



Fall 2023 Case Note

U.S.-Canadian Wildfire Cooperation

Nicholas Smetzer

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By: Nicholas Smetzer¹

Record-breaking wildfires are striking the United States and Canada with troubling, increasing frequency. As wildfires know no borders, climate change-related wildfires will increasingly damage the ecosystems and economies of both nations unless they develop an efficient system of cooperation to deal with this shared threat. As the U.S. and Canada share similar cultures, legal systems, and interests in preserving their ecosystems and air qualities, these countries are in a unique position to share intelligence and resources to properly address the scale of these disasters. Scholars such as Madison Gaffney have noted the potential for current legislation to expand and treat aspects of these crises. But, a comprehensive defense against all of the risks posed by increasing wildfires will require more proactive coordination, including a willingness by either nation to be held accountable for their own disasters when the negative externalities of domestic wildfires begin to damage neighbors.

As the United States and Canada share both the world's largest land border and a robust, healthy diplomatic relationship, the development of a proactive, bilateral disaster response policy between the two nations could form the blueprint for other nations as the effects of climate change begin to compound. This paper attempts to outline the possible political and legal developments that would better protect both countries from shared environmental disasters.

I. Introduction

In order to save lives, property, and wide swaths of unique North American ecology from increasingly deadly fires, it's crucial to understand how the current American-Canadian legal landscape has failed and how future wildfire-law must evolve from an ameliorative model of disaster to a more cooperative one. Wildfires are becoming dramatically more prevalent and costly across the United States and Canada. In addition to sharing the world's largest land border, in 2023 both nations shared atypically catastrophic wildfire damages.² Canada saw its largest recorded season for such fires in its history and was forced to evacuate an entire metropolitan area.³ Near-simultaneously, the United States saw its deadliest wildfire in over a century occur in Hawaii, which has a tropical climate that would normally preclude the kind of fast-spreading dry fires that decimated the island of Maui.⁴ The destruction caused by these wildfires, in addition to domestic loss of property, life, and ecology, has a great deal of international effect. American wildfires directly and negatively affect Canada's air quality, and vice versa.⁵ More broadly, wildfires are

¹ J.D. Candidate, SMU Dedman School of Law, 2025; Staff Editor for the International Law Review Association.

² Julia Jacobo and Dan Peck, *Record-breaking wildfires have occurred all over the Northern Hemisphere during 2023, new report finds*, ABC NEWS, (Sep. 13, 2023, 9:07 PM), <https://abcnews.go.com/US/record-breaking-wildfires-occurred-northern-hemisphere-2023-new/story?id=103169036> [<https://perma.cc/D7CB-MYQ4>].

³ AJLabs, *Mapping the scale of Canada's record wildfires*, AL JAZEERA (Aug. 23, 2023), <https://www.aljazeera.com/news/2023/8/23/mapping-the-scale-of-canadas-record-wildfires> [<https://perma.cc/MZ5Y-CEMS>].

⁴ *Hawaii wildfires: What caused deadliest US blazes in more than 100 years?*, AL JAZEERA (Aug. 14, 2023), <https://www.aljazeera.com/news/2023/8/14/hawaii-wildfires-what-caused-deadliest-us-blazes-in-more-than-100-years> [<https://perma.cc/ZSC8-F33H>].

⁵ Willem Marx, *Canada's record wildfire season continues to hammer U.S. air quality*, NPR (July 1, 2023, 2:48 PM), <https://www.npr.org/2023/07/01/1185652621/canada-wildfires-air-pollution> [<https://perma.cc/E2WD-EDX5>].

massive generators of carbons and other green-house gasses, giving rise to an insidious feedback-loop: uncontrolled wildfires worsen global climate conditions, which in turn increase the likelihood of future wildfires, which in turn will damage the climate even further.⁶

Given the relative wealth of the United States and Canada, a robust history of cooperation, and an ample presence of domestic, trans-national, and global risks, one might anticipate that the past year of wildfires acted as something of a wakeup-call for the two nations.⁷ Unfortunately, the current state of American-Canadian agreements and law remain crucially underdeveloped to effectively combat the threat posed by these fires.⁸ The political and economic engines of the two countries remain, at time of writing, more or less charted on the same course that led to the horrific blazes in the first place.⁹ This is largely because current state of catastrophe law between the two countries adheres to an “ameliorative” model that treats fires as natural incidents that can be traditionally remedied, and not as man-made disasters that can cause permanent and irreversible destruction.¹⁰

