy Group (Gisborne Lake, Newfoundland). Later the same year a lawsuit was filed against British Columbia by Sun Belt Inc. of California and its intent to use the investment chapter of NAFTA to seek compensation.

Perhaps in response to this news, the negative public attitude escalated. In the parliament, members demanded the government identify its position with respect to water exports and declare firmly “no” to any future export possibilities. The government’s standard response was that a comprehensive strategy was on the way. On the question of whether the government was indeed committed to banning water exports and introducing a moratorium, the government’s response was “yes,” an appropriate bill would be tabled soon. However, some members were concerned that the government might change its position and so they persisted in demanding a solution and reminding the government of its promise throughout the 1998-1999 parliamentary sessions.²³³

The Council of Canadians and its Chairwoman Maude Barlow launched a major campaign to prevent the bulk export of Canada’s fresh water and exerted pressure on the government by warning that NAFTA would not protect Canada’s water and arguing that large-scale water exports should be prohibited. Media provided considerable coverage with the following headlines:²³⁴

²³³ Hansard (1998, May 5; November 16); Hansard (1999, February 3-4; April 30)

²³⁴ *The Telegram* (1999, October 3 & 18); *Arctic* (1999, January 26); *The Spectator* (1999, March 29)

Just say no to water exports;
Gisborne project another giveaway?
Water vulnerable to opportunism;
Ban water exports, critics urge government;
The sellout of Canada is becoming evident.

The Last Word After the Government: Convenient Solution

The mounting criticism over the delay in producing a legislative solution consistent with Ottawa's previous commitment resulted in more pressure on the government, and suggested a rift between different interests in the water export debate. The absence of legislation suggested a lack of serious commitment by the government to resolving the issue of water export. The federal government started to make frequent statements that Canada's water is a precious resource that must be protected and voiced its opposition to the Nova and Gisborne projects. The government also promised water export legislation but said it first needed a thorough assessment of the legal options available and an opinion from the IJC concerning the effect of water exports.

By summer 1998 the federal government had become more focused on the water issue. Federal departments with responsibility for water ²³⁵ were working on the assessment of legal avenues available to the federal government for the adoption and implementation of a popular demand - a ban on water exports. The assessment of the

²³⁵ Environment Canada – a leading department and among 12 other departments, the Department of Justice, and the Department of Foreign Affairs and International Trade.

legal options included not only domestic but also international laws. The results of the legal analysis concluded that the only option that had potential for immediate federal action was amending the *International Boundary Waters Treaty Act* (IBWTA) even though the treaty did not specifically deal with water exports. However, inasmuch as water export proposals affect natural levels and flows of boundary waters, these treaty provisions, after amendments, offer an avenue for regulation and possible prevention of water exports from a specific project within boundary waters.

While still in the process of discussions and legal assessments, the federal government came up with a comprehensive solution – a national accord on bulk water removals including for exports from Canadian watersheds. This accord would be consistent with the broader Federal Freshwater Strategy under which each Canadian jurisdiction (provinces and territories) would implement their own measures designed to restrict bulk removals and the federal component would consist of amendments to the IBWTA. In the interim, the federal government would ask provinces to implement a one to two year moratorium on bulk removals of water from watersheds within all Canadian jurisdictions. In order to provide the foundation for a consistent approach, federal departments (Environment Canada and DFAIT) were authorized to work on a reference to the IJC to examine the issue of water export, the effects of consumption, diversion and export from boundary waters.

On January 21, 1999 then Minister of Foreign Affairs and International Trade Lloyd Axworthy presented an overview of the proposed federal approach to the Canadian Council of Resource and Environment Ministers to obtain a preliminary

confirmation of provincial and territorial participation in the voluntary moratorium.

On February 10, 1999 the federal government announced a strategy to protect the integrity of Canadian water resources by prohibiting the bulk removal of water from Canadian water basins, including for purposes of export, that consisted of three components:²³⁶

- a Canada-wide national accord that would require federal and provincial-territorial cooperation in prohibiting the bulk removal of water from Canadian water basins. The accord would be flexible and allow each jurisdiction to implement its own measures. While negotiating the national accord, the federal government planned to ask provinces and territories immediately to implement a moratorium on bulk removal of water from watersheds.
- Amendment by the federal government of the 1911 *International Boundary Water Treaty Act* (IBWTA), which implements the 1909 Canada-U.S. Boundary Waters Treaty signed in 1909 by Great Britain (on behalf of Canada) and the United States was originally enacted to establish principles to prevent and resolve disputes, primarily concerning the quantity and quality of boundary water between Canada and the United States. Subsequently to help implement its provisions, the Treaty also created the IJC. Parliament enacted the IBWTA in 1911 to implement the Treaty.
- A joint Canada-U.S. reference to the JIC concerning the effects of water consumption, diversion and removal, including for export, from boundary waters.

In February 2000, IJC released its study, *Protection of the Waters of the Great Lakes*. A national accord to prohibit bulk water exports through legislation or regulation, was not realized in November 2000. Only five provinces and territories signed the Accord. On November 22, 1999, Bill C-15, an *Act to Amend the*

²³⁶ International Joint Commission (2000): p.66

International Boundary Water Treaty Act was introduced in the House of Commons by then Minister of Foreign Affairs Lloyd Axworthy. After many deliberations it was finally announced on December 10, 2002 that Amendments to IBWTA were coming into force. Two components of the three part strategy had been completed.

Thus, the problem of water export, was resolved at least for a while despite the fact the result was not necessarily what the majority had been waiting for – a complete water export ban, renegotiation of free trade agreements and subsequent exemption of water. During a press conference in November 1999, Lloyd Axworthy stated that demand for an export ban as the way to protect freshwater is essentially a “simplistic and wrong ...approach.” In fact if the government had taken this course, it would have made water harder to protect and more vulnerable to trade regulations.²³⁷ Thus the problem as understood by the Canadian government was effectively resolved.

Conclusion

In this chapter the issue of water export has been considered from the perspective of agenda setting. The issue developed in a complex yet dynamic process from the moment of its initial inception until its ascension to the Governmental agenda. Such factors as droughts, business pressure to launch water exports, escalating

²³⁷ Government of Canada (1999).An Act To Amend the International Boundary Waters Treaty Act.

national concerns over the issue of water, sustained media presence, political commentary, the public call for government action and parliamentary activity were all necessary to sustain and prompt movement of the issue on the government agenda. The pressure of interest groups has had a significant impact on the federal government especially with regard to concerns over how water export pertains to free trade agreements. However, elected officials come closer than any other agenda setting factor in setting the agenda for water export and ultimately transforming it into public policy. From the early days they had a strong effect on the general direction of the issue on the Canadian political scene. When the time came to thoroughly workout specific solutions, it was inevitable that the government would have to draw attention to the issue from other agenda setting groups (interest groups, bureaucrats, legislators) whose contribution was needed in order to make a final authoritative, viable, and democratic policy choice.

Elements identified in stream theory were finally fully present by the end of the 1990s. It was the confluence of problems, solutions and politics that made the government realize the urgency of bringing forward a comprehensive strategy and adopting IBWTA amendments. The work of only one or two streams would not be able to produce this result (witness the failure of previous decades when the problem itself was recognized but solutions were in shortage or when problem and solution lacked a favorable political climate). It is only a crucial link among all three streams that allowed the issue to reach the agenda. The policy window was suddenly opened by the compelling water export problem and simultaneous happenings in the political

stream. Incidentally the government had to deal with Nova Group, McCurdy Group and Sun Belt cases. Under escalating negative public pressure the government appeared to accede to the wishes of Canadians that water should not be commodified and that the government should take responsibility for this resource. The transformation of water export into a public policy problem also happened at a favorable time when a legal option for the issue was found and the government felt predisposition and a certain level of comfort with adopting it as a solution to the problem.

However, in hindsight, the result of these deliberations also shows that the government was not primarily concerned with finding a way of conforming to the so-called popular demand for a ban on water exports as the last decade's events may imply. In fact what the analysis of the findings hints at is that the government has been trying through the entire history of the water export issue to stall for time by not adopting any solution that would ultimately close the door to any possibility of water exports in the future.

Although those participants who worked on the issue's problem expansion managed to help draw attention to the issue, they could not determine the outcome of the policy. They were not able to achieve the result they initially wanted – a ban on water exports. Their demands for a specific water export policy and/or separate legislation were frustrated. As of today the situation with the water export issue seems highly fluid even after the government amendments to the IBWTA have been formalized and come into force. It is clear that the water export problem as it is

understood and advanced by those who demanded a specific water export policy did not vanish. According to David Dery while an issue can be forced onto the government agenda by popular demand, media attention and interest groups strategies, still that is only half of the battle. The other half is even more complex. It is about winning a problem definition.²³⁸ Without this victory, popular demands will never be realized. But could they be realized?

The conclusion of this chapter is that the issue of water export is still present and unresolved, or at least not resolved in the expected way. The government “owns” the issue, and therefore the future is also in its hands. It indeed created a structure that makes it more or less inevitable that the water export issue will come back onto the agenda. In fact, in spring 2001 the Canadian news was full of reports that Prime Minister Chrétien showed an interest in holding a public debate on bulk water export just two years after his Liberal government promised to ban bulk water exports. Apparently, the Prime Minister wanted to set up a parliamentary committee to study freshwater issues, including the idea of selling water. The news also indicated that Dennis Mills, Member of the Parliament and a supporter of water sales to the United States, would chair the all-party House of Commons committee which would hold televised hearings on “freshwater security” beginning in Fall 2001. However, a proposed committee has not yet been realized and as it seems now, nothing will result from this, according to some.

²³⁸ Dery (2000)

Chapter 5

Water Export in the Context of Market Pressure

Content of the Perspective

An international market approach to water export is found often in the popular press and in the presentations made by business entrepreneurs. One of the closest examples is the presentation made by William Annett, chairman and chief executive of WCW Western Canada Water Enterprises Inc., the company that applied for the water export licenses in British Columbia:²³⁹

Increased population, agriculture, industry and the urbanization process all call for increased supplies of fresh water... Classical economics tells us that in a situation where supply is decreasing and demand is increasing, the value of that commodity will increase. We have seen this with water. Once taken for granted, pure water is now an increasingly valuable commodity around the world. This increased value is one of the factors driving the dramatic growth in the water industry worldwide.... Western Canada Water is ...working on plan to ship water in bulk tankers from British Columbia to California, Mexico and other areas of the world which need water... Western Canada Water has developed all of the shipping, engineering, quality control and other technical details necessary, and has determined that the project is economically feasible.

²³⁹ Annett (1992, 1990) See also Paley (1992)

Despite the fact this statement was made in 1990, the general conditions that this quote describes are applicable for the entire period the water export issue has been on the Canadian political scene. This statement is assessing the “objective pressures” of the marketplace. That, in effect, is also the objective of this chapter. There are at least three sources of such pressure. One is exemplified by demand from those areas of the world where there is lack of sufficient fresh water resources or areas where supplies of water are running critically low. This demand is measured through an assessment of the ability and willingness to pay for the imported water, effective demand and costs of water from alternative sources, if such are available and accessible. Another source of pressure is exerted by technological factors that in turn determine the cost of marketing and shipping water. Last but not least, pressure comes from the real, or “speculative” interests of investors in filling this potential (or apparent) demand for fresh water.

In a more general sense, the “objective” pressure of market forces historically has been associated in liberal democracies with efficiency and economic growth, where the market is the engine of change oriented toward progress. The role of government is to allow the market to operate with as few impediments as possible.

The core idea of this and the following chapter is that on one hand, the Canadian government has been resistant to fully responding to market signals as might be expected in accordance with the market approach. Partially this could be explained by the fact that international water markets are not fully developed and (contrary to the

claims of WCW Western Canada Water Enterprises Inc.) international water trading has yet to prove its economic feasibility for Canada. The other explanation is that throughout Canada's history, the market economy, with its claims of efficiency and focus on individualism and the notion of private property, has been embraced selectively. On the other hand, the period of strong nationalist orientation has been slowly easing up, opening space for the idea of free trade to take root. As a consequence of this trend, the underlying water market conditions progressively affect the vision of water as a non-trade good. This is especially evident in the increased commercialization of water, combined with the revolutionary improvement of technologies for transporting water over large distances that has taken place over the last few decades. As John Hayward, a World Bank water expert said, "One way or another water will be moved around the world as oil is now."²⁴⁰ And as others have suggested, all that is stopping water withdrawals and exports is that they are "not economical yet. Once it makes financial sense to take water... and ship it elsewhere, a poor track record on water withdrawals issues may jeopardize attempts by the states and provinces to block it."²⁴¹

Supporters of water trading argue for the "therapeutic" effect of markets and emphasize that water markets would benefit society since they ensure this scarce and valuable resource would be put to the higher value use. This in turn would decrease reliance on government subsidies and eliminate free riders who gain the benefits of

²⁴⁰ Lawrence (1996)

²⁴¹ Krupa (2002). Michigan Starts War for Water. *The Detroit News*.

water use without paying. On the other hand, markets do not distribute goods equally. This chapter supports the contention made by Helen Ingram, “contemporary market-oriented patterns of politics [especially in water] favor some interests over others.”²⁴² An implication of this argument is that water trading may take place even in the absence of economic viability. Indeed, water is not simply an economic but a highly political resource. Depending on the interests involved and the support they get, an opportunity for water trading may exist even when the cost of shipping the water far exceeds the price the users are willing to pay directly because those who are promoting water trading and export may well be aiming to pay for the largest portion of the cost of the water out of “public funds.”

Discussion of market pressure in this thesis is presented in two separate chapters. This chapter analyzes the development of the water export issue by examining the reaction of the Canadian government to market signals and how that reaction affected the water export issue and its transformation into a policy problem from the 1960s until the free trade agreement between Canada and the United States came into force in 1988. Discussion of water export within the free trade perspective is the topic of the subsequent chapter, however, the emphasis there is not so much on the influence of markets but on the federal government’s basic response within the context of the trade agreements.

The chapter starts with a general overview of fresh water scarcity around the globe, followed by a historical examination of changing water market conditions,

²⁴² Ingram (1990): p.19

government reaction to water markets, and how these affected the development of the water export issue on the Canadian public policy agenda. The chapter covers the first three key periods of interest starting from 1963-1967, 1973-1977 and 1983-1988.

Canadian Water and “Objective” Market Pressure

The water export issue is subset of physical and geographical constraints. Fresh water is unevenly distributed around the world and is becoming increasingly scarce in many regions. Thus, exactly from these realities flow many of the discussions of the issue's transformation into a policy problem under the influence of market conditions.

Canadian Water Abundance

The world's total fresh water supply consists of only about five percent of the total volume of water (fresh and salt). Of the total supply of fresh water, only a tiny amount, 0.01 percent, is not in ice or underground. Canada has one of the most abundant supplies of accessible fresh water in the world. This abundance is even more significant if we consider the relatively small population of the country.

Approximately 60 percent of Canadian runoff is carried by rivers flowing northward, about 90 percent of the Canadian population of 30 million lives along the south border of the country. The annual amount of water available per person in Canada in 1990

ranged from 100,000 m³. Per capita water use in 1995 for Canada was equal to over 1500 m³ a year.²⁴³ Canadian rivers discharge roughly 100,000 m³, or nine percent of the world's total surface freshwater into the ocean. By comparison, Brazil's rivers discharge 18 percent, the former Soviet Union' 13 percent, and China's nine percent. Canada probably has more lake area than any other country in the world, with 565 lakes larger than 100 square kilometers. The Great Lakes' shared by Canada and the U.S. contain 25 percent (22,700 km³) of the world's freshwater in lakes. In comparison to truly arid lands in the western United States and in Northern Mexico, Canada has no arid lands except roughly 100,000 square miles in the Southern Prairies and in Interior British Columbia which is semi-arid.²⁴⁴

World Water Scarcity

While Canada and other water-rich countries enjoy an abundant supply, many other countries are suffering from a lack of sufficient water.²⁴⁵ The countries of the Middle East, most countries in Africa, many countries in Asia, and regions of China, India, and North America are already coping with serious water deficits or could enter a period of serious water shortages. Water is a renewable resource but also a finite resource. Because the total amount of fresh water is fixed, as population and

²⁴³ Renzetti (2002)

²⁴⁴ Environment Canada.(1992) Freshwater Series. See also Tinney & Quinn (1969)

²⁴⁵ See among others Allan (2002); Postel (1997); Gleaick (1993); Woehlecke (1992); Falkenmark (1989) on world water scarcity.

consumption grow water availability will be continuously reduced. The world's population grew over the course of this century from 1.6 billion to more than 5.4 billion. The population of developing countries comprises approximately 75 percent of the world's population and roughly 90 percent of all future population increase will occur in the developing world. The rate of growth in Canada is around 1.7 percent²⁴⁶ whereas in the developing countries it exceeds two percent a year and in some parts of Africa, Asia, and the Middle East it exceeds three percent a year. Every individual added to the population requires a future supply of at least 1,000 tons (cubic meters) of new water every year to meet their food needs. When their annual supply of water drops below 1,000 cubic meters (2,740 liters per person) nations are considered water-scarce. At least 26 countries with a total population of 232 million people already fall into the water-scarce category. By the year 2025, more than 30 countries will be unable to provide 1,000 cubic meters of water per person a year because of population growth. In 1990 approximately 2,200 million people lived in 62 countries that report average domestic water use below 50 liters per capita per day.²⁴⁷ Given these statistics, almost all new births will be in regions where access to good water (and other fundamental requirements for satisfactory quality of life) are severely lacking.

The "water crisis" in the Middle East is almost legendary. Each year, nine countries in this region use more than 100 percent of their annual renewable water

²⁴⁶ For the past decade the national fertility rate has held at 1.7 lifetime births per women according to Canadian demographic review project. See Canada Charts Its Demographic Future.(1991, January) *Population Today*; Passaris (1998)

²⁴⁷ Gleick (2000)

supply and are already forced to import additional fresh water, pump ground water at non-renewable rates, or desalinate seawater at great expense. China has 22 percent of the world's population and only eight percent of its fresh water and faces severe water constraints. At least 100 cities and towns predominantly in the Northern and coastal regions of China have suffered shortages in recent years. The North, the East and some of the South African countries will arrive at absolute water scarcity by 2025. Some of these countries will depend on water security to support high yields or even import food for self-sufficiency.

Some of the driest regions of the world rely on the "mining" of water drawn from fossil aquifers, water supplies deep underground that get very little recharge. For example, in China and India ground water levels are falling rapidly, up to a meter per year. Libya has been building an extravagant giant pipeline for the last few years to connect its southern desert with northern Mediterranean coast to transport water mined from the underground reserves. It is projected that Libya's wells will run dry within 40-60 years. Saudi Arabia mines fossil groundwater for 75 percent of its water needs, depleting its groundwater by about 5.2 billion cubic meters a year. Projected water demand suggests that by 2010 the deep aquifers in the country will hold 42 percent less water than they did in 1985.

The United States, the closest country to Canada, persistently experiences water problems even though on average, it is a water-rich country which has seven percent of the world's renewable fresh water supply. However, the population size (Table 5.1) of the United States is almost ten times more than that of Canada and only

about one-half of the American water supply is in the continental U.S., with 42 percent of it in Alaska.²⁴⁸

Table 5.1 Annual internal renewable water resources in the U.S. and Canada

	1990 population (10 ⁶ people)	Total (km ³ /yr)	1990 (10 ³ m/yr per capita)
United States	249.22	2,478.00	9.94
Canada	26.52	2,901.00	109.37

Most of the concern regarding water availability is focused on the driest part of the United States – the West, the Southwest. It has been forecast for quite some time that water shortage in this area, with its high population growth, urbanization and industrialization, will “almost certainly reach crisis proportions by the end of the 20th century unless alternative sources are found.”²⁴⁹ For decades the U.S. federal government encouraged settlement in the American West through irrigation subsidies. Billions of dollars in public funds have been spent by four federal water-development agencies – the Army Corps of Engineers, the Tennessee Valley Authority, the Soil Conservation Service and especially by the U.S. Bureau of Reclamation²⁵⁰ – to meet

²⁴⁸ Gleick (1993): p.130. See also Fritz & McKinney (1992); Quinn (1990)

²⁴⁹ Foster & Sewell (1981): p. 20

²⁵⁰ The U.S. Bureau of Reclamation was created in 1902, under the Reclamation Act. The period from 1902 until 1987 when the Bureau had ceased its water construction activities is known as the “Reclamation Era.” See Smith (1993): p.8; Quinn (1973): pp. 12-15

the U.S. West's huge appetite for water.²⁵¹ With secured Congressional approval the Bureau of Reclamation irrigated millions of acres of land and agribusiness flourished along with cities and real estates developers. By 1977, there were built 322 storage reservoirs and 345 dams, along with 112,650 kilometers (70,000 miles) of canals, pipelines and drains. In 1984, it supplied 31.4 billion liters (8.3 billion gallons) of water to irrigate over 4 million hectares (10 million acres) of land. Between the 1950s and 1960s the rate of urbanization of Western states outpaced that of the rest of the United States. This increased tremendously municipal and industrial water use in these states and, along with persistent irrigation agriculture that accounts for 90 percent of all water consumed in the West, resulted in greatly increased demand for water. The point was made that the ideology of that time was, "If abundant water supply is made available for all conceivable purposes, the implication is that everything else should fall into place...To this kind of thinking population and economic growth will proceed only with proportional increases in water supply."²⁵²

Significant water shortfalls are being experienced or are anticipated in Southern California, the Great Basin, the Lower Colorado, the Rio Grande, the High Plains of Texas and the South-Central portion of the Missouri River basin.²⁵³ In some areas of Southern Arizona, groundwater levels have declined as much as 122 meters

²⁵¹ 35 percent of the \$52 billion federal water project budget between 1965 and 1980 for the development of the western regions whereas only 6 percent of it was directed to the Northeast. See Nothdurft (1984); Rogers (1983): p. 88

²⁵² Foster & Sewell (1981): p. 20;

²⁵³ Congress, Senate Committee on Agriculture, Nutrition and Forestry, Renewable Natural Resources: Some Emerging Issues (1979)

(400 feet) since the 1940s. The Ogallala Aquifer, an underground lake, is being heavily depleted. The overdraft of water in this region is equivalent to the annual flow of the Colorado River which is about 14 million acre-feet by supplying about 30 percent of the groundwater used for irrigation in the United States. The Colorado River basin faces problems of water allocations that are already greater than total river flow during periods of drought.²⁵⁴

Resource Trading as Canadian Paradigm

The facts about scarcity of water and its unequal distribution world-wide raises the question of whether recognition of the water export issue as a policy problem and its rise on the government agenda might be explained on the basis of water demand by water scarce countries? It seems only logical to say “yes.” Given Canada’s abundant supply of water and the lack of supply in other regions, there is potential for water export. Furthermore, water export might fit with the history of Canadian economic development, which to a large extent is the history of exploitation of abundant resources, the so-called resource paradigm. Even though the resource sectors themselves are relatively small in terms of national employment (6.9 percent) and gross domestic product (5.8 percent), at the aggregate level, Canada’s regular merchandise trade surplus is heavily reliant upon exports of resource and resource-based processed products. The leading exports are grain and grain products, energy

²⁵⁴ Foster & Sewell (1981): pp.26-30. See also Postel (1997); Windsor (1992)

(natural gas, crude petroleum, fuel oil, coal, electricity), fisheries (Canada's leading industry with about 9 percent of world exports), forestry logging, pulp and paper account for nearly 85 percent of Canadian forest products sales abroad. Canada also exports a wide diversity of minerals, especially nickel, silver, molybdenum, and asbestos, potash and sulphur.²⁵⁵ Canada did not and does not hesitate to export its natural resources when there are opportunities at hand. For example, energy resource exports have gone forward despite earlier fears that, once traded on the international market, they could never be captured for domestic use and despite the non-renewable nature of oil and gas.²⁵⁶

Thus, given this resource paradigm orientation, the most obvious expectation is that Canada with its abundance of fresh water would use an opportunity to trade this resource as another means improving its balance of payments, or improving its bargaining position in trade negotiations, or creating jobs.

Cautious Attitude Toward Water Exports: "Periods of Interest" I & II

Strong Government Role

Even though Canada has not hesitated to export its natural resources (whether renewable resources such as grain and lumber or non renewable, strategically important resources such as oil and natural gas), the federal government has developed

²⁵⁵ Wilkinson (1987)

²⁵⁶ Quinn (1973)

complex policies to guide its export control agencies based either on a hands-off approach or on close scrutiny and government regulation of exports. Historically Canadian commercial policy was founded on the National Policy of the nineteenth century with its railway subsidies and protective tariffs. Since 1959, the export of power, natural gas and oil was regulated by the federal National Energy Board (NEB) which determined how much those goods could be exported while still leaving enough for Canada's needs. NEB watched closely the prices of the exported resources to make sure that they are at least as high as domestic prices and even higher. NEB also was authorized to grant licenses for exports of natural resources under its jurisdiction. The nationalization of industries was another way of showing a strong role of Canadian government. Export of forest products and minerals was governed by the idea of meeting domestic requirements first before licenses would be issued to the industries. In the trade of agricultural products provincial governments had exercised their "landlord's power" to control exports whereas the federal government also had actively regulated exports of grain by means of Canadian Wheat Board. A sense of "nationalism" had also been present in the water management. In Ontario, Quebec and British Columbia, legislatures established public corporations to take over private companies and to promote regional development by harnessing the hydro-electric potential of these provinces major rivers.²⁵⁷ For example, Ontario Hydro was made a

²⁵⁷ Quinn (1977)

Crown corporation and in Quebec, Hydro Quebec was nationalized in the 1960s to become a “symbol of French-Canadian industrial nationalism.”²⁵⁸

Despite the fact that exports of natural resources have been encouraged, Canadian government policy still has been based on the notion of active governmental efforts and ambitious regulatory organization, rather than just yielding to market forces and letting them determine the price and quantity of exports according to market conditions. As Doern and Phidd point out, one of the visions of the described period was to go against the flow, that is “when market power is too great, then lean toward greater state power and control.”²⁵⁹ However, because Canada’s tendency to export commodities even under the watchful eye of Canadian government and its strict regulations, water exports could not be completely dismissed as a future possibility. Still, the Canadian government realized that water export is indeed a politically sensitive issue and a cautious attitude toward it at the time was a dominant one.

Sources of Cautious Attitude Toward Water Exports

Canadians were quite sensitive toward water export because of general resistance and fear of being “hewers of wood and drawers of water” to the United States. This inevitably evoked (and still does) the concept of continentalism even though continentalist policies at the time have been perceived to some extent “in the positive terms of economic development and efficiency,” especially in energy policy.

²⁵⁸ Scott et al (1986)

²⁵⁹ Doern & Phidd (1983): p.379

When then federal Minister of Energy, Mines and Resources J.J. Greene, on his trip to Washington in 1969, received a proposal from his counterpart, U.S. Interior Secretary Hickel to consider establishment of continental markets for all energy resources, Mr. Greene had to take pains in explaining back in Canada that these energy market discussions were of a preliminary nature and that the resource package would not include fresh water.²⁶⁰

The Canadian government attitude toward water was different because commodification of water resources was a totally new and unusual concept at the time. Water, some believed, is the only resource which has not yet been for sale and that condition should not change. Besides, if there were any market for Canadian water, this was seen only with regard to the U.S. and all the business proposals for the large-scale water diversion meant inevitable “continentalism” with the United States. In Canada that was the period of searching for ways to reduce American influence. Such ideas like “Canada” and “Canadian” decisions, national self-interest, nation-building and independence from the U.S. were strongly encouraged and promoted. Accordingly, the Canadian government was trying to avoid discussions on a “continental” approach to water resources development and by virtue it was also a way of resistance to market signals.²⁶¹

Water export policy, if not in documents at least only in the words of some officials, sounded almost categorical – Canadian water is not for export. Water cannot

²⁶⁰ Quinn (1973): p.61

²⁶¹ MC (1966)

be so easily allowed to be another natural resource commodity. Canadian waters are not a continental resource because they are as Canadian as any other resource found within the national boundaries. Jean-Luc Pepin, the then Minister of Mines and Technical Surveys stated with respect to water exports during one of the parliamentary sessions: “Canada is obviously not a seller, as has often been said both by this government and by the previous government.”²⁶²

However, these apparently uncompromising statements were also mixed with more accommodating ones that resonated the political sensitivity of this issue outside and inside of the government and parliament. The main idea of the statements could be conveyed as follows:²⁶³

- There is no indefinable market as yet for Canadian water in the United States.
- Canadian water will never be sold under conditions which would jeopardize their permanent ownership and their repatriation if and when needed in Canada.
- Canada would be unwilling to negotiate any sale of water at present even if there were a market, because Canadian water supplies have not yet been adequately inventoried and Canadian water requirements into the future have not been assessed.
- An accelerated effort is underway in Canada to this end, but it will take at least several years to complete.

²⁶² Hansard (1966, June 28)

²⁶³ Quinn (1973): pp.63-64

Thus, it seems more realistic to assert that despite the negative attitude toward making water another resource for sale and general disdain toward water continentalism, water export as a concept was not intended to be entirely precluded. On the contrary, Canadians needed some time to check upon the availability of water resources for their own present and future consumption before entering into any kind of deals of opening water market with the U.S.

“Period of Interest” III or Changing Market Conditions

Water Transportation Technology and Market Diversification

The droughts of the end of 1970s and beginning of the 1980s in the United States prompted a perception of increasing demand for Canadian water in places such as California and the U.S. Midwest. This brought a new wave of business interests to the export of water from Canada. For example, in 1980 Kansas Governor Garlin, frustrated with the Corps of Engineers' pessimistic reports on opportunities for water transfer from adjacent areas, had been making inquiries about Canadian water jurisdictions and plans. During one of the meetings of the Missouri River Basin Commission where a Canadian observer was present, there was some informal discussion of Canadian interest in the possibility of exporting water to the United

States, particularly to the High Plains region from South Dakota to Texas which overlies the declining reserves of the Ogallala formation.

By the mid-1980s concerns were also heightened because of a gold-rush of private proposals to export fresh water abroad. All that was needed at the time to launch a business was to obtain a water export permit. For example, in British Columbia the application fee for commercial bulk export of water by marine transport vessels for 200 acre feet or less was \$2,000 and each additional 10 acre feet was \$20 more.²⁶⁴ The majority of business interests in water exports were home based Canadian entrepreneurs actively seeking foreign markets to be served from coastal streams in British Columbia, Quebec and the Atlantic provinces. These proposals varied in terms of means and scale of operation e.g. containerized export by tankers and large-scale exports using rivers and canals (Grand Canal).²⁶⁵ In British Columbia alone by 1986 eight companies had applied for licenses to export 2343 acre feet of fresh water each year by ocean tanker. By the beginning of 1990 more than thirty companies were waiting for approval by the British Columbia Water Management Branch of licenses applications to export water in supertankers from the province's pristine coastal outfalls.²⁶⁶

Business interests found new, less expensive and more attractive solutions for the development of international water markets. Who would have thought a few

²⁶⁴ The Schedule A: Tariffs of Fees and Annual Rentals Payable in Respect of an Application or a License According to the British Columbia Pricing.

²⁶⁵ See detail description of these proposals in Chapters 3 & 4.

²⁶⁶ Linton (1993)

decades before that water transportation technology would develop in a such way that in addition to the sophisticated dams and aqueducts that were possible already in ancient time,²⁶⁷ water could be even more easily moved by means of artificial diversion of lakes and rivers from their basins of origin for delivery by canal or pipeline covering vast distances on a continental scale? Large-scale water diversion, the only way of exporting water from Canada in the 1960s, has been supplemented by the small-scale water exports due to seemingly promising innovations in water transportation technology. It appeared that water could be transported in oil tankers which, after delivering their cargo, carry water in ballast until they to pick up their next shipment of oil. Water also could be transported in dedicated water tankers which could guarantee quality water free from oil residues. In the early 1980s, water bag technology seemed on the verge of commercial viability. This technology consisted of waterproof plastic or fabric containers towed behind tugboats and allowed the movement of fresh water through the ocean to any port in the world. The largest capacity of water bag could be 30,000 metric tons which is the size of a small oil tanker. Another option is the construction of undersea pipelines.

As technological innovations in bulk water transfers became more advanced, actual water trading practices also became more apparent. In fact, tankers and barges had already been making deliveries to different regions around the world willing to

²⁶⁷ Residents of ancient Rome could enjoy as much water per person, delivered by means of pipe system and well-built sewers, as is provided in many parts of the industrial world today. As early as five thousand years ago settlements in the Indus Valley were built with pipes for water supply and ditches for wastewater. Gleick (2001)

pay premium prices for small amounts of fresh water.²⁶⁸ The government of Norway has been engaged in water exports to different water stranded regions since the 1950s. Spain has supplied parts of the Balearic Islands with water to meet the increase in demand caused by increased tourism. Kuwait imported water from the Shatt al Arab, 180 kilometers away. Since the 1960s Hong Kong has imported water from mainland rivers using up to 50 tankers of 20,000 dwt.

In 1977 the Hong Kong Department of Aquatic Affairs approached the Commission for Canada in Hong Kong and subsequently the Canadian Government about the possibility of tankers lifting water directly from Canadian rivers on the West Coast. Hong Kong was faced once again with a critical water shortage and water rationing, closing down of the water supply for fourteen hours daily had been in effect for several months. The reaction to the proposal to export fresh water was sympathetic on humanitarian grounds but the Government of Canada took its time to study this proposal. Environment Canada gathered a small team of experts, including representatives of Transport Canada, Department of Fisheries and the Environment, to study the feasibility of the project and to make a final reply to Hong Kong Ocean and Aquatic Sciences. At the beginning of 1978 the group issued a memorandum of findings that there is no suitable location on the West Coast where even a small tankers of more than 20,000 dwt could directly lift clean fresh water.

²⁶⁸ See Gleick (2001;1998); Lowi (2000) pp.163, 170 (note 25); The News Center-Global News and Industry Reports (2000, July); *Glob and Mail* (2000, October 21); Government of Newfoundland and Labrador (2001): Appendix III

In 1982, representatives from subsidiary companies of Exxon, the old world's largest oil company, explored the possibility of exporting water from the St. Lawrence or Saguenay rivers for the Exxon oil refinery in Aruba.²⁶⁹ Exxon had some other alternatives to meet the shortfall in fresh water by extracting it from the Orinoco River in Venezuela, the Gatun Lake on the Panama Canal and the Hudson River. These sources, while closer to Aruba than Canadian rivers, have problems associated with them, therefore Exxon wanted to have a contingency source of water in Canada until late 1983 when desalination units would be installed in Aruba. Informal meetings were held in Ottawa and Quebec, in August 1982 to explore the possibility of Canadian water supply. The meetings gathered representatives from Environment Canada and its different branches, Department of External Affairs, Canadian Coast Guard as well as officials of Quebec province. Exxon proposed to use tankers reserved for clean cargo (either salt water or refined products would be used for ballast on the trip from Aruba to Canada). Each tanker would have capacity for 20,000-30,000 cu.m. However, nothing came of the discussion because of potential problems that were pointed out during these meetings. Coast guard representatives identified winter navigation and navigable depths (particularly on the Saguenay) as problems for this kind of business. The External Affairs spokesman emphasized that a precedent might be created for other companies to export water and that this case would require examination by the Government of Canada.

²⁶⁹ LeMarquand (1984); Keating (1986):p.160

However, External Affairs fears about creating a “precedent” were ironic given the fact that bulk water exports had already been occurring for a very long time in Canada. One of them is the sale of water to foreign ships coming to Canadian ports. Any amount for the use on-board of other (foreign) vessels might be considered as an export of water in bulk. The City of St. John’s probably provides most of the water sold to vessels in port and in early 1980s the city’s port officials were interested in capitalizing on selling water. The amount of water involved is unknown since it is not metered. Payments to the City for water are based on the hours the vessel is connected to the loading hose.²⁷⁰

The other example of possibly long- term existing Canadian water exports is the ballast water used to stabilize vessels when they do not carry commercial cargo, for oil tankers arriving to the Canadian ports. The fresh water that tankers take on after discharging their oil comes from the St. Lawrence river and costs the tankers nothing.

²⁷¹ However, according to Quinn and Edstrom, there is no confirmation that any ballast water is sold abroad. Besides the volume of fresh water, for example, the

²⁷⁰ The city in early 1980s charged high volume users about \$.11 a ton. Ports Canada sells water to ships at \$.46 a ton. If water to be used as a trading commodity, the shipper might be able to negotiate a price closer to the \$.20 a ton that other port authorities offer. For example, in 2001, the fee was \$180 for the first four hours or less, and \$75 an hour for any additional hour. In the year 2000, the City earned almost \$40,000 in such water sales. See LeMarquand (1984); Government of Newfoundland and Labrador (2001).

²⁷¹ LeMarquand (1983)

amount of water carried from the Great Lakes as ballast is insignificant. On average, a ship in ballast carries about 12,000 tons of ballast water through the seaway.²⁷²

These are only a few examples of how the idea of transporting and trading water on international scale has taken root in the minds of those who were concerned with easing water shortages and in the attitudes of those willing to try anything new to make a profit. The 1980s indeed offered a range of interesting and promising solutions to the development of serious international water markets and the Canadian government was not oblivious to these prospects but showed a great interest, as the above examples indicate. The most significant changes in the development of water markets in comparison to the 1960s was the establishment of small-scale water trading on a regular basis and diversification of potential water markets for Canadian water beyond the U.S.

Defining the Agenda-Setting Process for the Water Export Issue

In the wake of these international water market developments the position of the Canadian government became more flexible. However, to attribute this solely to these latest developments yields only a partial explanation. The water export's issue progression on the government's agenda has to be considered within the context of general political and economic developments in Canada.

²⁷² Quinn & Edstrom (2000). For the previous nine years, this could equal approximately five million tons of freshwater, equivalent to an annual flow rate of 0.02 m³/s(0.7cfs).

In 1981 Canada released two important reports. "Global 2000: Implications for Canada" forecast increasing pressure on Canada to supply a whole range of resources to meet escalating world demands. Another report, "Statement on Economic Development for Canada in the 1980s," released as part of the Budget papers, argued that Canada's economic opportunity lay in the development of the country's "rich bounty of natural resources." It also emphasized the fact that this resource led strategy would be tied to emerging international trade opportunities in selected industries. On the one hand, this statement still suggested an interventionist government (e.g. reminiscent of the strong government involvement in export regulation in the previous decades) and on the other hand, it was intended to reassure "businesses and American audiences about nonintervention," that its strategy is going to change by reducing regulatory obstacles to businesses, encouragement competition and efficiency orientation.²⁷³ Already in the mid 1970s, there was a tendency within political circles to move toward "freer" trade, led at the time by the Economic Council of Canada. Of course, in the Canadian context, these signals to free trade, could be traced back to the nineteenth century and culminate in the Free Trade Agreement at the end of the 1980s. In 1985, the Royal Commission on the Economic Union and Development Prospects for Canada, also known as the MacDonald Commission, delivered its report. The head of the commission had been an architect of nationalist policies in the 1970s, however, this time he changed his direction making a strong claim for the merits of free trade.

