Quelques exemples de questions courantes de droit international d'une importance particulière pour le Canada

Some Examples of Current Issues of International Law of Particular Importance to Canada

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NUCLEAR NON-PROLIFERATION AND SAFEGUARDS

During the past two years Canada has been renegotiating its nuclear cooperation agreements with its nuclear customers, a process begun late in 1974 following a review of Canadian nuclear policy in the wake of the Indian nuclear test. Although Canada's new safeguards policy initially encountered some resistance, agreement was reached this year with two uranium customers, Finland and Spain, and two reactor customers, South Korea and Argentina. Understandings on safeguards were reached with the UK and the USA, and the Nuclear Cooperation Agreement with another uranium customer, Sweden, was upgraded by an exchange of notes. Discussions have proceeded with EURATOM, Japan and Switzerland for agreements which would cover not only uranium sales but also any future cooperation involving the sale of nuclear technology.

The Government has continued to pursue its policy, outlined by the Minister for Energy, Mines and Resources on December 20, 1974, of selling uranium and CANDU reactors under strict safeguards to selected customers. This policy is in keeping with Canada's commitments under the Treaty on the Non-Proliferation of Nuclear Weapons to export nuclear items only under safeguards and to ensure that the benefits of lower cost energy which nuclear power promises is shared by all nations. In keeping with this policy, sales of CANDU reactors to the Republic of Korea and Argentina were finalized early this year. Also in keeping with this policy, the Government announced that it was terminating all nuclear cooperation with India as a result of India's refusal to place all facilities and nuclear material in India produced with Canadian assistance under safeguards. Nuclear cooperation with Pakistan has been under review in the wake of Pakistan's purchase from France of a nuclear reprocessing plant whose main current source of irradiated fuel would be a Canadian-supplied reactor.

At the same time Canada has recognized that its bilateral efforts on the non-proliferation front would be ineffective unless the internationally acceptable minimum level of safeguards could be raised to a parallel level of stringency. To promote such international standards Canada has actively supported the activities of the International Atomic Energy Agency and has met with the nuclear supplier nations to discuss safeguards policy. The Secretary of State for External Affairs made a statement in the House of Commons on March 23, 1976 concerning the success of the nuclear suppliers discussions; excerpts from his speech are reprinted at the end of this article.

In addition to the two Canadian reactor sales, a series of commercial transactions around the globe have provided the stimulus for a heightened public sensitivity to nuclear exports both in Canada and elsewhere. Among the most notable transactions were the following:

— The announced sale of a reprocessing plant to the Republic of Korea by a French company.

— The cancellation of this sale by the Korean Government before its purchase of the CANDU reactor from Canada.

— The agreement by West Germany to sell a full nuclear fuel cycle to Brazil following U.S. refusal to do so.

— The sale of a $100 million reprocessing plant to Pakistan by a French company.

— The sale of a nuclear reactor to South Africa by France following delays in a deal with a Dutch-American consortium.

Adding to the growing public uneasiness over the threat to non-proliferation posed by the spread of nuclear technology were reports that Israel was in possession of several nuclear devices.

Production of Weapons-Usable Material - How to Stop It

The year's events have focussed the attention of governments on a major shortfall in the international safeguards system. Countries accepting safeguards are still permitted freely to stockpile weapons-usable material (either uranium highly enriched in U-235, made by enriching natural uranium in an enrichment plant or plutonium-239 separated from spent fuel by the reprocessing of spent fuel in a reprocessing plant). The ready availability of such weapons-usable material within a country's borders shortens the production time for a nuclear weapon from months to weeks, perhaps even days. This time span is too brief for the effective exercise of international sanctions and weakens the credibility of international safeguards. The search for an internationally acceptable solution for this problem was given added urgency by the French and West German sales.

There are a variety of bilateral controls at present which do serve to prohibit such activity unless there is economic justification for it. Canada generally requires that its consent be obtained before any nuclear material of Canadian origin or produced in a Canadian supplied facility can be reprocessed or enriched to more

than 20% in U-235. In addition Canada generally maintains controls over subsequent storage of weapons-usable material. The IAEA/France/-South African Agreement specified that spent nuclear material produced by the reactor could only be reprocessed outside South Africa in a facility acceptable to France. The United States generally retains an option to buy back spent fuel and also retains other bilateral controls to ensure that recipients do not stockpile weapons-usable material. The IAEA/FRG/Brazil Agreement left open the question of the nature of the special controls to be applied to any enrichment plant which Germany might eventually sell to Brazil. This would permit the FRG to insist on the international standard before the contract is finalized, but it makes development of such a standard more urgent than ever.

Technical Aspects of Safeguards

While the deficiences of relying exclusively on safeguards to inhibit proliferation have thus been recognized, many Governments have also realized that safeguards agreements, particularly with states not party to the NPT, require improvement above the standard agreed to by the Zangger Committee in 1974 and published in Agency document INFCIRC 209. The chief improvement would be a requirement that any country wishing to import nuclear items submit to safeguards all its nuclear facilities, not merely that part of its nuclear system which is "contaminated" by imports from states requiring safeguards. A draft "full-scope safeguards" agreement with the IAEA required for such an undertaking has been prepared by the Agency but no recipient state has been prepared to enter into such an agreement to date nor have suppliers been prepared to insist on it. In the absence of such full-scope assurances from its non-NPT trading partners, Canada insists on the broadest possible contamination of the fuel cycles of such states by items or information of Canadian origin.

Other areas of improvement, which have regularly found reflection in agreements approved by the IAEA Board of Governors during the year since the successful completion of the London suppliers discussions, have been the requirement for formal prohibition of explosive uses rather than the "peaceful uses only" formulation which has been in disrepute since the Indian nuclear test on March 18, 1974; the retention of a right by the supplying country to designate facilities built by a recipient of its technology as facilities built with supplied technology; the retention of a right to refuse re-export of supplied technology and the insistence that safeguards must continue so long as the supplied item or any subsequent generation of nuclear material produced with supplied materials, equipment or technology remains in existence.

Increasing nuclear sophistication in many non-NPT states however tends to undercut these technical improvements in safeguards, since safeguards lose much of their political effectiveness once a country achieves nuclear independence. A continuing commitment by all states to the political as well as the technical aspects of non-proliferation remains vital if proliferation is to be retarded.

NUCLEAR SUPPLIERS

Extract from a speech delivered in the House of Commons,
March 23, 1976
by the Secretary of State for External Affairs,
The Honourable Allan J. MacEachen,
on Nuclear Proliferation

We have recently completed a series of meetings with other nuclear suppliers in an effort to improve our system of international safeguards.

International standards, as honourable members will realize, are not static. They have been in evolution since the first agreements for co-operation in the peaceful application of nuclear energy were concluded in the 1950s. The trend in safeguards evolution has been one toward increased stringency both in the legal commitments and verification mechanisms which are required.