For all of their destructive might, wildfires are unique among catastrophes in that, unlike hurricanes or earthquakes, humans have the ability to effectively fight them, rather than just withstand them.¹¹ The potential exists for the United States and Canada not only to effectively manage their current cyclical catastrophes, but model the kind of international cooperation that all nations will need to engage in as the effects of climate-change continue to demonstrate themselves in the latter half of the twenty-first century.¹²

II. The Current State of U.S.-Canadian Law

The modern understanding is that there is at least some international obligation to assist other states during disasters.¹³ That said, difficult questions of sovereignty and economy make it difficult to formally impose a universally clear set of rules and regulations concerning disasters.¹⁴ Due to this challenge, international disaster law can broadly be considered to fall under various separate “regimes” which come into effect depending on the nature of the disaster.¹⁵ Humanitarian effects, the entities involved, whether or not there has been a formal request for aid, and other

⁶ See JOEL WAINWRIGHT & GEOFF MANN, *CLIMATE LEVIATHAN* 7 (2019).

⁷ See, e.g., Press Release, Government of Canada, Canada-United States relations, <https://www.international.gc.ca/country-pays/us-eu/relations.aspx?lang=eng> [https://perma.cc/9QMH-KDL8] (last visited Oct. 18, 2023).

⁸ Daniel A. Farber and Lisa Grow, *Foreword: Current Trends in Disaster Law and Policy* of THE CAMBRIDGE HANDBOOK OF DISASTER LAW AND POLICY: RISK, RECOVERY, AND REDEVELOPMENT at xxvii-xxx, (S. S. Kuo et al. ed., Univ. Press) (2022).

⁹ WAINWRIGHT & MANN, *supra* note 5 at 8.

¹⁰ See *LAW AND CATASTROPHE* 2-16 (L. Douglas et al. ed., Stan. Univ. Press) (2007).

¹¹ See Stephen R. Miller, *Wildfire Federalism: A Framework for Local Government Participation in Disaster Planning* of THE CAMBRIDGE HANDBOOK OF DISASTER LAW AND POLICY: RISK, RECOVERY, AND REDEVELOPMENT at 240-241, (S. S. Kuo et al. ed., Cambridge Univ. Press) (2022).

¹² Farber and Grow, *supra* note 7.

¹³ David Fisher, *The Law of International Disaster Response: Overview and Ramifications for Military Actors*, 83 INT’L L. STUD. 293, 309-10 (discussing the presence of clear gaps in international disaster law despite a general international will to prevent such disasters).

¹⁴ *Id.*

¹⁵ FLAVIA ZORZI GIUSTINIANI, *INTERNATIONAL LAW IN DISASTER SCENARIOS: APPLICABLE RULES AND PRINCIPLES* 93-105 (2021).

considerations go into shaping the nature of the disaster-regime of a state, or the regime shared between neighboring states.¹⁶ Because the U.S. and Canada share similar histories, legal systems, and economies, a regime applicable to one nation is quite likely to be applicable to the other.¹⁷

Particularly regarding wildfires, however, these similarities in climate regime might also explain why the current legal landscape between the U.S. and Canada remains somewhat antiquated. Both the United States and Canada are massive in size compared to their population densities, and the formative laws regarding wildfires for either nation were drafted at a time where a great portion of both countries' economies were based on extracting and managing vast natural resources well away from population centers.¹⁸ These facts, combined with a general North American ecology that often benefits from prescribed or controlled wildfires, resulted in a legal system that treats the destruction posed by wildfires to be economic losses as a result of pollution or burning, rather than existential losses of human life or wildlife.¹⁹ Domestically this can manifest in fruitless litigation between parties from one nation against the environmental regulating body of the other, such as occurred in *Her Majesty the Queen in Right of Ontario v. U.S. E.P.A.*²⁰ Not only is there a pragmatic hesitation for a nation to privilege the air quality of foreign nations over its own, but the primary polluting effects of wildfires can be difficult to trace, even despite a good-faith effort to do so.²¹

That is not to say that all trans-national litigation concerning pollution is fruitless. The Trail Smelter Case between the United States and Canada does establish that nations owe some duty to avoid harming the ecologies of their neighbors.²² But, while the Trail Smelter Case is certainly a positive step in solidifying norms between the United States and Canada, it is also an example of an “ameliorative” international disaster policy, or a policy of calculating case-specific reparations after a disaster has occurred, rather than a policy designed to reduce pollution and wildfires before they occur.²³