²⁷³ Doern & Phidd (1983): p.443

The government's position on water trade evolved within this broad transformation of its strategic economic objectives. Two different responses emanated from two ideological camps, so to speak, when experts began to predict that on a worldwide basis freshwater could soon be more valuable, and politically more volatile, than oil. On the one hand, there were those who were primarily interested in the economic potential of water exports. On the other were the protectionists who saw water as a heritage asset to be preserved and who consistently opposed any suggestion that Canadian water be considered a commodity for export. The opinion of the former group was that the growing interest in Canadian water should not be neglected and that water, in many respects, should be treated like any other resource when it comes to international trade. It is already a factor of production in many Canadian exports and in some industries it already represents a significant component of Canadian value added. The refusal to recognize water as a resource for market does not protect it, but merely undervalues it. Instead of a "no export policy" the government should therefore develop a proactive regulatory regime that would allow and encourage Canadian firms to take advantage of these new attractive trade possibilities. Canadians should approach the possibility of water export not as a threat posed by other countries (specifically, the United States) that would become dependent upon Canada's water but as an opportunity to strengthen the economy. The simple logic of this argument was that if the United States were to become dependent on a resource like Canadian

lumber this would ultimately work to Canadian advantage, allowing it to increase prices in response to high demand in such “a captive market.”²⁷⁴

The Inquiry’s Recommendations and Its Outcome

In this context, the Minister of the Environment, established an Inquiry on Federal Water Policy in 1984 to assess water supplies in Canada in relation to growing demands and emerging water problems and to develop a framework for a federal water policy for the future. The final report of this Inquiry emphasized the fact that Canadians are extraordinarily well endowed with high quality water resources, but that they must be vigilant in managing this resource. In particular, the report encouraged a shift from the traditional focus on supply, augmentation and control to demand management. Instead of concentrating primarily on making more water available to satisfy continuing projected growth, the emphasis should be on regulating the growth in water demand by achieving greater efficiency in its use. In fact it argued that by ignoring demand management in the past, Canada had been missing a major opportunity to develop appropriate market mechanisms that would help allocate water in an environment in which supply was becoming increasingly constrained. Indeed it emphasized that water was undervalued (there was charged for it other than delivery and treatment), overused and wasted, and suggested that water users should be invited to recognize the value of the water that they use by being required to assume the cost of providing it. Water projects should be subjected to a more systematic evaluation of

²⁷⁴ Saunders (1987); Foster & Sewell (1981)

their economic and environmental implications. Thus, water should be treated as an economic resource with a price tag that reflects its true opportunity cost.²⁷⁵

Though the Inquiry's conclusions above argument is obviously not a drastic departure from government's involvement in the management of natural resources, the report marked the beginning of the government's "softening" toward the market concept of efficiency. Ironically, in making this shift, government officials who were inclined to treat water as a national heritage took up economically-grounded arguments in presenting their case that water should not be treated simply as a commodity.

Based on their assessment of international market conditions for water export, new technological advances, and estimates of rough economic feasibility, the Inquiry concluded that it would be imprudent for the federal government to reject all water exports. Indeed a legislative and evaluative framework differentiating clearly between small-scale and large-scale projects should be established to deal with all forms of water exports. Moreover, in accordance with the focus on economic efficiency in water resource management, the report emphasized the need for continuous national assessments of water exports with regards to their economic potentials, benefits and feasibility. The national assessment should consist of the following key factors: type of water exports (large-scale or small scale), the general Canadian water supply and demand situation, foreign demand, international precedents and experience. In addition, the assessment should be based on consideration of capital requirements,

²⁷⁵ Currents of Change (1985)

environmental change, distribution of economic costs and benefits, impacts on job markets and current trade advantages for Canadian water dependent industries. The regular national assessments, the report argued, would enable the Canadian government to make well informed decisions on the question of exports and help it develop more comprehensive criteria on which to assess specific proposals. In general terms, these recommendations stressed that a simple "no export" policy would prove deficient unless the government had supporting data.

During the course of the work of the Inquiry and after, a series of studies were done a series of studies that directly addressed the issue of economic feasibility of water exports and what benefits the trade in water may bring to Canada. For example, in the first half of the 1980s Environment Canada funded two studies. One study was to present a general overview of economic and environmental issues associated with fresh water export by tankers and draw some implications and prospects for expansion of marine tanker export of Canadian water. The study was conducted within the context of research by and interests of the International Maritime Organization (IMO), a member agency of the United Nations Organization, that formulates strategies to reduce maritime pollution. The IMO had taken an interest in the use of fresh water ballast as a means of encouraging implementation of the oil pollution measures and also as a way of selling fresh water, after it served as ballast, to the arid oil producing states to supplement their inadequate water supplies. The IMO was interested in finding out if it were economically feasible to keep oil contamination of the fresh water to a minimum and ensure it is of marketable quality so that the tanker operators

would have an incentives to follow the regulations. In 1983 the IMO organized an international seminar in London, co-sponsored and largely funded by the Libyan National Academy for Scientific Research, due to its interest in the possibility of using oil contaminated water for irrigation.²⁷⁶ The second study, in 1984, addressed more specific issues such as Canadian interest in water export by tanker, the costs of transporting Canadian water to potential markets, the most likely sources of Canadian water for export and some aspects of policy and legislation relevant to the water export.²⁷⁷

The series of studies commissioned as part of the research program of the Royal Commission on the Economic Union and Development Prospects for Canada in 1986 published work by Anthony Scott, John Olynyk and Steven Rezzenti arguing that a good water export policy for Canada should be built around a cost- benefit analysis of each individual proposal. Offering a flexible open policy, the authors hoped, would appeal both to people who are categorically against any water exports from Canada and those who believe that water is an economic commodity like any other resource and that it should be governed by the same standards as allocation of capital and labor.²⁷⁸ Owen Saunders also explored the question of an “appropriate” regulatory basis for water exports, putting forward the argument that water resources should be treated as any other commodity in Canada.²⁷⁹ Charles Birt conducted a study on

²⁷⁶ LeMarquand (1983)

²⁷⁷ LeMarquand (1984)

²⁷⁸ Scott et al (1986)

²⁷⁹ Saunders (1987)

infrastructural requirements for bulk water export and import by tankers.²⁸⁰ The latest study on the economic feasibility has been commissioned by the Government of Newfoundland and Labrador in 2001.²⁸¹

Not surprisingly, these studies appealed to the government because at the time some officials, including Prime Minister Brian Mulroney, had already openly endorsed the idea of water export,²⁸² should the economics prove feasible.

Weighing Water Export Feasibility

In fact, the previous section showed how the government came to accept the principle that water should be considered an exportable commodity. However, despite the acceptance of water exports in principle, there would not be significant export at this time because they were not as yet economically feasible-costs were still too high in relation to the price that could be charged. All the above mentioned studies find at least a few specific reasons for that conclusion.

Water Markets

Fresh water does not have a worldwide integrated market, as there is for other commodities such as oil and wheat. The few markets that exist tend to be internal to a

²⁸⁰ Birt (1992)

²⁸¹ Government of Newfoundland and Labrador (2001)

²⁸² See Chapter 4.

country, or involve international trade on a bilateral basis.²⁸³ Moreover, the value of exported Canadian water to these markets is greater in years of drought than in years of normal or above normal yields of water supplies. Also, other countries with abundant water supplies are located much closer than Canada to prospective markets abroad. Even the California-Mexico border region could be served more effectively from the Pacific Northwest and Alaska than from diversions or ocean tankers drawing water from the Great Lakes. Canada is farther from most of the world's arid regions than other countries which might be sources of fresh water, for example, such developed and relatively water-rich countries as Norway, Ireland, Austria, France, or even Japan. With regard to markets for large-scale diversions, the indications are such that although the demands of a rapidly expanding population and agricultural base in the American Southwest are depleting available water supplies, it is not clear whether Canada could obtain net benefit in the form of monetary compensation or by attracting foreign investment capital for infrastructure to move water southward. Besides, interest in long distance transfer of water in the United States has diminished in comparison to the boom of the 1960s-1970s.

Cost of Water

The potential for long-term commercial markets exists predominantly in areas dependent on high cost water. However, even in these cases, the economic feasibility

²⁸³ See Government of Newfoundland and Labrador (2001); Gleick (1998); Quinn & Edstrom (2000); LeMarquand (1984)

of fresh water export has to face the challenges of guaranteeing a reliable long-term supply and suitable quality, as well as delivering it below the marginal cost of the next cheapest local alternatives such as ground water, recycled waste water, and desalinated water. That is for water exports to have an appropriate return and economic efficiency in resource allocation, water needs to be priced to reflect its marginal value. The return per cubic meter might be less than a few cents in comparison to the costs of harvesting and delivering it. Prices on different unconventional sources of water supply, as presented in the table below, put water export at competitive disadvantage.²⁸⁴

Table 5.2 Water costs (per cubic meter)

Conservation	\$0.10
Groundwater	\$0.16
Reuse	\$0.20
Recharge	\$0.86
River diversion	\$2.83
Bottled	\$500.00
Retail special (glacier water)	\$12,000.00

Critics of large-scale water diversions argue that the benefits of these schemes are “speculative” to say the least, and even its purely economic implications are very unfavorable. Apart from environmental impact, these schemes require major capital investments, the exact amount of which is sometimes difficult to predict with precision and would be difficult to recoup, if at all, over a long period. This again presents additional uncertainties about costs, benefits and future direction of technological

²⁸⁴ Study of Additional Water Sources for Corpus Christi (1997); LeMarquand (1999)

change in water export policy issue. For example restoration of Ogallala aquifer by transfers of water would probably cost \$500 to \$1,500 per thousand cubic meters for delivery just from Missouri and Arkansas River reservoirs to the Ogallala states; distribution costs within these states would probably double these figures. Delivery costs from a source as far away as the Great Lakes would be an additional \$500 per thousand cubic meter even without any allowance for compensation to existing users of those waters.²⁸⁵

Privately financed and executed water diversions from Canada to the United States were projected to cost as much as \$300 billion, \$10 billion per year for 30 years.²⁸⁶ NAWAPA was estimated between \$80 billion (over \$300 billion in 1990 dollars) and \$100 billion (over \$380 billion in 1990 dollars). The GRAND canal project had an estimated cost of \$100 billion in 1984 (10 times the cost of the Apollo project to put humans on the moon). The Inquiry report states that to agricultural users, who account for most of the water demand in the American West, new water supplies would be worth approximately \$130 per 1000 m³ and usually or as a rule, users would actually pay less than 10 percent of that cost. The difference between the cost of providing irrigation water and the actual value of the water would be made up by state and federal government subsidies.²⁸⁷

As for small-scale water exports the situation is as follows. Water, in comparison to other products, is a very heavy, low value and a highly variable cost

²⁸⁵ Currents of Change (1985)

²⁸⁶ Dale (1992)

²⁸⁷ Currents of Change (1985)

commodity. The transportation cost is a decisive factor in economic feasibility of water. For example, the difference in the impact of transportation costs of two similar weight products – oil and water - is that water's commodity value is approximately 10 percent of total cost and the rest covers the transportation cost. By comparison, the commodity value of oil is 90 percent of its total cost and only 10 percent is transportation cost.²⁸⁸ To be more precise, at \$1.00 per m³ of water, the delivery of 1,000 m³ will only gross \$1,000. The delivery of 1,000 m³ of oil at 420 per barrel would gross over \$125,000 and even \$150,000 at current prices.²⁸⁹ This makes delivery of water in bulk hardly competitive with the same volume of oil. Fresh water just is not worth enough much money to justify the cost of shipment, with the exception of fresh water shipped in bulk for bottle and sale in the "luxury" water market.

To be competitive, imported water would have to match or be below the cost of conventional and alternative nonconventional supplies of water. For example, the estimates of the cost of harvesting and shipping water from Newfoundland and Labrador province to Florida, Texas and the Caribbean range between \$1.35 US to \$3.00 per m³.²⁹⁰ However, a commercial system would have to be able to deliver water in many areas for well under \$1.00 per m³. Some claim that this is possible in

²⁸⁸ LeMarquand (1999)

²⁸⁹ See Gleick (1998); Quinn & Edstrom (2000)

²⁹⁰ Government of Newfoundland and Labrador(2001)

the long run, but the actual economics of water export can only be made fully known when deals are put into action.²⁹¹

The cost of water at the delivery site depends on the cost of water at its source, delivery costs, distance between source and market, depreciation costs, and operations costs for loading and off-loading facilities. Most cost estimates from the companies that intended to export water from Canada remain proprietary and thus inaccessible.

Water delivered in tankers requires investment of substantial, up-front capital that is specific to each transaction.²⁹² For example, the Gisbourne Lake proposal estimated that the annual cost of a new facility, including amortization costs, might range from \$3 million to \$6 million. In light of the large volumes of water involved, these costs are relatively low compared to the tanker costs, that vary substantially depending on the size of the cargo.

The greatest difficulty with transportation of water is making the size of the delivery system large enough to permit economies of scale. As water has a low commodity value shipping adds greatly to its delivery cost.²⁹³ Trade in water would only be valuable for both the importing and the exporting state when conducted at a very large scale. For water importing states no relief for water scarcity can be found in a few shipments of water. For water exporting states, exports are only remunerative when the quantity of the water sold can be set off against the high transport and

²⁹¹ Gleick (1998)

²⁹² See Smith (1994); Birt (1992); Gleick (1998)

²⁹³ See Government of Newfoundland and Labrador (2001); Birt (1992); LeMarquand (1983)

storage costs and low value per unit.²⁹⁴ The cost of carrying water, crude oil or any bulk commodity diminishes as the size of cargo a vessel can carry increases. The table below gives some indicative figures for tankers operating on shuttle delivery between Canadian ports and some suggested foreign market regions. The price per ton (based on 1981 costs) reflected the voyage costs, annual operating costs, and capital costs. These costs represent only the freight charges. The cost of the water, treatment, distribution at the delivery end, and port charges are not included. The port charges could increase the cost of water by perhaps \$.30 a ton for the cheaper deliveries.²⁹⁵

Table 5.3 Transportation cost of water in dedicated tankers (U.S. \$ per ton)

Tanker dwt cargo tonnage	30,000 25,172	80,000 68,017	250,000 209,453
B.C.- California/Mexico 2,500 miles	OC-6.08 TC-9.79	OC-2.90 TC-4.98	OC-1.79 TC-3.11
Quebec- Caribbean 4,000 miles	OC-8.86 TC-13.91	OC-4.46 TC-7.33	OC-2.60 TC-4.39
Eastern Canada – Suez-Gulf 16,300 miles	OC-36.48 TC-52.71	OC-18.48 TC-27.68	

OC-operating costs; TC-total cost.

Existence of Alternatives to Water Export

The cost of large-scale water diversions or small-scale tanker shipment is often compared with the cost of desalination. More than half of the world population lives

²⁹⁴ de Haan (1997)

²⁹⁵ LeMarquand (1984)

within 50 km of the ocean, which offers virtually unlimited seawater supply. Although desalination accounts for less than two-tenth' of one percent of world water use, Saudi Arabia, the United Arab Emirates and Kuwait account for 46 percent of the world's 1993 desalting capacity.²⁹⁶ The cost of bulk water delivery in 1985 per m³ ranged from \$1.25- \$7.50 in comparison to the cost of desalination which could be as low as \$.25-\$1.00 (brackish) and as high as \$0.80-\$1.50.²⁹⁷ Desalination technology changes rapidly and the Desalination Association predicts costs as low as \$0.50 per m³ in the future. Tampa Bay, the largest plant in North America, has desalination costs as low as \$0.55 per m³. Israeli experts claim that they can produce desalinated water for about \$0.60 per m³.

For example, Table 5.4 indicates the lowest projected prices for water delivery to Santa Barbara during the "famous" drought period in 1990.²⁹⁸ As the table suggests, projected costs for desalination are much lower than for tanker shipment.

²⁹⁶ Postel (1996). According to Postel, as of 1995 a total of 11,066 desalting units had been installed or contracted for worldwide.

²⁹⁷ Gleick (1993):p 414 ; Government of Newfoundland and Labrador (2001); Quinn & Edstrom (2000)

²⁹⁸ Santa-Barbara Water Fight a Learning Exercise (1990, August 7). *Globe and Mail*.

Table 5.4 Cost of water tanker vs. desalination (U.S. \$ per acre-foot)

By company names	2,500af/yr \$	5,000af/yr \$	7,500af/yr \$	10, 000af/yr \$
By tanker:				
Aqua Source	8,540	4,912	4,113	4,235
Snowcap/SunBelt	4,796	3,195	2,638	2,398
Western Can Water	4,640	3,620	3,211	2,929
By desalination:				
Aqua Design	2,081	1,818	1,683	
Ionics	2,241	1,953	1,918	1,866
Ambient Tech	2,595	2,390	2,295	2,229

However, despite technological innovations, the costs of desalination remain fluid, controversial and site-specific. There are also drawbacks to desalination such as vulnerability to higher energy prices,²⁹⁹ maintenance costs and possible risks if a desalination plant were hit by a missile or contaminated by an oil spill.³⁰⁰ The desalination process generates waste and land costs could be higher since plants take a lot of space.³⁰¹

In comparison to desalination, which is an energy-intensive process requiring equipment and skilled technicians, the tanker requirements are port and storage facilities, and low level' of technology. Water export and desalination as a means for

²⁹⁹ The fluctuating price of natural gas affect the cost of desalination.

³⁰⁰ Mouna (2003)

³⁰¹ For example, in the case of the Santa Barbara water export proposals, the tanker projects companies argued that the cost estimates did not properly compare the city's total costs of the contract. The city would contribute land and right-of-way to build the desalination plant, which should be valued and added to the city's financial costs. There is no publicly available estimate of the value of the city's contribution to the desalination plant, other than the city's own declaration that desalination was the cheaper alternative in this specific case. See Smith (1994)

solving water shortage problems could be complementary to one another. Both of these means have their advantages and disadvantages. In addition to the specific disadvantages of water import e.g. deep channels and facilities of large vessels, low volume supply, there are more general ones. It creates a dependency on sources of water outside country. The potential for a supply interruption because of storms, conflicts, boycotts, or strikes is thus relatively high.³⁰²

What might be concluded from the discussion above is that the opportunity for export of bulk water from Canada is limited at the moment considering both costs and the potential markets. Transportation costs and enormous fixed cost investments in dams, canals, pipelines and bulk carriers as well as substantial capital investments at the point of origin (e.g. storage and loading facilities) make export of water less feasible economically than alternative source of water supply. At the moment water export is a supply driven issue. As a result the long-term economic viability of water trading between Canada and water importing countries remains an open question. The experience of water export proposals suggests that water exports from Canada may not be economic in the U.S. water markets nor can Canadian water exports compete with alternative water supplies (conventional and nonconventional e.g. desalination) in the eastern Mediterranean, in the Middle East, or in Asia at least at the moment. Even if Canadian performance is technically reliable, the demand for imported water is uncertain. In any year, its economic value varies considerably, depending on the availability of water from other supply sources. During “normal” or wet years, the

³⁰² Gleick (1993):p. 414

value of imported water maybe only one fourth as much as it is during years of drought.³⁰³

However, few of the studies dismiss the potential for the water exports. The premise behind the government position on water export in general seems to be that Canadian water is for the benefit of Canadians now and into the future, and any water export proposals should demonstrate that the water exported is clearly surplus to present and future needs, and Canadians should benefit from any export. As some studies show, if volumes of exported water are large enough, the revenue could be substantial (e.g. a few million dollars or more).³⁰⁴ There are projections that Manitoba could generate amounts of at least \$4 billion dollars a year in water exports. Just for comparison, the province's annual budget is less than \$7 billion. Whether this is a realistic prediction or not is subject to debate and could only actually be proved if exports were implemented over an extended period.

Government Actions: 1987-1988

Preliminary investigations on the existing international water markets and the costs and benefits of two types of water exports, large-scale diversions and small-scale water exports, led the government to conclude that there was at least some

³⁰³ Smith (1994)

³⁰⁴ Government of Newfoundland and Labrador (2001); Manitoba Should Export Water to U.S., Study Says. (2001, September 29) *Globe and Mail* ; Export of Water Worth \$-b a Year. (2001, September 28) *Winnipeg Free Press*.

potential for small scale water exports. Large-scale exports are not only less economically feasible at the moment, but also potentially contentious, not the least because of possible environmental harm. After the adoption of the Federal Water Policy in 1987, in which the Canadian government declared its opposition to large-scale water diversions but made an exception for small-scale exports which would be regulated closely in cooperation with provincial governments, Cabinet authorized the drafting of the *Canada Water preservation Act*, Bill C-156. This bill was tabled in the House of Commons on August 25, 1988. The bill prohibited anyone from exporting water above the average daily rate of one cubic meter per second or annual volume of 20,000 cubic decameters (approximately equivalent to the water usage of a city of 130,000 population), but allowed the Minister to consider licensing smaller exports.³⁰⁵ Though these were very conservative allowances, since Canada's freshwater discharge to the sea totals 105,000 m³/s or 3.3. billion dam³/ year, this bill essentially allowed water exports to take place. It did not prohibit all water exports from the country and in that sense it might be seen as "progressive," that is in tune with market developments. The bill essentially demonstrated a pro-export policy position and dealt with process alternative for regulation of the activity. It was believed at the time that if Canadian entrepreneurs were to find customers abroad, tanker exports would not withdraw more than a small fraction of available supplies from Canadian coastal streams. Moreover, volumes of exported water would be small (less than one percent of flows involved in large-scale diversions schemes) and exports could be

³⁰⁵ Bill C-156 (1988)

discontinued if necessary because of the nature of transport and international competition among suppliers.

However, the *Water Preservation Act* was doomed. Within a few weeks of introducing the measures and before its terms could be considered by a Parliamentary Committee, the bill died on the order paper due to the call for general election on October 1, 1988. What happened after August 1988 and federal election signified the beginning of a new turn in Canadian history. It is a period when Canadian nationalism, with its idea of strong state began to lose ground to the pro-market international and global forces. This is also a period during which tension and confusion about the water export issue reached its highest point of attention in the country. In general terms this trend has been described by Harry Johnson as follows:³⁰⁶

In an important sense, the fundamental problem of the future is the conflict between the political forces of nationalism and the economic forces of world economic integration. This conflict currently ... [is] between the national government and the international corporation, in which the balance of power at least superficially appears to lie on the side of the national government. But in the longer run economic forces are likely to predominate over political, and may indeed come to do so before the end of this decade. Ultimately, a world federal government will appear as the only rational method for coping with the world's economic problems.

³⁰⁶ Johnson (1970): p.24 in Gilpin (1975): p.220

Conclusion

The reaction of the Canadian government to international water market forces was not simple and clear. Canada has traditionally been involved in its export sectors and especially in the trading of natural resources. However, during the first “period of interest” intensive market pressure for a liberal water export policy was met by a cautious government reaction. On the one hand, the issue obviously was politically sensitive. The water export issue was seen as part of American intentions to force the concept of continental water sharing with the U.S. This was against Canadian nationalist opinion promoted by the government at the time. On the other hand, the response of the federal government was not intended to rule out water exports. Rather it was made clear that bilateral (Canada-U.S.) discussions were premature until evaluation of Canadian water resources had been undertaken. However, already by the end of the second “period of interest” and beginning of the third, the Canadian government had begun to re-examine its position in the context of the general economic development of Canada - revival of the free trade option and changes of international water market conditions, expressed as a function of:

- intensifying entrepreneurial interests in launching small, more viable water exports from Canada
- technological innovations in water transportation, and

- growing interest and practical experience of other countries in international water trading

“Re-examination” of the government position at first did not mean yielding completely to the changing market conditions but exercising an instrumental rational policy making approach, based on careful evaluation of the costs and benefits of water export and choosing the course of action that would maximize net benefits. If in 1988 the government had wanted to ignore the potential economic benefits from water export, it would have prohibited even small-scale export. It did not. The challenge became how widely to open the door, which is discussed in the next chapter.

Chapter 6

The Water Export Issue in the Context of the Free Trade

Preamble

A course description from the School of Natural Resources and Environment at the University of Michigan illustrates some of the ways that people are looking at the problem of international water trading and the role of transnational institutions such as the World Trade Organization (WTO). The course, “Water Trade: What Should the World Trade Organization Do?” presents students with a dramatic description of global water shortage and the possibility of trade, and places them in a model scenario in which they play the parts of stakeholders and decision makers. They ask students to design systems of governance that would fairly, efficiently and sustainably govern bulk water trading practices. The simulation setting for the negotiation of such governance is an informal gathering of key actors convened by the WTO. The

objective of these key actors is to arrive at a consensus or near consensus

recommendation to the WTO regarding the tradability of water. Consider this:³⁰⁷

The year is 2004. One and half billion people on Earth lack access to fresh drinking water. As the water crisis intensifies, governments around the world are advocating trading of fresh water. The Global Water Corporation, a Canadian transnational corporation specializing in water products has secured permits to ship one billion gallons of water from the Great Lakes Basin to China over the course of the next ten years. Proponents argue that privatization and international trade of water resources is the only efficient way to distribute fresh water. Moreover such volumes are the proverbial drop in the bucket when it comes to North American water supplies. Opponents claim that selling water on the open market can wreak ecological havoc and does not address the needs of thirsty people. With environmental and public interest groups in the United States trying to block export of Great Lakes water, the Global Water Corporation turned to the WTO, demanding that the trade organization impose trade sanctions on the United States or Canada or both if these governments prevent the transport of the water. In the wake of public protests during its ministerial meeting, the WTO has been considering ways of changing its decision-making process and to regain public faith it has launched a process of multiple stakeholder public involvement. To solve water trading issue, WTO invited some two dozen stakeholders to consider all evidence on the issue of trade in water and to devise a nonbinding recommendation to WTO member governments. A recommendation with consensus from all participants stakeholders will carry significant weight in the WTO's upcoming meetings of member nations. Consensus will also set a strong precedent for future international policy decisions on other environmental and social issues.

³⁰⁷ Princen & Steyaert (2003)

Content of the Perspective

In the University of Michigan model, the entire issue, then, revolves around the type of role WTO should play. In the simulation model students have to be clear on the questions: should there be complete free trade, no trade in water or should trade be restricted? What is the role of WTO? Should it be the primary international decision-making body, should it only serve as a court of last resort, or should it have no role at all? This is a simulation model, and necessarily limited. However, as will be shown in the following sections, in reality this model even in its limited way captures an important part of contemporary reality. Increasingly the implication of free trade is to facilitate government efforts to create interstate arrangements for markets and interdependent cooperative policies for those markets to flourish. If water, as a scarce resource, indeed falls in the realm of market forces, then its allocation will be governed not by domestic but by international and even global commodity trading obligations. This tendency has greatly accelerated during the last fifteen years, since Canada became a party to regional trade agreements. International trade liberalization poses a number of dilemmas in terms of a country's sovereignty, environmental sustainability and property rights over its resources.

According to David Held these tendencies, contradictory or not, stem not from complete loss of legal and actual control by the nation-states over the process of determining policy directions, "but rather diminution of their capacity to achieve these

policies once they have been set.“ In other words, “nations retain actual as well as legal control over their instruments of policy, the problem arises because these instruments of policy lose their effectiveness.”³⁰⁸ While there is still insufficient evidence to conclude that Canada faces a loss of [general] sovereignty, its ability to control the future of its water resources is unquestionably problematic due to Canada’s position with respect to international and global (legal and power) system. In other words, while globalization leaves national territory unaltered, it is having pronounced effects on such vital resources as fresh water via furthering of a broad constitutionalization of neoliberal projects.

For the casual observer the transformation of water export into a public policy problem within the context of the free trade agreements could be viewed as an obvious response of the federal government to safeguard Canadian waters from being subjected to the conditions imposed by those agreements. Moreover, it would seem that the free trade agreements were some sort of exogenous disturbance, preventing the government from responding fully and sensibly to the strongly held public view that Canadian water should not be exported. At the same time the government’s argument is that the free trade agreements impose no obligation to export water and that there is no need to renegotiate the agreement. These two lines of thinking could hardly “hold water” against the contention of this chapter that while after almost 40 years of deliberation the government indeed adopted a policy solution to this issue, the motives of the government could hardly be interpreted in a straightforward fashion. It

³⁰⁸ Held (1989): p.229

seems more likely to suggest that the free trade agreements were designed to create an environment in which market practices, including commodification of all resources, would have maximum sway. And this is precisely what is happening with respect to water.

This chapter focuses on the analysis of the last two key “periods of interest”- 1991-1994 and 1998-2001- within the broad context of the international and global trade of water and its impact on the water export issue in Canada.

Water Export Issue as a Free Trade Problem: “Periods of Interest” IV & V

In Quest of Free Trade Virtue

While the work on the legislation package of the future Bill C-156 in 1987 was underway, free trade negotiations between Canada and U.S. were completed and the implementing legislation tabled in Parliament. The free trade negotiations with the U.S. began in 1986 after official notice of intentions in Fall 1985. The draft agreement of these negotiations was made in late 1987.³⁰⁹

³⁰⁹ Under this agreement most tariff, and service provision barriers (including financial barriers) between the two countries were supposed to come down within ten years, the asset threshold above which foreign investment becomes subject to review was greatly

On December 14, following the convening of the first session of the 34th parliament, the government introduced Bill C-2, the Canada –United States Free Trade Agreement Implementation Act. On January 1, 1989 the Canada-United States Free Trade Agreement (FTA, also known as CUFTA) came into force. Five years later it was suspended when the North American Free Trade Agreement (NAFTA), that transcends bilateral Canada- U.S. relation by including Mexico, came into effect on January 1, 1994.

FTA and NAFTA have similar architecture and both these regional agreements are rooted in the General Agreement on Tariffs and Trade (GATT) to which Canada has been a party for quite some time. From 1947 until the FTA, Canada's trade policy was based on multilateral negotiations under GATT which was created after the second world war to ensure economic reconstruction and avoidances of the 1930s depression.³¹⁰ Since 1995 the World Trade Organization (WTO) has assumed responsibility of GATT.³¹¹

The fundamental principle underlying trade agreements is to realize the potential gains from trade by reducing and removing national measures (barriers) that might act to distort or impede international trade in goods and services amongst its

increased, and last but not least, the agreement allowed to the creation of continental energy market.

³¹⁰ Doern & Tomlin (1991)

³¹¹ The WTO emerged out of the Uruguay round of negotiations on the General Agreement on Tariffs and Trade (GATT), held between 1986 and 1994. Its membership is not restricted to individual states and as of June 30th 2002 it included 144 members including the European Union and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu. See Street (2002). For details see WTO Document WT/INF/431.

members. Free trade is supposed to facilitate conditions for investment within free-trade areas as well as establish favorable conditions for further regional and multilateral cooperation that would expand and enhance the benefits of these agreements.³¹²

There are growing voices of those who argue³¹³ that the free trade regime implies that the time has come to stop relying on the heavy hand of government as a way of achieving environmental quality and consider using the invisible hand of free trade because the purpose of free trade is to reduce trade barriers, increase the efficiency with which resources are allocated and ultimately contribute to the wealth of citizens. However, how can gains from water trading be realized if there is public resistance to water exports that put constraints for the neighboring countries to realize those gains? Perhaps the possible shift in existing Canadian policy would come from a water export proposal perceived by Canadians as generating more benefits than costs. This can be achieved if Canada's commonly owned water and its political control by the "obscure and obsolete creature called the Nation" give place to the system of private rights, prices and profits in water use. Without clearly specified property rights, on the supply side, it is argued, citizens of the "selling" country gain little or nothing as individuals if exports are allowed. Hence it is costless to just to say "no" to water exports. On the demand side, the "buying" country has an insatiable thirst because the real cost of water consumption is hidden in taxes or other fiscal

³¹² See Article 102 in FTA and NAFTA and WTO documents.

³¹³ Anderson (1994); Gisser (1994); Fritz & McKinney (1994); Leon (1994)

illusion.”³¹⁴ For the proponents of free trade the answer is also in the creation of a common market of North America and the transfer of water from areas where there is surplus water to areas where it is desperately needed.³¹⁵

With regard to water exports a market perspective alone is not sufficient to explain what followed after the Canada-United States Free Trade Agreement Act came into effect in 1989. It has to be complemented with a more political concept of transnational trade regimes. It could be said that changes or developments in the provisions of free trade assumed the role of markets and became the guiding power for the government to adjust its domestic policy to yield those provisions that foster markets developments.

“Caught in the Trap”

Early in the course of the free trade negotiations, the Canadian government found itself under the attacks of nationalist or anti-free traders,³¹⁶ who focused on the claim that FTA does not rule out large-scale water exports to the United States and that water resources were part of the negotiations. The first full text of FTA agreement was realized on 10 December 1987 and water was in it.³¹⁷ The Toronto Star, in an article entitled “Water Sell-Out” alleged that water was discussed in the trade talks

³¹⁴ Anderson (1994)

³¹⁵ Dale (1992)

³¹⁶ See Chapters 3 & 4 reference to Rawson Academy, Wendy Holm.

³¹⁷ The release of the free trade text almost coincided with the release of the Federal Water Policy on 5 November 1987.

because Canada wanted to have it excluded, but that the demand was dropped in a final compromise with the U.S.³¹⁸

The Canadian government had taken pains to reassure the public that nothing in either trade agreement required Canada to export its water resources and that it is not for the international community to decide. The government insisted that, even if the free trade text included water as a “good” eligible for trade, this interpretation would only be compatible with the small-scale (containerized) water export provisions in the Federal Water Policy (1987) and did not authorize or legitimize large-scale exports to which the government had declared its opposition in the same document.

Nevertheless, in response to public pressure the government decided to make amendments to Bill C-2, the *Canada-United States Free Trade Agreement Implementation Act* to exclude all water from the Agreement, apart from water “packaged as a beverage or in tanks.” In addition the federal government felt obliged to make the following statement in a government manual accompanying the proposed agreement:

Canada’s legislation to implement the FTA already states clearly that the FTA does not apply to water, except in the case of water packaged as a beverage or in tanks. Similar provisions will be included in the NAFTA implementing legislation.

³¹⁸ Water Sell-Out (1998, June 11). *Toronto Star*. In May 1988 Associated Press interviewed Frank Quinn, Department of Environment, who said that the idea of a water exclusion was discussed by federal officials but was dropped at the “eleventh hour.” The main theme that Mr. Quinn tried to convey was that the United States was rather indifferent towards Canada’s water.

In 1992 the government made a special note in the *NAFTA Manual* - document that provides a summary of the NAFTA- that water was not discussed during the NAFTA negotiations with the United States and Mexico; and that NAFTA does not apply to large-scale exports of water which are contrary to the 1987 federal water policy nor would there be any negotiations or provision for large-scale water to another country.³¹⁹ Furthermore, a similar point - that none of the NAFTA provisions apply to natural or ground water - was made in *the North American Free Trade Implementation Agreement Act* that states in the section 7(2):³²⁰

...nothing in this Act or the Agreement, except Article 302 [a tariff elimination] of the Agreement, applies to water.

However, these amendments left many critics unsatisfied because they did not explicitly exclude water from either of the agreements.³²¹ They mainly meant a change in Canadian domestic legislation which did not alter the terms of the free trade agreements and could be overridden by the agreement itself.

Responding to the Public or Markets Concerns?

During the course of this unrest over the alleged association between free trade and water export and controversies over inclusion of large-scale water export into the

³¹⁹ Johansen (2001, February 20); Holm (1993)

³²⁰ Johansen (2001, February 20)

³²¹ Holm (1993): p.17

agreements and four years after tabling Bill C -156, the government decided to revive the bill with minor changes in 1991. This attempt was made with the idea that a new legislative response to the controversy would satisfy public concerns because it would ensure that major exports of fresh water were effectively prohibited and that small-scale exports were clearly subject to review, including specific application of the Canadian Environmental Assessment Act. Moreover, such a legislative measure would have the advantage of confirming for the Canadian public that the government was taking charge of a potentially divisive issue and not leaving it to the market to allocate the water that most Canadians want to preserve for their own use and enjoyment. On the pragmatic side, regulation of small-scale water exports became important because of the possible royalty surcharges that could be received from exports. Because water is a valuable resource it was argued that the government should not ignore the potential economic gains associated with such exports.

The government asserted that not renewing this legislation would imply that the government was open to any potential water export business. It would also indicate that it fails to deliver legislation that would prohibit large scale water export at the national level (as it had promised in its Federal Water Policy) and to stand by the noble idea of protecting Canadian water as a heritage that was not for sale. At the same time, allowing small-scale export may result in the criticism that the legislation does not go far enough and that most small-scale export firms will be foreign owned (or worse, Canadian water resources will be controlled by business interests south of

the border), and will enjoy the economic benefits of selling Canadian water.³²² On the other hand, domestic legislation prohibiting water exports would contradict Canada's international obligations and would seem like a unilateral measure. The concern was how the U.S. government would react and whether any such domestic legislation would be over-ridden if it conflicted with free trade agreements. The Canadian government appeared to want to avoid taking action that would go against any impediments to its commitments to the free trade agreement which would threaten significant business and the economic advantages it offers. Several federal departments involved in the work over revival of Bill C-156, expressed reservations about the need for this type of legislation. The Departments of Finance, Treasury Board and Energy, Mines and Resources argued that the proposed legislation ignores the potential economic benefits of water export and may constrain export demand from generating wealth for Canada. They also saw the need for a strong economic argument as a rationale for restricting water export and thus, by extension, for reinforcing the Federal Water Policy.

In all respects, this government legislative initiative did not go far enough because of the on going negotiations of NAFTA. The proposed for the legislation was subsequently rejected because it went against international trading rules as described below. The government's concern over public opinion with respect to water exports along with legislative initiatives became irrelevant. Ironically the free trade

³²² There were speculations that the B.C. government charges a royalty around \$9 per acre foot while Canadian water can sell for as much as \$3000 per acre foot in the U.S.

agreements had already sealed their fate as the free trade provisions, described below, indicate.

Free Trade Provisions

The most significant aspects of free trade and the water export issue center around the questions whether water in its natural state is a “good” and if so what are the consequences of such an inclusion? On a more dramatic scale, there is concern whether this inclusion of water resources in trade agreements jeopardizes Canadian sovereignty over its water resources. NAFTA and GATT/WTO list water, “natural water of all kinds other than sea water,” as a “good” under their provisions and as it is understood in the GATT.³²³ The Harmonized Tariff Schedule (HTS) used by U.S. and all WTO countries, includes water of all kinds – natural or artificial mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavored, ice and snow (other than seawater, which is described in a separate heading).³²⁴ The existence of the HTS means that there is a mechanism under which shipments of fresh water can be processed by U.S. Customs and comparable customs of other nations.³²⁵ If water is a “good” then it is subject to international trade disciplines, of which the most relevant to water are the *proportionality*, the *national*

³²³ Hansard (1999, November 22)

³²⁴ Appleton (1994): p.214; HTS 2201; NAFTA 201(1); Holm (1993;1988)

³²⁵ Gleick et al (2002)

treatment and the *investor state* provisions that allow “investors” (read corporations) to sue for compensation if the above rights are denied to them.

NAFTA’s Chapter 11 provision on National Treatment for Investors and Investments states that:³²⁶

Each Party shall accord to investors of another party treatment no less favorable than it accords, in like circumstances to its own investors with respect to the establishment acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

In other words, Canada (or any other NAFTA country) cannot treat other NAFTA investors, or the investment of an investor (e.g. water exporters or importers) differently from the way it treats its own domestic investors and investments (e.g. water exporters or importers).

Another provision of Chapter 11 for which there is no parallel in the GATT/ WTO, is the procedural innovation that allows an investor to settle disputes between itself and a NAFTA party by suing the government of either of the other two signatories:³²⁷

A Contracting Party shall not expropriate or nationalize directly or indirectly an investment in its territory of an investor of another Contracting Party or take any measure or measures having equivalent effect except... accompanied by payment of prompt, adequate and effective compensation... equivalent to the fair market value of the expropriated investment...