The most significant development, of course, that has taken place in the evolution of the safeguards system was the entry into effect of the non-proliferation treaty in 1970. Nuclear suppliers, who have certain generally defined obligations under the N.P.T., met for a number of years in order to define these obligations to a satisfactory working level. In August, 1974, countries that shared or were about to share these obligations, including the United Kingdom, the U.S.S.R., the United States, the Federal Republic of Germany, Japan and Canada, reached a basic consensus, one which was notified to the International Atomic Energy Agency on August 22 of that year, setting out their interpretation in some detail.

The policy of the countries which accepted this consensus required, as a minimum, that in transfers of certain nuclear equipment and materials to non-nuclear weapons states not party to the N.P.T. the safeguards system of the I.A.E.A. applicable to individual projects be applied. The participating countries, which were later joined by others, also stated an undertaking by the recipient not to use the supplied items for any explosive or other non-peaceful purposes as a prerequisite for the transfer. Recognizing the non-proliferation treaty as the keystone for international safeguards, Canada participated in these discussions and accepted the norms which were already consistent with Canadian policy as a basic standard for the safeguards it required. We did, as a country, go further than this particular consensus to which I refer; we went beyond the breadth of the "trigger list", which is fully outlined in the background paper that I tabled in the House on January 30. The details of that policy are clearly set out in that document.

In line with the argument that has been made today by the honourable member for Nanaimo-Cowichan-The Islands, the government was acutely conscious of the fact that one supplier cannot succeed unilaterally in raising the international safeguards standard and that Canada's forward position on safeguards and exports would only have real value and significance if the other major, significant suppliers also agreed to a similar set of policies.

Accordingly, a number of bilateral discussions have been initiated by Canada since the end of 1974 both on the level of officials and in the context of meetings held by the Prime Minister and myself. In part - and I think in significant part - as a result of these initiatives meetings among the officials of a number of countries have been held over the past year to examine the question of safeguards in great detail. There were diplomatic discussions of a sensitive nature, as the honourable member pointed out earlier, and in such cases it is up to the participants, if they wish to do so, to outline their role and policy. I should like to do that today on behalf of the Government of Canada. I might say that all major suppliers presently on the international market shared these consultations, and more may do so. Let me only say this, that as a result of these international meetings Canada has notified certain other interested countries of the standards of safeguards required under its national policy pursuant to the consensus. This was also done by other participants.

This position reflects much, though not necessarily all, of the policy set out in the background paper I have tabled. It is, however, fully consistent with that policy, stipulating, as it does, that transfers of certain equipment, materials and technology will only be authorized on the basis of a formal governmental assurance from recipients to exclude uses which would result in any nuclear explosive devices. These transfers would also trigger the application of the safeguard system of the I.A.E.A., and their retransfer to any third country could only be done on the basis of the consent of the Government of Canada.

It is also stipulated that safeguards should apply to the items covered for their useful life as well as to the subsequent generation of nuclear material produced. It refers to the desirability of imposing provisions for mutual agreement between supplier and recipient on arrangements for reprocessing, storage, alternative use, transfer or retransfer or any plutonium and highly-enriched uranium that is covered. The observance of recommendations and standards for the physical protection of nuclear materials and facilities forms part of this undertaking. The standards also call for safeguards to be triggered by the transfer of technology for heavy-water production enrichment and reprocessing. Canadian policy, I should say parenthetically, places safeguards as well on reactor technology.

It also sets out some of the areas where the government considers progress necessary for promoting non-proliferation, such as the promotion of regional fuel cycles. These are described in the background paper. The standard does not, as Canada would have wished, stipulate that safeguards be applied to the full nuclear programme of the recipient country. Such a requirement is not, however, precluded and achievement of a consensus on this question may be a future result of efforts in the suppliers' group.

I have just given an exposition of Canada's position. This position, or policy is, of course, shared by the other supplier countries concerned about the problem. As the Prime Minister has stated, however, there has been no secret agreement or binding international treaty enforcing this standard. What there has been as a result of consultation among senior technical officials, is a consensus decision expressed in unilateral form by a number of countries to accept certain safeguards principles in all cases of nuclear exports to non-nuclear weapon states, whether party to the N.P.T. or not. More countries are likely, on the basis of review, to make such a decision.

The Canadian Government has pressed, in its discussions, for the highest possible level of safeguards to be applied to all nuclear transfer. We are satisfied that much progress has been made as a result of this effort and that further progress can be made. It is one further stage in the evolution of the international safeguards system. The London Club conclusions, as the suppliers' meetings have been called, have been a success. We have covered one of the difficulties that is encountered by a single country acting alone.

The Canada/European Communities Framework Agreement

On July 6, 1976 a Framework Agreement was signed in Ottawa by the Canadian Secretary of State for External Affairs and the President of the European Council and the Vice-President of the Commission of the Communities. The Agreement was the "contractual link" between Canada and the European Communities which has been the subject of much discussion and negotiation during the past few years. The document has a number of features which are of interest to the international lawyer because they reflect aspects of an evolving legal order governing the European Communities.

The three European Communities (the European Coal and Steel Community or ECSC, the European Economic Community or EEC and the European Atomic Energy Community or EURATOM) were all established by treaties which gave the Communities "European" responsibilities; the jurisdiction of the Communities has progressively expanded as member states relinquish their sovereign rights in such areas as customs tariffs, commercial and agricultural policies and competition policy. The evolving transfer of jurisdiction is resulting in a new and complex legal order governing the relationships between the Communities inter se, between the Communities and the member states, between the member states and other countries and between the Communities and other countries. The evolving transfer of jurisdiction has led to an active international role for the Communities as legal entities.

The Framework Agreement is evidence of the international role now assigned to the Communities but it also reflects the fact that the new jurisdictional responsibilities are still subject to the evolving legal order governing the relationship between the Communities and the member states. For example the main agreement was signed by only three parties -- Canada, the EEC and EURATOM. The ECSC became a party to the Agreement by the combined effect of Article VI and a separate Protocol between Canada and the ECSC which had eleven signatories -- Canada, the Commission and the nine member states.

Also of interest are articles dealing with the relation between the Framework Agreement and existing agreements, either at the Communities' level (Article V,2) or at the bilateral level between Canada and individual member states (Article V,3). Future bilateral agreements were dealt with in Article III,4. Worthy of special notice because of its relative novelty is the provision contained in Article V (3) to the effect that "identical" clauses from existing bilateral agreements would be replaced by those of the Framework Agreement.

The Agreement also raises the intriguing legal question of the relationship between the Communities and the legal régime created by the General Agreement on Tariffs and Trade. In particular Article V(1) refers to the "rights and obligations" of the contracting parties under GATT although it is the individual member states of the Communities who are parties to GATT and not the Communities themselves. It is significant that the Communities appear to be willing to bind themselves by treaty to act in accordance with the rights and obligations created by the GATT; no doubt this reflects the Communities' de facto acceptance of rights and obligations evidenced by their participation in the Dillon and Kennedy Rounds and by their signature of the Anti-Dumping Code. Whether the Communities are GATT Contracting Parties is an interesting but unresolved legal question.