Wildfires tend to be symptomatic of dry conditions posed by caused by climate change, and thus the prospective agreements that could be considered to govern the effects of fires would be general pollution and climate agreements.²⁴ Both the United States and Canada are currently members of

¹⁶ *Id.*

¹⁷ W.R. Lederman, *A Comparison of Principal Elements of the Legal Systems and Constitutions of Canada and the United States*, 11 AM. J. COMPAR. L. 286, 286-291 (1962).

¹⁸ See Trail Smelter Case (U.S. v. Can.), 3 R.I.A.A. 1905, 1938-42 (March 1941).

¹⁹ See *id.*

²⁰ *Her Majesty the Queen in Right of Ontario v. U.S. E.P.A.*, 912 F.2d 1525, 1535 (D.C. Cir. 1990).

²¹ See WAINWRIGHT & MANN, *supra* note 5 at 65-68 (acknowledging that, despite a clear increasing trend in climate catastrophes, the interconnectivity of the global ecosystem can make it difficult to statistically analyze exactly how one event exacerbates future events).

²² Trail Smelter Case, 3 R.I.A.A. at 1938-42; see also Madison Gaffney, *Only Bilateral Agreements Can Stop Wildfires: Why Diplomacy Through the U.S.–Canada Air Quality Agreement (AQA) is a Solution for Wildfire Related Transboundary Pollution*, 24 VT. J. ENV'T. L. 1, 4–28 (2022).

²³ Compare Trail Smelter Case, 3 R.I.A.A. at 1942 (awarding money damages and imposing emission controls on the individual smelter in question) with LAW AND CATASTROPHE, *supra* note 9 at 6-17 (illustrating a concept of ameliorative solutions to disasters).

²⁴ FAO, *Strategy to Enhance International Cooperation on Fire Management*, FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (2008), available at

the Paris Agreement, a binding accord that aims to limit the emissions that, among other effects, contribute to wildfires.²⁵ Bilateral agreements currently in place between the United States and Canada, such as the Air Quality Agreement (“AQA”) also have a great deal of potential to reduce harmful forest fires, but require expansion to or replication to have a wider protective reach.²⁶ While these kinds of agreements surely have a positive effect on reducing forest fires, the fact that these forward-facing agreements police emissions and pollution, rather than forest fires themselves, indicates a gap in consensus on how the United States and Canada should handle their increasingly shared problem of forest fires.

III. The Challenges Posed by Modern Wildfires

Wildfires, particularly the large dry-fires increasingly plaguing the United States and Canada, are uniquely destructive natural disasters that are poorly managed by above-referenced current state of environmental law and treaties.²⁷ Through an examination of the following qualities of large wildfires, it becomes clear that the current model of international agreement, which aims primarily to remedy damages and gradually limit the warming-conditions that cause these fires, is inadequate to prevent the specific and significant threats the fires pose.

A. Simultaneous local and trans-national effect

The local devastation caused by wildfires is certainly their most noticeable effect, but the effects of these uncontrolled blazes are equally deleterious to neighboring nations and the global community.²⁸ For example, in 2020, California experienced its worst season for wildfires in its history.²⁹ Not only was there catastrophic damage to property and to the native ecosystem, but the smoke from these fires routinely drifts into several other states and Canada, drastically raising the rates of small particulate matter into the air to levels considered distinctly hazardous for human life.³⁰ This year, Canada similarly experienced its worst wildfire season of all time; locally, the entire city of Yellowknife in Canada’s Northwestern Territories was called to evacuate, and abroad, the pollution from the fires caused air quality in New York to become the worst in the

<https://foris.fao.org/static/pdf/fms/FMStrategyJune2008.pdf> [<https://perma.cc/BQ2A-S9QA>] (last visited Oct. 11, 2023).

²⁵ Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104.

²⁶ Gaffney, *supra* note 21, at 16-18.

²⁷ See, e.g. Malgosia Fitzmaurice and Agnes Viktoria Rydberg, *Using International Law to Address the Effects of Climate Change*, 4 Y.B. INT’L DISASTER L. ONLINE 281, 282-91 (2023).