³²⁶ NAFTA, Chapter 11, Article 1102.

³²⁷ NAFTA, Chapter 11, section B, Article 1110.

The third important NAFTA provision (Article 309) states that constraints on exports of any good must be shared proportionally across the signatory countries.³²⁸ This means that if Canada were to start exporting water in bulk and subsequently faced a drought or other shortage, it could not reduce the amount of water exported to the United States and Mexico in order to maintain levels of deliveries to domestic customers. Instead both domestic and foreign customers would have to proportionally share reduced deliveries, because all customers should be treated equally. Moreover, once water has entered trade, it must continue to be traded. Canada will be precluded by these provisions from ever reducing the “proportion of total exports shipments of the specific good such as water made available to that party relative to total supply.”³²⁹ Under these NAFTA provisions the implications for water export control measures are such that once water export gets underway, NAFTA parties, the U.S. or Mexico, will be entitled to a proportional share of Canadian water resources in perpetuity. These provisions impose significant constraints on Canadian policy and regulatory option and have specific implications for “turning off the tap” on water exports.

If a province that was about to export water in bulk form decided to cancel the business, then Canada would be obliged to pay compensation under Chapter 11 of NAFTA, which states:³³⁰

³²⁸ Barlow (1999)

³²⁹ Shrybman (1999)

³³⁰ NAFTA Chapter 11, Article 1102 (3).

The Treatment accorded by a Party.... means with respect to a state or province, treatment no less favorable than then most favorable treatment accorded, in like circumstances, by that state or province to investors, and to investments of investors, of the Party of which it forms a part.

As a result of these provisions, foreign companies can sue for millions if they argue that Canadian policies and laws, including environmental ones, are ruining their businesses. The challenges as a rule are not settled by Canadian courts, but by international tribunals whose decisions are almost impossible to appeal through traditional legal routes. As a result the possibility of an international arbitration overruling domestic law potentially would have a most significant effect in Canada. The Council of Canadians in 2003 served the federal government with evidence that NAFTA's Chapter 11 is unconstitutional and this case is awaiting hearing in the Supreme Court of Canada. If the case were to win (even though the consequences of granting this application would be rather daunting as the Council of Canadians admits), it could create a political crisis and lead to a re-examination of these free trade commitments.

So far, international business has challenged Canada at least 15 times using the rules from Chapter 11.³³¹ The most famous case with respect to water export is the

³³¹ Among others are Virginia –based Ethyl Corporation which threatened to sue Canada for banning MMT, a gasoline additive suspected of being a neuro-toxin, and which is banned in Europe and several U.S. states (April 1988). The federal government settled out of court for \$20 million, removed the ban on MMT and issued a public apology to the company for damaging its environmental reputation. In October 1988, Canada was ordered to pay \$8.2 million to Ohio –based waste-recycling company S.D. Myers because it suffered losses under a temporary ban on

case of Sun Belt Water Inc. from California, headed by Jack Lindsey, a former naval officer with strong ties to California political circles. Sun Belt Water Inc. formed a joint venture with Snowcap Water Ltd., a Vancouver Island company led by ex-Mountie, oilman Fred Paley and partners Barry and Linda Olsvik. Both Sun Belt and Snowcap Water were hoping to make a business out of importing water to California during the drought of 1990 and they even emerged as the winning company among the tanker proposals made by other British Columbia companies Western Canada Water and Aquasource. However, because of British Columbia's temporary moratorium resulting from the province's water policy prohibition of water export from its territory, Sun Belt lost its water export permit. In December 1998 Sun Belt Inc. filed a notice of intent for a claim under chapter 11 Article 1120 of the NAFTA due to the unfair cancellation of a permit on the grounds that the province compensated its Canadian partner Snowcap Water Ltd. for the "killed" contract with Goleta, California but not Sun Belt. In its application Sun Belt demanded \$10.5 billion in damages from the federal and British Columbia governments, restoration of the water export license and compensation for the lost business opportunities. In respect to the proportionality of treatment, some legal experts assert that the Chapter 11 suit cannot overturn British

PCB exports from Canada. Canadian Union of Postal Workers are challenged by UPS, an American courier service which argues that Canada Post benefits unfairly from the number of mailboxes in Canada. Trew (2003).

Columbia law, but it could make the government of Canada liable for the profits that Sun Belt would have earned from the contract.³³²

The case has been pending since 1999 and arbitration has not yet started. However, it fuels public perception that NAFTA weakens Canadian's sovereign power over its natural resources. The Canadian government argues that the Sun Belt Inc. has not satisfied the prerequisites for triggering the arbitration process and chances that the company will win the suit are very low because, the basis of the claim is not the legislation banning removal of water from British Columbia, but the alleged treatment of the company by British Columbia government and courts.

It has been suggested that bottled water and value-added water trading industries also may experience the consequences of Chapter 11 disciplines despite the fact that some assume that these industries are not directly engaged in water export activities. This is because Chapter 11 provisions are such that once water is allowed to be withdrawn from its natural state for either large-scale industrial use or personal consumption, the most-favored-nation provisions of the trade agreement require that NAFTA investors be treated at least as well as investors from other countries.

The most recent case that heightens speculations that NAFTA partners could demand equal access to Canadian water is Ontario's decision to allow a Swiss based-

³³² Gleick et al (2002) argue that while the government of Canada may be liable under these provisions of NAFTA, the profits Sun Belt might have actually received are highly uncertain and even unlikely because of questionable economic feasibility of water export.

multinational company OMYA Canada Inc.³³³ to triple the amount of water they withdraw, up to 4.5 million liters a day, from the shallow Tay River. According to critics, this case sets a precedent that entitles all North American investors to similar treatment in Ontario. Furthermore, the decision to give the company access to more water could effectively make water a commodity. OMYA uses water to make a product by mixing water with crushed calcium carbonate to produce a thick slurry which is shipped throughout North America to make products such as paper, pain, plastics, toothpaste etc. Another NAFTA –based investor can argue that the government had provided this Swiss investor with certain rights. In that case, trade tribunals may give an equal consideration to this company. This is a realistic scenario under which a company could make a claim.

Environmental Measures Under Free Trade

Even though free trade agreements allow member countries to retain the sovereign power to strengthen their environmental laws and enforcement efforts, the relevant provisions apply only so long as these environmental objectives reflect “a genuine credible” environmental concern and are not used for protectionist purposes or as disguised restrictions on international trade. There are two exceptions of the GATT that might be considered applicable in the case of water export. Article XX(b) permits measures needed to protect human, animal or plant life or health, and Article XX (g), permits measures to conserve exhaustible natural resources, if such measures

³³³ OMYA Ruling Opens Floodgates to Exports (2003, February 27). *Ottawa Citizen*.

are made effective in conjunction with restrictions on domestic production and consumption.³³⁴

These exceptions generated a great deal of discussion about how these environmental provisions are read, how they affect the possibility of export controls and whether Canada can use them to protect its water from export. The use of these provisions depends on how and who interprets them. The interpretations are also unclear with respect to whether or not water in its natural state falls under Article XX (g) of GATT and whether it qualifies to be called an “exhaustible” resource or whether that term is restricted only to finite resources such as oil, gas or coal.³³⁵

If one looks at the track record of the cases based on environmental resource conservation measures that were put before the trade panels under NAFTA or GATT/WTO, the findings indicate that almost each one of the cases was struck down, for example, the well-known cases such as:³³⁶

- The U.S.-Canada Tuna dispute in 1982 – the U.S. adopted an import ban on Canadian tuna, allegedly for environmental reasons. The Panel ruled that this ban did not meet the conditions under which Article XX(g) could be invoked. The panel noted that similar restrictions had

³³⁴ Article XX (b) and (g) of the GATT are incorporated into the NAFTA by Article 2101.

³³⁵ Saunders (2000) suggests that if the Article XX (g) is read broadly “there would certainly be a strong case that the particular nature of the Great Lakes basin waters is an exhaustible natural resource.” Gleick (2002) argues that water has characteristics of typical renewable resources and can be used in a manner that does not affect the long-term availability of it and also water is non-renewable resource if it is mismanaged, overpumped, contaminated. In the latter case, an Article XX (g) may support exemption of bulk water resources.

³³⁶ Barutciski (2002)

been placed on the imports of tuna from other nations, including Costa Rica, Ecuador, Mexico and Peru, but only subsequent to the restrictions placed on Canada. Thus perhaps the discrimination was not unjustifiable. However, if this were truly an environmental measure, the U.S. would have placed domestic limits on its own consumption of tuna, which it did not;

- The Salmon-Herring, Canada case adopted a measure that prohibited the export of unprocessed fresh salmon and herring from the west coast in 1987. GATT ruled the case on the basis that it has nothing to do with environment but with protecting processing jobs in B.C.;
- The U.S.-Mexico Tuna Dolphin dispute in 1991 and the Shrimp-Turtle case in 1998 – WTO expert panels rejected protection of dolphins and turtles against tuna and shrimp through import restriction. The United States attempted to protect dolphin “by-catch” in the high seas, which is not within U.S. jurisdiction and therefore it could not use either XX(b) or XX(g).

In no case has a trade panel been willing to support a conservation measure under Article XX. Indeed in every case it found several reasons for dismissing the applicability of its environmental provisions. As Steven Shrybman points out, to further complicate matters, panels “have often taken inconsistent and contradictory approaches to addressing these issues,” a problem that has even drawn stern comment from panels itself.³³⁷ The free trade panels do not generally accept domestic environmental protection legislation as a valid basis for imposing trade restrictions. As Beth Chalecki of the Pacific Institute for Studies in Development, Environment and Security points out various WTO member countries including South Africa, Angola, Ecuador, Chile, and Indonesia have publicly stated in high-level symposiums on Trade

³³⁷ Shybman (1999)

and Environment that environmental protection measures should not stand in the way of economic development.³³⁸

For the free trade protagonists, some of whom are environmentalists or conservationists, the panels' rulings signify "a positive development" as far as they encourage transparency and non-discrimination as well as environmental protection in the interest of conservation instead of disguised protectionism. However, at the same time, it becomes extremely daunting to craft any domestic regulations because they could be challenged or impugned by the international panels. Thus, it would be difficult for Canada to justify the necessity of an export ban (Article XX (b)) or to satisfy the domestic restrictions requirements (Article XX (g)). The effect of the free trade provisions is to ensure that, once it allows water exports, the government may not be in a position to stop them. For example, if Bill C-156 had been adopted it would have given the government the power to regulate small-scale water exports and to prohibit larger exports. But that power could well have been overridden by the free trade proportionality provision. Free trade profoundly limits the discretion the government has in taking actions that might be seen as restricting commerce.

It would also be difficult to use the environmental measures under free trade because even though cumulative effects of water exports are recognized as harmful to the environment, (for example by changing lake levels and outflows) still the impact of these changes is subject to interpretation. As the IJC 2000 Report to the Governments of Canada and the United States indicates, experts participating in a

³³⁸ Chalecki (2000)

Commission workshop on cumulative impacts concluded that it is difficult to quantify with any degree precision the ecological impacts of most water withdrawals, consumptive uses, and removals. Moreover, it has been emphasized that:³³⁹

The dynamic nature of the Great Lakes-St. Lawrence system and the multiplicity of physical, chemical, and biological processes affecting ecosystem status challenge science's ability to establish and characterize casual relationship between a given water use and its impact on levels, flows, and fluctuations, on any observed changes in the ecosystem, and on economic uses of the system.

The main advice that IJC gives in the face of “possible pressures for removals” [water exports] on the basis of its conclusion is that the governments [Canada, U.S.] should adopt a “precautionary approach.”

However, in Canada to send water from “where it is abundant to where it is scarce, or from where there are few people to where there are many” is seemingly not unusual. Quinn and Endstrom emphasize that no other country in the world diverts nearly as much water as Canada. In Canada the total flow of water diverted between drainage basins is colossal (4,450 m³/s; 157,000 cfs).³⁴⁰ If the flow transferred between basins within Canada were concentrated within one river, it would be Canada's third largest, after the St. Lawrence and Mackenzie. This total is greater than the combined total of water transfers in the next leading countries, the U.S. and the former Soviet

³³⁹ International Joint Commission (2000): Section 4.

³⁴⁰ m³/s – cubic meter per second; cfs - 1 cubic foot per second.

Union.³⁴¹ For example, the most recent diversions such as the LaGrande (James Bay) project in northern Quebec, the Churchill-Nelson diversion in northern Manitoba and the Churchill Falls project in Labrador makeup two-thirds of all water diverted within Canada.³⁴² Overall, Canada has between 54 and 60 interbasin diversions (the number varies from source to source)³⁴³ and the aim of these projects was not always to transfer water where it is most needed. In fact, the largest water diversions in this country are implemented to enhance hydroelectric power generation, thus transmitting low-cost electricity, not water, to U.S. markets. This fact alone rises the brows of some who wonder why continental megaprojects, that propose to move water across national boundaries, cannot be treated the same way as domestic water projects. Domestic and continental diversion are governed by the same economic analysis and may generate the same positive impact on economy where water is needed.

Even though the popularity of large-scale water diversions has greatly declined due to environmental impact, there are few major proposals pending. Some worldwide projects for diversion of waters to solve regional water deficits are:

- The Indian government has an ambitious plan to link major rivers (including Ganges and Brahmaputra) flowing from the Himalayas and divert them south to drought-prone areas to irrigate farmland and produce hydroelectricity. The plan is estimated to cost between \$70 bn and \$200 bn and the Indian

³⁴¹ Currents of Change (1985): p. 32

³⁴² Quinn & Endstrom (2000)

³⁴³ The Inquiry mentions 54 interbasin transfers. During the interview one of the Environment Canada bureaucrats mentioned 55 interbasin transfers. Another source (one of the government's confidential documents) mentions 60 interbasin transfers.

government is preparing to seek international funds for its giant project.³⁴⁴

- China's state planners in recent years revived a 1952 dream to divert water from the Yangtze to the parched north and west. The project is ready to begin and could be completed by 2010.³⁴⁵
- Japanese and American scientists proposed to divert Aral Sea water to Afghanistan at an international aid conference on Afghanistan held in Tokyo on January 2002. They suggested splitting the Aral Sea into three lakes, draining off the excess water into Afghanistan via the Amu Darya river.³⁴⁶
- As Central Asian states continue to haggle over the use of water resources. The Uzbek government is reviving the possibility of diverting north-flowing Siberian rivers southward into Central Asia with the aim of bolstering the region's agriculture. Proponents see the project as necessary to prevent an economic disaster. Turkmenistan focused on grand projects such as Friendship Dam, located on the border with Iran, the plans for lake Turkmen – a giant artificial lake in the Kara Kum Desert as well as creation of an artificial river in the capital of Turkmenistan, Ashgabat, to ensure that the country's capital does not "lag behind" leading world capitals.³⁴⁷
- Spain is considering reviving an old proposal to import water from the Rhone River with a 320-kilometer aqueduct extending from Montpellier, France to Barcelona. This will be the first trans-basin water deal in the European Union if completed. Italy is considering importing water to its dry southern regions by building a pipeline under the Adriatic Sea to pump in supplies from Albania.³⁴⁸
- In 1944 the U.S. Congress approved a massive project -the Garrison diversion³⁴⁹- to provide flood control, hydroelectric

³⁴⁴Vidal (2003)

³⁴⁵Cerentig (2000)

³⁴⁶ Kazakhstan: Afghan Water Project Fears (2002)

³⁴⁷ Argumenty i Fauty (2003, January); Desert Gold: Niyazov's Conflicted Approach to Turkmenistan's Water Woes. (2004, May 16) *Eurasianet*: <http://www.eurasianet.org>

³⁴⁸ *Financial Times* (2000)

³⁴⁹ The Garrison project is a complicated issue between U.S. and Canada for more than 30 years due to fact that it impacts water quality of Canadian rivers and lakes especially in the area of Devils Lake, 100 km south of the border with Manitoba. North Dakota wants to drain millions of lake water into the nearby Red River, which flows north through Manitoba and into Lake Winnipeg. Manitoba fears that its water

power, and irrigation in seven states, using the water of the Missouri River. The plan also includes pumping plants and hundreds of miles of canals to transfer water from the reservoir at Garrison Dam to east and north, across the continental divide, to irrigate 1,000,000 acres of farmland and improve water supply for towns in northern and eastern parts of the state. The Garrison diversion still exists, receiving millions of dollars of federal money in some years and about 120 miles of canals have been constructed to carry water over the continental divide. In December 2001 passed the Dakota Water Resources Act of 2000, which endorses the project's continuation.³⁵⁰

Ironically Bill C-156 was intended to prohibit *only* diversion of water from Canada for export but not to prohibit diversion of water within the country. At the time the bill was under elaboration, the impact of free trade provisions was not that clear and, in fact, was not taken into consideration. At present, the free trade provisions practically leave Canada “defenseless” and ill-equipped to protect its waters from export schemes.

maybe contaminated by new species of fish, which may threaten the local fishing industry and later ecosystems, as well as by parasites and pollutants. *Macleans* (1999, November 29).

³⁵⁰ Doig (2002)

Toward Transformation of Water Export into a Public Policy Problem

Joint Canada-U.S. Mexico Statement

After it was criticized for appearing not to have protected Canadian waters in the free trade agreements, the government issued a joint public declaration together with the United States, and Mexico in 1993:³⁵¹

The NAFTA creates no rights to the natural water resources of any Party to the Agreement. Unless water, in any form, has entered into commerce and become a good or product, it is not covered by the provisions of any trade agreement including the NAFTA. And anything in the NAFTA would oblige any NAFTA Party to either exploit its water for commercial use, or to begin exporting water in any form. Water in its natural state in lakes, rivers, reservoirs, aquifers, water basins and the like is not a good or product, it is not traded, and therefore is not and never has been subject to the terms of any trade agreement.

According to the government, if water resources were to become the subject of dispute settlement or arbitration, the 1993 Statement would at minimum be an important factor in the subsequent interpretation of the NAFTA. However, in a pragmatic sense, the government used the Statement as a “smokescreen” that allowed it to appear responsive to public concerns and at the same time to avoid meeting the

³⁵¹ Statement by the Governments of Canada, Mexico and the United States (1993)

demand for a complete ban on water exports or a complete exemption of water from trade agreements.

In the Canadian parliament it has been argued that even raw logs and unprocessed fish were exempted from NAFTA. However, the strongest declaration the Canadian government achieved on water was the 1993 Statement which works only as long as Canada never allows water to enter into commerce and thereby become a good or a product.³⁵² Furthermore, the distinction that has been drawn by the NAFTA parties between water as a resource and water as a good, for some is a distinction that has limited validity because for most practical purposes this distinction would “break down rather quickly.”³⁵³ The 1993 Statement is not part of the NAFTA per se but is “no more than an unsigned document on blank paper,” a “non-binding, gentlemen’s agreement released as an attachment to a press statement issued by the government of Canada.”³⁵⁴ According to Steven Shrybman, there is no indication that this Statement received approval by the U.S. Senate with respect to all international treaties which would be a customary under the U.S. Constitution, and thus it would not likely satisfy the requirements of the Vienna Convention even with respect to interpretive notes.³⁵⁵ What is certain, the majority of trade analysts agree that once international trade in

³⁵² Hansard (1996, March 11); International Boundary Waters Treaty Act, 1999.

³⁵³ Gaines (2002)

³⁵⁴ Shybman (1999)

³⁵⁵ Ibid.

bulk water has begun, the trade cannot be stopped by an action of the country of origin [Canada] unless specific exemptions within GATT/WTO or NAFTA are satisfied.³⁵⁶

The government argued that there is no exemption for water in the agreements because it is not necessary to insert an exemption from obligations that do not exist or otherwise, it would throw into doubt whether obligations exist for other natural resources in their natural state, such as trees in the ground, where clearly no such obligations exist either. The underlying premise is that water in its natural state (for example, in lakes, rivers, reservoirs or aquifers) is the same as trees in the forest, fish in the sea, or minerals in the ground. While all these resources can be named as goods or saleable commodities, still until that crucial step of either harvesting or extraction takes place, they remain natural resources that are outside the scope of trade agreements. Notwithstanding the fact that most of the various GATT provisions are expressed in terms of “products,” the government insists that the GATT tariff schedule does not define what a good is, it merely provides an organizational structure for the purposes of tariff negotiations and customs administration. It does not tell if and when water is a good. It only tells that when water is classified as a good, it falls under a particular tariff heading. Based on the rules of international law concerning the interpretation of treaties (e.g. Vienna Convention of the Law of Treaties 1969) the definition of the word “product” is primarily governed by its *ordinary* meaning which means that for a good to become a product, something must have been done to it: water should be removed from its natural state, captured or transferred into tankers,

³⁵⁶ Gleick et al (2002)

bottles or pipelines. Only in that case does water enter commerce and therefore become a good. It is only then that GATT/WTO and NAFTA obligations start to apply. Thus, the government argument is that Canada's international trade agreements create no rights of any other party to Canada's natural water resources and create no obligations whatsoever for Canada to commercially exploit its water. It is up to Canadians to determine how their water resources are managed.³⁵⁷

A Canada-Wide Approach

The next action by the Government, a Canada-wide approach of the 1999, is also supposed to reaffirm the government's position opposing bulk water removal from Canadian watersheds, both within Canada and for export, and be logically consistent with the 1993 Statement. A Canada-wide focuses on protection of water in its natural state by treating water as a resource and not as a good, which therefore excludes water from the trade provisions with respect to trade in goods. This means that water is protected in its natural state (basin), *before* the issue of its export arises. It also specifically addresses "bulk water removals", whether for domestic purposes or for export, as opposed to "water export" that is shipment of water for profit abroad. According to the official explanation, the former broadly refers to large-scale removals of water by man-made diversions (e.g. canals), tanker ships or trucks, or

³⁵⁷ Environment Canada (2000). Fresh Water: A Federal Discussion Document, July 25, 2000, Draft; Department of Foreign Affairs and International Trade (1999) Bulk Water Removal and International Trade Considerations; International Joint Commission (2000): Appendix 9, pp.66-69.

³⁵⁷ FTA Article 201.1

pipelines. This water is not necessarily exported from the country but may have harmful effects on a watershed system.³⁵⁸

Last but not least in the sequence of measures undertaken by the federal government to prove its point that Canadian water is protected was the amendment to the *International Boundary Water Treaty Act* (IBWTA) that came into force on December 10, 2002. IBWTA and the *Boundary Waters Treaty*, according to Canadian government, deal with water unequivocally in its natural state, i.e. in the lakes and rivers along the boundary: "... the water from main shore to main shore of the lakes and rivers and connecting waterways..." This clear definition of water conforms to the principal effect of the suggested amendments. The amendments prohibit bulk removal of water out of the Canadian portion of boundary water basins between Canada and the United States (the Great Lakes and other boundary waters, such as part of the St. Lawrence River, the St. Croix and Upper St. John Rivers, and the Lake of the Woods) either by means of diversion (e.g. by pipeline, canal, tunnel, aqueduct or channel) or by any other means by which more than 50,000 L (about the capacity of a tanker truck and trailer) of boundary water are taken outside the water basin per day. Licensing from the Minister of Foreign Affairs is required for any activity in boundary or transboundary waters that would have the effect of altering the natural level or flow of

³⁵⁸Environment Canada (2000). Fresh Water: A Federal Discussion Document, July 25, 2000, Draft; Department of Foreign Affairs and International Trade (1999) Bulk Water Removal and International Trade Considerations; International Joint Commission (2000): Appendix 9, pp.66-69.

waters on the United States side of the border.³⁵⁹ The Federal government solicited support from IJC which, after a broad public-consultation process (20 public hearings throughout the Great lake Basin in Canada and the United States; over 300 presentations, hundreds of submissions from and consultation with governments, interest groups, individuals, relevant sources, and expert workshops) stated in its August 1999 interim report on bulk water removal from the Great Lakes that:³⁶⁰

It would appear unlikely that water in its natural state (e.g. in lake, river, or aquifer) is included within the scope of any of these trade agreements since it is not a product or good....

IJC also enclosed in its Final Report a Letter From the Deputy United States Trade Representative which states that:³⁶¹

...no government seeking access resources controlled by another nation has ever sought to bring the matter before the GATT or the WTO. We do not expect that situation to change.”
...the WTO has nothing to say regarding the basic decision by governments on whether to permit the extraction of water from lakes and rivers in their territory.

According to the Director-General of the WTO the export of bulk water has not arisen yet under the GATT so far and water was not an issue as such during the Uruguay Round Table where contracting parties were discussing the status of natural resources. In fact, water has not been thought as a tradable commodity, with exception

³⁵⁹ Bill C-6 (2001) An Act to Amend the International Boundary Water Treaty Act.

³⁶⁰ International Joint Commission (2000): Appendix 9, p. 67

³⁶¹ Ibid.

of bottled mineral water, because of certain technical problems associated with water e.g. its bulkiness, pervasiveness and low cost. Water has been more a subject in relation to “environmental services.”³⁶²

The Expanding Concept of Water Markets

Mr. Speaker, we certainly subscribe to the idea of exporting beer to any part of the world that recognizes the high quality of our product, but we do not subscribe to the idea of exporting our water. It is as simple as that.

Minister of the Environment, Hon. Chas. L. Caccia³⁶³

While the Canadian government has been involved in this long, thorny debate the international water marketing activities have been adding new dimensions to the understanding of water export.

In the previous chapter the discussion of international water markets ended on the note of technological innovation in water transportation and growing number of private companies awaiting approval of their export licenses. The situation was almost the same by the mid-1990s. No proposal for water export had yet demonstrated economic feasibility. Nevertheless, entrepreneurs continued to explore and propose export initiatives. For example, the British Columbia government had an active file of

³⁶² Moore (2003)

³⁶³ Hansard (1984, June 1)

companies that registered applications for water export by pipeline and tankers with the registration date going back to 1996.³⁶⁴ Even though no water export from Canada took place between that time and the present, for many, that means simply that no export in its *conventional* sense occurred, whereas if one looks at the idea of water export more broadly, the situation is not so clear cut.

Ambiguous Meaning of Water Commercialization

In the context of free trade, it is difficult to draw clear lines between water as a “good” and water as a non-commodifiable resource. Would water extracted from its natural state for agricultural, industrial, or other purposes be equivalent to using water in commerce? And if so, would such commercial usage of water in some ways open the door to requiring free trade in water in all its states?

According to the Government’s explanation³⁶⁵ “commercialization” means water that has been transformed into saleable commodity and therefore a good, though not all water is removed from its natural state becomes a good. As for water extracted for municipal, industrial or agricultural uses, the government considers that this issue can be clarified only on the basis of specific factual and legal circumstances under which that particular water is removed from its natural state.

³⁶⁴ British Columbia Ministry of Environment, Lands & Parks
<http://www.env.gov.bc.ca/wat/wrs/papply.html>

³⁶⁵ Environment Canada (2001). Background Information on Bulk Water Removal and Water Export, and Bulk Water Removal and Water Export-Frequently Asked Questions.

The government's answers are less than satisfying because the question goes farther than just inquiring whether NAFTA compels Canada to sell its water. The focus is rather on what is a *trigger* that might place water under NAFTA? At what point does a misstep cause water to become part of commerce, giving a private investor the right to sue Canada if it refuses to sell it? According to Howard Mann, a legal adviser to the Canadian government on NAFTA-related North American Agreement on Environmental Cooperation, nobody knows how water would become part of commerce and subject to NAFTA rules. It all depends on how the agreement is read. If it is interpreted broadly, it could almost surely expand NAFTA's authority over fresh water. Could privatization of water systems make water part of commerce? Or is it correct to assume that Ottawa River is part of commerce on the basis that the public obtains water from this river filtered through the City of Ottawa treatment system? Thus what makes the answer to the question on commercialization of water complicated is the difficulty of determining the level of the bar that would indicate when water becomes part of commerce and how broadly free trade agreements should be interpreted.³⁶⁶ Notwithstanding the various ways of interpreting those provisions, whether fresh water falls under free trade agreements (NAFTA or GATT/WTO) is still legally unsettled.

³⁶⁶ OMYA Ruling Opens Floodgates to Exports (2003, February 27). *Ottawa Citizen*.

International Trends in Commercialization of Water

If the Canadian government applies only a limited interpretation of what exactly constitutes water commerce, then across the border, in the United States (Canada's largest trading partner and the largest potential market for Canadian water) the concept is accepted much more broadly and with much more unanimity in the interpretation. The U.S. treats water as an economic good and part of commerce

The United States

The United State doctrine of congressional power, the "Dormant Commerce Clause", inferred by the Supreme Court from the "Commerce Clause" in Article I - 8 of the U.S. Constitution, authorizes Congress to regulate commerce among the states. The exercise of this Congressional power is as broad as the needs of commerce itself and extends to the use of water (e.g. of a navigable stream for the production of hydroelectric power and to the protection of navigable waters). Typically Congress utilizes this power by enacting a law. However, according to the Dormant Commerce Clause, even when Congress has not acted (i.e. Congress' power to regulate commerce lies dormant) the Supreme Court may find certain state and local laws unconstitutional if they unduly burden interstate commerce. It is said that "neither the power to tax nor the police power may be used by the state of destination with the aim and effect of establishing an economic barrier against competition with the products of another state

or the labor of its residents. Restrictions so contrived are an unreasonable clog upon the mobility of commerce.”³⁶⁷

The IJC in its report to the government of Canada and the United States recognizes the fact that this doctrine maybe a constitutional restraint on protection of water resources (Great Lakes in particular). However, it emphasizes that it is not aware of any cases where “the doctrine has been applied to waters allocated by the doctrine of riparian rights, as are the Great Lakes in the United States, or to interstate or boundary waters widely shared among basin states and a foreign nation.” Besides, Congress has the power to authorize state legislation that would otherwise violate the doctrine. The IJC writes “it is very clear under the Commerce Clause cases that, where Congress has authorized a restraint on trade, there is no Commerce Clause problem.” The Commerce Clause attacks can be sustained only, as the IJC points out, in times of shortage when a state may favor its own citizens and there are times when legitimate state interests may justify actions by states that affect interstate commerce.³⁶⁸ However, the IJC recognizes that even in that case, a court will act depending on the facts of that case. Already in the 1980s U.S. court rulings have denied the state government the right to prohibit water transfers to other states in order to permit greater flexibility in redistributing water between regions.

One of the best pieces of evidence is that in 1982, the Supreme Court ruled, *Sporhase v Nebraska ex.rel. Douglas* case, that water in its natural state is considered a

³⁶⁷ United States Constitution /Commerce Clause. Wikipedia, the Free Encyclopedia. <http://www.wikipedia.org/w/wiki.phtml>

³⁶⁸ International Joint Commission (2000): Section 8, p. 36

commercial good and therefore is an article of interstate commerce, and that the principles of the commerce clause that protect free trade among states apply to statutes governing interstate water use. While western states use the right to regulate the interstate use and transfer of water on the basis of water conservation and the public welfare allowed by the Supreme Court's decision and at least nine out of eighteen western states have a specific statute listing criteria that must be met to appropriate in-state waters or transfer water out of state,³⁶⁹ still the recognition of water as an article of interstate commerce seems to provide a solid foundation for exporting water out-of-state and out-of-country. The Supreme Court of the United States dismissed the argument that water cannot be treated differently from other natural resources because of its essential for human survival nature. On the contrary, water is an article of commerce because of the nature of and trade in the commodities (e.g. agricultural) that were produced with its use. The court ruled out Nebraska's ground-water export control legislation as 'unconstitutional and held that water is an article of commerce under US law. Moreover, state ownership of water is found as discriminating against out-of-state users or as Helen Ingram points "public ownership of water asserted by most western state statutes and constitutions was a legal fiction."³⁷⁰

³⁶⁹ The three common criteria for the out-of-state transfers or appropriation are that it will not adversely affect the public welfare of the host state or the conservation of waters within the host state's boundaries, and that the waters appropriated or transferred will be put to a beneficial use. Fritz & McKinney (1994)

³⁷⁰ Ingram (1990): p.18. See also Miller (1988)

European Union

Under international law water is also considered a good. According to the European Court of Justice the term “good” includes anything capable of monetary valuation and of being the object of a commercial transaction, such as goods and materials that are supplied in the context of the provision of services. This means that if water is being shipped as a good in order to provide a service, e.g. for public consumption or agricultural irrigation, then it would be considered a good under the European Community Treaty.³⁷¹ In 2000 the European Parliament and the Economic and Social Committee on pricing policies adopted a resolution to promote the use of water charging to act as an incentive for the sustainable use of water resources and to recover the cost of services by the economic sector. The European Union believes that not only service fees but gradually the costs of environmental preservation, reconstruction to correct environmental damage and esurience of future water availability should be included in the price of water. This particular framework chosen by European Union has sparked debate and outraged environmental groups who were shocked because they believe that water is a human basic right and all should have access to it for free and that to commodify water is wrong. As a result the European Commission acknowledged and supported the idea that prices for water should clearly convey that water is a scarce resource hoping that this would be sufficient to establish

³⁷¹ Shybman (1999)

water as an essential need of human beings so that not purely economic factors alone are considered.³⁷²

This brief consideration of developments in the U.S. and in Europe suggests that the Canadian insistence that water is not subject to NAFTA rules (or for that matter GATT/WTO provisions) concerning trade in goods unless it has “in any form ... entered into commerce” is not so clear as Canada seems to suggest. The government’s claim is, at best, weak, and at worst perhaps illusory.

Water as Economic Good

In the early 1980s the Inquiry on Federal Water Policy emphasized that water should be recognized as an economic resource and a price tag should be put on it. In 2001 Environment Canada finally began the process of placing a value on the country’s fresh water supplies. The federal government justified this action by saying that “knowing the value of the country’s water supply will help to refute the arguments of those [e.g. case of Newfoundland Premier Roger Grimes] who believe Canada should start selling it.”³⁷³

However, for many critics, this is the way for the government to move closer to allowing bulk water exports. Recognition of water as an economic good means that

³⁷² Who Preaches What? (2003, September 6); Bulletin EU. (2001, January; 2000, August). European Commission.

³⁷³ Water Price Needed to Battle Proposed Sale, Anderson Says (2001, May 31-June 1). *Globe and Mail*.

water should be allocated across competing uses in a way that maximizes the net benefit from that amount of water. In turn, a rational price system for water would treat this resource as a tradable item, which raises the issue of what degree water resources have to be left to market forces. Should they be private goods or public goods that require some amount of market management to effectively and efficiently meet social goals? If water is like any other economic good and tradable commodity then its production allocation should be determined by the amount that people are ready and willing to pay for it. The United States provides a good example of how to start.

Water Marketing

After almost a century of political allocation, the U.S. recognized water as a commodity subject to interstate commerce. The American system of water management, especially in the western U.S., proponents claim, offers a model for transferring water management and allocation from a centralized bureaucracy to local entities with consequent privatization of water resources.³⁷⁴ This can happen, as they argue, in the context of NAFTA as well. According to the proponents, in the absence of a water market, water allocation will be left to the inefficient depletions of the commons or to the ongoing redistribution contests of the political process.

In the early 1990s president Bush signed the *Western Water Bill* (HR 429) which authorizes funding numerous federal water projects and maps out federal policy

³⁷⁴ Perry et al (1997)

for delivering water to western-states. The bill includes a plan for reallocation of water in California's Central Valley Project among different users. Congressional staff who worked on this legislation found water transfers provision together with water pricing and a market based approach to be exciting departures for western water policy. Water transfers force water to a *realistic* cost (as much as a few hundred dollars per acre foot) in comparison to the subsisted, giveaway approach (with the price per acre foot only \$3.50). The realistic price for water is supposed to lead to serious conservation. This approach may raise water to the same commodity stature as energy. Thus, marketing of developed water supplies and "water rights" on a voluntary basis among users is now becoming the chief means of sustainable municipal and industrial growth, with the price of water rising to reflect its real value among competing demands.

However, some argue that "all policies are redistributive in the long run, helping some at the expense of others" and contemporary market-oriented pattern of politics favor some interests over others.³⁷⁵ It is not a surprise to find out that those interests mainly represent the rich and politically connected minority and among those rich and powerful, the United States domestic policies tend to be stretched beyond their borders, thanks to the free trade agreements. Elizabeth DeSombre conducted a study in which she found that U.S. domestic environmental regulation can create an incentive for environmentalists and industry to work together to shape international environmental policy. For environmentalists, international regulation offers protection of a resource. For industry, internationalization prevents unregulated foreign industries

³⁷⁵ Lowi (1990): p.19

from operating at a competitive advantage. Thus, acting together these domestic forces often push for the threat or imposition of economic restrictions on countries resisting regulation.³⁷⁶ DeSombre's argument, may also be projected toward the issue of commercialization of water under the free trade regime because it is such an attractive idea for the U.S. to internationalize its own domestic regulations and policies beyond the scope of environmental aspects.

At this stage, the water pricing concept is a most contentious issue that continues causing confusion and debate in the international water community because there are so many benefits of water that cannot be simply measured in economic terms and because there is so much resistance toward water commodification and trade that it cannot be broken over night. As some argue putting a price tag on water is more *an art* than *a science*.³⁷⁷ Despite this uncertainty and confusion over what should constitute proper economic pricing of water and the basis for its commodification, certain developments have been taking place internationally that almost surely affect water export issue agenda setting in Canada. Despite the impediments, however, few doubt that markets are to become the future forum for water exchange. Free trade agreements seem a good start and within this regime we already witness booming markets in water-based and value added water commodities.

³⁷⁶ DeSombre (2000)

³⁷⁷ Who Preaches What? (2003, September 6); See also Soussan & Harrison (2000)

Value-Added or Virtual Water Markets

In the 1960s –1980s the concept of water export was only mentioned in relation to the large-scale water diversions and to the small-scale water shipments in tankers whereas value added or so called “water-based exports” were acknowledged but otherwise, dealt in a different context separate from actual physical transfer of water from Canadian drainages to a foreign country.³⁷⁸ Water export can run the gamut from trade in bottled water, the shipment abroad of Canadian water in the form of packaged beverages, value-added water (e.g. in food or other products) through bulk containerized shipments all the way to large-scale water diversion projects.