The Carriage of Goods by Sea

During its ninth session, in April and May 1976, the U.N. Commission on International Trade Law completed work on a draft Convention on the Carriage of Goods by Sea. The draft Convention is intended to replace the 1924 Brussels Convention for the unification of Certain Rules relating to Bills of Lading ("The Hague Rules") which for more than fifty years has provided the basis of the international régime governing sea shipment of goods under bills of lading. The draft Convention will be before the current (31st) session of the U.N. General Assembly, which is expected to convene a diplomatic conference in 1977 or 1978 on the subject. Although not a member of UNCITRAL, Canada has taken an active interest in recent developments concerning the draft Convention. Canada is not a party to the Brussels Convention, but the Carriage of Goods by Water Act provides for the application of The Hague Rules in connection with cargoes shipped from Canadian ports.

Dissatisfaction with The Hague Rules has come from two main sources, the traditional maritime shipowning states and the developing countries. The concern of the maritime nations has been to modernize the rules of liability to meet present conditions and to deal with various legal problems - time bar, agency, carrier defences - that have arisen. The third world states, whose interests are mainly those of shippers or cargo owners, believe that traditional maritime law impairs their balance of payments position by being weighted in favour of the carrier. The latter view was expressed in detail in the forum provided by the U.N. Conference on Trade and Development. UNCTAD's Working Group on International Legislation on Shipping in 1971 requested UNCITRAL to examine the subject with the aim of removing uncertainties and ambiguities and of establishing a balanced allocation of risks between the cargo owner and the carrier, with appropriate provisions concerning the burden of proof. UNCITRAL accepted this task and established its own working group on the subject which by early 1975 at its eighth session had agreed upon a draft text. Comments of governments and of UNCTAD were invited and were reviewed by UNCITRAL at its 1976 session when work on the draft convention was completed.

In formulating Canadian comments in response to the U.N. invitation, the several concerned departments and agencies of the federal government consulted with the Canadian Maritime Law Association. The CMLA, which had also been consulted by the Comité Maritime International, prepared its views in consultation with the Canadian Transport Commission. In general terms, Canadian views were aligned more toward

the cargo owning interest than toward the ship owning interest. They reflected the concerns of Canada, as a nation with an open economy dependent on its exports, to improve the legal régime under which many of its products are exported.

Canadian comments (without describing them or the draft convention in detail) were derived from the basic premise that where a contract for the carriage of goods by sea is one of adhesion, or where the consignee or other receiver of the goods was not a party to the concluding of the contract, a convention is needed to make the terms and conditions of such a contract fair and reasonable for those "innocent" parties while at the same time striking an equitable balance between the parties to the contract. From this premise, others evolved:

1. In the interests of uniformity in its application, the convention should provide only for those matters which are not properly the exclusive concern of the domestic law of contracting States.

2. The rights and liabilities of the carrier under the convention in relation to a contract of carriage should extend to his servants and agents.

3. The convention should apply strictly to the performance of a contract of carriage by sea. It should codify some mandatory elements of the relationship between the parties to a contract of carriage, namely, the carrier and the shipper, and especially their rights and liabilities, while protecting the right of the consignee or other person authorized by him to take delivery of the goods in the same condition as when they were shipped. The contract of carriage, concluded on the basis of good faith, should not be allowed to alter or over-rule any of these rights and liabilities; thus, the convention should be binding upon the parties and there should be no opportunity for opting out.

4. The convention should apply to the carriage of all goods by sea. The convention should apply to cargoes outwards and inwards, but not to domestic carriage unless it is determined by each State individually that the application of the convention to such carriage is in its public interest.

5. The carrier should have a duty to provide and maintain a vehicle of transport suitable to the nature of the goods to be carried. During the period of his responsibility for the goods, the carrier should have a duty to care for the goods as if they were his own.

6. The shipper should have a duty to inform the carrier of the true nature of the goods to be carried, of any special vice inherent in them and of any special characteristics of the goods which might bear upon the manner in which they would be loaded, handled, stowed, cared for and discharged.

7. The period of the carrier's responsibility for the goods should be limited to and extend from the time when the goods come under his control to the time when he relinquishes control over the goods by handing them over to the consignee or other authorized person.

8. The convention should recognize a bill of lading as the document of transport which would serve, in the absence of a formal contract of carriage, as a document of title, a receipt for goods shipped and as evidence of a contract of carriage. The issue of a bill of lading by the carrier would constitute an undertaking by him to deliver the goods to the person named therein or to the endorsee thereof or to the person entitled to take delivery of the goods.

9. The convention should not apply to multimodal carriage but strictly to the carriage of goods by sea, determined by the period of responsibility of the carrier as provided in the convention.

Specific Canadian comments derived from these premises were, of course, directed to several parts of the draft convention. They have to a considerable extent been reflected in the final draft, although there are of course many areas in what is now a delicately balanced text where Canada considers that improvements could still be made.

The draft convention that has emerged from five years of work is considered by the Canadian Government as a satisfactory basis for a conference, and it has also been considered generally acceptable for that purpose by most of the carrier and shipper nations. There are

many who consider that some parts of it go too far in shifting the balance of risks in favour of the shipper, while others believe that it does not go far enough. Whether a new convention will eventually come into force and provide a changed international legal regime for the carriage of goods by sea will depend on the acceptability to states of a text reached at a diplomatic conference on the basis of the UNCITRAL draft.

The Law of State Responsibility: The Greenpeace Incident and the Claim of David McTaggart

In March of 1975 the Government of Canada formally espoused the claim of David McTaggart against the Government of France. The fact situation and the espousal have raised interesting questions concerning the "local remedies rule" in the public international law of state responsibility.

The facts upon which the claim is based are as follows. In the summers of 1972 and 1973, David McTaggart, a Canadian citizen, sailed his boat, the "Greenpeace III" into an area of the Pacific Ocean on the high seas which had been declared a restricted nuclear testing zone by the Government of France. The restricted zone consisted of an area within a radius of 60 marine miles of the French possession, Muroroa Atoll. The French Government stated that the purpose in restricting navigation in that area was to ensure the safety of vessels and those on board during its nuclear tests.

On June 30, 1972, the French minesweeper "Paimpolaise" collided with the "Greenpeace" on the high seas within the restricted zone. McTaggart subsequently sued the Government of France. On June 17, 1975, the Tribunal de Grande Instance de Paris (1ère Chambre, 3e section) a French civil court, gave judgment against the French Navy; the assessment of the quantum of damages was to be determined by further proceedings which should be completed shortly.

