

## **Sumas II denied: the transboundary principle affirmed**

Posted by

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### **Sumas II denied the transboundary principle affirmed**

**Global Compliance Research Project** - Joan Russow - There is no legitimate ground for appeal of the recent decision of the Federal Court of Appeal, against the Sumas II Project. It was clear from the beginning of the application that although the plant was located in the US, there would be transboundary environmental consequences in Canada, and consequently a ruling from the Canadian National Energy Board against the Sumas II project was justified.

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### **Sumas denied the transboundary principle affirmed Joan Russow**

Global Compliance Research Project  
November 11, 2005

If the United States recognized international law related to the environment, not only when it is in their own self interest, the Sumas II application would have been denied as soon as Canada had raised concerns about the transboundary environmental impact.

Years ago the United States effectively and successfully used the Transboundary principle to sue the Canadian Company Cominco for the environmental destruction, in the US, caused by the Canadian company which operated solely in Canada. The essence of the transboundary principle is that states are legally responsible for the environmental impact, on other states, of the industrial activities under the jurisdiction.

The Cominco case is considered to be the foundation for the extremely important international principle: the transboundary principle. The principle has been affirmed in numerous international agreements and is a principle of international customary law and thus should be enshrined in National legislation.

The principle was affirmed in the Convention on the Law of Seas

"states shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention." (Art. 194. 2., Law of the Seas, 1982)

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Even in the NAFTA, the transboundary principle was considered binding. Under article 104.1 t of NAFTA the

Basel convention on the Control of transboundary Movement of Hazardous Wastes and their disposal (1989) was one of three international agreements that was accepted as taking precedent over NAFTA. The transboundary principle is prominent in the Basil convention.

In addition, the liability in accordance with international law is recognized:

?related to their international obligations concerning the protection of human health and protection and preservation of the environment, and are liable in accordance with international law (Preamble Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1992);

The transboundary principle was also affirmed in the 1994 Convention on the Environmental Impact assessment in a transboundary Context.

Mindful of the need and importance to develop anticipatory policies and of preventing, mitigating and monitoring significant adverse environmental impact in general and more specifically in a transboundary context (11.9.Convention on Environmental Impact Assessment in a Transboundary Context, 1994)

If the United States recognized international public trust law related to the environment, not only when it is in their own self interest, the Sumas II application would have been denied as soon as Canada had raised concerns about the transboundary environmental impact.

[in 1998, I made a submission on the Transboundary Principle, at the Sumas hearing in Bellingham]