Apparently a very large proportion of Canadian water resources can already be considered subject to commercial use either because it has been allocated to various users or because it is subject to proprietary claims. Tantamount to water export is what might be termed “water-based exports”, that is the export of products incorporating water such as beverages, or for which water is used extensively in the production process such as electricity, aluminum or paper. Several hydro-electric developments in Canada rely on American markets for sale of the power they generate. These electricity exchanges between two countries date back to the beginning of the century and since then Canada’s exports have grown significantly especially as various provincial governments take advantage of access to U.S. markets through NAFTA. For example, in the Great Lakes, the largest use of water is for the commercial purpose of generating hydroelectric power and is estimated to exceed one trillion

³⁷⁸ Scott et al (1986)

gallons per day. Two hydroelectric projects built during the second world war divert northern Ontario water at Ogoki and Long Lake into the Great Lakes where they are shared incidentally by United States interests. Quebec alone has contracted with utilities in New York and New England to supply 2500 megawatts of firm capacity. As many policy analysts argue, by importing hydro-electricity from Canada, the United States is placed in the same position as it would be if it paid for the use of a Canadian river.³⁷⁹

Water traded as bottled or value-added is covered by international trade rules like any other economic good and it is dynamically growing industry around the world. Bottled water sales have been increasing by 10 percent since the 1970s and by the mid 1990s the sales exceeded 50 billion liters.³⁸⁰

In Ontario, millions of liters of water are withdrawn from groundwater aquifers by commercial bottling companies, each day. For example, domestic bottlers have the legal right to extract about 30 billion liters a year – 1,000 liters a year for every person in Canada – from Canada's springs, lakes, icebergs and aquifers. Quebec, Ontario and British Columbia account for 99 percent of domestic bottled water export to the United States, according to the study for the International Joint Commission. Canadian companies sent 272 million liters of bottled water to the U.S.. It found also that nearly 100 times much bottled water moves from Canada to the United States (6.6 million liters) then in the other direction (0.2 million liters). In 1999 Canada accounted for 51

³⁷⁹ Quinn (1991; 1990); Lucas & Saunders (1983); Scott et al (1986)

³⁸⁰ Gleick et al (2002)

percent of the U.S. bottled water imports. Canada not only exports water but also imports. In 1998 46 million liters of bottled water have been imported and 70 percent of it from France.³⁸¹ The supply of water for bottling plants elsewhere is a type of water export that has been considered economically feasible for the Newfoundland and Labrador.³⁸² Some companies have trucked water from rural wells in southern Ontario to bottling plants in the United States, primarily in Michigan and New York. *Clearly Canadian* has a permit from Ontario to export 1.1. million liters (.01 m³/s), though the actual export has recently fallen to negligible levels.³⁸³ The bottled water called *Sahara Burst* comes to the water market not from North Africa, as could be expected from the name, but from one of Ontario's springs. Water for this brand then has been packaged in the U.S., Houston. Statistics Canada reports that in 2000 Canada exported nearly 470 million liters of bottled water, unsweetened mineral, aerated waters and ice and snow. Canada also exported over 385 million liters of beer which requires for its production water.³⁸⁴

Virtual water is another way of seeing expansion of international water trading that by all means has a direct impact on Canada. This concept emerged in the early 1990s to describe the water embedded in commodities, that is water used to produce agricultural or industrial products. Canada and the United States are by far the biggest

³⁸¹ Bottled Water Gushing South. (1999, September 21- 22). *Globe and Mail*; Water Fight (1999, December 9). *Globe and Mail*. Ferrier (2001); Quinn & Edstrom (2000); U.S. Bottled Water Imports in 1999. <http://www.soc.duk.edu/~s142tm16.imports.htm>

³⁸² Government of Newfoundland and Labrador (2001)

³⁸³ Quinn & Edstrom (2000)

³⁸⁴ Statistics Canada (2000) Exports Merchandise Trade.

exporters of virtual water in the world. In 1995-1999 Canada was second after U.S. with its net volume of virtual exports equal to 272.5 (10^9 m^3), whereas net exports from the U.S. amount to one third of the total water withdrawal in the country.³⁸⁵

These water-based activities are not just domestic economic activities. On the contrary, it can be argued they significantly affect the supply and the demand for Canadian water. They represent alternatives to direct water exports and should therefore be included into analysis especially when considering such a complex issue as what exactly constitutes commercialization of water and at what point water enters into commerce and therefore is governed by free trade obligations.

The Government's Response to the Changing Market

The majority of analysts of free trade agreements on either side of the debate recognize that it is an extremely complex issue than one might believe and government's actions and argumentation should credit. Given the issues raised here, it is important to examine whether claims that "it is up to Canadians to determine how their water resources are managed" are sustainable. This is the subject of the next section.

After 40 years of deliberation and verbal declarations the Canadian government has realized that "the time has come to deal with the issue [water export],

³⁸⁵ Hoekstra & Hung (2002)

and that is why we are taking action [an act to amend the *International Boundary Waters Treaty Act*].”³⁸⁶ It took six years to propose water export legislation after the ratification of the NAFTA. Those who criticize delayed government actions called this solution offered a “backup” instead of a re-negotiation of the NAFTA agreement and an exclusion of water from the trade deal. What is more, amendments proposed to prohibit bulk water removal *only* from boundary waters between Canada and United States that cover just 15 percent of Canada’s fresh water resources whereas provinces manage the remaining 85 percent. The government of Newfoundland and Labrador has already used its prerogatives in dealing with its provincial water by pointing out in 2001 that the amendments of IBWTA “would not have any application to the bulk water issue in this province” if it decides to allow water exports.³⁸⁷

On the more modest goal of prohibiting bulk water removals, amendments appear to be a scheme for licensing bulk water removal rather than a prohibition. Quebec’s Minister of Environment, for example, when refraining from Accord’s endorsement in 1999, indicated concern that the licensing system envisioned by the amendments for boundary water projects would allow exceptions to be made by regulation.³⁸⁸ There would be no guarantee that all water export proposals affecting levels and flows could be refused because some projects could be considered on their merits. Decisions regarding projects under the realm of the IBWTA would also be

³⁸⁶ Hansard (1999, November 22)

³⁸⁷ Government of Newfoundland and Labrador (2001): p.5

³⁸⁸ Ministers Withhold Endorsement of Bulk Water Accord (1999, December 10). *Eco/Log Week*.

subject to judicial review. Besides, granting the power to give out licenses for bulk water removal to the Minister of Foreign Affairs and not to the Minister of the Environment implies, according to some, that when the activities of the Department of Foreign Affairs are being increasingly dominated by commercial concerns, “one is not left feeling confident that environmental concerns will govern the licensing scheme.”³⁸⁹

As of today, the Canadian government has stopped arguing that free trade agreements provide Canada with the ability to protect its water resources from exploitation under environmental grounds and give it the right “to restrict or prohibit the export of water products as an environmental measure necessary to protect human, animal or plant life or health.”³⁹⁰ The official opinion is rather more sober and it is more inclined to assert that it will be challenging if not impossible to use environmental measures to protect Canadian water from export even though there have not been yet actual precedents to test exemption articles with regards to water. Moreover, now the government uses this fact as an excuse not to enact a water export ban because it will contravene Canada’s trade obligations. Simply to ban water exports, the government says, will not work because there would be the difficulty, under Article XX(b), of showing the “necessity” of an export ban and under Article XX (g) of satisfying the domestic restrictions requirement because “Canada does not

³⁸⁹ Hansard (1999, November 22)

³⁹⁰ Concern Over Water and NAFTA Not Based on Fact (1993, May 2). *Victoria Times-Colonist*; Holm (1993): p. 11

have a comparable resource- or environmental-based restriction on domestic consumption or withdrawal.”³⁹¹

That is why, the government argues, from the international trade law perspective, the best approach would be to ensure that water did not become a good by preventing its removal from its natural state and for that there is a measure – amendments to the IBWTA. However, as has been discussed earlier, these measures are also quite weak.

The Canadian government does not deny that it cannot prevent other countries or private investors from challenging its laws and regulations before dispute settlement or arbitration panels. However it believes the proposed Canada-wide accord between federal and provincial-territorial governments to prohibit the bulk removal of water either for domestic or export purposes from Canadian water basins is consistent with Canada’s international trade obligations and would not discriminate between investors, in like circumstances, on the basis of nationality.³⁹² The notion of such an Accord would seem like a reasonable, even desirable approach for dealing with the problem of bulk water exports. Theoretically it offers an opportunity for integrated efforts between federal and provincial governments and in no lesser degree it claims a basis for strong environmental policy perspective because of the watersheds concept that underlies it. However, in reality this Accord was not ratified and the only official

³⁹¹ Barutciski (2002): p.155

³⁹² Department of Foreign Affairs and International Trade (1999) *Bulk Water Removal and International Trade Considerations*, November 16, 1999.

document on the federal level that addresses water export issue is IBWTA which regulates only 15 percent of Canadian water.

Conclusion

The story of water with respect to the last two key “periods of interest” yields the following conclusions. On the one hand, Canada still retains the most general power in the areas of its domestic and foreign affairs and the government argues that there have been neither large nor small scale water exports from this country and that in case of future pressure, Canadian water is fully protected. And in fact, the argument continues, international trade agreements do not oblige Canada to sell its water against its will. However, as has been shown in this chapter, the growth in the influence of international and transnational organizations has led to important changes in the decision-making structure of world politics and a tendency toward “multinationalization” of once domestic activities. Canada’s decision-making process over water export, as this chapter showed, is subject to international obligations and reaction of such transnational institutions as GATT/WTO and NAFTA. Moreover, the government’s argument that Canadian water is not for sale is incorrect; it is in fact for sale and has been for quite some time. None of the government’s protectionist measures are strong enough to defend Canadian water from current and future water

trading pressure. Moreover, in fact the Canadian government has been party to creating conditions in which market practices are privileged over other concerns.

Chapter 7

The Water Export Issue in a National Security Context

Content of the Perspective

There are many reasons to see water as a security issue. Water is essential to national survival and preservation of the nation-state. Watercourses are frequently used to mark boundaries, and losing control of those boundaries can signal a threat to the existence of a state. Water also is bound up with economic development and in some parts of the world, control over water is basic to a nation's potential to prosper.³⁹³ Some analysts argue that access to fresh water, for some states, can have national security implications as crucial as access to oil.³⁹⁴ Trends in population growth, water demand, and climatic changes could make water resource scarcity more influential in geopolitical matters than heretofore has been the case.

This chapter considers the water export issue from the perspective of national security, a vision that emphasizes the role of natural resources as a potential source of

³⁹³ Blatter & Ingram (2001)

³⁹⁴ Butts (1997)

conflict between independent states. The discussion of security has its roots in the classical theory of international relations which directs attention toward external political pressure and competition among states in a system of anarchy. The sovereignty of states, in this vision, is based in part on their ability to protect their respective physical and political integrity. In the context of this research, conflict over access to Canadian water may cause security concerns at various levels: regional disputes and disputes within national subdivisions (e.g. within federal system), border disputes between two nations, or frictions involving many nations that may not share borders.

Canada must be particularly concerned the possibility of conflict with border states (the United States) and non-border states, particularly those in water-poor regions of the world. Demand from these countries is an important aspect of the water and security analysis because if those countries had plenty of fresh water, the problem of water export from Canada would be virtually non-existent. However, more than 40 years of existence of the issue on the Canadian agenda suggests that there is “no smoke without fire.” The lack of sufficient fresh water in many countries and the notion of more water in the hands of one country as being a loss of the same amount for other countries³⁹⁵ opens a window of opportunity for the issue of water export in Canada to gain agenda status. This zero-sum vision suggests water export could pose a threat to national sovereignty and security. Security in this case then becomes in part

³⁹⁵ Ohlsson (1995): p.23

an issue of protecting Canadian water resources against the dangers of pressure from other countries.

The general contention of this chapter is that the discourse about water and security elevates attention to the issue of water exports on the Canadian agenda. More specifically, the existence of a military threat over access to water is hotly contested, and based on historical evidence pointing to the rarity of wars over water, the possibility of military conflict over water may be remote in the present context. However, environmental and other trends do provide some basis for concern over rising pressure for future access to Canada's water. Furthermore, the discussion of water exports in this context depends on the position one takes on the spectrum between hydronationalism and water as a global commons. On philosophical and ethical grounds, the global commons concept is extremely important and has much to offer. Politically and practically, however, it is hard to sustain. Partially this stems from the difficulty of managing water as a global common resource in a rational and effective manner. There would be too many difficulties inherent in such an approach, not least the problem of dealing with existing power structures of nation-states. While this concept remains an important background issue to be borne in mind throughout the discussion, the real pressure impinging on Canada's control over water exports comes primarily from the U.S., though there is intense disagreement over the significance of that pressure. On the one hand there are those who argue that pressure is overemphasized and is indeed not that severe because of economic valuation and efficient allocation of available water resources and general conservation practices.

However, this position is in serious doubt given the chain of recent events in this country – droughts, politics of the current administration, and increasing intensity of disputes over water. These events undoubtedly bring the question of access to Canadian water back onto the radar screen. The pressure will continue to escalate not because of the threat of military force but primarily as a result of pressure to make water a commodity traded on the world's markets. In this context, the idea of Canadian water security remains useful in a number of respects, above all in emphasizing underlying global economic and political interdependence and in promoting an integrated continental approach to water as a commodity.

This chapter starts with a review of the water export issue on the formal Canadian agenda and follows with an analysis of the issue's underlying security implications. The key "periods of interest" are discussed primarily under the section heading "U.S. Water Politics: A Question of Canadian Security." The other sections of the chapter deal generally with the issue of water security and not with any one period in particular.

In the Name of National Security

Canada, as one of the few countries that has plentiful water supplies and the ability to turn them into food, will inevitably have a large stake in any talks about water. Climatic change and alteration in precipitation patterns may affect some of the

supplies, particularly in Saskatchewan and northern Alberta. However, according to some experts most of Canada's water supplies will remain intact. This prognosis potentially puts Canada in a situation in which it can either enjoy its position of power or accept a position of being vulnerable to foreign demands. "What Canada needs to do is have a water strategy," because "increasingly, the rest of the world will be looking at us [Canada] to help feed them."³⁹⁶

Being concerned about "the long-term security of fresh water" and "in order to conserve and protect this precious resources" Canada's House of Commons adopted a motion on water security on February 9th, 1999 which states that:³⁹⁷

...in the opinion of this House, the governmentshould not be a party to any international agreement that compels us to export freshwater against our will, in order to assert Canada's sovereign right to protect, preserve and conserve our freshwater resources for future generations.

To prevent a security threat to its water resources, to preserve the integrity of the ecosystem within the Canadian water basin, and to maintain national integrity and the well-being of its population, on February 10, 1999 the Canadian federal government proposed what it called an environmentally sound, Canada-wide approach to water. The strategy consisted of three parts: a Canada-wide accord to prohibit bulk

³⁹⁶ Canadian Water On Tap for Future Trade Talks. (2001, August 12). *Globe and Mail*.

³⁹⁷ Government of Canada (1999). News Release, 10 of February, 1999.

removal of water from Canadian water basins, amendments to the *International Boundary Waters Treaty Act* (IBWTA), and joint Canada-U.S. reference to the IJC. According to then Foreign Affairs Minister Lloyd Axworthy and then Environment Minister Christine Stewart, the strategy is consistent with the motion adopted by the House of Commons the previous day. This approach of prohibiting removal of water from its natural state outside of its water basin was chosen because it is environmentally comprehensive especially in the light of the uncertainties, pressures and cumulative impacts from removals, consumption, population growth, and climatic change.³⁹⁸

On December 10, 2002 the Canadian government announced the coming into force amendments to IBWTA to address water exports. "Canada's water is a precious resource that must be protected," said Foreign Affairs Minister Bill Graham. "The amendments coming into force today will protect the Great lakes and other boundary waters from bulk water removal, thereby preserving critical freshwater resources for future generations." Environment Minister David Anderson pointed out that the federal strategy "to protect water at the source not at the border, strengthens our commitment to securing water supplies for Canadians."³⁹⁹

³⁹⁸ Department of Foreign Affairs and International Trade (1999) Bulk Water Removal and International Trade Consideration. November 16, 1999; International Joint Commission (2000)

³⁹⁹ Government of Canada (2002). Canada Announces Coming Into Force of Amendments to International Boundary Waters Treaty Act. New Release. December 10, 2002.

Thus the Canadian position on water exports demonstrates that the state acted in line with its national self-interest and preservation of integrity of its environmental resources, which can be defined in terms of power and security. As Simon Dalby argues, environmental security is understood in the geopolitical terms of protecting the internal “us” from the threatening external “other” when domestic political resources are mobilized to support state efforts to “protect” the internal society from external threat.⁴⁰⁰

The other important aspect of the same self-interest and preservation of the state in the context of environmental security is the notion of hydronationalism based on the assumption that the national waters are the property of the “nation” and in its exclusive and exhaustive domain.⁴⁰¹ Canadian hydronationalism is very specific because Canadians consider water as more than just a necessity of life. Fresh water is a “highly emotional” issue, a national heritage which is held “firmly in the Canadian psyche.” It is part of Canadian folklore and a “liquid asset.” Ultimately, it is argued, water exports are a domain where Canadians “should follow our [Canadian] maxim and be ‘cautious as a Canadian’.” Water, as pointed out in the Inquiry on Federal Water Policy, is a way of life.⁴⁰²

Canadians do tend to identify themselves with a land laced with water...reflected in our[Canadian] artists’ preoccupation with rivers,

⁴⁰⁰ Dalby (1999): p.160

⁴⁰¹ Leon (1994)

⁴⁰² Currents of Change (1985): pp.7-8. See also Quinn (1990); Water as Commerce, Water as Life (1999, August 19). *Globe and Mail*.

lakes and snow; in the reference to water and activities associated with water in Canadian ballads and poetry; in the prominences of pristine water in our tourist promotion materials; and in the reference to Canada as a land where “lordly rivers flow” in our national anthem.

For Canadians then the identification with a particular physical environment and water, has been an important component of national identity. That is, water with its peculiar physical evasive qualities that give it a characteristic similarity to the most mobile elements of nature such as the clouds and the winds, is associated with the most stable of all elements, the land.⁴⁰³ However, as a gift of nature, some argue, rivers and lakes are quite localized and from this perspective, “water is inseparable from place and attempts to transport water destroy the essence of both the areas of receipt and origins.”⁴⁰⁴ With respect to the increasing growth of environmental issues and emergence of the notion of environmental security this attachment to a certain place and threat to this place takes on a new character which has broader implications for the Canadian state and international political communities. The Canadian hydronationalism could be applied to the notion of “earth nationalism” or “biorigeon” which, according to Daniel Deudney, poses a “fundamental challenge to the state-sponsored and defined concept of nation now hegemonic in world politics. It also

⁴⁰³ Barber (1959)

⁴⁰⁴ Blatter & Ingram (2001)

entails a powerful and fresh way to conceptualize environmental protection as the practice of national security.”⁴⁰⁵

This section has identified security issues related to Canadian water. The following section will examine ways in which this security could be violated.

Water Wars: Fiction or Fact?

International Dimension of Water Conflicts

As ways of finding new water sources decrease because the “best dam sites have already been developed and many groundwater reserves overtapped,”⁴⁰⁶ many warn that political stability is increasingly threatened. A significant number of scholars, analysts, public officials and politicians see connections between water scarcity and a high potential for violence between independent states, regardless of their political system or economic orientation.⁴⁰⁷ Kent Butts argues that water issues are and will continue to be a strategically important variable in foreign policy development and should be used as an indicator of potential regional instability and a constant reminder of the importance of geographical variables to international

⁴⁰⁵ Deudney (1999; 1991)

⁴⁰⁶ Postel (1997)

⁴⁰⁷ Biswas (1991); Starr (1991); Butts (1997); Gleick (1993; 1991)

relations and political military affairs.⁴⁰⁸ In the same vein, Joyce Starr emphasizes that water security “will soon rank with military security in the war rooms of defense ministries.”⁴⁰⁹

So many have spoken of the potential wars over water that, as Sandra Postel points out, “new warnings have begun to lack bite.”⁴¹⁰ Two references in particular are cited very frequently. In 1995, Ismail Seragildin, the World Bank vice president of environmentally sustainable development, warned, “If this century’s wars were often fought over oil, next century’s will be fought over water.”⁴¹¹ Dr. Mostafa Tolba, Executive Director of the United Nations Environment Program, declared, “National and global security are at stake. Shortages of fresh water worsen economic and political differences among countries and contribute to increasingly unstable perceptions of national security.”⁴¹² To these two could be added the most recent warning made in March 2003 by French President Jacques Chirac who, during the World Water Forum said, “tension and water wars” could erupt in the 21st century.⁴¹³

Joyce Starr writes that as early as the mid-1980s U.S. government intelligence services estimated that there were at least 10 places in the world where war could break out over dwindling shared water, among these the Middle East, Cyprus, Malta and other countries of the Arabian peninsula. The majority of the academic studies

⁴⁰⁸ Butts (1997)

⁴⁰⁹ Starr (1991)

⁴¹⁰ Postel (1997): p.74

⁴¹¹ Hydropolitics (1997)

⁴¹² Clarke (1991): pp.93-94. See also Timberlake & Tinker (1984)

⁴¹³ Water Scarcity Threatens World’s Poor.(2003, August 13).*Ottawa Citizen*.

that deal with the relation between water and war also concentrate on the same cluster of regions by adding to the U.S. estimates, South Asia and South America. The majority of conflicts have occurred over international watercourses such as the Jordan, the Tigris-Euphrates, the Nile, the Indus, the Ganges, the Rio Grande, the Columbia, the Parana between Brazil and Argentina. The most significant hostilities over water have erupted in the Jordan basin.

Treaties are indicators of how many conflicts involving water resources have occurred. The UN Food and Agriculture organization has identified more than 3600 treaties relating to international water resources dating between AD 805 and 1984 and 300 treaties since 1814 have been negotiated over issues of water management, flood control, hydropower projects or allocation for consumptive or non-consumptive uses in international basins.⁴¹⁴ These water conflicts in general are matters of high national interest, engaging the attention of government officials and scholars and some of the controversies were brought before the United Nations.⁴¹⁵

In examining water related conflicts it is important to keep in mind the distinction between interstate armed conflict over water as a scarce resource for human consumption and those conflicts where water was a means, method, or victim of warfare. And some of the experts are careful in this regard.⁴¹⁶ They differentiate between water resources as military targets, water resources as military means, or

⁴¹⁴ Wolf & Hammer (2000)

⁴¹⁵ McCaffrey (1993)

⁴¹⁶ For example, Gleick, in almost all his studies that concern water and wars/or conflicts, differentiates between access to and use of water as a tool and weapon in battles; water resources as military and political goals.

water resource inequalities and water developments as causes of conflicts. The World's Information on the world's fresh water resources maintains a water conflict chronology which begins with the first conflict over water dating back to 3000 BC with reference to ancient Sumerian legend and tentatively ends in the year 2003 with bombing of water pipelines in Iraq (Baghdad). From the total of 113 water conflicts 82 had been identified as violent conflicts or in the context of violence. At least 76 times the basis of conflict was identified as political or military goals with the drive to possess or control another nation's water resources. The rest of the incidents arose on the basis of either development disputes, or when water systems are used as instruments of war, or as targets or tools, or incidents involving water and terrorism.⁴¹⁷

"A Phantom Menace" for Canada

The potential foreign demand for Canadian water has been a longtime "phantom menace" that has served to promote the link between water and security. It is about "...the perennial Canadian angst that someday, someone will come for our water."⁴¹⁸ With the country's vast supplies of water just north of the current world power, Canadians worry they could find themselves at the center of a future storm.⁴¹⁹ This perception is "conditioned by a history of one after another of our [Canada's] natural resources falling under the shadow of foreign control, and reinforced by

⁴¹⁷ Gleick (2003). The Water Conflict Chronology.

⁴¹⁸ Andrew Phillips. (2000, March 30). They Don't Want Our Water. *Maclean's*.

⁴¹⁹ When the World's Water Taps Run Dry (2000, August 5). *Globe and Mail*.

predictions of a warming and drying continent.”⁴²⁰ Whether with respect to the U.S. or to other countries, some Canadians believe that if and when fresh water becomes a commodity then it will be subjected to the treacherous currents of politics, power, and their manipulation. As U.S. Senator David Durenburger, stated for water policy “...rational thinking doesn’t apply. Water is a political, not an economic, commodity.”⁴²¹ Some Canadians predict that if this vital “national heritage” resource is alienated to the U.S. or to any other country, this could promote “civil disobedience and even terrorism among Canadians.”⁴²² Any attempt to discontinue water export, the argument goes, could mean that Canada “shall face force to compel compliance”⁴²³ or else, it will have “to deal with the [U.S.] marines.”⁴²⁴

The concern that the U.S. has an interest in Canadian fresh water resources and the anticipation that “anytime soon” Canada would have to share its precious resource with its powerful neighbor comprises roughly 45 percent of the total water export discussions in the Canadian parliament from the early 1960s until 2002. These discussions can be summed up in the following statements by members of the parliament:⁴²⁵

The United States may annex Canadian water;
U.S. has a shortage of and thirst for fresh water.

⁴²⁰ Quinn (1990)

⁴²¹ Bocking (1992). Similar argument is made by Quinn (1990).

⁴²² Boyanowski (1992): p. 269

⁴²³ McNauhton (1969)

⁴²⁴ An anonymous statement by American quoted in Bocking (1987)

⁴²⁵ Hansard (1965, April 28); Hansard (1966, January 31); Hansard (1966, February 2-3); Hansard (1966, May 27).

The most characteristic of Canadian media headlines that mention water export in relation to the possible danger coming from south of the Canadian border are: ⁴²⁶

America thirsts for Canadian Water;
 U.S. again eyeing our water ...;
 Americans thirsty for Great Lakes;
 Canada should ignore pressure from US for water;
 US drought is a threat to our water...;
 US eyes Canada's water as its own supplies dwindle;
 Canadian water valuable to US;
 Thirsty US gives Canada notice: we'll want more of your water;
 American development needs new source of water, Canadian water.

The findings of a series of eight focus groups with Canadians in Toronto, St. John's, Montreal and Calgary regarding their attitudes about the export of Canada's fresh water⁴²⁷ show that there is agreement among participants about the inevitable shortage of water worldwide in the future. Some participants even predict that future wars could be fought over water in much the same way as they have been fought over oil. A majority of participants associated water shortage with poor developing countries or arid countries in Africa and Middle East and less so with the United States. They believed that the U.S. has a large share of world's fresh water and that it should use its own water resources rather than being "greedy" and counting on Canada's water. The study does not raise the issue of international conflict over

⁴²⁶ *Western Business* (1966, November 1); *Financial Post Daily* (1969, March 8); *Toronto Star* (1984, May 17; 1988, June 30, July 24); *Globe and Mail* (1984, June 21; 1994, August 3); *Winnipeg Free Press* (1990, May 3); *Vancouver Sun* (1992, June 3).

⁴²⁷ *Enviro-nics* (1998)

Canadian water and there is no direct mention of that possibility. However, the study suggested, if the rest of world were to experience drought, a majority would assign to Canada a humanitarian role in helping poor countries and giving water away on humanitarian grounds or exporting it as a form of foreign assistance to the countries in need. As for the U.S., some participants felt it is inevitable that Canada would have to export water to parts of the U.S. at some point. There was cynicism about whether Canada would drive a hard bargain and Americans would pay “top dollar” for the water, or whether Canada would end up almost “giving it away” as had happened to Newfoundland in its deal with Quebec over Churchill Falls. Some participants think that should Canada refuse to export water to the U.S. voluntarily, the chances are high that their southern neighbor would take it away.

Approximately three per cent of the Parliamentary discussions on water export address the theme of water conflicts and wars. Some of these also address the interest of countries other than the United States in Canadian fresh water resources. Among the most typical media headlines in this category are: ⁴²⁸

World looks to Canada in solving water crises;
 Next century could bring water wars;
 World Bank warns of wars over water;
 Nations may go to war over water...;
 Thirsty world covets our water...

⁴²⁸ *Toronto Star* (1995, August 7); *Halifax Chronicle Herald* (1995, August 7); *Vancouver Sun* (1995, August 8); *Winnipeg Free Press* (1995, August 8); *The Gazette (Montreal)* (2001, July 26).

International attention to a perceived link between water and security also has gradually affected the agenda-setting process in Canada. It contributed to an atmosphere of concern in which Canada's nine percent of the world freshwater supply (it actually has 20 percent of the world's fresh water, but only part of the reserve is accessible, with the rest consisting of inaccessible or fossil water)⁴²⁹ could be seen, implicitly if not explicitly, as a potential cause of conflict. This was expressed in statements such as, "if the population and demand keep growing in the dry states then we [Canadians] could have problems."⁴³⁰ In 2000 during the Stockholm Water Symposium the water issue was discussed in the framework of water and security for the 21st century and the list of these international conferences does not end here. The most recent Stockholm Water Symposium happened in summer 2003 where representatives from 100 countries were trying to find ways to halt the reduction in global water supplies.

Is the Canadian water security issue overstated?

"Water Wars" Deemed Remote

In light of what has been said so far, the question of whether the security threat to Canadian water is substantiated or whether it is just a myth is still open. On one hand the contention that "today's water will be tomorrow's oil" or "the wars of the

⁴²⁹ Labelle & Forge (2001)

⁴³⁰ Keating (1991): p.75

next century will be about water” is over-dramatized. Similarly, reference to Canada as being “the Saudi Arabia of water,”⁴³¹ with the implication that sooner or later Canadian security will be in danger because foreign governments that need access to fresh water outside of their borders would exert a lateral pressure on Canada, is also overstated. At present, at least, there is no strong evidence demonstrating conventional military threats to Canada that involve appropriation or control of its water resources by other independent states. There are only speculations.

While much of the literature on water and military conflict may seem alarmist, at least in its popular articulations, there is also a growing body of scholarly research that presents the water and security link in less drastic terms. This alternative body of literature⁴³² attributes the water and war link to the category of futile scholarly debate “marred by polemics and semantics.” Despite this, however, scholars working in this vein acknowledge that states do have cause to concern themselves, for reasons of national security, with ensuring that they have an adequate and relatively reliable source of essential natural resources. The quest for a stable supply of natural resources has been and in some respects continues to be an important stake in warfare. The fight for the appropriation and control of resources involves the military component of national security and conventional territorial conquest. Two frequently cited examples are Nazi Germany’s and Japan’s strategic attempts to achieve resource sufficiency during the 1930s. A much more recent example of imperial quest for securing stable

⁴³¹ Others coin such expression as Canada’s becoming “the OPEC of water.”

⁴³² Wolf & Hammer (2000); Wolf (1998); Lowi (2000); Leslie (2000); Hayward (2003)

access to natural resources, specifically oil, might be the U.S. wars in Iraq in 1991 and 2003.

Those scholars who do not see the water war link argue that the actual history of armed water conflict is less dramatic than it is presented in some of the more “sensationalist environmental literature” or widely publicized by media statements made by some public officials. As most of this research shows, there has never been a single war fought over water ⁴³³ though water has been a contributing factor in many incidents of conflict. ⁴³⁴ For example, Aaron Wolf and Jesse Hammer conducted a study in which they investigated the cases of international conflict over water per se by utilizing what they say is the most systematically developed collection of international conflicts – the International Crisis Behaviors dataset. They found a total of seven incidents involving water, in three of which no gunshots were fired. Thus they conclude, “there has never been a single war fought over water” and that the history of armed water conflict is somewhat less dramatic than the “water wars literature would lead one to believe.” ⁴³⁵

That said, the methodological problems of identifying the “true” causes of wars are such that any conclusion reached in such a discussion is bound to be subject to wide variations in interpretation, allowing some to make a strong connection

⁴³³ Exception of this statement is an incident 4500 years ago between the Sumerian city-states of Lagash and Umma over the right to exploit boundary channels along the Tigris in 2500 BC. Wolf & Hammer (2000): p.148

⁴³⁴ Among others, one of the most frequently discussed cases of war and conflict link is Arab-Israeli war of 1967.

⁴³⁵ Wolf & Hammer (2000): pp.126-128

between water and conflict and others to dismiss the idea completely. If there have been few water wars in the past, this certainly suggests we should not leap to the conclusion that water will soon become the cause of significant military conflict. However, the world of international politics and nation-states is unstable, and increasing demand for water does present legitimate cause for concern.

Meanwhile, although no “water wars” have occurred and in general water resources have rarely been the sole cause of conflict, still access to clean fresh water is high on the agenda as a global development issue and there is ample evidence that the lack of this resource makes it more valuable in many regions. Water scarcity caused by growing population and changing levels of development are real and can constitute security threats.

Solving Environmental Security Concerns with Economics

Degradation of natural resources, their overexploitation, or modification threatens the environmental security of a state. For any state to preserve its natural resource system, for example, rivers, lakes, represents not only an investment in the maintenance of its population’s quality of life but also an important indicator of protection of state’s national interests. As Michael Frederick argues, natural resources constitute fertile ground for many types of environmental antagonisms and water, because it is essential to the very survival any human community, is an important element in a state’s promotion of the welfare of its population and the maintenance of

its functional integrity.⁴³⁶ From this environmental security perspective, in order to assess the context within which a state measures its vulnerability, it is important to understand whether the threat to environmental security jeopardizes national interests of the state and to what extent and how.

Climate change already exerts pressures on both demand for and supply of water resources. Global climatic change, it is predicted, will affect water availability in many ways, though the precise nature of such changes remains obscure. Despite many scientific uncertainties, the trends of important water resource changes can be seen now and shifts in the temperature and annual precipitation are more than enough to cause serious problems in some places. According to some scientific reports⁴³⁷ in order to meet growing water demands in addition to the improvement in management of existing water resources, non-conventional sources of water supply are expected to play an important role. Non-conventional sources of water supply include desalination of brackish water or seawater, water re-use, cloud seeding, reclaimed, recycled water and most importantly importation of water in tankers, or diversion of water in pipelines thousand of kilometers long, or even the diversion of icebergs from the polar regions. In fact, some scholars argue, today the prospects for resource wars are diminishing not only because of the growing difficulty of territorial conquest but because of availability of technological advances that make it possible to overcome water scarcity by means of non-conventional water supply. Another view is that social

⁴³⁶ Frederick (1999)

⁴³⁷ Gleick (1993); Ragab & Prudhomme (2002)

disruption and possible military aggression to obtain additional supplies of scarce water could be eliminated with introduction of economically rational pricing.⁴³⁸ The implication is that economic valuation of water resources has the potential to discourage inefficient water use and eliminate the need for large subsidies that hide the real price of water usage.

Leif Ohlsson suggests that it is quite possible that potential conflict around water might be due not so much to the very real contemporary scarcity of and competition for the waters, but rather, “the ease with which today’s water conflicts seem also to become pervaded by controversies of unrelated, often age-old origin, now invested with the very physical presence of water.”⁴³⁹ The majority of conflicts that involved water were “multi-faceted and multidimensional” and the security of the states involved was challenged more often than not as a result of danger to “core values -- identity, sovereignty, the survival of communities -- and distribution of power” while water itself was not identified as a determining factor.⁴⁴⁰ Some experts in water and conflicts suggest that since water is such an essential necessity for which there is no substitution, countries that experience an increased scarcity of water will tend to opt for a negotiated solution to conflict with implications for water rather than unilateral annexation. Peaceful solutions to water issues would in most cases ensure access to this scarce resource for all whereas continued conflict is at best a zero-sum

⁴³⁸ Beaumont (1994)

⁴³⁹ Ohlsson (1995): p.23

⁴⁴⁰ Lowi (2000): p.164

game.⁴⁴¹ States seek cooperation especially in cases when jointly owned water resources are at stake. One of the examples frequently quoted is the Great Lakes Basin cooperation between Canada and the United States. Daniel Doudney and Ronnie Lipschutz argue that the scenario of resource war is of diminishing plausibility for the foreseeable future because of extensive international trade. This implies that states no longer have to endure resource dependency as a major threat to their military security and political economy.⁴⁴² However, as some analysts argue, commercial or trade interdependence can trigger different fears, the fear of “the security effects of interdependence.”⁴⁴³ Or as Kenneth Waltz explains:⁴⁴⁴

...Like other organizations, states seek to control what they depend on or to lessen the extent of their dependency. This simple thought explains quite a bit of the behavior of states: their imperial thrusts to widen the scope of their control and their anarchic strivings toward greater self-sufficiency.

Thus, the implication is that indeed environmental degradation and economic interdependence rather than military threats over access to water most probably may provide some basis for concerns in Canada. These concerns depend on the positions taken between hydronationalism and water as a global commons. This is the discussion of the next sections.

⁴⁴¹ Ohlsson (1995)

⁴⁴² Lipschutz (1989); Deudney (1999)

⁴⁴³ Haglund (1987); Mudock (1977)

⁴⁴⁴ Waltz (1979): pp. 105-106

Environmental Security Threat from the ...“South”?

As was mentioned in the introduction, there are at least two sources of conflict that Canada may face with regards to its fresh water resources: the United States of America and the other water scarce countries of the world.⁴⁴⁵ The United States, the super power of the world, and those “other” water scarce countries of Africa, Asia, Middle East and South and Central America, have vastly different political and economic structures, with the latter made up primarily of developing countries, less industrialized than Canada.

The majority of the discussions on the water export issue center on relations between the U.S. and Canada (which is dealt in a later section of this chapter and elsewhere in the thesis) while analysis of Canada vis-a-vis “other” countries is almost completely absent. One of the reasons for this neglect is that there is no actual “threat” or demand for Canadian water from “other” countries. However, this does not imply that policy analysts should ignore this issue even if the flow of arguments could be limited and imperfect. Largely drawing on Salmon Dalby’s argument about the danger of overlooking important political issues within the context of environmental security “unless analysts are alert to the persistent dangers of the traditional ethnocentric and geopolitical assumptions,”⁴⁴⁶ provides a basis to discuss Canadian self-interest in its quest for water security with respect to “other” countries. Two particular analytical

⁴⁴⁵ Ironically these two sources of possible conflict are from the “south” given the unique geographical position of Canada situated up north of the rest of the world.

⁴⁴⁶ Dalby (1999): p.157. See also Dalby (2002)

stances are worth addressing with respect to Canadian water policy: water as hydrocommons and water as a continental resource.

Heuristic Discussion of Danger From “Others”

Global Commons Concept

Water is in a continuous cyclical movement in nature and all types of water on earth interact closely as water passes from one state to another and moves from the ocean to land and back. An enormous amount of water ($505,000 \text{ km}^3$) evaporates annually from the ocean surface. Of this amount, nearly 90 percent returns to the ocean in the form of atmospheric precipitation that falls on the ocean surface, and 10 percent falls on to dry land. Together with atmospheric precipitation of local origin, the total precipitation falling on dry land and supplying all types of land water is only $119,000 \text{ km}^3$ annually. Of this amount about 35 percent is returned to the oceans in the form of river, ground, and glacial runoff. On the whole, an average of $577,000 \text{ km}^3$ of precipitation falls annually on the earth surface. Approximately the same amount of water evaporates annually from the ocean surface and dry land and this concludes the world water balance.⁴⁴⁷

⁴⁴⁷ Gleick (1993): p.15

For some this description of the hydrological cycle lays the basis for questioning whether it is appropriate to see water as a property of only one particular state or administrative territory given the fact that it is in continuous movement, and transition as it moves from the ocean to land and back. Perhaps, conditionally, only closed water basins should be considered as a property of a particular state or administrative territory and the rest should be considered as a global commons like the atmosphere, the oceans or Antarctica, which no single state owns or has jurisdiction over but from which all gain benefits.⁴⁴⁸

Supporters of this position argue against a unilateralist decision-making approach and instead of hydronationalism they promote the notion of hydrocommons. For example, one of the arguments is that the Great Lakes governments should not permit removal of water from the Great Lakes Basin, a position that has Harmon Doctrine overtones.⁴⁴⁹ This implies, as Gaines argues,⁴⁵⁰ that Canada and the United States unilaterally decide how the water of the Great Lakes should be used by building a “Chinese wall” around the Basin and assuming that there will never be any transfer outside of this basin for any reason, or only on terms dictated by the governments within the region. From this perspective, a “no-export” or “no-inter-basin transfers”

⁴⁴⁸ Antonov (1997)

⁴⁴⁹ The Harmon Doctrine is, by modern standards, a disreputable approach to the management of water resources. It was named after Attorney General Judson Harmon who claimed that waters in the United States were subject to the absolute sovereign control and unilateral decisions of the United States. Based on that approach, the United States had no obligation at all to Mexico or to Canada in terms of the amount of water available at or along the border because the upstream waters were exclusively U.S. resources.