On August 15, 1973, French navy personnel boarded and seized the "Greenpeace III" while it was sailing on the high seas outside the 12-mile territorial limit of the atoll but within the restricted zone. Although there was initially a dispute concerning the facts of this incident it is clear that Mr. McTaggart suffered a serious injury to one eye which was caused by armed personnel of the French navy. McTaggart was held for treatment in a Tahitian medical centre until a Canadian diplomat secured his release. His crew was held for approximately eight days on the Hoa Atoll until their release through Papeete. The Canadian Government arranged for the return of the "Greenpeace III".

McTaggart sued the Government of France with respect of this incident in the French civil courts and both the court of first instance and the court of appeal held that they lacked jurisdiction over the case and suggested that he seek his remedy in the French administrative courts, specifically the "Conseil d'Etat". McTaggart has not pursued his remedy in the "Conseil d'Etat".

The general rule of public international law provides that before a state can espouse a claim of one of its citizens against another state the citizen must first pursue the remedies open to him within the domestic laws of the state against which the claim is made. The decision of the Government of Canada to espouse the claim of McTaggart is founded upon an exception to the exhaustion of local remedies rule, an exception which is based upon the same policy considerations which lead to the creation of the rule. If a person, who has suffered an injury at the instance of a state of which he is not a national, is a resident of that state, or present in the state when the injury occurs, or carrying on business with the state or its nationals it can be inferred that he submits, initially, to the jurisdiction of the State. The respondent state should then have the opportunity of redressing the grievance before the dispute acquires the characteristics of an interstate claim. If a claimant has not created a residential or contractual tie with the respondent state it is illogical in theory and often financially prohibitive in practice to expect him to pursue his remedies within the venue of the respondent state.(1) In the instant case Mr. McTaggart suffered his injury on the high seas and had not established the necessary factual "link" to require him to exhaust his legal remedies under French domestic law as a prerequisite to an espousal of his claim by the Government of Canada.

It is interesting that British common law supports the above analysis in that it distinguishes between remedies for tortious actions of agents of the Crown which are committed within the jurisdiction of the State from those committed abroad. In the case of Johnstone v. Pedlar, Lord Finlay said the following:(2)

> "It is the settled law of this country ... that if a wrongful act has been committed against the person or the property of any person the wrongdoer cannot set up as a defence that the act was done by the command of the Crown. The Crown can do no wrong, and the Sovereign cannot be sued in tort, but the person who did the act is liable in damages, as any private person would be. This rule of law has, however, been held subject to qualification in the case of acts committed abroad against a foreigner. If an action be brought in the British courts in such a case it is open to the defendant to plead that the act was done by the order of the British Government, or that after it had been committed it was adopted by the British Government. In any such case the act is regarded as an act of the State of which a municipal court cannot take cognizance. The foreigner who has sustained injury must seek redress against the British Government through his own Government by diplomatic or other means."

Lord Reid quoted this with approval and indicated that although the views were obiter dicta, he "would regard the weight of the opinion as falling little short of the weight of a considered decision of the House".(3) It is beyond the scope of this note to discuss the situation under French Law.(4)

In summary the Government of Canada has espoused the claim of David McTaggart against the Government of France and holds the opinion that his claim falls within an exception to the exhaustion of local remedies rule.

Footnotes:

1. Interesting discussions of the exceptions to the exhaustion of local remedies rule may be found in the following works:

   C. F. Amerasinghe - State Responsibility for Injury to Aliens (Oxford, 1967) pp 192-99;

   T. Meron - "The Incidence of the Rule of Exhaustion of Local Remedies" in 35 B.Y.I.L. (1959 at pg 101), in particular reference to the link theory at pp 94-95 and 101;

   Haesler, Thomas - The Exhaustion of Local Remedies in the Case Law of International Courts and Tribunals, (Sythoff, 1968) at pg 18;

   Law, Castor H.P. - The Local Remedies Rule in International Law (Paris, 1961)

   J.E.S. Fawcett - "The Exhaustion of Local Remedies: Substance or Procedure?" B.Y.I.L.(1954) at pg 455;

   D. P. O'Connell - International Law (London, 1970) pg 950.

2. Johnstone v. Pedlar (1921) 2 A.C. 262, Lord Finlay at pg 271.

3. Attorney-General v. Nissan (1970) A.C. 205, House of Lords as quoted in 44 International Law Reports (Lauterpacht ed.) at p. 265. For contrary views, see McNair, International Legal Opinions, Vol 2, p. 302.

4. Interesting views on French policy on creation of contiguous zones beyond territorial sea are found in:

U.N., Official Documents of the General Assembly, XIII Session, 6th Committee P. 183, representative of France, M.Chaumont; Ch. Rousseau, Droit International Public (Paris, 1965, 3rd ed.) pg 225, 252-253; G. Gidec, Le Droit International Public de la Mer (Paris, 1934) Tome III, pg 372; text of latter was quoted by French Representative to the 1958 Conference on the Law of the Sea, April 8, 1958, Official Documents, Vol. III, pp. 123-124; M. R. Simmonet, La Convention sur la Haute Mer (Paris, 1966) at pg 294; In re Société Iguazio Messina (Conseil d'Etat) as reported in 47 International Law Reports at pg 164. The latter two references discuss specifically the rights of the individual under French law in a restricted contiguous zone.

International Organizations

The International Conference on the Establishment of an International Maritime Satellite System, which met in three sessions in 1975 and 1976, concluded its work by adopting and opening for signature on September 3, 1976, the "Convention on the International Maritime Satellite Organization (INMARSAT)" and the "Operating Agreement on the International Maritime Satellite Organization (INMARSAT)". The Organization which will be established upon the entry into force of these documents has a number of interesting features.

The Organization is to provide the space segment necessary for an international system for communication with ships by satellite, in effect a maritime counterpart to INTELSAT, though some significant differences are noted below.

For most governments taking part in the Organization, the financial contribution to the Organization's expenses will be from public funds. Because the U.S.A. was unable to provide its contribution from public funds, however, the structure of the Organization was designed to permit U.S.A. participation through a designated private commercial agency.

The Parties to the Convention will be sovereign states. The Signatories to the Operating Agreement will be public or private entities designated by the states parties to assume certain obligations in the Organization. The division of the "constitution" of the Organization into two documents reflects the distinction between those obligations which must be assumed by governments, and which are found in the Convention, and those which may be assumed by private entities, found in the Operating Agreement. The significance of this division is underlined by the fact that the financial rights and obligations are contained in the Operating Agreement and it is the designated Signatories to that document who will sit on the Council, which is to be the effective operational organ of INMARSAT. The use of the term "member state" was deliberately avoided in the documents in order to avoid any suggestion that designated entities were not members of the Organization.

Not only is INMARSAT an operational (as distinct from a consultative, advisory or regulatory) organization, its purpose is largely, though not entirely, commercial. Whereas the basic objective of INTELSAT's operation is the provision of the space segment of a public telecommunications service by satellite "on a commercial basis",

with non-commercial services occupying a clearly subsidiary role, INMARSAT had to be tailored to provide a service responding equally to commercial requirements for public correspondence and to government requirements in such areas as distress, safety and navigation.