²⁸ Hamish Clarke, Rachael H. Nolan, Victor Resco De Dios, Ross Bradstock, Anne Griebel, Shiva Khanal, & Matthias M. Boer, *Forest fire threatens global carbon sinks and population centres under rising atmospheric water demand*, 13:7161 NATURE COMMUNICATIONS 1, 1-10, (2022), <https://www.nature.com/articles/s41467-022-34966-3> [<https://perma.cc/M994-3S8D>] [hereinafter *Nature Carbon Sink Article*].

²⁹ Julie Cart, *California’s 2020 fire siege: wildfires by the numbers*, CALMATTERS (July 29, 2021), (<https://calmatters.org/environment/2021/07/california-fires-2020/>) [<https://perma.cc/KC24-HJK7>].

³⁰ Dianna Smith, *California Wildfires: How Much Did 2020’s Wildfire Season Contribute to PM2.5 Pollution?*, KAITERRA (Dec. 9, 2020), <https://learn.kaiterra.com/en/air-academy/california-wildfires-2020-wildfire-pm2.5> [<https://perma.cc/XX92-4RWC>] (PM2.5 referring to small-diameter particulate matter, a wildfire pollutant that is particularly hazardous to human health).

world.³¹ The simultaneous local and trans-national effects of large wildfires mean that, even if a state does everything in its power to manage its own domestic fires, it can still be seriously harmed by the fires of a separate nation.³² As the amount and severity of fires has grown even in the last five years, it can easily be anticipated that both the U.S. and Canada will continue to experience negative effects from fires occurring both within, and beyond their borders.³³

B. The feedback loop effect of wildfires and climate change

Damage to life, property, land, and breathable air quality are not the only threats posed by wildfires. Large, uncontrolled blazes are tremendous sources of carbon emissions, which also exacerbate the exact climate conditions that make wildfires more likely to happen in the first place and contribute to rising sea levels and other ecological harms associated with anthropogenic climate change.³⁴ For example, recent estimates suggest that in 2023, global wildfires have released 410 megatons of carbon into the atmosphere, with over a quarter of these emissions occurring from the Canadian blazes themselves.³⁵

Large forests, such as those that make up much of Canada and the United States, are normally considered to be carbon sinks—that is, ecological features that help to absorb carbon from the atmosphere and contribute to gradual cooling of the atmosphere.³⁶ Due to this, when uncontrolled fires destroy hundreds of miles of forests, not only is there an immediate deposition of carbon back into the atmosphere, but the landscape itself loses a degree of ability to reabsorb carbon until new growth can take its place.³⁷ Even if all nations currently party to the Paris Agreement are able to meet their commitments to limit emissions and cap global warming to 1.5 degrees Celsius by 2050—a goal that is by no means assured—such fires might still jeopardize the goals of the agreement and propel further damage to global ecologies if they sufficiently ravage enough of the planet’s forest’s abilities to absorb carbon emissions.³⁸

C. The political challenges of responsibility for fires

Wildfires pose difficult political challenges when their effects are felt across borders. As wildfires can occur from both natural and human causes, it can be contentious to prompt cooperation between nations when they are caused by either state or private negligence.³⁹

³¹ Marx, *supra* note 4; *see also* Caleb White, *Breathing Toxic Air in New York Is Equivalent to Smoking 6 Cigarettes a Day*, SCI. TIMES, (June 9, 2023, 9:30 AM), <https://www.sciencetimes.com/articles/44239/20230609/breathing-toxic-air-new-york-equivalent-smoking-6-cigarettes-day.htm> [<https://perma.cc/6VPH-PY9R>].

³² Farber and Grow, *supra* note 7.

³³ *Id.*

³⁴ Nancy Harris, Thailynn Munroe, and Kelly Levin, *6 Graphics Explain the Climate Feedback Loop Fueling US Fires*, WORLD RES. INST., (Sep. 16, 2020), <https://www.wri.org/insights/6-graphics-explain-climate-feedback-loop-fueling-us-fires> [<https://perma.cc/3LSH-KW96>].

³⁵ Jacobo and Peck, *supra* note 1.