⁴⁵⁰ Gaines (2002): pp.159-161

policy is an approach that ignores such aspects as the increasing scarcity of fresh water in the world at large, the increasing interconnectedness of the world communities (globalization) and the changing awareness of the complex interactions between ecosystems and the complexities of different legal and management tools for managing those interactions. The fresh water in the Great Lakes has world significance and potentially users may come from many countries of world. The role of Mexico, the third North American partner which has inadequate supplies of fresh water through the country and especially in the northern regions bordering on the United States, has been neglected.⁴⁵¹

Thus, some propose to think about a concept of a “hydrocommons” as a “hybrid basin” encompassing the watersheds of both the sending (exporting) and receiving (importing) basins, “tied together by man-made plumbing.”⁴⁵² This concept recognizes the environmental significance of regional water transfers, water pollution of surface and ground waters, and aquatic ecosystem degradation. More importantly this concept recognizes the idea of increased interconnectedness. Unilateral or exclusive decisions making on water -- prohibiting exports or setting unilaterally-established conditions on withdrawals -- “are simply incompatible with the multiple-stakeholder, interconnected view of the world.”⁴⁵³

There is a problem with the commons concept, however. It encourages overgrazing, overfishing and generally over consumption of common resource pools.

⁴⁵¹ Ibid.

⁴⁵² Michel (2000) in Gaines (2000): p.162

⁴⁵³ Gaines (2000): p.163

Biologist Garrett Hardin, writing on social dimensions of environmental problems, pointed to the “the tragedy of commons” which has become a reference point for formulation and evaluation of environmental policies.⁴⁵⁴ The idea of the commons is not only about overconsumption but also about the imposition of constraints on a country’s economic development, the welfare of its population, its national integrity and thus maybe seen as a threat to the national security. One of the interesting examples that Simon Dalby draws upon is the 1992 Earth Summit on biodiversity where Northern environmentalists made a suggestion to keep intact the remaining forests on Earth, which are mainly situated in tropical and underdeveloped areas, as a global commons to ensure preservation of global biodiversity and for the benefit of all future generations. However, as Dalby argues, any attempt to introduce a global commons via international treaty, “runs into the question of the political remit of sovereignty.”⁴⁵⁵ In the specific case of forests it is Brazil whose reserves would be declared commons. The irony of the situation is even more striking considering that the Northern states became wealthy through a process of nearly completely deforesting much of their territory before concerns about the global impacts of such devastation were on the political agenda.⁴⁵⁶

Canadians are among the biggest water users in the world. They consume 326 liters of water per day per person in contrast to a person living in Sub-Saharan Africa who typically uses 10-20 liters of water per day. Just for comparison, the annual

⁴⁵⁴ Hardin (1968)

⁴⁵⁵ Dalby (1999): p.168

⁴⁵⁶ Ibid., pp.167-169

amount of water available per person in 1990 ranged from 100,000 m³ in Canada to 400 m³ in Israel.⁴⁵⁷ Per capita water use in 1995 for Canada was equal to over 1500 m³ a year.⁴⁵⁸ In 2002 the newly developed Water Poverty Index assessed 147 countries in terms of five different measures- resources, access, capacity, use and environmental impact. Canada was ranked second overall after Finland. It had high scores in four of the categories and in domestic supply. However, it was ranked 19th in the “use” component because of wasteful or inefficient water use in industry and domestic supply.⁴⁵⁹ If water is to be secured, preserved and protected, then Canada has to modify its consumption pattern. However, as Dalby emphasizes, “It has been the ‘right’ to maintain Northern lifestyles and the power structure that underlies them that has been the object of the geographically formulated national security policies of Northern states.”⁴⁶⁰ According to some, Canadians with respect to water behave as “though they were members of a club that owns property” or , a “congregation that owns a church.”⁴⁶¹ Any loss of water even by means of trade, is seen as a threat to the security and joy of this bounty of life.

⁴⁵⁷ Labelle & Forge (2001); Dinar & Subramanian (1997)

⁴⁵⁸ Renzetti (2002)

⁴⁵⁹ Water Poverty Index (2002)

⁴⁶⁰ Dalby (1999):p 165

⁴⁶¹ Scott (1994)

Universal Access to Water as a Result of Environmental Change

Resource consumption in developed countries is an important security issue. Overconsumption by wealthy states can be a source of tension with less powerful countries. In Canada, a small minority of the world's population (less than one percent in Canada) consumes a disproportionate amount of world water resources. Given that Canada is water rich and overconsuming, it is conceivable that demand for Canadian water will be exerted from the water stranded countries of the world. The "external" threat to this consumption could be defined as a problem that could lead to political disruptions from environmental refugees and migrations caused by external environmental disruptions and political turmoil. This thinking can be seen in a speech made shortly after the end of the Cold War by Manfred Worner, then NATO's secretary general, who described the geopolitical division and the rise of new security threats, military and non-military from the Third World: ⁴⁶²

...The immense conflict potential that is building up in Third World countries, characterized by growing wealth differentials, an exploding demography, climate shifts and the prospect of environmental disaster, combined with the source conflicts of the future, cannot be left out of our security calculations, no matter how we translate our broader analysis in operational aspects in the longer term.

⁴⁶² Worner (1991): pp. 103-104 in Dalby (1999): p.162

Water scarcity may spur immigration to Canada from water-scarce regions. If Canadian water is too difficult to be moved to where it is needed, then people can move toward where water is. Some argue that if the market fails to make water available to everyone everywhere in the world in an efficient and effective way, and if such a failure would require bringing people to the water, then one solution to water scarcity could be international migration and relaxation of the stringent national protection of labor markets. The right to fresh water through either international migration or international trade, de Wart argues, will have to rely on a balanced division of power between the state, the market and civil society. "When the situation cannot be realized through international trade, international migration should fill the gap between people and water. Only in such a society can international migration and the market be made instrumental to a fair and just distribution of wealth and income which secures freedom from fresh water and fresh water war..."⁴⁶³

The most interesting and direct example of water shortage and migration is Saudi Arabia. It is forecasted that within a few years there will be a desperate situation with drinking water in the country. As a result Saudi Arabia will have to rely entirely on its desalination plants. However, the cost of building and maintaining desalination plants is extremely high, not to speak of the risks they run, such as possible accident with an oil tanker and leaking of oil got into the desalination plants. The country's minister for water and Saudi Arabia special representative on water issues in UNESCO have already sounded the alarm and there are serious thoughts about

⁴⁶³ de Wart (1997): p.118

emigration of Saudis on a gradual and voluntary basis from the country as a solution to the shortage of fresh water. The total population of Saudi Arabia is 21 million of whom 14 million are Saudi nationals. “The state must get grips with the problem and begin to prepare our citizens for such a solution.”⁴⁶⁴

Over the last two decades Canada has increasingly geared its immigration programme towards new geographical regions and non-traditional areas as opposed to Britain, the U.S. and Western Europe. By the mid-1990s, the list of the ten leading source countries was markedly different to the 1951 and included countries from Asia, Middle East, Africa and South America region. Specifically, countries like Saudi Arabia, United Arab Emirates, Egypt, Jordan and Kuwait, Israel, Lebanon Hong-Kong were in the ten leading source countries for immigration to Canada, according to the department of Citizenship and Immigration of Canada.⁴⁶⁵ The point is not to argue that the main reason for this influx in the last years of multicultural and multiracial immigration to Canada from these regions, which are identified as the most prone to water problems, is because of water shortage alone. It would be too difficult to make a direct correlation in this case as it is at times difficult to make a connection between environmental change and migration in general. For example, political refugees “enjoy” a special status under international law and are thus internationally recognized as deserving protection. At the same time only a fraction of them receive this official status. The prospects are even gloomier for those refugees who are not internationally

⁴⁶⁴ Saudi Thirsts for Water Grows.(2003, March 27-April 2). *Guardian Weekly*.

⁴⁶⁵ See Environmental Refugees (2002); Bates (2002); Myers (2002); Passaris (1998); Troper (1993); Woehlcke (1992); Canada Charts Its Demographic Future (1991).

recognized as, for example, environmental refugees. For many technical and legal reasons, it can be difficult to claim that access to water is a primary reason why people decide to move to Canada. However, it would be also difficult to reject the argument that access to clean fresh water is one of the multifaceted reasons for this movement. While Canada does have a relatively open universalistic policy of admissions to the country, the situation is slowly changing, especially in the aftermath of the September 11, 2001. The most immediate concerns about national security and territorial sovereignty create pressure on Canada to follow the United States policies of more stringent border control and security measures against the free movement of people, pressure which inevitably is reflected in immigration policies. Incidentally, all these security measures reduce the influx of immigrants or refugees and thus those who could potentially share the access to fresh water with Canadians.

One of the ways that Canada envisions may *minimize demand* for access to or export of its water resources is by working with other countries and in international fora on sustainable management of water resources. The U.N. Commission on Sustainable Development recommended that governments give priority to sustainable management of their own water, providing an opportunity for the Canadian government to encourage other countries to develop cost effective and sustainable management practices by sharing its expertise in water technology and services, particularly with those countries facing water challenges. Canada's official development assistance for water supply and sanitation was on average \$23 million

U.S. in 1996-1998 and \$22 million U.S. in 1999-2001.⁴⁶⁶ However, despite the altruistic element of water assistance programs, there is a broadly held perception in recipient countries that the assistance and funding programs tend to benefit the donor side, professional and business groups that include consulting firms, free-lance consultants, university faculty and other experts, and leave the so-called assisted countries' problems essentially unresolved.⁴⁶⁷ In general official development assistance for water projects from countries of the Organization for Economic Cooperation and Development (OECD) and the major international financial institutions has actually declined over the past few years (from an average \$3.4 billion per year in 1996-1998 to average \$3.0 billion per year from 1999-2001). Furthermore, those most in need receive the smallest amount of aid. Only ten countries received about half of all water-related aid, while countries where less than 60 percent of the population has access to an improved water source received only 12 percent of the money.⁴⁶⁸

Canada also accepts the notion of water exports as an exception in a non-commercial projects (e.g. no one is required to pay for the water) on a short-term basis for firefighting or humanitarian purposes as reflected in the federal (IBWTA) and provincial water policies.⁴⁶⁹ These are certainly a noble concerns by Canadians. However, in these "protective" measures there is also a bittersweet taste of Canadian

⁴⁶⁶ Gleick (2003, November 14 -December 5)

⁴⁶⁷ See Gajduschek & Hajnal (2003): pp.76-77.

⁴⁶⁸ Aide Activities in the Water Sector: 1997-2002. (2002) in Gleick (2003, November 14-December 5)

⁴⁶⁹ Johansen (2002, September 18)

hydronationalism and the aftertaste of “conventional Northern environmental thinking.”

Although it is not completely clear what the relationship is between water as a hydrocommons and migration, it is reasonable to consider that this relationship is relevant to security and to water policy and, as a result, to the rise of the water export issue on the Canadian agenda. Too frequently Canada is presented as a potential victim in forthcoming struggles over water. The discussion above, however, suggests it may occupy a position of power. This discussion, as a heuristic exercise, is useful in understanding the implications of the transformation of the water export issue into a policy problem in Canada. It also reveals multifaceted issues hidden behind the importance of the water export in this country, and its implications for the rest of the world within the context of environmental security approach.

U.S. Water Politics: A Question of Canadian Security

Though few deny that in the future there may be global demand for Canada's water, still there is a strong assumption that the most likely disputes would arise from U.S. demand for geographical and practical reasons. Moreover, there is a long history that substantiates this argument. Is the situation such that the U.S. is so critically in need of Canadian water sources as to require massive diversions or shipments of this

precious resource? The research shows quite contradictory results. Let's first deal with arguments of those who contend that large-scale and small scale water exports to the United States are not feasible at least in the foreseeable future.⁴⁷⁰

With respect to the thesis that "America thirsts for Canadian water," many challengers have argued that there were no identifiable markets as yet for Canadian water in the United States in the 1960s and there is no market for it now, forty years later. "There is no shortage of water in the United States endangering life or the economy. There are local individual problems, mostly related to pollution and to the unwise use and waste of water."⁴⁷¹ Even less realistic are the claims that the U.S. would use its military might to annex Canada's water resources. The cult of market efficiency and market based allocation of resources made western states shift their approach toward conservation and reallocation of valuable water supplies to higher use values rather than the development of new water supplies, the focus now is not on supply but on demand management. In other words, the trend in U.S. water policy encourages conservation and the use of market prices to regulate the demand and supply of water.

Even during the period of grand water projects not all water authorities were convinced of the need to find additional sources of water. For example, a water review completed by the Committee on Water of the National Academy of Science in 1966 states that "This report is not prompted by a national shortage of water, for there is no

⁴⁷⁰ See Smith (1993); Day & Quinn (1992); Caulfield (1984); Bocking (1972); Tinney & Quinn (1969)

⁴⁷¹ Bocking (1972): p.14

nationwide shortage, and no imminent danger of one...”⁴⁷² Almost two decades later, the Conservation Foundation of the United States published its report titled “America’s Water: Current Trends and Emerging Issues” which states that the country’s conditions with respect to water availability “are not dire” and “the lives and habits of most Americans remain largely or entirely untouched by water perils or prognostications” despite the “apocalyptic headlines in the magazines and newspapers” that proclaim national water shortage as the “energy crisis of the 1980s.”⁴⁷³

In 2000, the U.S. Global Change Research Program issued a comprehensive report that summarized the conclusions of a substantial body of literature on the implications of both existing climate variability and future climate change for U.S. water resources.⁴⁷⁴ The report’s findings indicate that with very few exceptions the majority of various projections of future water withdrawals in the United States over the past 50 years “have overestimated, often substantially, the rates of increase in water withdrawals.” Since the mid-1970s, withdrawals have been constrained and declined almost in all sectors because of high costs, environmental concerns, regulatory actions, and in a few cases, actual scarcity which encouraged the development and adoption of more water-efficient practices. According to the new set of U.S. long-term water resource projection to the year 2040 total water withdrawals

⁴⁷² Tinney & Quinn (1969): p.412

⁴⁷³ America’s Water: Current Trends and Emerging Issues. (1984): p. xi-xiii

⁴⁷⁴ Gleick et al (2000)

will increase only seven percent by the year 2040 despite a 41 percent increase in population.

In 1968, the U.S. Congress issued a moratorium of ten years on federal investigations of water diversion into the Colorado Basin because of the resistance of the Columbia Basin states toward feasibility studies of major inter-regional diversion. Similar resistance was shown by Northern Californian counties, the Pacific Northwest and Missouri Basin representatives. Between 1976 and 1985 Congress did not authorize a single major water project.⁴⁷⁵

The question then is to what extent these trends within the United States may be considered as substantial grounds for dismissing an argument about alleged U.S. attempts to acquire access to Canadian water?

Opponents of global climate change as an important factor in the Canadian water security issue argue that the rate and magnitude of global warming and its impact on water resources are uncertain. From this perspective, it is a possibility but by no means a certainty that global warming could lead to increased demand for Canadian water. Furthermore, even if the supply of water were to diminish, it is quite possible the response would be a focus on efficiency and demand management and reliance on alternative forms of supply (such as wastewater reclamation, desalination, or rainwater harvest) rather than on importing foreign supplies of water. This would suggest the fear of increased demand for Canada's water is not yet substantiated and that the focus on water export issues might, in fact, deflect Canadian attention away

⁴⁷⁵ Quinn (1970); Day & Quinn (1992)

from other issues that should be debated more fully. This argument suggests not to get too emotional about an issue which has not yet occurred but attend to more pressing matters that wait urgent solutions. On the one hand perhaps this is correct.

However, how should we deal with ample evidence that suggest that the United States is still sensitive to possible disruptions in water resources supply? And that while American water planners tend to promote U.S. reliance on its domestic water supplies, there is still a tendency to look up north to Canadian water resources which deep down maybe regarded by the U.S. as reliable as domestic sources are? According to a confidential information, U.S. congressional staff does not find unreasonable the concerns of some Canadians that California or other Southwestern drought-prone regions in U.S. might one day reach for Canadian water. The simple explanation is that their values are based in part on awareness of water's critical importance in continuing development of the region and pressure of increasingly growing population. This has already resulted in a dramatic shift in political power (through redistricting) from the Frost Belt to the Sun Belt. Perhaps it is not a prospect in the near future but certainly the possibility cannot be dismissed. As for the alternative sources of water supply by means of which the U.S. is hoping to manage its water demand, there is one more alternative that has to be mentioned and most definitely cannot be neglected – it is water marketing and transfers. Despite the fact that there has never been any formal request from the U.S. to the government of Canada to initiate a joint discussion of the question of accessing its water resources

and subjecting them to massive diversion and export, certain trends in U.S. water resource policy has direct effects on setting the water export agenda in Canada.

The Agenda - Setting Forces from U.S.

The boundary between Canada and the United States is typically a human creation; it is physically invisible, geographically illogical, militarily indefensible and emotionally inescapable.

Hough Keenleyside⁴⁷⁶

Canada shares the largest undefended border in the world with the United States, the one remaining superpower. This border runs more than 8,900 kilometers across the continent up to the Arctic ocean and includes such major drainage basins as the Yukon, Columbia, Red Great Lakes and Saint John, and numerous smaller basins. The geographical link between the countries, the relatively porous nature of the border, and the overwhelming economic and cultural presence of the U.S. in the lives of Canadians all serve to magnify its potential to exert pressure for access to Canadian water. As Frank Quinn wrote:⁴⁷⁷

The thirst of the North American continent's southern deserts and central plains has been working its way northward since the turn of the 20th century... It is the concept of water transfer from the wet to the dry areas of North America that attracted the most attention and the greatest fear.

⁴⁷⁶ Goldberg & Mercer (1986): p.1

⁴⁷⁷ Quinn (1970): p.57

Even though schemes like NAWAPA, Grand Canal and others, have never been realized, the significance of all these projects is that statements by U.S. public officials have been making many Canadians worry about the security of their fresh water resources since the 1960s and some of this rhetoric is still there 40 years later. Moreover, as the following sections show, the developments in the U.S. were, in almost every case, significantly responsible for pushing the issue of water exports on to the policy agenda in Canada.

“Period of Interest” I

In the 1960s U.S. Congressman Jim Wright and U.S. Senator Frank E. Moss in their books, “The Coming Water Famine” and “The Water Crisis” enthusiastically promoted a continental resource sharing that they saw as a total answer to “the harsh truth” that “the United States of America, the richest and most powerful nation in the world, is running out of its most indispensable commodity. . .clear, usable water.”⁴⁷⁸ From their point of view, “the countries of North America can hardly be any more separate in their utilization of the continent’s water resources than they are in the defense of the continent. There is complete military cooperation.” Such projects as NAWAPA, North American Water and Power Alliance, would make available abundant waters of Alaska and Canada, “to the parched and unproductive areas of the entire continent” and most importantly these would be available to the United States

⁴⁷⁸ Write (1966): p.15; Moss (1967)

because, “the fact remains: there is to the north of us a stupendous supply of water, enough to satisfy most of our predictable wants for years to come, which is simply going to waste. We need the water. We need to develop the means of getting that water.”⁴⁷⁹

In 1965, upon announcing the international Water for Peace Conference to be held in the U.S. two years later, President Lyndon Johnson declared that the world was rapidly approaching a choice between war and adequate supplies of pure water and if the challenge were not met it was probable that “...even America’s unprecedented military might will be unable to preserve the peace for long.”⁴⁸⁰ At the height of megaschemes frenzy, during the 1960s, the U.S. government advocated the idea of, “close international cooperation to assure a fair distribution of fresh water supplies for all nations.” It also rushed to argue that, “as water shortages grow more acute, the traditional notion that a nation’s fresh water resources are exclusively its own must yield to the view that water systems do not respect national boundaries.”⁴⁸¹ Morris Udall, the U.S. Secretary of the Interior during the Johnson administration, stressed that “the more difficult problem ... is to reshape thinking about a nation’s absolute sovereignty over its water supplies.”⁴⁸² This statement, certainly contradicts the

⁴⁷⁹ Moss (1967): p.252; Write (1966): pp. 220, 224

⁴⁸⁰ What a Curse Liquor is to Water Conference. (1966, September 21). *Vancouver, The Province*.

⁴⁸¹ Water for Peace’ Parley Turn Some Canadians Belligerent. (1966, October 20). *Vancouver Sun*.

⁴⁸² Ibid.

reassuring statement made during the 1967 Conference that the U.S. does not have interest in Canada's water as described in Chapter 4.

In the 1960s opinions diverged in Canada regarding this U.S. rhetoric. One side was inclined to think that the pollution troubled U.S. wanted Canadian water and meant to get it. For them it was not clear where this "fair share" doctrine originated and whether it had direct connection to "...that busy American organization known as NAWAPA and its grand schemes for diverting Canadian waters." Moreover it made some wonder "if the Americans, in this great reshaping project have any particular nation in mind."⁴⁸³ Whereas the other side was apt to regard the such speculation as "chauvinistic slogans on behalf of some politicians in Ottawa and the provincial capitals who cry no truck or trade with the Yankees on water matters." From this position "the United States has no immediate intentions to lay its hands on Canadian water. Any apprehensions from senior provincial and federal politicians and experts about imminent American plans to gain access to Canadian water by hook or by crook were allayed by firm U.S. statements that Washington would have a long way to go before "it makes overtures to Canada."⁴⁸⁴

⁴⁸³ Ibid.

⁴⁸⁴ No Threat (1967, June 5). *Montreal Star*.

“Period of Interest” II

In 1971 the New York Examiner published an interview with Henry Gablinger, at the time a resources expert and advisor to President Nixon.⁴⁸⁵ Mr. Gablinger was speculating about growing U.S. needs in fuel, power, minerals, metals and, of course, water, “the world’s most precious element perhaps replacing gold as a medium of exchange between nations.” The U.S., Mr. Gablinger highlighted, has never been shy about what it wants. Driven by its growing needs, “it will do the same with Canada. U.S. has offered to Canada all kind of deals such as Continental Energies Program which could unite all the resources in North America into a common pool. If they [Canadians], don’t accept it, we’ll just have to force it on them. U.S. has the economic arsenal to do it.” “The bargaining over Canadian water has started a cold war in resources that Canada can only lose.”⁴⁸⁶ These statements may sound like science fiction to some, and certainly they overstate the threat, but it is important to remember that they are inspired by actual problems related to water shortages in the U.S. and the relative power of that country to Canada.

“Period of Interest” III

In 1984, the U.S. Council on Foreign Relations stated that, “Fresh water, long considered inexhaustible and hence a free good, now begins to appear as perhaps the major long-range resource issue on the continent...Rising demand, especially by

⁴⁸⁵ Samson J. (1971). A Friendly Southern Neighbor Looks North. *The New York Examiner*.

⁴⁸⁶ Ibid.

Americans, can cause problems of unprecedented seriousness since water is clearly the most precious of all continental resources.”⁴⁸⁷ Mr. Robinson, while serving as the U.S. Ambassador to Canada, stated that: “No adequate demand now exists for such diversions, nor any serious interest in supplying such demand, nor any source of funding for the immense costs of such ventures.” However, he added that in the future if “water sharing” became a live issue, “The United States Government will be prepared to discuss (it) ...and to manage the issue with Canada in a spirit of mutual inter-dependence.”⁴⁸⁸

“Period of Interest” IV & V

U.S. President George W. Bush, according to the Canadian media, was ready in 2001 to reopen debate to quench the growing U.S. thirst for water and discuss with Canadian Prime Minister Jean Chretien possible continental water pact along with the co-operation talks between Canada, the United States and Mexico on energy.⁴⁸⁹

⁴⁸⁷ Keating (1991)

⁴⁸⁸ Robison (1984)

⁴⁸⁹ Bush Eager for Talks on Canadian Water. (2001, July 18). *Globe and Mail*

Contemporary U.S. Water Realities and Interests

The shift in the U.S. water policy from supply toward demand management and water conservation measures may deflect attention away from Canada's water at least for a while but, "It is still uncertain how long it may last because another drought cycle may be on the way."⁴⁹⁰ Global warming trends, increases in atmospheric greenhouse gas concentrations, affect the availability, quality, distribution, and form of Earth's water resources and could almost certainly result in additional demands for water in the American Southwest.⁴⁹¹ If that is the case, Canadian water may seem a more accommodating solution even at a high price rather than relocations of existing water supplies within the U.S.

California serves as a useful example for thinking about the potential consequences of climate change though it is impossible to confirm whether the state's last long dry spell, which lasted for six years (beginning in 1987), was a result of the greenhouse effect. Throughout California's water shortage the state's politically powerful farmers were screaming for water at public meetings. They wanted water fast and did not care where it came from or how much it cost. California's Santa Barbara and Goleta Water District became famous cases in the saga of the water export issue in Canada. The cities' managers considered two alternatives to cope with water supply: marine tankers bringing fresh water from British Columbia and desalination plants.

⁴⁹⁰ Smith (1993); Windsor (1992); Keating (1991); Crane (1988); Foster & Sewell (1981)

⁴⁹¹ Ragab & Prudhomme (2002); Gleick et al (2000)

Three British Columbia companies – Snowcap Water Ltd., Western Canada Water and Aquasource – had bid for contracts to provide this supply. The prolonged drought in Southern California came to an end and the long awaited rains dampened enthusiasm for British Columbia water (never mind the fact that the desalination alternative was preferred). However, the case resulted in one of the significant spikes in attention in Canada toward the water export issue.

The water base for the development of Southern Californian cities, which are green gardens in a desert climate, with high municipal per capita water use and high consumptive water losses has for a long time been imported via aqueduct from northern and central California and from the Colorado River. There have been political struggles around water such as it has become increasingly difficult to import additional water from the water rich part of the state and one referendum in early 1990s rejected a proposal to export additional water from northern to southern California. Some water which is imported to southern California from the Colorado River system belongs to other interests within the basin that draw on this resource. Similar conditions appear in the Southwestern United States, especially in Arizona. Water supply is being extended in this area with the Central Arizona Project, which imports water from the Colorado River. The amount of water however is not enough. In the present situation, animosity is developing between farmers and city managers. The former see irrigation as a waste of water and are buying agricultural land with water rights. The alternative option of reducing water demand is seen as highly

controversial. Some citizens intend to keep their oases green and fight for the water they need.⁴⁹²

If the dry U.S. regions will have at least one-quarter of the voting power in the House of Representatives that may put more weight in the hands of a prevailing group in the United States Congress favoring importation of water from Canada. Water could be shipped in tankers, or a large number of dams, close to the international boundary between the two countries could with relatively little cost and effort be extended to divert water to the U.S.⁴⁹³

Only recently Karl Rove, President Bush's political strategist responsible for domestic policies emerging from the executive branch, has been involved in the dispute over water rights in Oregon's Klamath River basin. As described in a Wall Street Journal report, Mr. Rove has worked almost obsessively behind the scenes to ensure that the outcome satisfies the Republican party's agricultural base at the expense of conservationists and Indian tribes. Farmers want water for irrigation, while conservationists and Indian tribes want it for endangered fish species, including downriver salmon. Because of the support from the Bush administration, the farmers have prevailed almost every step of the way. In March 2002, the administration staged an elaborate ceremony to release irrigation water that had been held back to help fish and later it unveiled a 10-year plan widely seen as pro-farmer. The farmers clearly

⁴⁹² El-Ashry & Gibbons (1986); Glecik (1993); Hettena (2004, January 4). Water: A New Cash Crop. *Los Angeles Times*.

⁴⁹³ Quinn (1990)

owe a considerable debt to Mr. Rove because he made clear that agricultural interests came first.⁴⁹⁴

U.S. plans for energy self-sufficiency may pose additional demands for huge volumes of water to develop a synthetic fuel. Much of the demand would come from the dry western states where oil shale and coal reserves are found and where existing water supplies are already heavily committed to agricultural use. As a result schemes such as NAWAPA for redistributing water on a continental basis, could be reassessed with an eye toward Canada's water abundance. In fact, in the early 1990s Mr. Dale, a former U.S. ambassador to Canada was interviewed in *Western Report Magazine* about the renewed interest by southern California in revitalizing the concept of the NAWAPA plan to divert large amounts of water from Canada to the greater Sacramento basin. The American Society of Civil Engineers recently published a handbook that points out all the benefits of diverting water from Canada to the United States.⁴⁹⁵ It is also possible that the United States may choose to develop future energy uses from waters of Canada-U.S. (trans) boundary basins like the Columbia, Red and Great Lakes rather than from basins of the Southwest where water shortages are acute. Greater use by the United States of boundary basins would not require the physical diversion of water from Canadian territory but would have the same effect of reduced supply for Canadian use.

⁴⁹⁴ Karl Rove's Water Policy (2003, August 6). *The New York Times*.

⁴⁹⁵ Hansard (1996, March 11)

Kent Butts points out that fresh water has significant implications for U.S. domestic agricultural policy. Moreover, water issues “will continue to be a strategically important variable in foreign policy development, and should be used as an indicator of potential regional instability and a constant reminder of the importance of geographical variables to international relations and political military affairs.”⁴⁹⁶ American Council for the United Nations University published a report, “Future International Environmental Security Issues and Potential Requirements Over the Period of 2010 to 2025,”⁴⁹⁷ that identifies and discusses environmental issues that may affect the U.S. Army’s transformation efforts in the aftermath of September 11, 2001. Many factors such as new kinds of weapons, increasing demands on natural resources, urbanization, and globalization are making the planning of environmental viability for life support more important in the future. After assessing the situation with water resources on the global scale (global warming, water system vulnerability to industrial catastrophe, agricultural pollution and terrorist attacks, regional water shortages and disparities), the report suggests a number of military actions to address the water issue among them: military development and maintenance of a global and national database of water resources; military protection of water supplies; development of rapidly deployable water supply, groundwater and surface contamination modeling and water purification and cleanup systems. Although the report stresses that water should be

⁴⁹⁶ Butts (1997): p.82

⁴⁹⁷ Glenn & Gordon (2002). The report is published by the American Council for the United Nations University (2002) in *The State of the Future* <http://millennium-project.org>.

viewed through the prism of peace research and should not be militarized, still the military may have a greater role in water resources due to concerns about terrorism as well as the security of allies, strategic countries and susceptible governments in countries that do not participate in alliances. Furthermore, the U.S. National Intelligence Council also noted in its Global Trends 2015 report that even if historically water has been a source of contention “no water disputes has been a cause of open interstate conflict.” Water shortages often have stimulated cooperative arrangements for sharing the scarce resource. However, the reports emphasizes that “As countries press against the limits of available water between now and 2015, the possibility of conflict will increase.”⁴⁹⁸

Indeed water has become a priority in the U.S. under the current Bush administration. An effort is under way in Congress to develop a national policy to ensure an adequate and dependable supply of fresh water in the U.S. for the next 50 years. Bill R-GA has been introduced to create a presidentially appointed commission to recommend how to better deal with water issues. The proposed legislation calls for the president to appoint 17 commissioners who in one year would hold public hearings on water issues and collect information from federal agencies, then offer Congress a blueprint for possible legislation establishing a comprehensive water policy. There is also call for comprehensive national water resources needs assessment.⁴⁹⁹

⁴⁹⁸ US National Intelligence Council. (2000, December 2)

⁴⁹⁹ Regulatory Matters. (2002, May 28)

Continentalism

Political, economic concerns and technical progress may eventually inspire a shift in attitudes not only of water-stranded regions toward Canadian water but attitudes of Canadians themselves. For example water could be exported not for money but for other considerations, a situation referred to as “linkage.” Anthony Scott argues that resistance to internal transfers in the U.S. could be “so inflamed that a Canadian source would be the best bet... Politicians and diplomats might want to swap water exports for a military, economic, territorial, social or environmental agreement in another area.”⁵⁰⁰ Water could be a bargain for a chunk of agricultural land, e.g. in Southern California. Fruits and vegetables grown there by Canadian corporations using Canadian water would enter Canada duty free to satisfy winter demands for those products; or water would be supplied to Americans for each certain percent reduction in acid rain.⁵⁰¹

To date it is unclear how the Canadian public should interpret U.S. President George W. Bush’s intention to discuss with Canada a possible continental water pact and piping Canadian water to the parched American Southwest.⁵⁰² Some remain convinced that in his statement Mr. Bush did not mean actually “water”, and that the whole talk was only about energy. Moreover, if the United States did not respect Canadian rights under international law reinforced by Canada-United States treaties, it could long ago have diverted a lot of water from the Great Lakes system through Lake

⁵⁰⁰ Scott (1988): pp. 59-60

⁵⁰¹ Windsor (1992)

⁵⁰² Bush Eager for Talks on Canadian Water. (2001, July 18). *Globe and Mail*.

Michigan and, with a short hop, to the Mississippi watershed. For example, for years Chicago has diverted some amount and at times even more than permitted (by international agreement IBWTA) for water supply, pumping the effluent out its back door into the Chicago River. However, when asked to reduce its usage, it has done so. Thus, the argument follows that the possibility of large quantities of extra water being diverted to the United States from Canada without the proper approval of the government of Canada is not considered to be great. Nevertheless, the question should be posed what are the chances that the U.S. would ask for water directly rather than using economics as a tool for its political maneuvering? If the U.S. were to look for Canadian water as an alternative source, and an official request were made, would Canada be in a very difficult situation to refuse given the pro-American attitude of Canadian business, given close economic ties and given the political grip that U.S. adopts in its relations with the rest of the world? The situation then becomes quite serious especially so if one extends the general American security planners' notion about Canadian-sourced minerals toward water which are called as "being as reliable as domestically sources ones."

International relations theory suggests states not only compete they also cooperate. Despite the fact that any suggestion to a continental water idea "by a Canadian Government would probably amount to political suicide" some are certain that Canada and the U.S. will evolve a new policy for a continental water resources

based on an exchange of economic benefits between the two countries.⁵⁰³ The concept of “watersheds” or drainage basins that describes a geographical feature without regard to political boundaries, divides Canada into five major watersheds. Each watershed consists of a series of smaller or regional watersheds and some of them crossing inter-provincial boundaries and at least one extending into the United States. Saunders, for example, argues that “continentalism” in reality more and more characterizes the approach taken with respect to shared water between the United States and Canada and this practice is likely to increase rather than diminish in the coming years. He bases his argument on the recognition of the Great Lakes watershed as a unit and the signing of the Great Lakes Charter and sees a watershed approach or cooperative approach as a form of continentalism that in the years to come would require Canada to balance the costs and benefits of constraining its sovereignty with respect to shared water resources and especially such as Great Lakes.⁵⁰⁴

However, the watershed division concept is problematic, not only with respect to the Great Lakes but generally in the context of international trade and investment agreements the intent of which is to transcend boundaries. Because these watersheds bridge inter-provincial and international boundaries the clear implication is that provincial measures must be judged in this broader context. If, for example, a province entered into an agreement that it will manage a watershed with one or more provinces or territories, it would be difficult for it to resist a request of the same deal from a U.S.

⁵⁰³ Saunders (1987): pp.325-345

⁵⁰⁴ Ibid.

jurisdiction. That is, it would be obliged under free trade agreement to provide National Treatment to US investors or service providers.⁵⁰⁵

Then Ontario Premier Ernie Eves and New York Governor George Pataki, backed by some in the U.S. administration and Canada and U.S. business lobbies, signed a declaration in 2003 calling on Canadian and the U.S. federal governments to establish a security perimeter to serve as a mechanism for a proper screening out of terrorists and “other undesirable individuals” and at the same time further facilitating and securing the interdependent economic relationship so vital for the prosperity of both economies.⁵⁰⁶ The security perimeter, as well as rumors about a unified currency zone between the U.S. and Canada⁵⁰⁷ and the possibility of a joint missile defense system, so far are only suggestions and blips on a radar screen. However, if realized it could be one of those paths that implicitly leads Americans to Canadian fresh water resources in the name of mutual beneficial economic development and continental security.

Perhaps for the American public it is a great relief that Canada will not proceed with bulk water exports or domestic removals from the Great Lakes and other border sharing water resources because of the enacted amendments to IBWTA. However, could Canada say the same with regard to the U.S.? Are the *Water Resources Development Act*, 1986 (a federal law that prohibits any further diversion of

⁵⁰⁵ Shrybman (1999)

⁵⁰⁶ Canadian CEOs Play Down Divisions. (2003, April 7). *Globe and Mail*; Eves, Pataki Want Canada-U.S. Security Perimeter. (2003, April 9). *Globe and Mail*.

⁵⁰⁷ Gabriel & Macdonald (2003); Helleiner (2003)

water from any U.S. portion of the Great Lakes or their tributaries for use outside of the Basin *unless* such diversion is approved by the Governors of all Great Lakes states) and the *Great Lakes Charter*, 1985 (a document which has no legal binding but only a good-will meaning) enough to assure Canadians that U.S. conservation measures would not permit removal of water in bulk, or further divert water from the Great Lakes or other sources? In 1998 the U.S. House of Representatives passed a resolution that at certain level coincides with Canadian government view that:⁵⁰⁸

...the most effective means of protecting, conserving, and managing the water resources of the Great Lakes is through the joint pursuit of unified and cooperative principles, policies, and programs mutually agreed upon, enacted, and adhered to by each and every Great Lakes States and Province

The resolution proposes that:

the President and the Senate should act to prevent the foreign sale or diversion of Great Lakes water to foreign countries, businesses, corporations, and individuals *until procedures are established* to guarantee that any such sale or diversion is fully negotiated and approved by the representatives of the United States Government and the Government of Canada, in consultation with any Great Lakes State or Province that could be impacted by such a sale or diversion.⁵⁰⁹

No doubt this resolution stems from the efforts of Great Lakes states representatives concerned over the protection and security of the waters of the Great Lakes. However, it is important to note that the U.S. resolution does not call for a

⁵⁰⁸ U.S. Congressional Record Online. (1998, October 20). House Resolution 566.

⁵⁰⁹ Ibid. Emphasis is added.

complete ban on bulk water exports, but instead proposes *a permitting* system to manage such exports. The notion outlined in the U.S. resolution to create a permitting regime presents certain difficulties for the Government of Canada on its way to obtain complete cooperation with the U.S. to institute a regime that would prohibit water exports.

While the Great Lakes Charter can be viewed as an ecosystem initiative, its provisions have been criticized as the first step in legitimizing the licensing of diversions. Even after U.S. federal legislation was enacted requiring consent of all Great Lakes governments for future diversions, this legislative initiative turned out to be a hollow one. Consent is required only for proposals to divert water outside the basin whereas interbasin diversions, even if they cross state boundaries, are not included.⁵¹⁰

Furthermore, after commissioning in 1998 an expert bi-national legal team to analyze the existing regime used to regulate water withdrawals and exports, in June 2001 the Great Lakes Governors and the Premiers adopted the Great Lakes Charter Annex (an amendment to the Great Lakes Charter signed in 1985).⁵¹¹ The proposed Annex unveils a plan to establish a new standard for reviewing diversions and major consumptive uses and the principles upon which it will be based. The standard will also address proposed increases to existing water withdrawals and existing water withdrawal capacity from the Great Lakes Basin. These agreements will make many

⁵¹⁰ Miller (1988): p.79

⁵¹¹ Council of Great Lakes Governors (2001)

of the Charter's provisions binding upon all of the signatories and also will provide a more direct mechanism for States and Provinces to formally resolve major disputes regarding proposed diversions and consumptive uses. In so far as U.S. and Canadian federal laws prevent States and Provinces from entering into binding agreements across international borders, the States will enter into one interstate compact that will be paralleled by laws, regulations, and/or agreements approved in the Provinces and/or by the Canadian federal government.