At the same time it was necessary to establish operational principles for the Organization which would enable it to attract capital participation from the U.S. private sector. This balance is reflected in two provisions of the Convention.

> "The purpose of the Organization is to make provision for the space segment necessary for improving maritime communications, thereby assisting in improving distress and safety of life at sea communications, efficiency and management of ships, maritime public correspondence services and radiodetermination capabilities." (Article 3(1))

> "The organization shall operate on a sound economic and financial basis having regard to accepted commercial principles." (Article 5(3))

The INMARSAT Organization is likely to differ from INTELSAT in another very significant respect. Unlike INTELSAT, which was brought into being under largely U.S. auspices, the INMARSAT agreements were negotiated under the auspices of a U.N. Specialized Agency (IMCO). The Soviet Union and other socialist states of eastern Europe, which have refrained from participating in INTELSAT, played a leading role in the INMARSAT Conference and clearly intend to play a major role in the Organization itself. Indeed the greatest significance of the INMARSAT Convention may be that it indicates acceptance by the international community of the INTELSAT type of organizational structure.

This nascent Organization, conceived under U.N. auspices and designed to operate at least in part in the commercial, high-technology field of satellite communications, presents features of particular interest to the international lawyer. The Convention is clearly a treaty and the rights and obligations of states parties to it will be governed by the law of treaties. What law will operate to determine the rights and obligations of Signatories to the Operating Agreement? Will the answer vary depending upon whether one of the Signatories which is a party to a dispute is a private commercial entity? The operating Agreement contains a provision for compulsory arbitration of disputes. The Annex to the Convention which establishes the disputes settlement procedures for both the Convention and the Operating Agreement, provides that the decision of the arbitral tribunal "shall be in accordance with international law and be based upon ... generally accepted principles of law". The obviously carefully-chosen words do not resolve the issue.

A related issue arises in connection with the privileges and immunities to be accorded to designated entities, their officers and employees where the entity is a private commercial corporation. The Convention provides that Signatories "acting in their capacity as such" shall be exempt from national taxation on income earned from the Organization. The Convention further provides for the conclusion of subsidiary agreements establishing the privileges and immunities of, inter alia, representatives of Signatories exercising their functions. For Canada, this raises the question of the application to a private commercial designated entity, its officers and employees, of the Privileges and Immunities (International Organization) Act. This question has already arisen in the INTELSAT context, but the relevant Protocol between that Organization and Canada has not yet been negotiated and the issue has, as a result, not yet been resolved.

Canada Treaty Series

The Canada Treaty Register, maintained by the Treaty Section of Legal Advisory Division, reports that action was taken during the past twelve months (July 1, 1975 - June 30, 1976) in connection with 21 multilateral and 53 bilateral agreements.

This Section continues to provide answers to a great number of written or oral questions from other divisions, other departments of Government, foreign governments and the general public concerning treaties to which Canada may or may not be a party.

A cumulative index to the Canada Treaty Series covering the years 1965 through 1974 has been compiled and will be available shortly. An index to the 1975 Series plus 12 individual treaties which entered into force in that year remain to be published, while in the 1976 Series, 25 treaties are already in the process of publication.

Notice of the publication of the cumulative index and of individual treaties will appear in the Daily and Monthly Checklist of Government Publications, available from the Publications Centre, Supply and Services Canada, 270 Albert Street, Ottawa, K1A 0S9. Individual copies of treaties may also be purchased from that Centre.

Environmental Law

The Boundary waters Treaty of 1909 and in particular the reciprocal obligations created by Article IV continued to play a prominent role in bilateral environmental discussions between the Governments of Canada and the United States over the past year. That article stipulates that boundary waters and waters flowing across the boundary "shall not be polluted on either side to the injury of health or property on the other".

This obligation has formed the basis for discussions between the two governments on the Garrison Diversion Unit, an irrigation scheme which would divert the waters of the Missouri River to irrigate one quarter million acres in North Dakota and direct return flows into the Souris and Red Rivers. On the basis of studies conducted in the United States and in Canada, the Canadian Government has concluded that if the project is completed according to present plans, it will have adverse effects on the Canadian portions of the Souris, Assiniboine and Red Rivers and on Lake Winnipeg which would cause injury to health and property in Canada in contravention of Article IV of the Boundary Waters Treaty.

The United States Government has formally confirmed its obligations under Article IV of the treaty, and has informed the Canadian Government that this obligation will be honoured. The discussions between officials of the two governments had been directed toward ensuring that transboundary pollution resulting in a breach of the treaty does not occur and resulted in the preparation of a reference to the International Joint Commission (IJC) under Article IX of the Boundary Waters Treaty.

In October 1975, the Canadian Government formally requested the IJC to prepare a report on the potential effects of the Garrison Diversion Project on Canadian portions of transboundary waterways in order "to assist both the Governments of Canada and the United States in ensuring the provisions of Article IV of the Boundary Waters Treaty are honoured".

The Commission was requested to investigate the following matters:

a) the present state of water quality in the Souris and Red Rivers, the tributaries and other downstream waters with particular reference to the Canadian portions thereof, which may be affected by the proposed completion and operation of the Garrison Diversion Unit;

b) the present use of these waters and their uses which may reasonably be anticipated in the future;

c) the effects of present water quality on these uses;

d) the nature, extent and location of inputs on the quality and quantity of these waters to be anticipated as a result of the proposed completion and operation of the Garrison Diversion Unit;

e) the nature, extent and economic cost of such inputs to be anticipated from the proposed completion and operation of the Garrison Diversion Unit on the present and anticipated future uses of these waters; and

f) the nature and extent of the input on commercial and recreational fisheries in Manitoba, particularly Lake Winnipeg, of the possible introduction from the Missouri River system through the Garrison Diversion Unit of foreign species of fish, fish diseases and fish parasites.

The Commission has been in session for a year and its report was scheduled for October 31, 1976. However, due to delays in preparation of background scientific data, the IJC's recommendations will not be ready before 1977.

Consultation prior to implementation of a project in order to ensure adherence to Article IV of the Boundary Waters Treaty is illustrated also in the Poplar River Project. This is a power proposal of the Saskatchewan Power Corporation (SPC) to construct a coal-fired thermal electric generating station, a water reservoir to provide a coolant and a coal strip-mining operation. This system would be located within five miles of the international border.

Construction is proceeding and a license has been issued to the SPC by the Federal Department of the Environment subject to certain terms and conditions, one of which is that "the licencee shall construct, operate and maintain the improvement in such a manner as shall not contravene any provision of the International Boundary Waters Treaty of 1909".

A desire by Canada to comply with Article IV of the treaty and concern on the part of the United States, led to the IJC being requested to carry out a water apportionment study. This report is expected shortly.