³⁶ *Nature Carbon Sink Article*, *supra* note 27.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Cf.* Fitzmaurice and Rydberg, *supra* note 26 (outlining the broad challenges that nations face in enforcing international agreements against other polluters or large polluters on the United Nations Security Council); *see also Her Majesty the Queen in Right of Ontario v. U.S. E.P.A.*, 912 F.2d 1525, 1535 (D.C. Cir. 1990) (as a more

Developing a more cooperative policy between the United States and Canada would require a degree of transparency between the two nations regarding the causes of wildfires, particularly when said fires are often caused by private actors seeking profit, as was the case with Pacific Gas & Electric Co.'s role in causing California's deadly Camp fire of 2020.⁴⁰ Both the U.S. and Canada have largely been reluctant to severely punish their own industries for the damages caused by fires they created, largely preferring money damages to prosecution.⁴¹ If international cooperation is to be achieved, then both nations would need to begin holding their own private actors to a higher degree of accountability, or otherwise open up pathways for those harmed by foreign fires to achieve more meaningful opportunities for litigation.

D. The necessity of local response

Though they have effects that reach across the globe, a fundamental challenge of controlling wildfires is the fact that once they have emerged, they demand a local response in order to be successfully managed.⁴² Some wildfires, caused by aforementioned industry or other human causes, occur in places that are generally heavily populated and thus easier for fire-response teams reach.⁴³ Yet many other fires occur remotely and unpredictably; it is predicted that a major cause of Canada's 2023 fires was lightning strikes combined with drought conditions, and only gradually grew to a size that threatened human population centers.⁴⁴ Wildfires that occur in remote locations, or near settlements that lack the resources to effectively manage initial blazes can quickly spiral into larger disasters with a more significant global impact.⁴⁵ Currently, as Canada and the United States are such geographically massive countries, it can be difficult for a local fire-response to be mustered when a fire that occurs in one portion of a country is adversely affecting the other nation more noticeably.⁴⁶

E. The uniquely combatable properties of wildfires

Despite the above international challenges posed by wildfires, these disasters are unique

American-Canadian specific example of the challenges that one nation encounters when attempting to sue for environmental harms through the domestic courts of another).

⁴⁰ *Ex-PG&E execs to pay \$117M to settle lawsuit over wildfires*, ASSOCIATED PRESS, (Sep. 29, 2022, 8:44 PM), <https://apnews.com/article/wildfires-business-fires-lawsuits-california-450c961a4c6b467fcfb5465e7b9c5ae7> [<https://perma.cc/R647-JNHZ>].

⁴¹ *See id.*

⁴² Nicholas A. Robinson, *Forest Fires as a Common International Concern: Precedents for the Progressive Development of International Environmental Law*, 18 PACE ENV'T. L. REV. 459, 500 (2001); *see also* Miller, *supra* note 10.

⁴³ *See, e.g.*, Kanishka Singh, *Fast-moving California wildfire prompts evacuations of thousands of residents*, REUTERS, (Sep 3, 2022, 3:05 PM) <https://www.reuters.com/world/us/fast-moving-california-wildfire-prompts-evacuations-thousands-residents-2022-09-03/> [<https://perma.cc/L8UT-UB3L>].

⁴⁴ *See, e.g.*, *Number of wildfires surges in British Columbia after weekend of lightning strikes*, ASSOCIATED PRESS, (July 10, 2023, 6:04), <https://apnews.com/article/canada-wildfires-3d3cd93c898ef286583b6b94219fd6c9> [<https://perma.cc/9D5M-LUY2>].

⁴⁵ *Id.*

⁴⁶ *Cf.* FIRE INFO. RES. MGMT. SYS. U.S./CAN., <https://firms.modaps.eosdis.nasa.gov/usfs/map/#d:24hrs;@-100.0,40.0,4.0z> [<https://perma.cc/P75K-9KYH>] (last visited Oct. 25, 2023) (satellite tracking of current active fires shows that several occur across borders, or are otherwise located in either the U.S. or Canada but lie closer to a population center of the other nation).

among environmental catastrophe in that they can be effectively mitigated by human intervention.⁴⁷ Unlike earthquakes or hurricanes, states and fire-fighters can actively dismantle threats, rather than simply prepared for and withstand.⁴⁸ As wildfires have such an outsized effect on both domestic life and global environmental quality, high level, coordinated cooperation between nations can absolutely help prevent the worst effects of these disasters from continuing to worsen over the coming decades.⁴⁹ The United States and Canada share similarities in their legal structures, their cultures, and a history of strong cooperation.⁵⁰ Thus it is imperative that the two nations develop a shared framework for environmental disaster response, not only as a better remedy to their shared issue of wildfires, but as a model of cooperation for other nations to rely on as the more drastic and dangerous effects of climate change make themselves known in the coming decades.⁵¹