What is disturbing in this proposed Annex is that some aspects of it certainly could contradict if not go into direct conflict with the Canada-U.S. *Boundary Waters Treaty*. New standards under consideration could be too permissive and could open the door to large-scale, long-distance removals of water. Recognizing these facts, the Canadian government still hopes to ensure that its rights under the treaty are protected and also it hopes that Ontario and Quebec provinces will exert some influence on the final decision with regards of this Annex.⁵¹²

Along the Canadian –U.S. border, the IJC, a bilateral independent body with equal representation by both Canada and the United States, has a mandate under the *Boundary Waters Treaty* to approve diversions from boundary waters. However, this mandate has always had a loophole. It cannot effectively deal with the case of diversion from Lake Michigan which is entirely within the United States territory but is part of the Great Lakes system. The famous case of Lake Michigan diversion

⁵¹² Department of Foreign Affairs and International Trade.(1999). Q&A-General Issues on the Legislation.

scheme in summer 1988 when governor James R. Thompson of Illinois “forgot” about the signed Great Lakes Charter when he announced the need to divert Lake Michigan water south to the Mississippi River for 100 days. In doing this, the governor was testing his authority to carry out an interbasin diversion within his own state. This diversion would have an effect on the water level of the Great Lakes. During the deliberation of this Illinois plan, Canada’s Environment Minister McMillan called the Illinois plan an “insane idea.” The Canadian Ambassador to the United States delivered a formal note to the U.S. State Department in July 1988, stating that “Canada was unalterably opposed to the diversion.” There was a fear that even an “emergency” diversion would have implications beyond the drought and transfer of water from the Great Lakes would be conducted on a regular basis. The general uproar in the U.S. and Canada eventually stopped this scheme. However, this does not resolve the problem because this Lake is not subject to the IBTWA and is a “wild card” with regard to diversions. Moreover, IJC’s ability to protect the basin is also impeded because its authority is restricted to approving or rejecting permit applications. All applications for transfer permission must come through the two federal governments, and after that requests are forwarded to the IJC. This makes the IJC role rather inherently reactive in nature. It is also unclear whether IJC can intervene to stop a diversion project that had bypassed routine application procedures.⁵¹³

At present there is no statute that regulates the withdrawals of water from Lake Michigan’s aquifers or protects them from overuse. Fears will not be hypothetical if

⁵¹³ Miller (1988): pp. 76-77. See also Scott (1994)

and when, for example, Arizona finds way to pump Great Lakes water all of the way down to Phoenix. Officials assigned to protect the Great Lakes basin from withdrawals say the state must create a track record of protecting the quantity of water in the region. However, agricultural interests and the golfing industry are put off by any onerous attempt to regulate a supply of water that they take for granted. A bipartisan group of four senators have offered legislation to require the department of Environmental Quality to establish a permitting process for anyone who pumps more than 100,000 gallons of water, averaged over 30 days. If the legislation becomes law, Michigan would join Minnesota, Ohio and Wisconsin in requiring permits. There are some disagreements over the 100,000-gallon limit. Some believe that the limit should be larger. Another proposal suggests to create a two-tiered system of permitting. Under this system one could pump more than 70 gallons per minute which would include significantly more withdrawal operations than the other plan. There is a political game induced by the Michigan Farm Bureau that tries to significantly amend the legislation by lobbying for the two-tiered system.⁵¹⁴

Discussion of Canada's subordinate status vis-a vis the United States goes back to the works of Canadian political economist Harold Innis. Innis tried to understand Canada's position in the continental economy arguing that Canadian economic history could be explained through the patterns of exploitation of particular resources — staples. Once staples are extracted, they are exported to more industrially advanced centers. US interest in Canada's industrial potential and strategic investments in

⁵¹⁴ Michigan Starts War for Water. (2002). *The Detroit News*.

Canada's resource base economy, especially industrial minerals, pulp and paper, and oil, resulted in Canada's becoming a "northern extension" of the powerful US economy.⁵¹⁵ This kind of pattern of relationship exemplifies, according to Haglund, a classic instance of markets having intended consequences under the persistence and power of US capital in Canadian affairs.⁵¹⁶ Another words, investment and trade may most certainly be used to enhance and sustain a state's greater capabilities including military power.

These days there exist different opinions on North American continentalism because the prevalence of the "North American" concept has important consequences for Canada beyond the immediate and future policy issues raised by foregoing comments about Canada's energy and natural resources. For some continentalism "extends to the manner in which Canadians view Canada and themselves increasingly through a "North American" lens. A continentalist perspective is sensible if Canada is essentially similar to the United States. If on the other hand significant differences do exist between U.S. and Canadian institutions, "then homogenizing Canada into 'North America' is not especially instructive and may be quite misleading and, in the extreme, even dangerous."⁵¹⁷ Others argue that continentalism with its embrace of economic liberalization may foster the growth of new political identities and serve as a mean to enhance Canadian prosperity albeit still recognizing the dominant position of

⁵¹⁵ Drache (1995)

⁵¹⁶ Haglund (1987)

⁵¹⁷ Goldberg & Mercer (1986): p.3

the United States.⁵¹⁸ Mexico somehow is usually ignored in this union of North America. Another position holds opinion that there are contradictory signs of North American integration, especially in the light of recent political events (September 11, 2001). On the one hand, there is a close security integration, as mentioned above, and yet Canada still continues to exercise its sovereignty in general and over its water resources in particular.⁵¹⁹

Perhaps for some the evidence served thus far belongs to the category of “ifs and *ands*.” However, the most decisive and yet sensitive contributing factor is the signing of the Canada-United States Free Trade Agreement (FTA) and the North American Free Trade Agreement (NAFTA) that may oblige Canada to export its water. Many see this free trade factor as a way for Canada to lose its ownership over water and on a bigger scale to lose its sovereignty.⁵²⁰

⁵¹⁸ Clarkson (1996)

⁵¹⁹ Gabriel & Macdonald (2003)

⁵²⁰ Windsor (1992)

Conclusion

If the fear that somebody will come and by military force take Canadian water is overstated, there is still more subtle reason for concern left. As Wendy Holm once observed, "With some exceptions..., future battles between nations will not be waged with guns but with economics."⁵²¹ Canada does have cause to concern itself with the fresh water issue for reasons of national security and this concern centers not on military threat but on the security effects of political and economic interdependence. If we attempt to reduce the issue of Canadian security to the singular dimension of water supply, and if we look at the demand and potential for supply of water in a restricted way, then it seems almost impossible to support the argument that water is a security issue. However, policy agendas are not best explained through reductionism. In the same way conflict and security have a multifaceted nature where water could be one of the dimensions of conflict.

Those who study the water export issue in Canada recognize the fact that if other countries needs for Canadian water have not been explicit thus far, then in the future under the effect of climatic changes and technical progress, political pressure could develop in such way that the export of water from Canada would be inevitable. There is some sense that this is occurring already, in that the free trade regime creates

⁵²¹ Holm (1993):p.96

a precedent for water export to the thirsty world. As some argue there is a “paradox associated with the growth of trade, however, for the spread of commercial interdependence can also trigger worries about the security effects of interdependence.”⁵²² Water, as the vice-president of the World Water Council William Cosgrove emphasizes, “will become such a scarce and precious commodity in the coming years that it is set to emerge as a key issue in the next round of international trade talks. One of the issues to be hammered out is how much of Canada’s water -- and the food we grow with it -- will need to be shared with other countries in the future. I see this as a major agenda item of future World Trade organization talks.”⁵²³

⁵²² Murdock (1977)

⁵²³ Canadian Water On Tap for Future Trade Talks. (2001, August 12). *The Globe and Mail*.

Chapter 8

Water Export Issue as a Resultant of Changing Intergovernmental Relations

Content of the Perspective

Richard Simeon pointed out three decades ago, while it is true that many issues facing the Canadian political system become “grist for the federal-provincial mill,” it is also true that many issues are raised and resolved without becoming the subject of intergovernmental negotiations since they are just a small part of the more general problems that challenge the effective conduct of a federal system.⁵²⁴ Based on the story of how the role of the provinces changed over time, and how their interaction with the federal government ultimately shaped the water export issue agenda setting process, and its transformation into a public policy problem, this chapter’s objective is to show that the water export issue is indeed “grist for the federal-provincial mill” and that complex federal-provincial relations undoubtedly contribute to the contours of this issue.

⁵²⁴ Simeon (1972): pp.146-161

The water export issue, if conceptualized within the framework of intergovernmental relations, may suggest for a casual observer a contradictory story. On hand, it has been popular to assert that the federal government has been relatively restrained in its involvement in the management of water resources and has had an inclination “to defer largely to the provinces unless there is clear federal interest ...”⁵²⁵ On the other hand, with respect to the water export issue, provinces at first took a very low key approach, basically supporting those federal initiatives that were framed in a context where they deemed it appropriate or feasible to declare water a “national heritage,” “not for sale.” Yet, as this chapter will illustrate, the development of the water export issue as a federal-provincial concern reveals a different dynamic and suggests a complex story because as soon as water came to be discussed as a commercially exploitable resource, the intergovernmental debate became intense.

One of the most immediate reasons why water export has become an issue in federal provincial relations is the constitutional interdependence of governments in Canada and the division between them of responsibilities for natural resources. Indeed, under most federal systems (not only in Canada but also in other federal states including the United States and Australia) the management of natural resources is regarded as a matter in which provincial or regional levels of government have an important stake since it is at this level that most of the direct impact of resource development is going to be felt. In general an important issue fails to arise on the federal-provincial agenda only if “constitutional allocation of both responsibility and

⁵²⁵ Saunders (2000): p. 223

the requisite resources is clear, when the respective government leaders feel this allocation is legitimate, when social problems do not cut across constitutional categories, and when the actions taken by the governments do not have spill over effects to the other governments which are perceived as important by their leaders.”⁵²⁶

When these conditions are not met, the issue will likely arise at that level with further implication that the question of water exports will become a contentious federal-provincial issue, as the scope and terms of the resulting “rights” are negotiated.

Accordingly, with respect to the water export issue, federalism can in theory facilitate diverse regional economic goals, while at the same time preserving certain essential national priorities. Of course, at its worst federalism could also generate both interjurisdictional disputes and unilateralism, if either federal or provincial governments prove absolutely unwilling to give up their political positions, economic priorities and the potential benefits from the export of their water resources. Given the geographically mobile and interlinked nature of water resources and given the need to avoid provinces being played off against one another, a strong federal coordinating presence is desirable (from the federal perspective), and this has now become the primary objective of the policy process.

Although in general matters of water resource management the federal government role could be characterized as restrained, that is not the case with respect to water exports. The issue has been identified as a matter of national concern from the outset, so that the federal government was supposed to play a leading role in

⁵²⁶ Simeon (1972): p.150

designing a suitable policy response and maintaining a cooperative approach which is “almost mandatory” and beneficial...,⁵²⁷ rather than just leaving it for the unilateral provincial decisions. With hindsight, as the chapter shows, it is possible to see that Ottawa has been the chief initiator of water export policy initiatives, albeit with mixed results. It initiated almost all federal-provincial discussions that would address and protect national interests with respect to water exports, ensure “fair” return for the use of Canadian resources if water export is permitted, or give the federal government the power to stop water export projects in case they are not deemed to be in the interest of social and economic benefits of present and future generations of Canadians.

The reason why the provinces at first supported federal initiatives also could be understood through the lens of intergovernmental relations. In such a world, the provinces might well look to the federal government mainly to bring some clarity into a potentially complex situation while also helping them to assess information with respect to economic benefits and environmental consequences of this enterprise. However, as soon as the provinces sensed that on the federal level water may indeed be available “for sale,” given proper regulatory mechanisms and economic feasibility, the position of the provinces was likely to change. If at first the provinces were content not to push the water export issue onto the formal policy agenda, under the new conditions their interest was understandably awakened. Given the rising interest of the provinces in the issue, Ottawa’s role becomes far more difficult because in such

⁵²⁷ Quinn (1977): p. 229

contradictory issue it has to deal now with motives, preferences, actions and choices of 10 provinces.⁵²⁸

This chapter examines how trends in federal-provincial relations have affected the evolution of the water export issue and concludes that, although at the moment it may seem that federal-provincial tensions over water exports have eased, this is only because the issue has merely moved on to pose new and different challenges. The political solution that both levels of governments have currently achieved is therefore not a stable and permanent solution but one that can be expected to remain in continual flux.

The chapter begins with an overview of the federal and provincial jurisdiction over water resources under Canada's constitution and interpretations it has received the rich body of literature.⁵²⁹ Then follows a historical analysis of interactions between the governments with respect to water exports in order to understand how this process influenced the transformation of the water export issue into a policy problem. Finally, it offers some concluding thoughts in regards to the federal-provincial dimension of the water export issue. The chapter is organized around key "periods of interest" as identified in Chapter 3. However, for analytical purposes, in certain sections of the chapter it addresses time frames that bridge more than one of the identified periods.

⁵²⁸ Although, there is some attention paid here to Yukon, the focus of this study is on provinces.

⁵²⁹ See Skogstad & Kopas (1992); Steven (1991); Saunders (1988); Rueggeberg & Thompson (1984); Quinn (1973); Bourne (1965)

Federal and Provincial Jurisdiction in Water Management

It is common to refer to the “ownership of water,” though, as some assert, this is a technically inaccurate term for such a fugitive resource when it is in its natural state. In fact the Canadian constitution does not mention water but deals only with some water uses such as navigation, fisheries, and electrical energy generation.

Besides, few jurisdictional disputes over water have been litigated in Canada, partly because Canada has abundant water supplies. As a result, it is quite difficult to define the precise roles of federal and provincial governments in water management.⁵³⁰

However, this does not mean that there cannot be legal rights over water.⁵³¹

In accordance with the *British North America Act* of 1867 (now the *Constitutional Act*) provincial governments exercise authority and control over most natural resources within their boundaries and inland waters (surface and groundwater) are among those resources. Provincial law-making power over water derives from such constitutional clauses that assign provinces jurisdiction over “property and civil rights,” and “the management and sale of public land” because water is regarded as a form of property and public lands include water. Provinces also have control over local works and undertakings (e.g. construction of dams) and “all matters of a merely local or private nature” within their borders. Provinces control water flow regulation,

⁵³⁰ Currents of Change (1985): p.63

⁵³¹ Gibson (1969)

authorization of water use development, authority to legislate areas of water supply, pollution control, thermal and hydroelectric power development. All these constitutional provisions give provinces considerable authority over water which is, however limited by specific federal powers.

Federal jurisdiction over water management consists of water on federal lands (e.g. National parks), in the territories (Northwest Territories and Nunavut with exception of Yukon)⁵³² and on the reserves of Canada's aboriginal peoples. Furthermore, federal jurisdiction over water includes authority over navigation and fisheries as reflected in the *Navigable Water Protection Act* and the *Fisheries Act*. This gives the federal government authority over water quantity since changes in water quantity directly affect navigation and alter or threaten the fishery.⁵³³ In addition, federal authority derives from jurisdiction over transboundary water, lakes and rivers between Canada and the United States under the *Boundary Waters Treaty* of 1909, which covers a numbers of commitments, largely related to water quantity and water quality considerations. The *International River Improvement Act* of 1955 gives the

⁵³² The Government of Canada and the Government of Yukon have signed the *Yukon Northern Affairs Program Devolution Transfer Agreement* which came into force on April 1, 2003. This transfer agreement sets out the terms and conditions for transferring the administration and control over lands and resources from the Government of Canada to the Government of Yukon. Accordingly, Yukon acquired provincial-type management responsibilities in relations to water on its territory. See www.inac.gc.ca

⁵³³ Because common law defines fisheries as property, provinces also have some jurisdiction over it. Thus, courts ruled that federal powers are limited to the regulation and protection of fish, and prohibit federal regulation of activities such as fishing that would impinge on provincial rights as owners. Despite the court ruling this matter still is regarded as controversial one. See *Currents of Change* (1985): p.64

federal government authority over the flow of rivers across Canada's international boundaries with the United States

In addition to these specific federal government jurisdictions over water there are more general ones. The *Export and Import Permits Act* provides for the federal government to control imports and exports of goods for particular purposes. It derives its constitutional authority from the power to regulate trade and commerce. The *Peace, Order, and Good Government of Canada* (POGG) clause in the *Constitution Act* allows the federal parliament to legislate on subjects of national dimension and under special circumstances override provincial powers on matters which are constitutionally under exclusive provincial power. Constitutional scholars have heatedly debated exactly what these special circumstances mean.⁵³⁴ However, the most prevalent opinion is that even if POGG might be available to deal with major water issues, each situation must be analyzed on the basis of specific facts and even in that case conclusions may be subject to challenge. Resorting to the POGG power, it is believed, would best be reserved as a last resort only when major water related issues including water export cannot be resolved through federal-provincial cooperation.

The overview of the federal and provincial jurisdictions shows that each level of government has distinct but interdependent responsibilities over water. Based on that, it has been asserted for a long time by many policy and legal analysts that federal and provincial governments have substantial water-related powers and as a result

⁵³⁴ For example, Saunders (1987) interpreted this doctrine with respect to large-scale schemes for water export.

approval of any water export project would require consent from both levels. That is, both federal and provincial governments have veto power on water exports.⁵³⁵ If Canadian water is to be exported, provincial approval is necessary because of provincial jurisdiction to make laws concerning the ownership and management of water resources within their borders. At the same time, approval by the federal government is also required because of its powers over navigation and fisheries, its legislative authority under POGG, the *Boundary Waters Treaty* and its responsibility for external commerce.

However, having jurisdiction is one thing, exercising it through legitimate statutes and regulations is another. Despite shared constitutional authority over water, the federal government's political resources have been significantly constrained in the absence of specific federal water-export legislation. In the absence of such legislation, provinces (as the outright owners of water resources on their territory) can make a strong case for the provincial control of water exports, whereas the federal government can evoke its authority only in a piecemeal way. Most of the acts give the federal government authority insofar as they relate to water management and do not provide sufficient scope for it to regulate or ban water exports. The acts are limited by their particular purpose and administered by a different agency, none capable of addressing the total national interest. For example, the *Fisheries Act* could be authorized by the Minister of Fisheries and Oceans or under regulations made by the Governor in Council; the *Navigable Water Protection Act* provisions must be

⁵³⁵ Quinn (1973): p.61; Saunders (1987): p. 325

approved by the Minister of Transport; the *International River Improvement Act* requires authorization of the Minister of the Environment. To complicate the situation even further, the historical development of the water export issue, as discussed later in the chapter, shows the shared veto assumption is complex and has changed over time. It appears that the federal authorities do not have a veto over all water export proposals.

The next section addresses the actual interactions between federal and provincial governments in historical perspective.

The Early Provincial Position or the Federal Government Takes Care of the “Big Picture”

“Periods of Interest” I & II: Nation Building

Water exports from Canada had not been an issue requiring federal-provincial negotiations until the 1980s. Neither media accounts, nor the Parliamentary debates of the time contain specific references to any conflicts or disagreements between the federal government and the provinces at this time. This is notwithstanding the fact that provincially owned water resources were identified as major potential sources for diversion and export in several megaschemes. For example, the Parson’s North American Water and Power Alliance (NAWAPA) project proposed diverting water

from rivers in Yukon, Alaska, British Columbia; the Smith's Western Alliance Augmentation Concept proposed diverting water from rivers in British Columbia, Alberta, Northwest Territories; the Tinney's Central North American Water Project proposed to divert water from rivers in Northwest Territories, Prairie; the Kierans' GRAND Canal proposed to divert water from James Bay rivers of Ontario and Quebec.

At the time, water export was commonly discussed in terms of "Canadian owned water," rather than differentiating between federal or provincial jurisdictions. It was stressed on several occasions during Parliamentary sessions that the federal government would not make any decisions on water exports without first seeking the opinion of the provinces and of the general public.⁵³⁶ Thus there was a large provincial component in the Canadian delegation that attended the intergovernmental meeting prior to the International Conference on Water For Peace in 1967 despite the fact that each country's participation was limited to only five delegates and despite the fact that this might create misunderstanding about the role of the provinces in foreign affairs. Anxious to present a strong unified Canadian national point of view firmly opposed to any possibility of continental water management, diversion and export, the federal government made sure that the provincial representatives (ministers and officials), who were given equal treatment in the proceedings of the Conference and in the attendant social engagements, participated as integral members of the Canadian

⁵³⁶ Hansard (1966, June 28)

delegation, rather than as representative their provinces.⁵³⁷ Such coordinated actions on behalf of the federal government were remarkable in the absence of a clearly defined official policy which would carry the endorsement of the government, as opposed to just a number of verbal “defensive responses by a series of ministers responsible for water resources.”⁵³⁸ Perhaps the fear of continental resource sharing, and specifically sharing Canadian water with a “thirsty” American neighbor, overshadowed the possibility of federal-provincial strain in the relationship over the issue.

It would be wrong, however, to assume that no attention was paid to the legal complications that could potentially arise from the existing constitutional arrangements between federal and provincial governments. This matter was dealt with at some length in academic and professional publications.⁵³⁹ Though they were somewhat hypothetical (given the absence of actual conflict), the emphasis in this literature had been on the fact that none of the proposed megascheme diversions (e.g. NAWAPA or Grand Canal) could be launched by the federal government without the support of the interested provinces because “co-operation between all levels of government is the only sure foundation on which to build such great works.”⁵⁴⁰ The federal strategy of careful censorship of unified “Canadian” answers on possible

⁵³⁷ MC (1966). In regards to Quebec, the position of the federal government was that if Canada decides to participate in the Conference, Quebec must participate and its delegates must have the right to make known the position of the Quebec Government on subjects on the agenda. Because of implications of all declarations, even of a scientific nature, it would be unacceptable for the federal government to submit papers without having obtained the approval of Quebec.

⁵³⁸ Quinn (1991)

⁵³⁹ Bourne (1965)

⁵⁴⁰ Ibid., p.168

questions about Canadian water export shows also that the federal government tried to assume, though with some degree of subtlety, a more leading role in the matter.

By the end of the 1960s the federal government had been involved in different water management initiatives which were partially described in Chapter 4 with reference to the departmental reorganizations. There were undertaken also various mechanisms for federal-provincial interaction on water management. 1961 was the year in which the Resources for Tomorrow Conference provided a national forum for intergovernmental dialogue which led to agreement among the federal and provincial governments to create the Canadian Council of Resource Ministers (CCRM) which a decade later was renamed into the Canadian Council of Resource and Environment Ministers (CCREM). The Council was supposed to be a forum for the exchange of ideas and intergovernmental discussion of environmental matters of national importance at the political level. During the early years of its existence, it did indeed pay special attention to water resource issues. However, over time the Council's concerns for natural resources and the environment have become so broad as to preclude it from any frequent or systematic consideration of specific water and water export issues.⁵⁴¹ Various consultative boards and committees were established to provide unofficial occasions for sharing views and exchanging information between the federal and provincial government (e.g. the Prairie Provinces Board, Flood Damage reduction Steering Committees, and other short-term basin planning and implementation committees).

⁵⁴¹ Skogstad & Kopas (1992)

Recognizing the need to take a more comprehensive approach to water management, the federal government started talking about the possibility of a national water policy. From these discussions came a proposal for a bill dealing with fresh water resources - a new *Canada Water Act*. This bill was introduced into Parliament in 1969 by the federal Minister of Energy, Mines and Resources. It became a law in 1970 replacing the *Canada Water Conservation Assistance Act* of 1953 which mainly dealt with federal cost sharing when building water storage facilities and supporting flood control projects. The *Canada Water Act* reflected the rising interest of the federal government in water developments and in general provided a broader scope for federal activity in comparison to the previous Act.

The *Canada Water Act* is the first water management legislation that pays special tribute to federal-provincial relations which is reflected in the Act's Part I "Comprehensive Water Management."⁵⁴² The Act permits the Minister responsible (since 1971 the Minister of the Environment), with the approval of Cabinet, to enter into a variety of arrangements with provincial governments on water resources - and with respect to federal waters to implement water management directly. The authority then, with the exception of federal waters, is essentially dependent on the willingness of the provinces to participate, whether in "consultative arrangements" or in more ambitious federal-provincial water resource management programs dealing with water quality, quantity, distribution, or use. The Act authorizes the federal government to enter into arrangements with provinces for conducting research, data collection and

⁵⁴² Department of Justice (2001). *Canada Water Act*.

water inventories, formulation of management plans and their execution. Unilateral federal action is, however, highly limited within the federal waters and international or boundary waters where there is a significant national interest and it does not include interjurisdictional waters, in other words, it does not give the federal government authority to intervene where waters flow from one province or territory into another, or along their common boundaries.

In parliamentary deliberations the point was raised that because the Act deals with the control and development of all Canadian waters, it should include some reference to water exports.⁵⁴³ However, the Act is silent about the issue. As a result of this omission and with respect to the general federal participation in water management some suggest⁵⁴⁴ that the Act is still within the constitutional limits of federal authority and shows rather little comprehensiveness despite its description as "Comprehensive Water Management." Nevertheless, even in this interpretation, the Act clearly indicates that water was a rising priority for federal government.⁵⁴⁵

With respect to water exports, it had been generally accepted that federal and provincial governments in Canada must both agree on the issue before Canada-U.S. negotiations could begin.⁵⁴⁶ Even before that, however, it was determined that both governments should explore alternatives to continental thinking in terms of large-scale diversions within Canada itself. This was in accordance with the Resources for

⁵⁴³ Hansard (1970, May 20)

⁵⁴⁴ Saunders (1988)

⁵⁴⁵ Quinn (1973): p.68

⁵⁴⁶ Ibid., p.64

Tomorrow Conference which at the request of the Prime Minister set the theme for national economic growth through intergovernmental coordination. It was said that:⁵⁴⁷

...our concern is not just with resources alone but with resources in relation to capital and labor, and in our complex of institutions as they all, in turn, relate to the objectives of growth... We must be able to turn resources into income and employment opportunities.

Not surprisingly the relative abundance of water has had an effect on Canadian attitudes toward water management. Canadians were free to concentrate on the use of water in an economic development context because each incremental use had only a minor impact on this “unlimited” resource. When immediate supplies of water were inadequate, industries and communities tapped the next convenient resource. Until the 1980s the widespread perception was that new demands for water could be satisfied simply by exploiting a new source of water. This period of supply-side orientation was predominant not only in Canada but, as mentioned in earlier chapters for U.S. and also for other countries, especially former USSR. Exploiting water sources and finding new ones is a historical legacy which makes water management synonymous with engineering measures of capture and delivery. It is also a legacy of a period of nation building by means of connecting different parts of the country into one whole.

As a result of these supply water management and national building priorities, some of the provinces in the 1960s started their own water redistribution engineering projects and the federal government was supportive of these ideas. Alberta formulated

⁵⁴⁷ Honorable Walter Dinsdale (1962)

its provincial water redistribution plan called PRIME in 1965 and continued to pursue the project throughout 1970s. Ontario launched an investigative project, the Northern Ontario Water Studies, regarding potential water supplies in the north during the period of 1965-1974. Nelson River Power Investigations and Saskatchewan-Nelson Basin Board investigations project had been conducted during the period from 1963 to 1966 and 1967-1972 respectively. Quebec pursued its own transfer possibilities and proceeded with large-scale water transfer and hydropower projects on the Churchill-Nelson and James Bay rivers. The largest of these undertaken transfers were Churchill River Diversion in Manitoba, Churchill Falls Project in Labrador and La Grand Project in Quebec. Most of the interbasin developments were contained effectively within provincial boundaries. However, some of the diversion plans involved significant interjurisdictional transfers (between provinces and between provinces and U.S. states) such as McGregor Project in British Columbia, the Garrison Diversion Unit in North Dakota, and north-south diversion possibilities in the Prairie provinces.⁵⁴⁸

The conflict over water export between federal and provincial governments did not begin in earnest until the late 1980s. However, the period of the 1960s and 1970s is important because of the emerging signs that the water export issue could be a component of national policies for the Canadian economy and environment rather than just an issue of provincial interest. During two decades on the general water

⁵⁴⁸ Inland Waters Directorate, Environment Canada (1973). Northern Ontario Water Resources Studies; Canada, Alberta, Saskatchewan, Manitoba (1972). Water Supply for the Saskatchewan-Nelson Basin.

management front the federal government had twice shifted its strategy: from provision of financial and technical assistance to certain provincial proposals; in collection and analysis of data on water levels and flows; research on the hydraulic cycle and on impacts of engineering and other activities, toward a more comprehensive involvement in national water management in the late 1960s and the 1970s, focusing on organizational and legislative initiatives described above.

At the same time this period was full of uncertainties. The economic benefits of the megaschemes were unknown. Besides, by the end of the 1960s there was a general decline in the number of large water export proposals. As a result the issue of water export was not yet pressing for an urgent policy solution. Because of these, and because the idea of water transfers to the U.S. was unpopular with the public, provinces did not have much interest in supporting the continental southward water projects. They preferred to be engaged in their own provincial water transfer matters and to support federal initiatives that were framed in the context of “nation building.” For example, Alberta in 1979 became one of the first provinces that formally opposed massive water exports. Alberta’s “Water Resource Management Principals,” clause 18 “Water not for Export” states that:⁵⁴⁹

Alberta will not be party to any undertaking for the possible export of water beyond Canadian borders. The priority of water use and allocation is based firstly on Provincial, secondly on interprovincial and finally on national jurisdictions, and will not be influenced by any additional considerations.

⁵⁴⁹ Alberta Environment (1979)

However, by the end of the 1970s another type of water export started to attract the attention of the provinces on both the east and west coasts of the country – the non-diversionary sale of water in tankers. The rise of these small-scale water export proposals profoundly changed the debates over water export on the intergovernmental level.

Toward a Federal Strategy: “Period of Interest” III

Changing Conditions

General Conditions

The end of the 1970s and beginning of the 1980s brought new realities. Environment Canada forecasted that although overall supply of water in Canada would still exceed total demand by the end of the century, there were certain regions of the country where scarcities had already appeared or would emerge in the forthcoming years. In particular major water problems were likely to arise in regions of aridity, areas where urban development and industrial expansion are heavily concentrated, or where thermal or nuclear power production is located including such basins as the Okanagan, Milk, north and south Saskatchewan, Red-Assiniboine, and

southern Ontario.⁵⁵⁰ It was suggested that Canada may face the prospect of a water crisis before the turn of the 20th century because the exploitation of water resources has been based on large-scale alteration either to the environment or to the way of life of particular social groups. These matters led to debates in the Parliament or in provincial legislatures that started to question the ethics and environmental effects of these schemes.

At the same time, it became more evident that the impending water problems in Canada would stem only partially from regional water shortages in this country because the main pressure, it was expected, would come from U.S. which was struggling to overcome several emerging deficiencies there, notably in the West, the Southwest and the Western Great Lakes region. The water crisis in the U.S. may, it was feared, cause fundamental changes in demand for Canadian water. This was particularly because the support for extensive approach to water management had not vanished completely but continued to linger on and even become prominent with the rising interest among certain provinces in small-scale water exports.

Rise in Provincial Interests

In 1981, British Columbia Premier William Bennett told some California entrepreneurs that the province's water was not then for sale but perhaps an opportunity that could be considered in twenty years. In 1984 B.C. Environment Minister Anthony Brummett said that ultimately the global water shortage would

⁵⁵⁰ Foster & Derrick (1981)

create an opportunity to export some of the province's fresh water to relieve the rising demand.⁵⁵¹

During the 1984 parliamentary sessions some members were saying that: "auctioneers ...running British Columbia, known as the Socreds, who are the Liberal wing in the West, have authorized in principal the export of fresh water from British Columbia." Moreover, despite official opposition to any massive diversion of water to the United States, some members from this province proposed damming the southern part of James Bay with a 160 kilometer-long dike and diverting those rivers to the United States. The federal Minister of Environment responded that indeed "a number of ideas have been floating around, not just in British Columbia, about water diversions and the export of water." Nevertheless, the federal government rejected "the contention that water is available for export. This will be a very important commodity for Canadians in the decades ahead. We therefore reject any such notion, whether it comes from provinces, municipalities, or regions in the North." During the same parliamentary session, however, one of the members noted that British Columbia proposed to take water from the foot of a waterfall that empties into the Pacific Ocean, for export to Mexico. "That would not be much more water than goes every year in beer bottles to the United States. What could be possibly wrong with taking water that is going to waste, and exporting it?"⁵⁵²

⁵⁵¹ Keating (1986): p.158

⁵⁵² Hansard (1984, June 1)

In reality, by the mid-1980s British Columbia was overwhelmed by the rapid proliferation of small-scale water export applications. It was preoccupied with reviewing applications and issuing licenses for small-scale containerized water export, for its coastal region. It even set a schedule of fees to be charged for water. Until March 1991, British Columbia had an open policy favoring water export, though limited to export by marine transport. The policy at the time stated that:⁵⁵³

...applications for the bulk export of water discharging to ocean from coastal streams will be considered on their individual merits provided that the water to be licensed for the export is surplus to local and provincial requirements and that the export operation does not impact upon other resources values including environmental and land use concerns.

In 1985 Quebec and Ontario together with eight Great Lake states signed a non-binding agreement, the Great Lakes Charter, that disapproves any unilateral increase in water consumption or diversion from the Great Lakes without approval from the other signatories. However, almost at the same time, Quebec was showing interest in small water exports (proposal to export water from Sept-Iles to Arab countries) as well as a controversial interest in investigating the Kierans Grand Canal proposal as a future possibility for water export. In 1985, Robert Bourassa, leader of the then opposition Liberal party in Quebec, endorsed the Grand Canal project in the chapter of his book, "Power From the North," and in an interview he noted that this project "could create spectacular wealth for Canada ... that could change the political

⁵⁵³ British Columbia Environment (1991). News Release. March 20, 1991.

equilibrium in North America.”⁵⁵⁴ During the parliamentary sessions, one of the members addressed the issue of Bourassa’s plan and asked whether the Government of Canada is going to provide help “either in the form of technical assistance or through the Prime Minister’s own contacts with the United States, and also to see whether any financial assistance will be necessary to help realize this important project for Quebec?” Prime Minister Mulroney’s answer was that as far as Mr. Bourassa submitted this project as a Leader of the Opposition in Quebec, thus the Government of Canada has to deal with the duly elected Government of Quebec. However, Mulroney noted that “as a Quebecer and a Quebec taxpayer, I am of course very much interested in any proposal likely to create jobs in our province. I think that Mr. Bourassa is particularly knowledgeable in this field, considering his involvement in the James Bay project, and I listen to what he has to say on the subject with a great deal of attention and respect.”⁵⁵⁵

Rise in Federal Concerns

The provincial interest in water exports raised concerns in the federal government because the provinces have constitutional authority to issue rights to use water within their boundaries and all of them, including the northern territories, have well-developed arrangements for licensing uses of water, whereas the federal

⁵⁵⁴ Hansard (1985, April 19); Keating (1986): p.158

⁵⁵⁵ Hansard (1985, April 19)

government did not have any formally codified policy that would deal with water exports. Under these circumstances future federal-provincial relations required a clear articulation of the federal role with respect to the economic, social and ecological dimensions of water management. The question was where could the federal government best show its leadership and concentrate its efforts? Among the major issues,⁵⁵⁶ the federal government's position on potential water exports was soon identified as one of the most important and one in urgent need of federal legislation.

The strategy that the federal government decided use was similar to the general water management strategy of the previous period – cooperation and consultation with the resources owners, ten provincial governments, as an essential element for ensuring its success. This is because a number of factors could affect the “new” role that the federal government had been planning to assume. Among these were the multifaceted nature of water, its uses and relative importance to different regions; the strong interest and dominant role of the provinces defined by the Constitution as the prime managers of water resources in Canada, and the high public profile of water. Any unilateral measures with respect to water, such as formulation of federal water policy only within the framework of federal government departments, would inevitably raise intergovernmental problems.

⁵⁵⁶ The water export issue was among the following other six major water problems: water supply/demand imbalances in the parts of prairies and parts of British Columbia; principles governing inter-basin transfers among different political jurisdictions; uncertainties in management of ground water; hazardous contaminants; water quality and quantity of hydro-electric and conventional and nuclear energy development; demand vs. supply management.

Inquiry

Thus as part of the strategy, the federal government decided to do a comprehensive, independent and objective review of the water resource situation in Canada, which would allow for public input and at the same time dispel possible provincial concerns about intrusion into their jurisdictions. In December 1983, Cabinet accepted the recommendation of the Minister of the Environment to establish an advisory committee under Section 26 (1) of the *Canada Water Act* which subsequently became known as the Inquiry on Federal Water Policy (the Inquiry). Under its Terms of Reference, the Inquiry was instructed to identify and describe emerging water issue and their federal, provincial and international jurisdictional implications.

A crucial aspect of the federal government's efforts in the early period of 1983 was to convince the provinces of the importance of this initiative. Apart from many complexities that appeared during this initiative,⁵⁵⁷ explaining the Inquiry objectives and gaining provincial support and cooperation for the process posed certain challenges. The initial reaction of the provinces was mixed. Provinces less supportive of the Inquiry were already having conflicts with the federal government over other issues. For example, Alberta had concerns over the National Energy Board and Newfoundland was engaged in the struggle over offshore oil rights.⁵⁵⁸ With respect to the Inquiry, Alberta questioned the appropriateness of a federally sponsored initiative

⁵⁵⁷ For example, numerous federal departments have an authority on water issues thus Inquiry members felt that they had to convince some departments that the process was not controlled by Environment Canada. See Filyk & Cote (1992): p.74

⁵⁵⁸ Ibid.

on the grounds that ownership and management of natural resources is principally a provincial matter, and subsequently objected strongly in writing to a federal Inquiry. British Columbia indicated that it shared Alberta's concerns and questioned the urgency of the initiative, given the slowdown in megaproject development. Quebec indicated qualified concurrence on the condition that the review be focused on areas of federal jurisdiction. Ontario, Newfoundland, Manitoba and Saskatchewan stressed provincial resource ownership, but accepted a need for federal involvement on the grounds that water issues were of such importance as to require national leadership. Nova Scotia, Prince Edward Island, and New Brunswick indicated no opposition but cautioned that the process could raise expectations in areas of provincial jurisdiction which the provinces might have difficulty meeting.

By the time of the actual start of the Inquiry most of the provincial concerns had been more or less resolved for the time being. Prior to the establishment of the Inquiry, the provinces reviewed and agreed upon its Terms of Reference and this allowed the review process to proceed as planned.⁵⁵⁹ The Inquiry visited all provinces in gathering information for briefs. Upon completion of the process, provinces reviewed the Inquiry's recommendations and presented their review of the Report.

The Inquiry was the first thorough assessment of the federal government's policy on freshwater resources and it was thought to have achieved its broad objective of delineating the scope of federal responsibilities and presence in water management, of establishing principles on which federal policy and programs should be based.

⁵⁵⁹ Ibid., p.75

With respect to water exports the Inquiry's recommendations emphasized the lack of federal legislation dealing specifically with water exports. Apart from having the constitutional authority to regulate international trade and apart from the relevance of the *International River Improvement Act*, the federal government had never adopted any legislation to actually control water exports. Since the provinces license water use within their boundaries, the federal criteria should be established in a political forum to emphasize considerations of federal and national concern. The criteria included:⁵⁶⁰

- Impacts on fisheries, navigation, federal waters and international interjurisdictional waters;
- International economic, political and strategic considerations;
- Implications for the ability of available water supplies to meet long-term Canadian requirements, the uncertainties and cumulative effects of exports on a regional and national scale;
- Regional environmental and economic effects;
- Implications for the interests of native and other social groups, adequacy of compensation for adverse effects;
- The general economic advantages to Canada

Moreover, for those criteria to have an effect, the federal government would need legislative authority to review water export proposals. Thus, with respect to small-scale water export projects, the Inquiry stated that the Minister of the Environment should review and approve(regulate) such proposals as long as they did not have significant implications and had already been approved by the relevant provincial governments. With respect to large-scale diversions, the Minister of the

⁵⁶⁰ Currents of Change (1985): pp.75; 130-131

Environment should be empowered to appoint a special review panel for each such proposal.