At a meeting between the Governments of Canada, the United States, Saskatchewan and Montana held in Regina on March 5, 1976, the Canadian Government reiterated that Canada would meet its obligations under the Boundary Waters Treaty. On the recommendation of the IJC an international monitoring network in the Poplar basin will be established to provide basic data on the existing water quality and any changes in that quality.

At another meeting held in Washington on July 12, 1976, an ad referendum agreement was reached between Canada and the United States which would lead to negotiation on the terms of a joint water quality reference to the International Joint Commission.

Another transboundary environmental problem to which the Boundary Waters Treaty is applicable concerns the Skagit Valley in British Columbia, although in this case flooding is the main concern. The roots of the problem date from 1941 when the city of Seattle applied to the IJC under the terms of the treaty for authority to raise the water level of the Skagit River by increasing the height of the Ross Dam in the state of Washington, the effect of which would be to flood approximately 5,475 acreas of land in British Columbia. In a 1942 Order the Commission gave its approval subject to certain conditions, one of which was that Seattle adequately compensate Canadian interests that might be affected. In 1967 British Columbia and Seattle concluded a binding compensation agreement. Since then public concern over the environment has increased and British Columbia now opposes the flooding of one of the last surviving wilderness areas in the southern part of the province, a position which is supported by the Federal Government.

In June 1974, the Government of British Columbia presented a "request" to the International Joint Commission challenging the legal validity of the 1942 Order. The Commission in response asked the four governments involved for opinions on whether the Commission had jurisdiction to review its 1942 Order. Briefs were submitted by the four governments but the Commission has deferred any decision on the matter pending the outcome of negotiations in which the city of Seattle and British Columbia are attempting to reach a private settlement of the dispute.

These negotiations are an attempt to reach a mutually satisfactory settlement that would prevent flooding of the Skagit Valley and yet supply Seattle with additional power. On February 4, 1976, the presiding judge of the U.S. Federal Power Commission ordered that the license granted Seattle in 1927 be amended subject to certain conditions to permit completion of the Ross Dam. This is only an initial ruling; the final decision, subject to appeal, is expected at the end of 1976. Meanwhile it has been suggested that rather than raise the Ross Dam, British Columbia might compensate for the lost energy capacity by modifying the Seven Mile Dam now under construction on the Pied-d'Oreille River, thereby increasing generating capacity and permitting export of energy to Seattle while preserving the Skagit Valley.

The problem of transboundary flooding is also raised by the Dickey-Lincoln Project, a hydroelectric system under consideration for the Upper St. John River Valley in Maine. Such a project, still in the study stage, could have marked environmental effect on areas of New Brunswick and Quebec. The United States Corp of Engineers is in the midst of an environmental impact statement (EIS) on the proposal. The Canadian Government is following the developments with great interest, particularly that part of the project that would affect Canadian provinces.

Environmental problems are also present on both our coasts. Of continuing concern to the Canadian Government has been the proposal by the Pittston Company to build an oil refinery and terminal at Eastport, Maine. The only possible route for a tanker supplying Pittston would be through Canadian waters at Head Harbour Passage. Due to the narrow channels, treacherous currents, and variable weather conditions as well as the close proximity of valuable fishing grounds, the Canadian Government has expressed strong opposition to the United States authorities on any proposal calling for the transportation of petroleum products through these Canadian waters.

Pittston received the approval of the Maine Board of Environmental Protection to proceed with construction of the refinery in June 1975. The approval, which is currently before the courts on appeal, was given subject to a set of criteria which included executing agreements with, or receiving approval from appropriate Canadian authorities regarding the movement of tankers through Canadian waters. The Environmental Protection Agency in the United States is preparing an EIS on the project. To date this report has not been released and Pittston has not made an approach to the Canadian Government to satisfy the Board's conditions. There have been no circumstances to alter Canada's basic objections to transport of oil through these Canadian waters.

On the West Coast, continuing discussions have taken place in light of the anticipated increase in tanker traffic in the Puget Sound area which will result from completion of the pipeline from the north slope oil field in Alaska. The "Comprehensive Oil Pollution Liability and Compensation Act" introduced in July 1975 is still before the American Congress. If passed it would supersede the liability and compensation provisions of the Trans-Alaska Pipeline Authorization Act. The proposed Act would afford better access for residents of Canada to compensation arising from environmental damage which might occur from the transportation of Alaska oil down the West Coast. On the state level, an attempt by Washington to control the size of tankers entering its waters failed when a three-man Federal District Court

declared a law limiting the size of tankers in Puget Sound to 125,000 tons unconstitutional.

In conjunction with these pollution prevention systems technical discussions will be taking place between Canada and the United States in the fall of 1976 to develop a traffic management system for the Pacific regions, and specifically for the Strait of Juan de Fuca and Georgia Strait, in order to provide a system to control the movement of tankers so as to minimize the likelihood of collision and other marine accidents.

With respect to Beaufort Sea drilling activity, Canada initiated discussions with the U.S. in February 1976 in light of the principles formulated by the OECD in 1974 calling for prior notification of projects having potential transfrontier pollution effects and consistent with general Canada/U.S. practice in environmental matters. A number of talks with U.S. officials were held both before and after the issuance of drilling authorities to Dome Petroleum Ltd. Since there were legal difficulties in extending the statutory remedies available to Canadian residents under the Arctic Waters Pollution Prevention Act to U.S. residents, an arrangement was developed whereby the Beaufort Sea operators have entered into an agreement, guaranteed by a bond, whereby an amount of $10 million would be available to satisfy U.S. claimants in the event of an oil well blowout in the Beaufort Sea. Interagency discussions have also begun on drafting joint oilspill contingency plan applicable to any clean up operations which may result from an oil well blowout in the area.

On the multilateral level there have also been developments in relation to environment protection. Canada proclaimed in force the Ocean Dumping Control Act on December 13, 1975 which is "to provide for the control of dumping waste and other substances in the ocean". This statute will implement the obligations placed upon Canada by the 1972 Convention on the Prevention of Maritime Pollution by the Dumping of Wastes and Other Matters which itself came into force on August 30, 1975. Canada deposited its instrument of ratification in December 1975. As a full member Canada attended the first consultative meeting of the contracting parties which was held in London from the 20-24 of September 1976. This was basically an organizational meeting in which important procedural rules and methods to be used in relation to the effective operation of the Convention were discussed and established.

There have been further developments in the international legal control of the military use of weather modification

activities. In July 1974, the United States and the Soviet Union in a joint statement advocated measures to overcome this danger. A draft resolution was submitted to the U.N. General Assembly by the Soviet Union. Resolution 3264 (XXIX) took note of the Soviet proposal and called upon the Conference of the Committee on Disarmament (CCD) to proceed with the preparation of a draft text of the proposed convention. In August 1975, both sponsors tabled in the CCD parallel draft conventions. The CCD established a working group for the purpose of considering modifications to the identical texts. This working group held sessions from July 2 to September 1, 1976 at which time revisions and amendments were considered by those nations participating, including Canada. These meetings have been adjourned and the U.N. resolution may be placed before the General Assembly at its XXXI Session seeking endorsement of the draft convention and asking that it be opened for signature and ratification.