IV. A More Cooperative Model

Current bilateral agreements should be continued and expanded upon, and new bilateral efforts between the United States and Canada should be forged in order to better account for the danger posed by modern wildfires. Current bilateral agreements provide an already-existing template for how cooperation between the two nations could continue to develop; for example, the aforementioned Air Quality Agreement, initially developed to combat acid rain, has already proven quite adaptable as a procedure through which other environmental goals can be accomplished.⁵² While the AQA's primary focus has, as its name suggests, primarily been on transboundary pollution, this diplomatic solution could be a viable way to expand research and cooperation on the other effects of wildfires, or at least a template for a similar such agreement. Transparent and proactive exchanging of data concerning all aspects of wildfires, not just their airborne pollutants, would enable both the United States and Canada to adequately understand the fluctuations of current wildfire threat-levels.⁵³ This more complete understanding of fires across the continent would make it easier for the nations involved hold each other accountable for lapses in care or management strategies that cause worse fires.⁵⁴

In addition to an AQA-like agreement, more direct preventative and suppressive efforts could similarly be expanded. Currently, while the United States and Canada have both sent domestic firefighters abroad to assist other nations with their fire suppression efforts, most recently with U.S. firefighters assisting with Canada's 2023 season, these calls for foreign firefighters tend only to occur when fires have already reached catastrophic sizes.⁵⁵ A formalization of promised aid, a

⁴⁷ Robinson, *supra* note 41 at 499-502.

⁴⁸ *See id.*

⁴⁹ *See id.*

⁵⁰ *See, e.g.*, Press Release, Government of Canada, Canada-United States relations, <https://www.international.gc.ca/country-pays/us-eu/relations.aspx?lang=eng> [<https://perma.cc/9QMH-KDL8>] (last visited Oct. 18, 2023).

⁵¹ *See* Farber and Grow, *supra* note 7; *see also* WAINWRIGHT & MANN, *supra* note 5 at 65-68.

⁵² Gaffney, *supra* note 21, at 16-18; Agreement Between the Government of the United States of America and the Government of Canada on Air Quality, Can.-U.S., Mar. 13, 1991, T.I.A.S. 11783.

⁵³ Gaffney, *supra* note 21, at 16-18.

⁵⁴ *Id.*

⁵⁵ *See, e.g.*, Office of wildland fire *Canada and the United States Commit to Enhanced Fire Cooperation*, U.S. DEP'T INTERIOR (June 23, 2023), <https://www.doi.gov/wildlandfire/canada-and-united-states-commit-enhanced-wildland-fire-cooperation> [<https://perma.cc/8RUZ-66F9>].

so-called “defense treaty against wildfires”, could serve as a useful and expedient means for trained professionals from either country to effectively provide assistance to locations where it would be most effective.⁵⁶ Especially given the particularly large military budget of the United States, “[t]here is no rational explanation for a nation having a large air force “to defend” against a theoretical foreign military force, and yet have no equipment to help fight off the common foe of fire.”⁵⁷ An agreement such as this would have to be carefully crafted to respect the integrity of either state’s borders or sovereignty, but seeing as both the U.S. and Canada already enjoy relatively civil border relations, such a joint effort could comfortably be reached without serious fear of invasion or economic blowback.⁵⁸ New programs, such as the United States’ climate corps, could be similarly be employed both domestically and with a degree of reciprocity to Canada, in service of assisting a host-nation’s fire-prevention and suppression efforts and exchanging best practice knowledge.⁵⁹ Especially considering the primary method advocated for by firefighters to combat wildfires is prevention and proper-infrastructure rather than “boots-on-the-ground” suppression efforts, having as many avenues for state-of-the-art knowledge to flow between both states as possibly would only be a boon to both nations.⁶⁰

Finally, and perhaps most importantly, both the United States and Canada should begin more seriously enabling litigation against private and public causers of fires, both at home and abroad. Nearly eighty-five percent of wildfires in the United States are caused by humans, whether they are individuals failing to manage campfires or industrial efforts failing to properly prevent electrical or equipment fires.⁶¹ As established, these fires can cause billions of dollars in damage and extend into neighboring territories.⁶² Despite this, it is rare for an entity responsible for a wildfire to effectively held responsible, and even more so by a foreign body.⁶³ While it is understandable that the U.S. and Canada are hesitant to privilege foreign interests over their own economies, it is counter-intuitively this domestic protectionism that hinders either nation from completely managing its own wildfire disasters, let alone mitigating the negative effects that these disasters have on neighbors.⁶⁴ Extending the reach of each nation to seek reparations would allow each country to act as a check and balance for the other.⁶⁵ Particularly if other methods of cooperative wildfire prevention are employed simultaneously, this shared sense of responsibility

⁵⁶ Robinson, *supra* note 41 at 499-502.