Notwithstanding the Inquiry's strong recommendation that the federal government should assume a leading national role in executing its clear legislative authority over water exports, the overall provincial response was supportive. The reasons for these could be twofold. The Inquiry's recommendations emphasized that the federal and provincial governments would need to collaborate in the matter of water exports since any project would require provincial approval. This meant, according to the recommendations, that the rights of the provinces (especially the right to pursue small-scale water exports) would not be infringed by the federal legislation if they were adopted as advised. The provinces still could exercise their ownership rights to approve such proposals in the first hand as long as these proposals did not have significant implications for any of the above specified federal government considerations. If a province approved a proposal, the license approval on the federal level would be guaranteed, according to the recommendations. Certainly, with respect to large-scale diversions, the federal government assumed larger responsibilities. As Saunders points out, the Inquiry's recommendation essentially "strikes a rather odd balance between federal and provincial interests," because:⁵⁶¹

the scope and nature of the review is apparently to be set according to federal priorities, and provincial input is limited to consultation in the appointment of some panel members. Unless a separate provincial

⁵⁶¹ Saunders (1987): p.337

review process is contemplated, this level of provincial participation is hardly likely to be considered acceptable by any province.

However, even in this regard the provinces did not object because these export schemes were negative reminders of the previous decades and continued to remain very unpopular among the general Canadian public and also among many government officials as well as federal and provincial legislators. Moreover, some provinces had officially declared bans large-scale water exports. Thus, provinces indeed did not lose much but on the contrary, acquired an endorsement of water exports on the federal level. These recommendations were in tune with attitudes and moods of many in the federal and provincial governments who were attracted by the concept and its possible economic benefits.

Toward Federal Water Policy

Subsequently to the release of the Inquiry Report in 1985, Cabinet decided to establish a follow-up process by setting up an Interdepartmental Water Policy Task Force which had two major goals. One goal was to provide the Environment Minister with advice on the 55 recommendations of the Inquiry report. The second goal was to advise on the “scope and nature” of an appropriate federal water policy. In the summer of 1986 the Task Force presented “Report on Federal Water Policy” to the Environment Minister and in fall 1986 the report was distributed among provincial

governments. In 1987 the Federal Water Policy was released.⁵⁶² The Inquiry had been a catalyst for activity leading up to the drafting of a comprehensive and first in its nature federal water policy.

The annual meeting of the CCREM during the fall 1986 led to the formation of a Water Advisory Committee that provided assistance in the federal policy development process. Consultation and information flow regarding water policy have been maintained through the Water Advisory Committee and CCREM. Provinces were generally supportive of the principles incorporated into the Federal Water Policy despite the obvious concerns of some of them about possible incursions into their jurisdiction.

On one hand it seemed logical, given the constitutional distribution of federal and provincial authority, that a national water policy would lessen public confusion and increase the effectiveness of federal government action in the area of water management. On the other hand, there were doubts whether it was worth the time and trouble to formulate a national policy for water. It seemed that the issue may be better handled as a component of national economic and environmental policy in case an official national water policy proved politically unacceptable. As Frank Quinn pointed out, “federal” is not necessarily a synonym for “national” and especially in the natural resources policy. Agreement among the eleven senior governments would be critical to the political viability of a Canadian water policy. The federal leadership role should be more “in the nature of providing the forum and moderator for discussions

⁵⁶² Federal Water Policy (1987)

aimed at consensus, exercising influence rather than imposing jurisdictional superiority, even in matters affecting international relation.”⁵⁶³ The implication is that the venue chosen by the federal government could potentially lead to a long lasting disputes among parties involved and that the issue of infringement into provincial jurisdiction may still strike back. Already Quebec and British Columbia showed signs of dissatisfaction during one of the meetings at CCREM in 1986 during which they asserted that the federal legislation would result in a dual licensing system.

Nevertheless, the approach that the federal government chose to test the waters, as it were, by launching the Inquiry review worked out. The government was able to harvest the fruits of its labor, when it won almost unanimous support from the provinces for the basis of a national water policy. Of course, this success was due to the fact provinces approved of and could benefit from the permissive nature of regulatory regime for water exports that the federal policy was advocating.

The next on the federal agenda was the actual introduction of legislative measures. The time was of the essence because of periodic reports of water supply difficulties in the American southwest and a rising provincial interest in water exports. This had a decisive effect on the federal government because of the concern that provincial licensing of water exports would not take into account federal interests and that projects would be undertaken unilaterally, making the entire preparatory work by the Inquiry and the formal promise of federal legislation in the Federal Water Policy futile. Moreover, if provinces were to launch water exports, none of the existing

⁵⁶³ Quinn (1977)

federal legislation could be used to address the total national interest (environmental considerations, fisheries, navigation, trade and commerce etc). Existing federal legislation addressed water export in a piece-meal fashion. If the provinces alone continued to regulate water exports, they might still consult with the federal government when its interests are at stake e.g. if fisheries were affected. However, there were no means to ensure appropriate returns for the use of the Canadian resources in these water export projects, so some projects that the federal government would deem unacceptable would be difficult or impossible to stop. Thus, the federal government had to act.

Federal Policy on Water Export

During the fall 1986 meeting of the CCREM the federal government decided to explore the idea of a moratorium on all types of water export with provincial ministers. The moratorium would allow it to gain some time for the development of appropriate water export legislation and evaluation criteria for water export proposals and in the interim, to negotiate a mutually acceptable referral system with provincial governments to ensure that their licensing of water accounts for the federal interests. In early winter 1987 CCERD considered a separate Cabinet paper on Water Export and later in the spring it was again discussed by the Subcommittee on Trade. It had been decided that the Cabinet decision on water export would be incorporated into the Policy.

The issue of water export at the time aroused interest at two levels. First is what might be called the immediate policy questions to be decided. Secondly, water became representation of broader policy issues. Though it is difficult at times to draw a clear line between the two levels, it seems that the immediate policy issue revolved primarily around the federal role in licensing small-scale water export. The broader issues had to do with the connection between free trade and water export.

Ontario was one of the first provinces that saw a clear point of contact between water export and free trade. In spring 1988, the Attorney General for Ontario published a legal analysis of water-trade stating that “provincial policies on the exploitation of natural resources will be seriously affected by the [free trade] Agreement.”⁵⁶⁴ Quebec, led at the time by the Parti Quebecois, was not prone to cooperating in federal water export initiatives but still, together with other seven provinces, it gave a strong support to the Free Trade Agreement.⁵⁶⁵

In any event, in summer 1988 the Cabinet started the review of the enhanced federal water resources legislation including its export provisions. The main argument of the review was that proceeding immediately with water export legislation would put to rest most public concerns, the pressing speculations on behalf of environmental groups, the media and the Ontario government that have effectively tied the issue to the Free Trade Agreement. The federal government measure also would eliminate the ability of provinces to initiate action which could jeopardize the federal policy.

⁵⁶⁴ Holm (1993):p.16. See also Quinn (1991)

⁵⁶⁵ Filyk & Cote (1992) p.74

Ontario by this time had already introduced into the provincial legislature the *Water Transfer Control Act* that sought to control and assert the sole jurisdiction of provinces' over water diversion and export. The federal government's argument was that, if adopted, this legislation would have resulted in a much weaker policy on water exports than the federal government's proposed legislation. In 1989 Ontario's legislature approved the Act but it was not proclaimed at that time.⁵⁶⁶ For the federal government it was essential to show to the public that it was in control of this explosive issue to minimize any uncertainty about its position and plug the loopholes created by provincial legislation.

To further its strategy and promote its legislative measures, the federal government used a number of tactics. One was to present the broadly based legislative initiative as a necessary and logical outcome of the review of federal water policy. Second, the federal government suggested that the legislative measure logically followed from its constitutional authority to act upon the issue. Another tactic was to focus on the fact that the new federal legislative measure would prohibit large-scale water exports but the provinces would be able to exercise licensing authority over small-scale exports. The legislative provision would empower the Minister of the Environment to license small-scale water exports but this power could be also delegated by the Governor in Council to a province if there were a federal-provincial agreement on such a transfer.⁵⁶⁷ Last but not least, the government decided to draft the

⁵⁶⁶ Quinn (1992): p.117

⁵⁶⁷ Bill C-156 (1988): Delegation

full legislative package on water exports as soon as possible so that by August 25, 1988, Bill C-156, the *Canada Water Preservation Act* had passed its first reading in the House of Commons.

It appeared that once again the federal government's strategy had paid off. Despite mixed reaction, the provinces did not object strongly to this federal initiative. Indeed, the provinces publicly welcomed the bill and declared it timely. However, the federal government failed to capitalize on its success because the call for an early election on October 1, 1988 dismissed the parliament before the bill could be adopted. The federal government did not reintroduced the legislation immediately upon the opening of the next Parliamentary session as its priorities shifted because much more important government policy was on the way – the *Canada-United States Free Trade Agreement Implementation Act*.

Activist Provinces

“Period of Interest” IV

While the federal government was preoccupied with the free trade issue since the failure of Bill C-156, some provinces actively promoted water exports on their respective policy agendas.

A considerable increase in the number of applications for the small-scale water export from its coastal streams of British Columbia alerted various environmental

groups and their official provincial opposition, the New Democratic Party, who vigorously attacked British Columbia's water export policy because it allowed small-scale water export but failed to take account of the cumulative impact of these many small-scale water schemes.⁵⁶⁸ Partly as a result of this pressure, the provincial government, the Environment Minister Cliff Serwa announced on March 20, 1991 that no further water licenses would be issued until after June 30, 1991. This moratorium was subsequently extended twice, one time until June 30, 1992, and then again until June 30, 1994.⁵⁶⁹ In the Summer of 1992 the British Columbia government released two discussion papers. "Sustaining the Water Resource," called for a review of water policy, while "Stewardship of the Water of British Columbia: a Review of Policy and Legislation" focused specifically on legislative renewal. During the extended moratorium period, B.C. Environment carried out studies and assessments of the environmental impacts of water export, and weighed the economic, jurisdictional and environmental issues to ensure that its water export policy was compatible with the overall provincial policy review on water legislation. In 1992 British Columbia hosted a few important events that dealt directly with the issue of water export. In late spring of the 1991 the provinces hosted a meeting of experts on water export in Victoria.

⁵⁶⁸ British Columbia New Democratic Party (1991). Report from the Legislature, Mike Harcourt, Leader of the Official Opposition "B.C. water export must be handled carefully." February 26, 1991; Adopted Policy Resolution passed by the B.C. Democratic Party Provincial Council, February 10, 1991 "Bulk Water Exports; British Columbia New Democratic Party "Policy Statement on Bulk Water Export.

⁵⁶⁹ British Columbia, Ministry of Environment, Lands and Parks (1991) News Release. March 20, 1991; British Columbia, Ministry of Environment, Lands and Parks (1992). News Release. May 8, 1992.

Participants included various agencies and special groups as well as representatives of the federal government who examined issues pertinent to water export and reviewed the existing provincial policy. The other event was a conference of water export experts in Vancouver with the theme “Water Export: Should British Columbia’s Water Be For Sale?” that attracted delegates from Canada, the U.S. and from Mexico.⁵⁷⁰ The events created a forum for discussion among proponents (business groups, researchers, economists), opponents (interest groups) and those who preferred to be called “objective” observers, with respect to water exports.

British Columbia’s focus on the water export issue, including its consecutive declarations of moratoriums and the launching of a policy review process, prompted the federal government to return to the idea of water export legislation. When in early 1992 the senior federal officials began to discuss the possible reintroduction of federal legislation similar to Bill C-156 provincial reaction was mixed. Some provinces, including Alberta, Saskatchewan and Ontario, were supportive and some not. By the end of its second moratorium on applications for exporting water in late spring 1992, British Columbia had not yet decided its policy regarding water export. The province was taking its time in order to consider the water export issue as part of a broader review of water legislation which it was planning to announce. The federal government’s concern was that being in the process of making its own decision British Columbia could have objections to federal legislation if it pre-empted the province’s right to decide the future of its own resources. Quebec was also non-committal

⁵⁷⁰ Windsor (1992)

indicating that federal legislation on water export would not be welcomed and would increase rise the province's concerns. This was despite the fact that it did not have at the time any specific proposals for water export. Though there were some unconfirmed rumors that the province had started to explore water market possibilities in thirty different countries.

Federal "Retreat" From Its Initiative

The circumstances surrounding the possible reintroduction of the federal legislation had changed in the interim and the federal government slowly tried to retreat from its legislative initiative because it could potentially jeopardize larger policy stakes. Canada formally endorsed the first free trade agreement with the U.S. in 1989 and the trilateral free trade agreement with the U.S. and Mexico in 1993. Not only could Ottawa not reintroduce Bill C-156 in 1992 in the form it had been proposed in 1988 (e.g. the prohibition of large-scale water exports) but it had to situate any of its policy and legislative measures in the context of signed trade obligations in order not to raise claims for damages under the articles of those agreements. The federal government found itself rather preoccupied with free trade and between 1992 and 1998 its initiatives with respect to water export went in limbo.

Back to Provincial Initiatives

The provinces also used the time to reassess their own bargaining positions realizing that they have enough power and resources to be able to determine the pace

and timing of their own economic development without letting the federal government encroach on their ownership and control of natural resources. This is what many in the federal government were afraid would happen between the Inquiry review and consultation over Bill C-156. By the end of the 1990s almost all provinces were investigating or had established positions with respect to the water export issue. Some provinces prohibited large-scale, some allowed small-scale exports, another were in the process of making decisions. In the process of making decision were the following provinces:⁵⁷¹

Prince Edward Island did not yet have an explicit policy for water export but treated the issue as no different from any other water use. Nova Scotia did not have prohibition and explicit regulation on water export under its 1995 *Environment Act*. However, its Fall 1998 draft Water Strategy stated that the province needs to better understand the value of the resource and the negative impacts related to export to assist in developing a policy on the bulk export of water. By the mid-1990s water export was not treated any differently than any other water use in Yukon. In fact at the time Yukon water was administered federally while water use permitting was under the authority of the *Yukon and North West Territories Water Act*. However, in September 1998 the Government of Canada, the Government of Yukon, the Council of Yukon First Nations signed the *Devolution Protocol Accord* that covers a wide range of issues pertaining to the transfer of land and resource management power, programs, and responsibilities in the Yukon from the federal government to the

⁵⁷¹ Johansen (2002, September 18)

territorial government. It was also agreed to introduce a new *Yukon Act* that came into force on April 1, 2003. According to the Act Yukon may then legislate as it wishes with respect to water exports from water basins in the territory.⁵⁷² Quebec had not yet established a policy on water export though it had launched a thorough water policy review based on the outcome of a consultation document released in September 1997 and subsequent public symposium. Quebec's policy in 1997 was that bulk exports may not be economically viable, however, it encouraged its booming bottled water industry which accounted for almost 80 percent of all Canada's bottled industry.

Large-scale water exports were prohibited or regulated in the following provinces:

New Brunswick was in the early stages of developing a provincial policy on water export. The province allowed water uses based on a priority ranking where water export was at the bottom of the list. The draft policy at the time (June 1998) stated that:

Large scale export (by pipeline, interbasin diversions or bulk marine shipments) shall not be permitted until such time as a proponent can demonstrate that there would be no significant adverse environmental impacts and that there would be significant economic benefits. Small exports (bottled, tanker trucks) would be allowed to continue.

Ontario's *Water Transfer Control Act* of the 1989 prohibited the transfer of water out of two main provincial watersheds. Manitoba was working on a *Water Rights Act* that would cover water export policy overall. However, its water policy of

⁵⁷² Bill C-39 (2001). Northern Affairs program Devolution Transfer Agreement.

the late 1990s included a statement on large water exports:

Transfer of untreated water across the continental divide shall be opposed. Transfers from within the Hudson Bay watershed shall be minimized and only considered after a complete assessment of the environmental, social and economic impacts on the donor and receiving basins.

The Alberta *Water Act* was in place by 1996 but was awaiting promulgation of further regulations and public review. The Act stated that:

A license shall not be issued for the purpose of transferring water from the province outside of Canada by any means unless the license is specifically authorized by a special Act of the Legislature.

Small-scale water exports were not prohibited by or regulated in the following provinces:

Ontario did not prohibit small-scale water exports. Newfoundland had approved its *Water Export Policy* in September 1996 which regulated containerized water export on the condition of addressing environmental impacts and if water is surplus to all other needs and results in economic benefits. The Saskatchewan policy on water export in 1998 stated that:

Ground or surface water supplies can be considered for export (after an environmental assessment) where water is surplus to existing and anticipated future needs. Volume of the export must be in containers not exceeded 10 liters (20,000 cubic decameters annually).

The period between 1992 to almost the end of the 1990s seemed to be a time of relative calm in federal-provincial relations. However, it appears that was the lull before the storm because although the water export issue did not seem to be pressing for urgent solution at the time, still it had yet to resolved. The storm came in 1998.

The provincial governments' policy initiatives indicate that the provinces no longer looked to the federal government to bring clarity into the complex situation of water exports as they had in the 1960s-1970s. The federal government's public-appeasing rhetoric that "water is not for sale" in the form of large-scale diversions, and its simultaneous endorsement of small-scale water exports, was accepted by the provinces. Once the concept of small-scale water exports was accepted (on the assumption that one day they would be economically viable), the provinces on their own began to push the issue onto their respective agendas and as a result onto the formal agenda of the federal government, as the next section will show.

Intergovernmental Tension Rises & Water Exports Back on the Formal Agenda: "Period of Interest" V

In summer 1995 the Department of Environment and Labor of Newfoundland and Labrador registered a proposal by the McCurdy Group of Companies to export water from Gisborne Lake in Grand Le Pierre. The proposal consisted of a bottling plant and bulk shipments of water abroad by supertankers. As this was the first request of this nature, no water export policy existed to guide and direct the authorization and

licensing of applications to sell and or export water. Thus, the department promptly tabled a policy to Cabinet which was approved in September 1996. This policy was supposed to be used as a mechanism for issuing water use authorization or licenses to eligible applicants and its rationale as described by the Minister of Environment, Kevin Aylward, was that "This is a good opportunity to capitalize on a commodity that, with stringent controls in place to protect the province's resources, can yield vital activity and inject jobs and dollars into province."⁵⁷³ In 1998 the government of Newfoundland conducted an environmental assessment under provincial and federal requirements of a proposal by McCurdy Group to withdraw up to 500,000 cubic meters of water per week for export from Gisborne Lake.

In May 1998, almost concurrently with the events unfolding around Gisborne Lake project, the Ontario government granted an Ontario company (Nova Group) a permit to take ten million liters of water per day for 60 days per year for five years, from Lake Superior for export by tanker. However, the public and media concerns were so overwhelmingly negative that the province had to immediately announce a new operational policy for providing guidance for ministry officials when issuing permits to take water. The province also issued a policy statement that prohibits the transfer of water out of Ontario water basins, including the portion of the Great lakes within provincial boundaries. This policy was used to revoke the Nova Group water export permit. The company had appealed the withdrawal of the permit before the

⁵⁷³ Government of Newfoundland and Labrador (1996). Press Release. September 6, 1996.

Ontario Environmental Appeal citing that the official who revoked the permit exceeded his jurisdiction. However, the company subsequently dropped the appeal.

The events in Ontario and Newfoundland had a profound impact on the Canadian public, media and interest groups. Most importantly, it made the federal government realize that almost a decade of lull in water export proposals, since the government of British Columbia had been considering applications for bulk export from its coastal streams, was over. Though there were quite a few applications pending in British Columbia during the mid-1990s, the province's *Water Protection Act* (1995) prohibited the removal of water in containers larger than 20 liters while exempting exports via trucks and bottles. The federal government voiced its opposition to the Nova and Gisborne projects. Because withdrawal of water from Lake Superior would have an effect on boundary and transboundary waters which are under the authority of the federal government, the government of Ontario had to immediately revoke the Nova's Group water export permits. However, the Newfoundland case was much more challenging.

The McCurdy project was meant to take place strictly within the provincial boundaries. Although the Newfoundland government recognized the federal government's authority under the trade and commerce power, it stressed its right to manage its own waters without federal interference. The province further suggested that a federal initiative to prohibit water removals from Canada might prompt demands for compensation to the McCurdy Group. The activities over the water export issue in other provinces were also putting some strain on the federal

government because they insisted that waters, except boundary and transboundary, should be within their jurisdiction only. This triggered the perception that Canada could not prevent its water from being exported and that the international trade agreements would compel Canadian governments, federal and provincial, to approve future water export projects just because previous bulk water removal projects have been approved; that these agreements impose restrictions on the governments' ability to regulate the extraction and management of water in its natural state; and that any possible precedent from a water export project would not be limited only to the particular province involved but would necessarily spill over to other provinces. That is if one province's legislation permits removal of water and a project were to be approved (after passing environmental assessment requirements in the particular province and in accordance with principals of administrative law, e.g. fairness and reasonableness, without discriminating against applicants on the basis of their nationality), other provinces would have to provide similar opportunities for investors (foreign and Canadian), and essentially approve similar water export projects across the country.⁵⁷⁴

⁵⁷⁴ Johansen (2001, February 20)

Toward New National Strategy

In the wake of new export proposals in Ontario and Newfoundland in early summer 1998 the federal government started to work toward a comprehensive approach to control water exports. To appease the public and ease the pressure from opponents of these projects the Ministers of Environment and of Foreign Affairs and International Trade made a public commitment to ban water exports. However, the government realized that the promise would be hard to fulfill because free trade had become the government's public policy, and so the most feasible way to address the water export issue was by shifting from the promise to ban exports and to deal with it indirectly, through the international trade obligations. The federal government seemed to have a strong constitutional basis for employing the trade and commerce power. Though it realized that any legislation to restrict water export would be vulnerable to international trade challenges and existing environmental legislation would require amendments to restrict water export which in turn likely would be seen by provinces as encroaching on their jurisdictions. The free trade priorities have started to dictate certain obligations for the federal government which was reflected in a fundamental shift in its policy on water exports. This in turn reflected the fundamental shift in the way the water issue came to be perceived in the 1970s (according the earlier discussion).

To gain time, once again the provinces were asked to implement a one or two

year moratorium (as it was in 1986 prior to the legislative measure of the 1988) on water exports within their jurisdictions.⁵⁷⁵ The moratorium, according to the federal government, if fully enacted, would allow time to develop a permanent and comprehensive solution to water export. Meanwhile, the federal government also outlined a three-pronged approach to address the issue of consultations with all provinces and territories already during the summer and fall of 1998. The outline consisted of an assessment of the legal options open to the federal government, and a reference to the IJC concerning the effect of consumptive uses, including exports, on boundary and transboundary basins and on aquifers shared with the U.S. Part of the solution envisaged a national accord which would be flexible and allow each Canadian jurisdiction to implement its own measures designed to control water exports. The 1999 strategy differed to a great extent from the legislative initiative of the 1988 (Bill C-156) with respect to the role of the two levels of government. If Bill C-156 had been adopted, the federal government would have had primary legislative authority to regulate water exports. However, now the government had fundamentally changed its policy in line with the free trade mentality. In fact, it could be said that the federal government was abdicating its responsibilities and that it had to make significant concessions to the provinces in the new circumstances to gain support. The federal government's strategy consisted of making amendments to the *International Boundary Water Treaty Act* (IBWTA), whereas the provinces would bear the initial burden of managing the water export approval process. Only in the event of a specified project

⁵⁷⁵ Government of Canada (1999). News Release. February 10, 1999.

receiving provincial approval would the matter be referred to the federal government and the IJC.

The initial consultations showed that the majority of the provinces and territories were relatively supportive of the general idea of the federal initiative because it gave them power. Manitoba, Saskatchewan, Nova Scotia, Yukon and Northwest Territories and especially British Columbia, Ontario and New Brunswick encouraged the federal government to speed up federal action to deal with the issue.⁵⁷⁶ The main impediment to the federal strategy was the outstanding Gisborne Lake proposal which had the potential to undermine the entire process, if the government of Newfoundland were to allow the project to proceed.

However, the project was extremely unpopular in Canada. It received widespread criticism during the parliamentary sessions as well as negative coverage in Canadian media. The federal government's only hope was that the province would stop the project. The calculations of the federal government appeared to be right.

Even though the Gisborne Lake project passed the provincial and federal environmental assessment and the federal government had to recognize that the project would be unlikely deemed to cause significant adverse environmental effects,⁵⁷⁷ on October 1, 1999 Environment and Labor Minister Oliver Landgon announced that the Government of Newfoundland and Labrador intended to endorse and fully support a

⁵⁷⁶ Environment Minister Norm Sterling even made a written request to Minister Axworthy (DFAIT) stressing the timely importance of the federal fresh water strategy and action toward resolving the water export issue.

⁵⁷⁷ Government of Newfoundland and Labrador Report (2001)

permanent national ban on new bulk water export projects. After this announcement the provincial government almost immediately adopted the *Water Resources Protection Act* prohibiting bulk water removal. With this legislation the Government of Newfoundland and Labrador expressed full support and cooperation with the federal government strategy. Minister Landgon pointed out that “... at this fall’s meeting of environment ministers, I intend to press for an early conclusion to negotiations and speedy implementation of a national accord banning the export of bulk water.”⁵⁷⁸

After all, this obstacle seemed to be manageable and the federal government had a straightforward strategy which majority of the provinces accepted. The next step came after official ratification of the initiative.

On February 10, 1999 the federal government publicly announced its strategy. On November 29-30, 1999 at the meeting of the CCREM in Kananaskis, Alberta federal Environment Minister David Anderson asked provincial environment ministers to endorse the *Canada Accord for the Prohibition of Bulk Water Removal from Drainage Basins* including removal of water by pipelines, tanker ships and interbasin transfers. However, what happened next is perhaps not surprising given what had occurred already in the long history of the water export issue.

All Environment Ministers with the exception of the Quebec representative (Quebec set out its position in its own communiqué), agreed to prohibit the bulk

⁵⁷⁸ Government of Newfoundland and Labrador (1999). Press Release. October 1, 1999.

removal of surface and groundwater from the Canadian portion of major basins. However, only nine jurisdictions (Canada, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Ontario, Yukon) endorsed the Accord. Alberta, British Columbia, Manitoba, Saskatchewan reserved their position pending further consultation.⁵⁷⁹

British Columbia Environment Minister Joan Sawicki pointed out that it is a concern of this province's government that the proposed accord "will do what British Columbians, and ...all Canadians, want us to do: protect water."⁵⁸⁰ A similar stance on the accord was explained by Quebec environment Minister Paul Begin, who argued that the issue of water export could be best addressed only under provincial authority. Alberta opposed federal prohibition of exports or their regulation under the federal trade and commerce power seeing it as a barrier for province's future export option if it chooses it to consider. During the meeting in Kananaskis Environment Minister Gary Mar said:⁵⁸¹

Alberta must retain the right to manage water resources within its boundaries.... We already have the legislation, policies and regulations in place to protect bulk water removals.

No attempts were made to revive the federal government initiative in the following after Kananaskis meeting. The idea of a Canada-wide accord ceased to

⁵⁷⁹ Canadian Council of Ministers of the Environment (1999). News Release, November 29-30, 1999.

⁵⁸⁰ Ministers Withhold Endorsement of Bulk Water Accord. (1999, December 10) *Eco/Log Week*.

⁵⁸¹ Ibid.

exist. The federal government only introduced amendments to the IBWTA on December 10, 2002 which confirm its authority over boundary and transboundary waters in Canada and leave the provincial authority to make decisions with respect to the rest of the waters.

In the Aftermath of the Accord

The federal initiative and its outcome has at least two interpretations: *the official* one and a *competing* vision.

The official [federal government] sources have pointed out that the Canada-wide Accord was, if not a complete victory, then at least an effective influence on the course of the water export problem development within the country. The reason for this optimistic attitude is that all provinces have developed or are developing legislation or regulations that will accomplish this goal by prohibiting bulk water removals within their respective jurisdictions.⁵⁸² If provinces have in place water export regulating mechanisms and as long as those mechanisms meet the objective of the federal government to prohibit bulk water exports from surface and ground sources, the ultimate goal of the Canada-wide Accord, then there is no need to treat the situation as a loss. According to Environment Canada officials, this provides solid

⁵⁸² See Johansen (2002, September 18) for an outline of the provincial legislative initiatives with respect to water exports.

assurance that bulk water removals and exports will not proceed in the near future.⁵⁸³

This is the official interpretation.

The competing vision asserts that the federal government initiative would have been a failure even if it had succeeded. This is because even though all Canadian provinces and territories by the time of the announcement of the federal strategy were against water exports, their attitude toward this federal initiative differed, making the overall situation around water export rather unpredictable. The Accord itself does nothing to actually prohibit export initiatives that might be undertaken by provincial governments or even private parties. The Council of Canadians in its press release stated that the federal government plan for a voluntary moratorium “is a plan full of holes.” It does not diminish concern over water export and free trade, and when “a voluntary accord gives in, the floodgates to sell water are open everywhere.” In the House of Commons it had been emphasized that a voluntary accord would be just that - voluntary - and would not bind any province in a meaningful way to protect its water resources now or in the future.⁵⁸⁴ Because the Accord is not a legally binding agreement, provincial governments, perhaps upon a change of political administration, would be able to abandon obligations they had agreed to under the Accord and extricate themselves from such commitments.⁵⁸⁵ These arguments have been confirmed by events both prior to and after 1999, which point out that the federal initiative does not represent a durable guarantee against bulk water exports.

⁵⁸³ Johansen (2001, February, 20)

⁵⁸⁴ Ibid. See also Ottawa’s Leaky Water Policy (1999, November 18). *Globe and Mail*.

⁵⁸⁵ Shrybman (1999)

initiative does not represent a durable guarantee against bulk water exports.

Among the provinces that did not endorse the federal initiative, the most interesting twist came from the government of Newfoundland. The federal government did not have the foresight to predict that in March 2001 the Government of Newfoundland and Labrador would announce its intention to re-examine the decision, influenced by the strong public opposition, to ban the export of bulk water and initiated a review of the legal, trade, environmental and economic aspects of the water export issue. The then newly elected provincial Premier Roger Grimes formed a Ministerial Committee, chaired by the Minister of Justice, including the Minister of Finance, the Minister of Environment, and the Minister of Industry, Trade and Rural Development to gather factual information on the bulk water export issue. The Ministerial Committee worked with officials from the respective departments and also sought the advice of outside legal and economic experts.

The results of the review were released in October 2001 with the main conclusion that the government would not introduce legislation to remove the ban on bulk water exports during the upcoming session of the legislature.⁵⁸⁶ The reason for this decision was mainly grounded on the lack of economic feasibility of water export from the province.

⁵⁸⁶ Government of Newfoundland and Labrador (2001)

Intergovernmental Relations and Implications On The Water Export

Reassessment of the Federal Power Over Water Exports

The events that took place in the wake of the McCurdy water export proposal (and to a certain degree the Nova Group proposal) indicate that the initial evaluation of political resources distribution, the constitutional authority that two levels of governments have over water resources, was imprecise. The federal government's constitutional authority to stop all water export proposals appears to be weak. The federal role is over management of boundary waters and responsibility for trade and commerce. However, as the case study shows, even this role to impose a simple ban on water exports is limited by consideration of Canada's international free trade obligations and by the constitutional jurisdiction over water management.

“Alienation” Syndrome

Another process that has significant implications on the development of the water export issue within the context of federal-provincial relations is a so-called “alienation” trend among the provinces from the federal government. As Foster and Sewell pointed out back in the early 1980s “the quality and quantity of this resource is

increasingly falling victim to power struggle within the nation's borders."⁵⁸⁷ A similar point was made by Danson who emphasized that "given the emerging demand from the United States and the economic incentive for water-rich regions of Canada to meet this demand, constitutional challenges by the provinces are inevitable."⁵⁸⁸ Some analysts even argue that "not only will Canada's future be more decentralist, but the future of Canadian federalism will almost surely be defined more by process than by structure."⁵⁸⁹ Even though most of the provinces will remain committed to the Canadian federal system, in terms of overall "national" parameters, they will expect the federal government to provide the basic environmental framework that will allow the province to capitalize on its opportunities.⁵⁹⁰ The alienation trends could be seen in many policy areas. Functional and political needs to coordinate and regulate interactions across the border involve provincial premiers in a broad spectrum of political agenda because political interests can have close connection to their economic interests. There have already been arguments from certain provinces that even greater participation should be accorded to provinces in the free trade negotiations. For example in 2001, during the Western Premier's Conference in Saskatchewan, premiers called on the federal government to aggressively pursue a level playing field for western producers in international markets through the significant reduction of trade barriers, trade distorting domestic support and export

⁵⁸⁷ Foster & Derrick (1981): p 4

⁵⁸⁸ Danson (1988): p.122

⁵⁸⁹ Courchener & Telmer (1998)

⁵⁹⁰ Ibid.

subsidies, and to support provincial trade ministers' strong role at ministerial meetings in the context of international trade negotiation forums.⁵⁹¹ In 2003 the Premier of Alberta met with the Vice President of the United States of America to discuss a matter of extreme urgency for the province, the ban on export of Canadian beef. The same year the Premier of Newfoundland and Labrador challenged the federal government to reconsider terms of union with regards to management of province's fisheries.

Because of decentralization, it is easier for individual provinces to enter unilaterally into interbasin agreements with the United States or any other water stranded country.⁵⁹² It would have been hard perhaps to imagine in 1967 that provinces during the Water For Peace Conference would make demands for their separate and distinct presence at the international conference despite the fact that their water was at stake. Now provincial governments regularly enter into non-binding international agreements and most of these agreements concern natural resources. The signing of the Great Lakes Charter in 1985 is one example. According Saunders,⁵⁹³ the federal government has recognized the need for and usefulness of such contacts "gentlemen agreements" over which one does "not go into law." Though he doubts that in the absence of consent by the Canadian government such an agreement could be construed as creating international obligations, still obligations may be enforced if not in legal fora then through political channels. Transborder relationship,

⁵⁹¹ Western Premier's Conference (2001)

⁵⁹² Danson (1988): p.122

⁵⁹³ Saunders (1986)

globalization and market integration trends push Ontario to explore the possibility of joining the Council of Great Lakes Governors or British Columbia and Alberta joining the Western Legislative Conference as organization of thirteen western states.

Market Regulation of Water Transfers

Huffman⁵⁹⁴ argues that inefficiency of political resource management in Canada, can be corrected by a trans-national North American water marketing federation, which would overcome the limits that sovereignty places on market resource allocations and would be unconstrained by either political or topographical boundaries. The goal of this system would be to create unified property rights with few market distortions, which are free from the influence of nationalism, provincialism and political competition. In its modest form, a transboundary water marketing federation would provide a single political authority over the definition, transfer and enforcement of water rights and the regulation of water use in a particular water basin. For example, the United States and Canada or Alberta and Montana might agree to form a Milk River water marketing federation. At a minimum this organization would have to recognize a single system of transferable water use rights enforceable on both sides of the border. As a matter of fact, the government of Alberta in 2002 was analyzing needs for a water transfer system called Transfer of Allocation

⁵⁹⁴ Huffman (1994)

of Water Under a License.⁵⁹⁵ Under this system, Alberta's government recognizes the need to increase the flexibility of the licensing system and introduce the ability to transfer an allocation of water or "detach" the rights associated with a license from the land or the project to which it is attached. The concept of transfer states that what is being transferred is the right to divert a volume from a source of water supply while there is no physical transfer of water from the land. This particular type of allocation of water is voluntary, with willing seller and willing buyer. Alberta is famous for its embrace of a market approach in many other policy areas such as, for example, health or education. Thus, even in its modest interpretation, the water transfer system is a step toward the market allocation of water in this province.

Conclusion

This chapter sought to explain transformation of the water export issue into a policy problem through the analysis of federal and provincial interactions. Federal and provincial governments are assumed to be single actors united in the federal system and each having particular power, resources and objectives. The federal government's objective was to have legislation that would account for the national interests in water export regulation without leaving the decision entirely in the hands of provinces.

⁵⁹⁵ Government of Alberta (2002, June 24). Water Act Fact Sheet.

Because constitutionally water resource management is primarily a provincial responsibility, the federal government had to employ a strategy that would win provincial cooperation in order to reach its objective. However, the strategy was complicated by the general policy direction that the federal government wanted to implement.

During the 1960s and 1970s intergovernmental conflict was dormant because for the provinces it was convenient to look to the federal government and comply with the notion of “Canadian water is not for sale.” Neither the federal government nor the provinces were exactly sure about the economic feasibility of large-scale water exports. At the same time, provinces looked to the federal government initiatives to bring clarity to a complex issue.

The first part of the bargaining process (1983-1988) seemed to be favorable for the federal government as exemplified by the successful acceptance of the Inquiry recommendations, adoption of the Federal Water Policy and the initial introduction of Bill C-156. This success could be only partially explained by the widespread public support of the federal initiatives that promoted “water is not for sale” rhetoric (meaning only large-scale diversions); or the good sense of timing on the federal government’s part (e.g. the initiatives followed each other almost immediately). The main basis for success was the endorsement of small-scale water exports by the federal government which was important for the provinces that just started to realize the economic potentials of this type of trade. And the federal government was able to convince provinces that it holds a sufficient amount of political resources as

exemplified by the constitutional authority with respect to water resources, which it shares almost equally with provinces.

It took the federal government almost ten years and one failed initiative in 1992 (an attempt to reintroduce the Bill C-156), to resume its activities again in 1998. However, the historical context had changed significantly. Provinces got the time to reevaluate their resources and their positions on the water export issue. They needed flexibility which could be gained only if the federal government did not dominate. The federal government shifted its water export strategy by dealing with it strictly within the framework of free trade which by that time had become a main federal public policy area. The reassessment of resources showed that the federal government had stronger power only in the management of boundary water and trade and commerce. However, the latter power could not be easily applied because Canada's international trade obligations. The federal government's only way to reach its objective was to convince provinces of the necessity of the national accord. For that the federal government had to make concessions making the national accord voluntary and acknowledging the provinces' discretion and flexibility to implement their own water export measures. The federal component would include only amendments to the boundary and transboundary waters. The result of the second attempt by the federal government was only partially fulfilled with introduction of amendments. Provinces did not buy into the endorsement of the Accord, preferring legislative flexibility. In the years following the federal initiative years (1999-2002) provinces have been introducing policies and regulations with respect to water export. Even though current

provincial measures do not go against the federal amendments, provinces preferred flexibility in water export issue management over the political (or legislative) constraint that the Accord would have had over them. The federal government in turn did not try to return to the national accord. The water export issue though cannot be said to have ceased to exist. It is just for time being neither the federal government nor the provinces mention it.

This essentially supports the argument of the chapter that the outcome reached between both levels of government as of today is not a fixed solution but is in continuous flux. While the current tendency among the provinces is to ban water exports out of provincial water basins, it also provides for the approval of such projects at the discretion of the provincial governments, (as in the case of Newfoundland in 2001). Thus, it seems likely that in the area of water export at some point federal-provincial or interprovincial concerns will be irreconcilable. The Canadian federal government has no capacity to impose limits on the range and extent of activities of provincial governments and particularly not in those issues that fall within the constitutional jurisdiction of provincial governments under the Constitution. These constitutional constraints are also reinforced by the increasing involvement of provincial governments into international activity by the pull of a rapidly globalizing economy and the push to advance and protect local economic interests.⁵⁹⁶ Furthermore, because provinces are energetic supporters of continental (FTAA – Free Trade Agreement of Americas and NAFTA) and international (GATT/WTO) trade

⁵⁹⁶ Nossal (1996)

agreements, it means freer trade is “in” and to be advanced where possible. As far as Ottawa’s decisions with regards to imposing or prohibiting water exports are greatly constrained and prohibition would directly contravene Canada’s international obligations under those agreements, odds are that the water export issue will surface again and possibly the outcome could be different.