Le droit international de la pêche

Il ne fait aucun doute que l'année 1976 marquera un tournant décisif dans l'évolution du régime de gestion et d'exploitation par les Etats côtiers de leurs ressources halieutiques. Deux sessions en 1976 de la Conférence des Nations Unies sur le droit de la mer, en mars et en août, n'ont fait que confirmer le consensus qui s'était déjà dégagé de la deuxième session à Genève, en 1975, et qui reconnaît progressivement aux Etats côtiers le droit de gérer et d'exploiter les ressources biologiques se trouvant dans une zone de 200 milles marins de leurs côtes. Ce droit comporte cependant en contre-partie l'obligation pour l'Etat côtier d'assurer la pleine utilisation de ces ressources, en accordant aux navires étrangers qu'il désignera l'accès à toute portion de ces ressources qui dépasserait la capacité d'exploitation des pêcheurs de l'Etat côtier.

A la lumière de cette évolution, et devant la nécessité de mettre fin à la déprédation des stocks par les flottes étrangères, les autorités canadiennes ont mis en branle vers le milieu de 1975 un processus de négociation avec les pays qui allaient être les plus durement touchés par l'extension à 200 milles de la zone canadienne de pêche, et qui avaient manifesté un intérêt à mettre sur pied à l'avance le régime de gestion qui devait à plus ou moins courte échéance s'appliquer à leurs navires. C'est ainsi qu'un an plus tard, en juillet 1976, cinq ententes bilatérales ont été conclues sur la base de la future zone de 200 milles du Canada, avec la Norvège, la Pologne, l'URSS, l'Espagne et le Portugal. Selon ces accords, ces pays, reconnaissant à l'avance le droit du Canada à étendre sa compétence en matière de pêche, conformément au consensus qui se dégage de la Troisième Conférence sur le droit de la mer, se voient assurer la poursuite de leurs opérations de pêche dans les futures eaux canadiennes, selon les conditions qui seront établies par le Canada, pour une part des stocks qui excéderont la capacité d'exploitation canadienne.

Le 4 juin 1976, le Secrétaire d'Etat aux Affaires extérieures et le Ministre d'Etat de la Pêche annoncent la décision du Gouvernement d'étendre à 200 milles, d'ici le premier janvier 1977, la compétence territoriale du Canada en matière de pêche. Cette mesure s'est avérée nécessaire devant l'exploitation abusive des stocks de poisson par des flottilles étrangères dont la technologie et la capacité de capture dépassent largement le potentiel de rendement des mers; il faut au plus tôt freiner le déclin des ressources halieutiques et assurer, au cours de la prochaine décennie, le rétablissement des pêches côtières et hauturières. Dès l'extension de la juridiction de pêche, les autorités canadiennes seront seules compétentes pour juger du volume global des stock de poissons dans sa zone, pour fixer le total annuel de captures permises (TAC),

pour déterminer la capacité de capture des pêcheurs canadiens, et pour établir la part du TAC en excédent de cette capacité de capture, qui serait offerte aux navires étrangers opérants en vertu d'un permis canadien. Le décret d'extension sera édicté sous l'autorité de la Loi sur la mer territoriale et les zones de pêches, d'abord promulguée en 1964 et modifiée en 1970; selon les dispositions de cette Loi, le Gouvernement publiera dans la Gazette du Canada, 60 jours au moins avant son entrée en vigueur, le projet du décret prolongeant la zone de pêche. Pour assurer la mise en application du nouveau régime de pêche, des règlements seront adoptés selon les dispositions de la Loi sur la protection des pêcheries côtières et la Loi sur les pêcheries.

En ce qui concerne particulièrement les eaux au large de la côte atlantique du Canada, le Gouvernement a entrepris, à titre de mesure provisoire pour 1977 seulement, de donner cours aux règlements adoptés avec l'accord du Canada par la Commission internationale des pêcheries de l'Atlantique nord-ouest (ICNAF, selon le sigle anglais). Les contingents de prises fixés par l'ICNAF pour 1977 correspondent en général à ceux qu'aurait fixés le Canada dans le cadre de la zone de 200 milles.

Des pourparlers sont en cours ou sont envisagés avec les Etats voisins du Canada: les Etats-Unis, la France (en raison des Iles St-Pierre et Miquelon) et le Danemark (pour le Groënland). Il s'agira de prévoir des mesures de coopération dans la mise en application des zones respectives de pêches dont la délimitation pourrait être sujette à discussion. Dans certains cas, en ce qui concerne particulièrement les Etats-Unis et accessoirement la France, il convient de revoir les accords qui prévoient actuellement des droits réciproques de pêche, et de voir dans quelle mesure ces éléments de réciprocité pourraient être maintenus et développés dans le contexte nouveau du régime de zones élargies.

Enfin, une revue est en cours de tous les accords de pêche auxquels le Canada est lié, afin de déterminer les modifications qu'il sera nécessaire d'y apporter pour les rendre compatibles avec la juridiction élargie du Canada sur les ressources biologiques dans une zone de 200 milles marins au large de ses côtes.

OUTER SPACE LAW

During the past year, Canada continued to participate actively in the work of the United Nations' Committee on the Peaceful Uses of Outer Space and, more particularly, in the work of its Legal Sub-Committee. Canada's involvement in this Sub-Committee is coordinated by the U.N. and Legal Planning Section of Legal Operations Division, Department of External Affairs.

In an attempt to keep pace with rapidly advancing technology, the Legal Sub-Committee, this past year, continued to consider the following subjects as matters of high priority: the draft treaty relating to the moon; the elaboration of principles governing the use by States of artificial earth satellites for direct television broadcasting; and the legal implications of remote sensing of the earth from space.

With respect to the Draft Moon Treaty, there has been little progress. In the course of previous sessions of the Sub-Committee no agreement could be reached on questions concerning the scope of the treaty, information to be furnished on missions to the moon and the natural resources of the moon. At the Fifteenth Session of the Sub-Committee priority was again given to the question of the moon's resources since many delegations believed that a resolution of this problem would facilitate agreement on the remaining two issues. Basic differences remain, however, between those countries which believe the moon's resources should be treated as the "common heritage of mankind" and those who do not wish to place undue international legal restrictions on research and unforeseen future prospects for exploitation of the moon's resources.

