

Chapter 7

INTERNATIONAL LAW

Although most of the legal activities of the Department are discussed in this chapter, particular issues are dealt with elsewhere in the report. There is a legal dimension to almost every departmental policy and program activity. In some cases, the legal element is so closely linked to the policy and other aspects of the issue that they are best discussed together. For example, the legal aspects of export controls and extraterritoriality are included in Chapter 2; environmental law, the law of the sea and human rights law are found in Chapter 3; and private international law is discussed in Chapter 6. The reader is referred to these chapters in order to have as complete an idea as possible of the range of legal activities for which the Department is responsible.

Fisheries

The International North Pacific Fisheries Convention, a multilateral treaty between Canada, the United States and Japan, was under active review in 1985. Discussions were held with a view to amending the Convention to further restrict interceptions of North American salmon and Steelhead trout on the high seas. Agreement to this amendment is expected by mid-1986.

In March, 1985 a technical discussion took place between Canadian and French experts in Ottawa for the establishment of fishing quotas by Canada for French boats in Canadian waters on the Atlantic coast as of January 1, 1987. Trawlers registered in Saint Pierre and Miquelon will have quotas both within and beyond the Gulf of St. Lawrence, while vessels registered in metropolitan France will receive quotas beyond the Gulf only. During this first meeting, the French representatives made proposals that will be studied by their Canadian counterparts before the next set of technical discussions, to be held in Paris at a future date.

The Pacific Salmon Treaty

After the ratification of the Pacific Salmon Treaty at the Shamrock Summit in March, 1985, Canada and the United States have begun to implement the Treaty provisions. The Pacific Salmon Commission has been established with headquarters in New Westminster, British Columbia. The Commission held its inaugural meeting in September 1985 at Seattle, Washington. The 1986 fishing plan, the first agreed to under the provisions of the Treaty, was prepared at the Commission's March 1986 meeting in Vancouver. On the basis of Commission recommendations, the Governments of Canada and the United States have implemented the plan by an exchange of diplomatic notes.

The Pacific Salmon Treaty also calls for the two states to enter into negotiations to regulate the Yukon River Salmon Fishery pursuant to the provisions of the Treaty. Two rounds of bilateral discussions have been held in Fairbanks, Alaska (October 1985) and Whitehorse, Yukon Territory (January

1986). At these sessions, both countries have set out their views on the critical issues of equity (each state to receive the value of all the fish it produces), quotas, stock rebuilding and "deeming" (the concept that a certain percentage of Canadian-bred fish will be "deemed" to be American for catch purposes). At the January meeting, a proposal was tabled for consideration. Negotiations are continuing.

The "La Bretagne" case

Canada and France have referred to an international arbitral tribunal a dispute over fishing by French trawlers registered in Saint Pierre and Miquelon in the Gulf of St. Lawrence. This case began in January 1985, when Canada prohibited the factory-freezer trawler "La Bretagne" from filleting within the Gulf of St. Lawrence. This prohibition was based on the "equal footing" principle set forth in Article 4 (b) of the 1972 fisheries agreement between Canada and France.

As provided for in Article 10 of this agreement, an arbitral tribunal was established by the two parties. It is chaired by Professor Paul de Visscher of the Faculty of Law, Université de Louvain; its members are Professors Donat Pharand, Faculty of Law, University of Ottawa, and Jean-Pierre Quéneudec, University of Paris, Faculty of Law.

On October 23, 1985 Canada and France signed an arbitration agreement for a two-stage written procedure followed by an oral procedure that will take place in Geneva from June 3 to 13, 1986. The arbitration award will be final and binding and should be made between mid-July and early August of 1986.

Space law

At its 25th session in March, 1986 the Legal Subcommittee of the United Nations Committee on the Peaceful Uses of Outer Space had two main items on its agenda. The first was to discuss the legal consequences of remote sensing in space. Canada has been on the leading edge of this technology for a number of years. A working group in which the Canadian delegation participated completed the preparation of draft principles on remote sensing, and a consensus was reached. These principles state that the concepts of freedom of exploration and use of space under conditions of equality apply to remote sensing activities. However, such activities must not be carried out in a manner prejudicial to the rights and interests of the State being observed, which must have access to the data without discrimination or unreasonable price conditions.

Progress was also made in the development of rules for the use of nuclear power sources in outer space, a subject placed on the Subcommittee agenda by Canada, prompted by the disintegration over the Northwest Territories of a Soviet Cosmos 954 satellite in 1978. After several years of exploratory discussions, the Subcommittee was finally given the