Chapter 9

Conclusion

This dissertation presented the first comprehensive longitudinal analysis of the water export issue in Canada from a public policy and politics perspective. Its specific objectives were to understand the politics at stake in the creation of the water export issue and its transformation into a public policy problem; to account for the shifts in attention to the issue over time; and to explain its historical development. The general objective was to understand what it takes for a national government to pay attention to an issue and mobilize its resources to respond to it. Conceptually this thesis was built on agenda-setting theory with a specific focus on macro forces. The central thesis of the dissertation was that understanding the emergence of the water export issue and its transformation into a public policy problem requires an approach that takes account of the influence of the following forces: economic pressure of international and global scale, perceived security threats and the changing nature of federal-provincial relations.

This chapter reviews concrete conclusions derived from the analysis of each explanatory variable with respect to the water export issue and its transformation into a policy. Then it suggests some insights into the theoretical framework used in the analysis and implications of the framework for the future study of water export policy.

Finally, it discusses the significance of the findings for the future of the water export issue on the Canadian agenda.

Agenda Setting

The agenda setting framework in general is concerned with understanding how issues are created and why some of them receive attention in and around the government. This conceptual approach deals directly with the question under study. Moreover, the aim of situating the research within the streams approach has been to uncover the dynamics of water export issue development by illuminating the workings of processes before the policy decisions are made.

The stream theory developed by Kingdon suggests that for an issue to reach the government agenda and become a policy problem there are should be: recognition of a pressing problem; policy formulation; and the “right” confluence of political events. The transformation of the issue into a policy is likely to occur only if the three independent streams become linked at a certain favorable moment when a problem demands attention, policy proposals fit with that political event, and policy initiatives fit with government’s philosophy. All three come to the fore and merge in a ripe political climate. This moment is called a “policy-window.” The overall findings showed that elements identified by Kingdon were present in the case of water export. The analysis also demonstrated considerable insights into the decision itself, which

supports the argument advanced in Chapter 1 that the government has always considered water export a serious possibility and it has *never* intended to preclude water exports for all time. Moreover, while stalling for time, the government was acceding not so much to the popular demands of the Canadian public but to international rules and conventions.

The 1960s and the 1970s was the period of problem recognition. Though at the time the problem lacked a tangible policy solution, the government did not preclude water exports as a future possibility. In 1980s the attention to the issue become more intensive. Frustration among the Canadian public, interest groups, and some members of parliament was growing. The media covered the issue intensively. However, the solution as exemplified by Bill C-156 missed its opportunity because “windows” do not stay open long. Through the 1990s policy participants continued their work through a softening-up process that included using free trade as a venue for the expansion of the water export issue. Intensive media coverage, testimonies, conferences and other forums all addressed the direct relation between free trade and water exports. In Canada renewed public interest was triggered by two water export proposals made in 1988: the Nova Group’s Lake Superior, Ontario proposal and the McCurdy Group’s Gisborne Lake, Newfoundland proposal. Thus by the end of the 1990s the escalation of events was such that politicians sensed a change in the national mood, increasing hostility to possible water exports, and general dissatisfaction that the government had not yet done anything to resolve a pressing matter. In order to present itself as being sensitive to public concerns, the government had to undertake

certain policy initiatives. All three components of stream theory at this time came together. The political stream made the government receptive to the pressing matters of the water export issue. The joining of problem, policy, and politics pushed the water export issue into a position on the decision-making agenda. Thus, having initially to deny agenda access to the water export issue, the Canadian government in 1999 successfully translated a broad demand and its own public promises to ban water exports into a narrowly defined policy which was feasible, technically and politically, and suited prevailing values and the current government's mood. On December 10, 2002 the government adopted amendments to the 1911 *International Boundary Water Treaty Act* (IBWTA) prohibiting water diversion and removal, including for export, from the Canadian portion of boundary waters between Canada and the United States.

What are the significant agenda forces that put water export onto the formal agenda and contributed to transforming the issue into a policy problem according to the agenda setting approach?

Agenda Forces

It should be no surprise that an impressively large number of elements have influenced agenda-setting on the water export issue. It appears that business interests could get credit for the issue's emergence and re-emergence, while public interest groups could be credited with associating water export with free trade policy and further expanding the issue. Multiple focusing events such as periodic droughts in the

United States and the growing realization of the cumulative effects of water exports on the environment contributed to a “favorable” political environment for the water export issue to be pushed onto the government agenda. The media coverage of the issue through the years, parliamentary debates and bureaucracy activities also serve as important indicators of the issue’s transformation. From the examined data, it may be assumed that each agenda-setting body feeds from the others, making references to the others and reinforcing the significance of the problem. For decades the Canadian bureaucracy kept a constant eye on the issue, never completely discarding it from its agenda as one of the most controversial subjects that might “burst” at any moment demanding solution. Even during the period of least attention to water export, the Canadian Parliamentary agenda, which is incredibly crowded with “a myriad of horse-and-buggy issues,” managed to “squeeze in” the issue at least a few times. As for the media, it is imperative to acknowledge that it played an important role in the visibility of the water export issue, both shaping and reflecting the public’s call for action on the part of the federal government. Frank Quinn’s words written almost four decades ago are still relevant in this context: “whatever the continuing controversy over water... proves, Canadians cannot be accused of apathy on this issue.”⁵⁹⁷ In many ways the public interest in the issue demonstrates the impact that newspapers, radio and television had in the course of the water export issue development, providing the

⁵⁹⁷ Quinn (1973): p.60

general public and policy makers with many of the images that “mentally order and organize our world.”⁵⁹⁸

Attention to the issue may have been stimulated by pressure of different policy participants, however, the actual policy solutions were generated by the government itself. As a result, no one set of actors dominated the process, but elected politicians and their appointees come closer than any others. It was government initiative that resulted in the major policy measures on water export: verbal endorsements of water exports by senior government officials on different occasions; the Inquiry into the Federal Water Policy that not only formally addressed the water export issue but also supported those verbal endorsements; Federal Water Policy that promised water export legislation; Bill C-156 that called for prohibition of large-scale but regulation of small-scale water exports; and finally the three-part strategy and amendments to the IBWTA -- all these measures were the result of government initiative.

Implications

Agenda setting is supposedly the most general public policy approach and the one best-suited to the question of concern in the thesis. It offers an interesting explanation for the issue's transformation. However, the analysis of the water export issue suggests certain limitations to this approach and ways it might be broadened to better serve longitudinal studies.

⁵⁹⁸ McCombs & Shaw (1990): p.75

Ahistoricism

Agenda setting explains the water export issue's transformation into a problem as a confluence of three independent streams by virtue of "good timing." The implicit idea is that there remains some degree of unpredictability, coincidence, and randomness. Independence of problems, solutions and politics implies an ahistoricism with respect to development of the water export issue. That is, what happened in the past with the water export issue does not in fact have any impact or have connection with the present or the future or if it does, the connection is subtle. However, the analysis of the findings in this thesis suggests that this was not the case for transformation of the water export issue. An important implication of this study is that the streams did not meet by chance to produce a policy, as the stream model with its fragmentation (that is separation into streams) of the decision-making world would suggest. Many crucial details of water export issue development followed from preexisting history rather than from simple coincidence of problems, policies and politics at a certain point in time. Identifying the problem, how it should be dealt with and what kind of solution should be attached to it depends, in many ways, on the past. Actions taken early on may influence future perceptions, make certain explanations of the problem seem more plausible than others, and make some solutions appear more viable than others. For example, even apparently "casual" endorsements of water exports (e.g. PM Mulroney's statements and the appointment of Simon Reisman, energetic supporter of water exports, as chief negotiator for free trade talks with the

U.S in mid 1980s) made by senior governmental officials at one point in time, had a significant impact on subsequent periods of the agenda setting process and laid a basis for later treatment of the issue on the formal agenda.

Macro Forces

The agenda setting approach is preoccupied with easily measurable micro forces such as government institutions, officials, interest groups, citizen activities, media, parliamentary debates, or bureaucratic activities. The focus on this particular set of factors inevitably creates an impression (and one open to question) that they in confluence directly influence the government's decisions for undertaking policy measures. The government's failure to legitimize the water export issue, in 1978 for example, might be explained by the low level of activities of these forces. Agenda setting acknowledges the role of the external environment in the emergence of focusing events which, however, have a passing significance because later on other focusing events could emerge. Moreover, even those researchers who concede the significant role that underlying forces (economic, political and social) play in the agenda process and policy innovation, still in their methodology tend when possible to measure each of these as micro variables. Thus, even structural political-economic forces could be dealt with on the micro level in order to adhere to positivist methodology. The presumption is that data tells the story and interpretive, discursive analysis of data is considered to lack any explanatory rigor.

While this way of looking at the politics of agenda setting may have been justifiable (although still certainly questionable), the findings of this thesis showed that to focus only on micro sources of water export transformation into public policy does not work. More importantly, it underestimates the importance of the interpretive, historical analysis of macro forces that are, in fact, implicitly present in the stream version of the agenda-setting process itself. These forces evolved over time and began to influence the policy terrain before policy actors turned their attention to the problem and well before the actual policy choice was made. The analysis of agenda setting initiatives in the case of the water export issue reveals growing, long-term economic pressure on the developments that brought the issue onto the formal agenda. Similarly, this thesis indicates that growing, perceived, national security concerns also triggered a process through which this policy problem was brought to the formal agenda. In other words, increasingly policy actors' activities are affected by international market conditions. For example, free trade negotiations prompted interest groups to mobilize protests against these negotiations and to use free trade as an avenue for expanding the water export issue. Not only interest groups but members of parliament and bureaucrats are associated with policy predispositions on international and economic issues. Thus, the implication of the thesis with respect to macro forces is that even if some analysts believe they could be reduced to conventional agenda setting methodology, the most comprehensive analysis is yielded through the interpretive, discursive approach. As Majone emphasizes "argument is central in all stages of the policy process" and it is crucial for policy analysts to be concerned with

“which assumptions and arguments would provide a conceptual basis for a certain policy or assessing the persuasiveness of the evidence that supports a proposal.”⁵⁹⁹

Generalizability

Furthermore, as this thesis indicates, water exports may or may not be unusual for having at times “laid low” on the Canadian agenda without ever completely vanishing. Future studies may show there are other issues that exhibit that tendency. For example, if free trade were studied as an agenda issue from 1900 to 1980, rather than 1980 to 2000, it also might look a lot like water exports in agenda-setting terms. In fact, Johnson et al in the study of the evolution of free trade and its manipulation on the respective agendas of Conservatives and Liberals, suggested that this policy has been “notable mainly for its absence from the Canadian electoral agenda.” They stress that before 1988, the only successful moves in Canada were explicitly protectionist; that is between 1878 and 1988, comprehensive liberalization was proposed only twice.⁶⁰⁰ In the same way, the water export issue was low on the agenda during the 1960s and 1970s but was gradually elevated during the next two decades. However, the low profile of the issue during the first two decades of its existence is not an indication that it lacked relevance during this period. On the contrary, the larger, macro-level political and economic forces, as this thesis showed, demonstrate the relevance of these two decades and add to our understanding of the policy formation.

⁵⁹⁹ Majone (1988): p.157

⁶⁰⁰ Johnson et al (1993)

The elaborated framework could be applied to other longitudinal policy issues if the general objective is to understand how an issue becomes a policy problem. As has been mentioned, the time could be ripe to study free trade's emergence as a policy issue. At the same time some issues in public policy still remain primarily domestic in origins and solutions without being much exposed to international forces (e.g. petty crimes).⁶⁰¹ By the same token, not all issues are clearly affected by federal-provincial relations. Focus on the exact set of macro forces as they have been used in the dissertation framework may not necessarily yield the best explanatory outcome in all other policy issues. Thus, depending on the particular case study, adjustments and refinements must be made when defining the types and scope of macro forces. For example, there are a few other forces that could have been used in this study to present a more detailed understanding of the water export issue. Among these are the specific focus on the pressure of interest groups, or the influence of bureaucracy, or influence of ideas. The reason why these forces have not been included in this study, or have been included only in a limited way, is mainly explained by constraints of resources and time. Most important, perhaps, the set of forces that were chosen for this study explicitly address issues that have been fundamental concerns for water exports and these concerns were identified through the examination of literature, extended data analysis, and interviews with people in the water export policy community.

However, it is important to emphasize that the implication of the elaborated framework goes further than the simple suggestion to focus on the interplay and

⁶⁰¹ Pal (2001)

analysis of specific macro forces. The crucial point of the framework is that the predecision policy making process is shaped not only by conventional agenda setting forces but by structural forces of political economy. The point is not simply to test the explanatory strength of the same set of forces that have been used in this dissertation framework but explicitly to take into account the power of underlying macro forces in general when studying agenda setting in other cases. The type of forces may vary depending on the policy issue but none of the policy issues (e.g. those that are or are not exposed to international influence or federal provincial relations) develops in a policy vacuum completely free from the political, economic or social impact.

Thus, for some policy analysts the agenda setting process could be treated as detached from a complex reality. The array of seemingly puzzling or even contradictory evidence about the issue could be simply bunched together to produce a single dynamic: the confluence of three streams and the window of opportunity. Within the range of minimum information, this approach may help to construct a dynamic picture with some attention to tendencies or patterns of the issue's development from its inception until it reaches the agenda. However, for those who are interested in developing a deeper understanding of policymaking processes, this conceptual lens, particularly the "stream" version, suggests some insights.

The framework elaborated in this thesis creates a superior understanding of the predecision policy process and the results support the main thesis of the dissertation that the transformation of water export into a public policy problem could indeed be explained within the agenda setting approach but requires serious consideration of

economic and political processes on domestic and international levels. The implication of this study is that when agenda setting factors are present and macro forces are in action, transformation of an issue into a public policy is likely.⁶⁰² Further, the augmentation of the agenda setting discussion with macro-level forces, and their effect on the trajectory of the issue's development, ameliorates the deficiency of the stream approach, specifically its tendency toward ahistoricism and its overall preoccupation with the study of micro-factors. The study also showed that the predecision process is ultimately linked to the decision making process, even though these two are treated as separate stages of the policy process in policy analysis. The study clarifies the political dynamics of actual policy choice by illuminating the way in which policy solutions under the influence of larger forces become a medium of political exchange. When decision makers have to choose a policy direction, they in effect have to consider the pros and cons of those larger forces.

⁶⁰² The Advocacy Coalition Framework (ACF) developed by Sabatier & Jenkins-Smith (1993) brings macro and micro forces together in the policy analysis. However, the ACF approach addresses stage of policy *implementation* and *change* within already established policy, whereas, the objective of this study is to analyze the *initial* policy process, agenda-setting.

Forces of Economic Pressure

The examination of forces of economic pressure in this thesis showed how market conditions affected the problem's rise on the formal governmental agenda and spurred subsequent governmental action to justify or to prevent a policy change. Conditions in water markets are exemplified by: increasing demand for fresh water, concerns about its availability for the growing population around the world, and escalation in industrial and agricultural consumption; technological factors that affect the cost and opportunity of marketing and delivering water; and speculative interests of different investors that are preoccupied to fill the water demand - put pressure on Canada. As this study points out, the extent to which a government yields in the general direction indicated by markets depends on the predispositions of the leadership of the government. In the case of the Canadian government it has not been a clear-cut process of market change inducing government to produce a policy adoption. However, the analysis supports the general argument advanced in Chapter 1 that conditions in water markets encouraged the government's support of water exports despite the ambiguous indicators of economic feasibility. Moreover, forces of economic pressure and neoliberal ideology are driving forces in the contemporary world and constitute an agenda-setting power within sovereign states.

The first market indications for water export during the 1960s and 1970s provoked cautious government reaction. The water export issue was seen as part of the

American private market plot, gaining respectability in political and financial circles, to enforce the concept of continental water sharing on Canada. However, as part of recognizing the growing demand for water, the Canadian government decided to investigate its water supplies which may be seen as partially yielding to the market signs. At the same time, the cautious attentiveness on the part of the government to the “first” market signals for water export serves as an indication of the political rather the economic nature of the issue.

During the 1980s water market conditions continued to change. An increase in private water export proposals together with technological innovations in water transportation, and practical experience of other countries in international water trading and other developments (such as the final report of the Inquiry on Federal Water Policy and the on going Canada-U.S. free trade talks) all have pointed to the need for the government not to rule out support for water exports. Notwithstanding the disappointing findings on the costs and benefits of water exports and lack of firm markets and economical viability, the government decided to go ahead and introduce federal legislation in 1988. Bill C-156 was the thin end of a wedge that was used to pry open the water export discussions. It allowed the government to make frequent statements to the effect that water “is not for sale” while at the same time openly accepting the possibility of small-scale exports. Due to the federal election, this legislation was not passed. Nevertheless, the international market perspective identifies the largest influence explaining this change in the government’s behavior from now on.

During the 1990s the notion of what exactly constitutes water trading became more blurred; pressure had been created to recognize water as an economic good, and to set prices for water to reflect its “real” value. Indeed in many countries water has become a part of commerce and proponents of water marketing and water rights argue this commerce is a way of sustaining growing demands. Even though demand for Canadian water and water export feasibility did not show much improvement, what influenced the issue’s transformation into a policy problem was the fact that water was subjected to free trade. Forces of market pressure were fortified by the growing influence of international trade regimes. This influence led to important changes in the decision-making structure of world politics and a tendency toward “multinationalization” of previously domestic activities as well as harmonization of domestic policies, regulations and rules in the attempt to enhance the free trade regime. Thus water resources became subject to free trade provisions and rules. However, pressed again by the negative public response to the possibility that free trade would allow the sale of Canadian water resources, the government had to take action. The only policy option that the government found to be consistent with international trade obligations and which did not impose restrictions or prohibitions on the export of goods was the introduction of amendments to the IBWTA and licensing of any water export projects from boundary waters.

The forces of market pressure serve as an important anchor for the explanation of the government’s actions. However, as the thesis suggested, combining this with a focus on agenda setting forces, pressure of perceived national security threats and

changing intergovernmental relations added even more explanatory value for the understanding of this issue's dynamics.

Forces of Perceived National Security Concerns

The underlying premise of the forces of perceived national security concern in this thesis was that the security of a state is based on its ability to protect its physical and political integrity. In turn, the water export issue was conceived as a policy problem because it relates to protection of Canadian water resources against the claims and/or possible pressure from water-poor countries. The analysis of these forces supports the argument advanced in the Chapter 1 that despite the fact that the perceived security threat forced the government to adopt policy that at first glance opposes market signals, in fact it opens the window to further promote trade as a solution because the adopted policy (amendments to IBWTA) provides ineffective protection against the rising influence of international and global trade regimes.

In the dissertation several variants of the security perspective were distinguished. One variant dwells on the global military conflict over access to water resources. As the analysis showed, the period that concerns the emergence of the water export issue in Canada lacks decisive evidence to test this version of the perspective. Another variant emphasizes that water resources become part of Canadian concern because of the danger of overexploitation, overconsumption or environmental

modification/degradation via trade impacts. And this variant of the security forces made the government undertake protective measures to deal with overconsumption as a security issue. This, in turn, structured the discussion of water exports within the framework of such arguments as hydronationalism and water as a global commons. However, while the global commons argument is an important aspect of water exports, it is a difficult concept to reconcile with contemporary nation-state power structures.

The thesis's findings indicate that in fact the pressure impinging on Canada over water exports comes primarily from south of Canadian border – the U.S. The peculiar nature of relations between Canada and the United States is a crucial supporting argument for this variant of the security forces. This relationship provides significant evidence, in rich rhetoric and actual measures undertaken by the United States, that is central to the problem of security and integrity of Canadian water. The perceived danger to Canadian water posed by the U.S. was present throughout the periods under examination, though with ebbs and flows. The height of this tension fell in the period of free trade. U.S. access to Canadian fresh water emerged as part of international trade talks and subsequent signing of agreements. During the free trade period, Canada's dilemma then became whether, and to what extent, its security considerations could be held to be important forces contributing to the distorting of international patterns of trade in resources, in particular fresh water resources. That is how the amendments to the IBTWA were brought into force.

Some may suggest that, despite the importance of the pressure of security forces in the analysis, in their own right they are insufficient, judging from the existing

evidence which is predominantly encapsulated in rhetoric. Therefore it would seem that the governmental measures to protect Canadian fresh water resources were the result of a hypothetical threat. Moreover, government prohibition of exports was based on presumed environmental risk to Canadian water and the environment in general. However, as this thesis showed, the pressure of security forces may be only potential but this does not make them merely hypothetical or non-existent. If it were true or insofar as it is true that a serious life threatening crisis were to engulf the U.S., there would be no question that “they” [the U.S.] would come for Canadian water. In that case, as the evidence shows, the choice would be merely whether they came to “buy” water or to take it. Again, as the findings indicate the preferred choice would be the former solution and this further clarifies links to the pressure of market forces. These links occur in the security of effects of resource trade. Specifically, free trade implies trade in everything with monetary value. As far as Canada is part of free trade regime, any protectionist policy is assumed a barrier for trade, whereas absence of protection is a breach of security and threatens sovereignty. From that perspective, it is hardly possible to suggest that the threat is non-existent.

Forces of Changing Intergovernmental Politics

The analysis of intergovernmental politics supports the argument advanced in Chapter 1 that water export is a contentious intergovernmental issue and that it makes

it far more difficult for Canada to “hold the line” on the issue since provinces, not to mention territories, have different aspirations with respect to the proposed solutions. The argument builds on the fact that the resource ownership is vested in Canada’s provinces and the policy process is significantly affected by the federal-provincial sharing of powers and responsibilities.

In this general context the role of the federal government is to preserve national unity and integrity, and to facilitate the simultaneous attainment of diverse regional economic goals. However, if either federal or provincial governments prove absolutely unwilling to give up their political positions, economic priorities and the potential benefits from the export of their water resources, federalism could also generate both interjudicial disputes and unilateralism. The priority of the provinces then becomes protection of their respective jurisdictions (in this case resource ownership rights) against intrusion by the federal government. However, in that case, a strong federal coordinating presence becomes imperative due to the mobile and interlinked nature of water resources and given the need to avoid provinces being played off against one another. Given these general underpinnings the analysis then searched for explanations of the outcome of the policy making process in the interplay of the resources, strategies and tactics used by the governments within the Canadian federal state.

The period considered demonstrates change in intergovernmental relations for the water export issue. During the early stages of the emergence of the issue in the Canadian policy arena, intergovernmental conflict had been dormant. The provinces

appeared to have looked to the federal government to bring clarity to a potentially complex situation and as a result deemed appropriate the federal approach to declare water a “non commodity” and “national heritage.” The majority of evidence that highlighted the rising intergovernmental tension fell into the decades between the end of the 1980s and of the 1990s. Because water exports had already been endorsed on the federal level, the provinces almost immediately started to show signs of irritation and discontent with new federal government policy proposals which they considered an infringement into provincial resource jurisdictions. The thesis findings indicate this obvious change from the position held by the provinces during the 1960 and the 1970s. If in the early period they were content to keep the water export issue off the formal agenda, in the new situation, they began to push the issue onto the agenda. Each province started its own work on policies and regulations that deal with the issue directly. As a result, the dynamics became such that it not only affected the agenda process, but it also increased the likelihood that more water export deals could be struck, should the economics of water trading turn favorable. At this point, the federal-provincial structure once again became important since those who were promoting commodification of water had the luxury of having 10 provinces and three territories and the obvious advantage in finding a “weak spot” in the opposition. The federal government proposition to sign a national accord with provinces and territories in 1999 for non-withdrawal of water in bulk from Canadian watersheds has never been ratified because provinces felt that this was unnecessary duplication to their own policies. Thus, the federal government was left with only one option - adopt IBWTA

amendments that cover boundary waters putting the onus on provinces to act to protect non-boundary waters.

In that context, the water export issue then became a “victim” of the ongoing struggle between two levels of government trying to surpass one another in the policy making process. Federal government tries to predict and if possible eliminate the potential for provincial governments to come up with better or more encompassing policy that could jeopardize the federal policy. This is because such measures could prevent the federal government from demonstrating to Canadians that it was in control of the nation’s water, with water export being an example of such management. For the provinces, it has been imperative to introduce policies that would eliminate any necessity for federal duplication. With hindsight, the analysis of pressure of intergovernmental forces raises the broader concern of whether provincial involvement in water exports weakens the ability of the federal government to sustain a policy that would serve the national interest in the longer run.

The pressure of intergovernmental forces explains the general nature of the relationships between the governments in Canada, the factors influencing these relationships, and what accounts for their long-term developments. Taken within this broader perspective, the outcome of specific issue negotiations (e.g. water exports) within the system may become less relevant because, for the reasons advanced, only what happens between these levels of governments unified in one system is important, whereas what is beyond the scope of federal-provincial relationships falls out of the analysis or is discussed only briefly. However, as this thesis showed, the complex

intergovernmental negotiating process could hardly be relevant without establishing its linkages with other explanatory variables. External political and economic determinants may be crucial to water export issue development, and especially during the period of “dormancy” of the federal-provincial conflict over the water export issue in the 1960- 1970s. That is linkages with other explanatory variables could fill in the contextual gaps during the periods when the relevance of the intergovernmental approach was in doubt. There are also important links with other variables in the periods of intensified intergovernmental struggle over the issue. For example, a gradual shift toward free trade ideology and influence of international political forces hold extremely important clues to understanding the water export issue within the context of intergovernmental relations. There is also a link of federal-provincial relations vis-a-vis the water export issue with forces of perceived security threat as far as it deals with aspects of conflict. The desire of certain water rich provinces to have “their” water export policies may put pressure on the integrity and security of *Canadian* water resources.

Transformation of the Water Export Issue into a Policy Problem

It has been the purpose of the dissertation to understand how this highly controversial issue after more than forty years of struggle for attention was partially acted upon by the Canadian government. Illuminating agenda setting theory with a

complex set of forces, the dissertation then provided an in-depth analysis of the politics of the water export issue transformation into a policy problem. At the end of the day the question is asked: what type of forces yield the most credible and realistic explanation for the transformation of the water export issue into a policy? Or what type of reasoning most convincingly explains the government's decision to mobilize its resources and undertake measures that would legitimize the issue that it has been for so long avoiding attending to?

To explain it only as a result of changing relations between federal and provincial governments would be to miss the larger point because some may legitimately claim that almost everything is part of intergovernmental relations or that there are many issues at stake between these levels of government and water export is one of those many. To limit the analysis of the issue only to the interactions between the governments in one nation state is also to undermine the significance of other potential sources of power that pushed the issue and did not let it fade away for so many years. The forces of perceived national security that consider water export issue transformation as a result of struggle among independent states over access to Canadian freshwater stocks are important and have to be reconciled with the government's reluctance to act upon the issue for so long. For that reason the economic pressure forces analysis could be helpful because it could explain this "delay" in the government actions as a result of changing market conditions for water. At the point when those conditions were about to be developed, not only did the security effect become significant but intergovernmental relations and agenda setting

factors acquired more momentum to push the water export issue onto the formal governmental agenda.

With respect to water exports, as this thesis showed, only when three sets of forces were taken together could they contribute to the construction of a comprehensive framework for the understanding of the policy process. Taken individually they may be considered as a worldview of an analyst. There is a conviction that, for example, only the changing condition of markets (economic foundations of world order), or conflictual and competitive relations among states (anarchic power structure of the world order) may be the way to understand the world or/and a policy process. However, the thesis presented the analysis of a specific issue by gathering together different aspects of politics, economics, history. The case study supports the claim that the understanding of issue transformation into a policy would benefit from an enhanced agenda setting approach and integration of different sets of forces that tend to shape the behavior of the government. The findings also contradict those who argue that structural explanations (e.g. massive changes in economic circumstances, or powerful shifts in technology) can only illuminate the broad shape of the public agenda.⁶⁰³ As this thesis shows, the structural forces not only shape the agenda in a broad sense but most definitely affect the specific policy process. In other words, when the water export issue is on the public agenda and the influence of the macro forces are present the water export issue is transformed into a public policy problem and knowing this brings us a bit closer to understanding the issue.

⁶⁰³ Pal (1997)

Policy Implications

An analytical framework is valuable not only for what it helps us to learn about the analysis of what has happened and how things are now, but also for what it tells us about the trends that the policy analyst should consider in order to have some understanding of a possible future turn in the issue's development. By drawing explanatory variables together from the longitudinal case study, the dissertation addresses the question which was posed at the beginning of this research study: what does the future hold for the water export issue? With its arrival on the government agenda, will water export continue to be an important issue or is it going to decline in policy salience without anything substantial happening, as many policy issues do? The analysis of findings cautions against confidence in the impossibility of policy reversal and gives a policy analyst a clue what trends he/she should watch in order to understand the possible changes of the issue under consideration.

The most important, if obvious lesson that economic and security forces reveal is that water is still and will continue to be a most precious, unevenly distributed resource around the world. Climatic change and human population growth continue to rise, affecting the world's fresh water supply and demand. Against this grave trend, Canada still will continue to have almost 20 percent of world's fresh water despite the fact that a large portion of it is locked and inaccessible.

The lesson that could be drawn from the analysis of forces of perceived national security pressure is that demand for Canadian water is a security concern but the future battles most probably will be fought not with arms but with economics, particularly as international economics becomes increasingly intertwined with international politics. Lessons that emerge from the forces of economic pressure give one even less reason to be sanguine about our understanding of the possible future trends in water export. The Canadian government has been changing the course of its policies over time from aggressive interventionism into the functioning of its main trading industries, especially in natural resources, toward acceptance of free trade ideology. Free trade without doubt is a most considerable force and played a crucial role in bringing water export issue back onto the agenda. The growth in the influence of international and transnational organizations has led to important changes in the decision-making structure of world politics and a tendency toward “multinationalization” of previously domestic activities. Even though Canada still retains some general power in most areas of its domestic and foreign affairs, its decision-making process over water export increasingly involves consideration of its international obligations and reaction of such transnational institutions as GATT/WTO and NAFTA.

In 1990 Sophie Dufour wrote a thesis on “The Canada-United States Free Trade Agreement: The Latest Threat of Water Diversions from Great Lakes Basin?”⁶⁰⁴ in which she argued, based on a legal analysis of the free trade agreement, that water

⁶⁰⁴ Dufour (1990)

diversions to the U.S. remain a distant prospect for the foreseeable future at the very least. Since that time, free trade has had an enormous, if ambiguous, impact on water export policy. Many insist that the free trade provisions most relevant to the water export issue have an aura of legal uncertainty around them. For some it is still disputable whether fresh water falls under the free trade definition of a good. It is not clear what exactly constitutes commercialization of water because the meaning of water markets has become so broad and may include value-added water and virtual water as well as transfer or shipment of unprocessed water, as it had been before free trade agreements came into force. The controversy intensifies even more so with debates about pricing water and its implications for private property rights and water markets. However, as this thesis shows, consideration of water as an economic good would inevitably subject it to the rules and power of markets and international trading regimes. These trends are necessary to watch because they may put the water export issue back on the agenda.

The pressure for greater continental integration has a significant effect, as has been pointed out in the thesis. Continental water sharing may become more likely in the future especially because of the internationalization or harmonization process by which basic policies, rules, and regulations affecting commerce or public policy in one country tend to become virtually indistinguishable from those of other countries. Thus, commodification of water and recognition of this resource as part of commerce in the U.S. may have an effect on Canadian water policy as well. The impediments to water trading may become weaker, especially if a price is placed on water. In that case it

may raise the issue of property rights over common resources and this in turn, may push water into the market place. Market incentives and pressure already penetrate the personal, corporate, legal and administrative structures which use and allocate water. In that environment then transfer of water from Canada to the U.S. is a strong possibility.

In fact we already see impacts of certain American policies in Canada. One recent example is the slow but sure creep of privatization of wildlife resources that could be specifically attributed to the expansion of game ranching and the sale and exchange of live wildlife practiced in the U.S. The Yukon government proposed changes to the Yukon Wildlife Act to make animals a private resource. This goes against the Yukon Wildlife Act that vests all property, title and interest in and to wildlife in the Crown. This Act is based on the so-called North American model, the keystone of which is the principle that wildlife are owned by no one, and are to be held in trust for the benefit of all people by government. Under the new legislation, animals will no longer be owned and protected by the Crown – they will be in the hands of private citizens. This means that Caribou or Mountain sheep will be sold like cars and trucks.⁶⁰⁵ This is just one small example of the potential impact of policy internationalization. Privatization of health and education systems are the other significant challenges that Canada faces and already deals with.

⁶⁰⁵ Government of Yukon (2003, January 31). Yukon Fish and Wildlife Management Board's Recommendations on Proposed Regulation for Wildlife. See also Yukon Approved Wildlife Sale to Hunt Farm. (2003, May 30). *CBC Radio News*.

With respect to water commodification, the market performance depends on the income distribution in the society. The application of such an allocative rule in a world with an extremely skewed income distribution is inherently problematic. Because life itself depends on water, the demand for which is infinitely inelastic, regions with unequal distribution of income and scarce water resources would be priced out of the market. The application of the market allocative principle based on income distribution may also affect poor Canadians despite the fact that they are citizens of a water rich country. Thus consideration of water as an economic good subjects it to the rules and power of markets and international trading regimes and is the most important driving forces to watch for water export issue to come back onto Canadian agenda.

The analysis of intergovernmental relations also yields some lessons. The federal government's proposed Canada-wide accord prohibiting bulk water removals out of Canada's major watersheds was not endorsed. Instead, as of today all provinces and territories have developed or are in the process of developing policies and regulations that prohibit bulk water removals within their respective jurisdictions. One may ask why there should then be reason for uncertainty? The lesson that could be drawn from the consideration of this factor is that achievement of a certain degree of consensus today between all levels of Canadian government with regards to water export in reality does not resolve the larger problem which is so characteristic of Canadian federalism – "pulling and hauling" and the inherent weakness of a federal government that has to deal with 10 provinces and three territories. The situation

becomes favorable for those forces that promote commodification because division of governmental responsibilities creates an opportunity to find a weak spot in the union. In turn, this may have direct impact on the water export issue in the future. Maude Barlow, national chairperson of the Council of Canadians argues that if a single province were to revoke its ban on bulk water removals and start exporting water, bans in other provinces would become subject to challenges from companies wanting to buy Canada water. She maintains that the federal government needs to bring in a full, binding, federal ban of water exports. It must work to exempt water from pernicious trade deals that would privatize, commodify and put water on the open global market for highest bidder. However, simple exempting water is not easy for a federal government that does not want to lose its stakes in free trade.

While the current trend among the provinces is to ban water exports from provincial water basins, this tendency also provides for the approval of such projects at the discretion of the provincial governments. The case of Newfoundland's decision to lift the ban on water export in 2001 is one of the most interesting twists in the saga of water export issue development in this country. The results of the study conducted by the government of Newfoundland and Labrador emphasize that water export operations ultimately would be determined by the interaction of market forces and the ingenuity of entrepreneurs in developing low-cost, high quality water for market niches if other considerations that are unique to water trading, such as the political

complications and resolution of uncertain Canadian water export policy, are resolved.⁶⁰⁶

Furthermore, because all provinces are energetic supporters of continental and international trade agreements, it means freer trade is “in” and to be advanced where possible. As far as Ottawa’s decisions with regards to imposing or prohibiting water exports are greatly constrained by Canada’s international obligations under those agreements and given the fact that its attempts to take a leadership position in the issue’s destiny failed so far because of the weak role that it plays in this decentralized federation, odds are that the water export issue will surface again.

We see from the examination of the pressure of economic forces that governments are not oblivious to markets. They react to their changing conditions, albeit cautiously and not exactly in the complete laissez-faire stance. What the government could have been waiting for is the *right* market conditions to appear. This may imply that large-scale, long-term bulk water exports across international borders are unlikely in the nearest future for many reasons but most surely because of the high economic cost of moving water. However, economic considerations are recognized as concerns that could be worked out if not with ease then with time. Water export policy experts (some of whom have been dealing with the issue for more than a decade within the realm of Canadian government) frequently claim that the economic feasibility of water export could be resolved in the near future. Once the economic feasibility problem is solved, perhaps Canadian water could compete with

⁶⁰⁶ Government of Newfoundland and Labrador (2001)

conventional and other non conventional water supplies and water “may indeed attain the value of oil today, a commodity for which no-one questions the economic feasibility of transport system.”⁶⁰⁷ Thus, it is crucial to consider developments and improvements in water transportation and economic feasibility.

At the same time these experts agree also on at least one more point, that water export is a highly politicized issue. They suggest that the future of water export policy has more to do with political determinations than with economics. Here again the endorsement of water exports by senior politicians, recommendations of the first and so far the last Inquiry on Federal Water Policy should not be forgotten. The Inquiry did not recommend the rejection of all water exports out of hand “regardless of the opportunities and against private and provincial government interests.”⁶⁰⁸

The lesson that could be drawn from the agenda setting process is that the window of opportunity defined as pushing one’s issues means also one simple thing: if action is taken, a change could occur though it does not guarantee what the change will be. Still, the thesis concludes, there are some bits and pieces of evidence that suggest the water export issue will not simply vanish into an empty void. The road toward government agenda acceptance of the water export issue has been long and difficult. However, those participants who worked on the issue’s expansion did not really achieve what they demanded and expected – a complete ban on water exports even though water export as a policy issue was legitimized. Their demands for a

⁶⁰⁷ Holm (1993)

⁶⁰⁸ Currents of Change (1985): pp.130-131

specific water export policy and/or separate legislation were frustrated by a government that had a different point of view. From its perspective, the government has been very attentive to public opinion and as result the best policy solution at a given time came in the amendments to the IBWTA. Given the fact that after the amendments to the IBWTA came into force nothing has changed ever since, the problem as it is understood by those who demanded different policy has not vanished. Critics of the government position remain adamant that water in its natural state is covered by NAFTA and that nothing short of an amendment to the agreement, accompanied by the federal legislation banning large-scale water exports will protect Canadian water resources adequately. The concerns of critics were not assuaged by the federal government strategy in 1999 for seeking a commitment from all jurisdictions across Canada to prohibit the bulk removal of water, including for export, from Canadian watersheds. Thus, the debate concerning bulk water removals, water exports and free trade continues.⁶⁰⁹ However, the problem as *understood* and *defended* by the *government* was effectively resolved, although no claim is made that this will put an end to new demands. This is in addition to the conviction of all interviewees who believe that water export “is here for the long-haul.”

⁶⁰⁹ Johansen (2001, February 20)

Notes for Future Research in Water Exports

The conclusions of this thesis are drawn on the basis of one case study and thus necessarily limited only to this case. Wider generalization is possible but only if there is a comparative component involved. It would be interesting and valuable to make a comparative study of, for example, water export issue evolvement on the agendas of different governments. The government of Norway, for example, has been considering the possibility of water export since the 1950s. A comparative study of Canadian and Norwegian cases could be very important and offer more insights for the understanding of the water export issue. Comparative study of Canada and the United States is also important as far as there are could be generated many interesting insights not only on a comparative basis but also for the Canadian case as well. And study of water issue development on the agendas of other countries in regions such as the Middle East and Central Asia may also be useful.

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