⁵⁷ *Id.*

⁵⁸ Giustiniani, *supra* note 14 at 60-61.

⁵⁹ Robinson, *supra* note 41 at 499-502; *see also*, *cf. President Biden Launches the American Climate Corps, Announces new Americorps NCCC Forest Corps*, AMERICORPS (Sep 20, 2023), <https://americorps.gov/newsroom/press-release/president-biden-launches-american-climate-corps-announces-new-amicorps> [<https://perma.cc/WW2T-DWSZ>] (announcing the newly created Climate Corps and announcing intention “to conserve national forests and grasslands, mitigate risks of wildfires in high-risk regions, and support reforestation efforts and wildfire crisis response.”).

⁶⁰ *See* Miller, *supra* note 10.

⁶¹ *Wildfire Causes and Evaluations*, NAT’L PARK SERV. available at <https://www.nps.gov/articles/wildfire-causes-and-evaluation.htm> [<https://perma.cc/FU9F-XBAZ>] (last visited Oct. 12, 2023) (“[n]early [eighty-five] percent of wildland fires in the United States are caused by humans”).

⁶² *See, e.g. Dave Sawyer, Seton Stiebert, and Colin Welburn, With the forest ablaze, the health costs hit home*, CANADIAN CLIMATE INSTITUTE, (Aug. 6, 2023) <https://climateinstitute.ca/with-the-forest-ablaze-the-health-costs-hit-home/> [<https://perma.cc/M5XR-M9T3>]; *see also* Cart, *supra* note 28.

⁶³ *See* Fitzmaurice and Rydberg, *supra* note 26.

⁶⁴ *Nature Carbon Sink Article*, *supra* note 27.

⁶⁵ *See* Fitzmaurice and Rydberg, *supra* note 26.

can develop into a collective North-American will to protect what remains of the continent's forests.

V. Conclusion

The rampant wildfires of the twenty-first century transcend borders; fires in the United State have historically caused great harms to Canadian environments, and recent fires in Canada have proven that similar damages occur to the United States.⁶⁶ Despite the ability for local fires to have such an outsized effect, wholistic cooperation between Canada and the U.S. to prevent and suppress these wildfires has been challenged by internal politics as well as a general failure to combat the inherently international nature of these out-of-control blazes.⁶⁷ Current successful programs of research-exchange and pollution reduction demonstrate that cooperation between the U.S. and Canada is highly successful at managing crisis once they are considered to be a shared responsibility, and thus expanding or replicating these kinds of programs provides one path forward in improving a currently overwhelmed fire infrastructure.⁶⁸ Ultimately, the goal for both nations should be to utilize a shared ecosystem and culture to share the burdens of these fires as much as possible, through the efficient exchanges of knowledgeable professionals to where they will be most useful and through the development of a shared legal understanding that the fires of one nation, if left burning, will increasingly and irrevocably damage the health of both.⁶⁹ Without a unified sense of legal and civic solidarity regarding these more-and-more frequent crisis, both America and Canada could find themselves doomed to continue to suffer the consequences of each other's fires, as global conditions continue to make larger potential blazes all the more inevitable.⁷⁰

⁶⁶ See, e.g. Jacobo and Peck, *supra* note 1.

⁶⁷ See Fitzmaurice and Rydberg, *supra* note 26; see also *Her Majesty the Queen in Right of Ontario v. U.S. E.P.A.*, 912 F.2d 1525, 1535 (D.C. Cir. 1990).

⁶⁸ Gaffney, *supra* note 21, at 16-18.

⁶⁹ Robinson, *supra* note 41 at 499-502.

⁷⁰ See, e.g., *Nature Carbon Sink Article*, *supra* note 27; Farber and Grow, *supra* note 7.