Considerable progress has been made, however, in the elaboration of Principles to Govern the Use of Satellites for Direct Television Broadcasting. At its last session, the Legal Sub-Committee was able to draft nine principles relating to the following: purposes and objectives, applicability of international law, rights and benefits of states, international cooperation, state responsibility, duty and right to consult, peaceful settlement of disputes, copyright and neighbouring rights, and notification to the United Nations. Canada, jointly with Sweden, has played a major role in the development of these principles by initiating a series of proposals many of which are reflected in the principles noted above. Canada and Sweden believe that a concerted effort should now be made to complete a full set of

draft principles, including principles to regulate consent and participation. On this latter point, the two countries believe that the most effective way to ensure an orderly development of this technology, and to avoid its abuse, is through international cooperation complemented by principles requiring the consent of receiving states to the establishment of direct television broadcasting systems which are intended to broadcast specifically at those States and the right of these States to participate in activities related to the setting up of such systems. Canada was pleased to note growing support for this approach at the last session of the Legal Sub-Committee.

Considerable progress was also made during the past year on the question of the legal implications of remote sensing of the earth from space. At the Fifteenth Session of the Legal Sub-Committee five common elements identified at the Fourteenth Session were converted into draft principles relating to the following issues: purposes and objectives of remote sensing, applicability of international law, international cooperation and participation, protection of the environment and technical assistance. In addition, three further common elements were identified: the role of international organizations, information on natural disasters and a duty to avoid detrimental uses of remote sensing. In spite of this relative success, there are still basic differences between States which will require resolution before any meaningful set of principles can be drafted. Substantial disagreement exists between the United States and most European countries on the one hand, and several developing countries and the Soviet Union on the other, on whether and how sensed states could protect themselves from acquisition and release of information acquired by the sensing state which could be detrimental to the interests of the sensed state. Following a careful and thorough review of Canada's national experience and of the international legal implications of remote sensing, Canada, in the last session of the Legal Sub-Committee, advanced a series of propositions designed to reflect a recognition of the need to safeguard national interests without creating obstacles to the maximum cooperative utilization of this promising technology. The underlying objective would be to develop an international legal regime for remote sensing which would be cautionary without being stifling. Canada believes these propositions will help to provide a basis for further progress at the next session of the Legal Sub-Committee.

HUMANITARIAN LAW IN ARMED CONFLICTS

From April 21 to June 11, 1976, delegates from 104 courtries met in Geneva for the Third Session of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law. This was part of the ongoing process of updating and revitalizing the norms of international humanitarian law contained in the Geneva Conventions of August 12, 1949 for the Protection of War Victims by the eventual adoption of two Additional Protocols to these Conventions.

The Canadian delegation was headed by the former director of Legal Operations Division at the Department of External Affairs; the alternate head of the delegation was the senior legal adviser of Canadian Forces in Europe.

This year's session attempted to pursue several difficult issues left from the second session and satisfactorily resolved some but not all of them. The atmosphere was perhaps less conducive towards constructive compromise than last year, but the issues discussed were more intricate and crucial. Such progress as was made in the adoption at committee level of some 23 articles, plus the technical annex of Protocol I on international armed conflicts and 14 articles of Protocol II on non-international armed conflicts, was often accomplished only after prolonged debates and negotiations.

Following is a review of the work done by the committees of the conference.

Committee I:

The most significant accomplishment was the consensus adoption of the grave breach provisions of Protocol I. Despite a list of well over 40 separate suggestions, the resulting article contained only 11 specified grave breaches; some reflect current political pre-occupations of some states (e.g. apartheid war crimes) that may defy adequate translation into national legislation. The committee also made relatively good progress on Protocol II by adopting a basic article on penal responsibility, a useful formulation on reprisals, as well as articles on the execution of the Protocol relating to its dissemination, special agreements and the right of ICRC to offer its services to parties to the conflict. Several developing countries expressed continuing concern, however, that such an offer if made to rebels could both politicize and internationalize such internal armed conflicts. Left to next year were the concepts of taking reprisals under certain conditions, superior orders, the extradition of those committing grave breaches and the proposed commission of enquiry to enforce Protocol I. In addition the committee will have to consider the usual final provisions for both Protocols, with the attendant problem of how non-state national liberation movements can indicate their adherence to Protocol I.

Committee II:

Committee II was easily able to complete the adoption of all articles of both Protocols dealing with the wounded and sick and with medical transports. A series of articles on missing and dead persons and on war graves was accepted after intense negotiations among the USA, West Germany, East Germany and USSR with Canadian participation. The technical annex to Protocol I on signalling and the marking of medical transports was also adopted. However the chapter on Civil Defence was deferred pending resolution of the whole Civil Defence issue which itself proved highly contentious since differences remained mainly over the way military units and personnel so engaged should enjoy protection and whether Civil Defence personnel should be permitted small arms while so protected. The committee failed, however, to take up relief in either Protocol, although efforts were made to find more suitable provisions for Protocol I by, among others, Finland, Australia and Canada.

Committee III:

Committee III adopted a series of articles in Protocol I respecting individual rather than state obligations (e.g. the prohibition of perfidy and the determination of POW status based on the Geneva Conventions). A background to debate was the unresolved and thorny issue concerning new categories of POWS covering essentially guerrilla fighters in national liberation wars. For instance, the prime example of perfidy discussed was feigning civilian status in killing or injuring the adversary, but since guerrilla fighters often wear civilian clothing, it was advocated principally by the Arabs that this should not be pleaded to avoid protection for guerrillas as a new category of POW. It was agreed that this would be dealt with in the elaboration of such a new category next year. A new concept affecting all provisions adopted by the committee is the common definition for all armed forces, whether regular or irregular, to which all rules will apply uniformly. Unfortunately, national liberation organizations and others among the Africans wanted rules designed specifically to meet the operational requirements of guerrilla warfare without affecting other rules governing uniformed forces. It will be necessary next year, therefore, to anticipate a maximum effort by them to adopt rules providing minimum requirements for distinguishing combatants from the civilian population, while maintaining combatant status and POW protection for such combatants on capture. Also next year the committee will have to resolve acute differences concerning the protection, if any, to be given to mercenaries, however they are to be defined. Proposed immunity from attack for oil installations and facilities as demanded by the Arabs will have to be carefully considered next year.

Ad Hoc Committee on Conventional Weapons:

After an artificially delayed start, due to Soviet insistence on a Russian language version of the report of the Lugano Conference of Weapons Experts, the committee witnessed a dilatory debate of each weapon category initiated mainly by the proponents of restrictions or prohibitions in use of certain weapons and directed primarily at the Eastern and Western weapon-states. The only new developments were a Norwegian paper on incendiaries, a revised Dutch paper on the same subject, a similarly revised United Kingdom paper on mines and booby-traps and some refinements in Swedish thinking on small calibre projectiles. The committee concluded with nothing decided about intersessional follow-up and with a Canadian-suggested comparative table of existing proposals as its only meagre achievement. However, several non-aligned delegates have warned that next year more will be expected and demanded of the committee or else they will seek to frustrate efforts in the other main committees in development of the two Protocols.

The third session was therefore limited in its results, but valuable nevertheless for several worthwhile gains and for sharpening the focus on the difficult issues yet to be resolved. The Swiss Government, supported by all, is determined the fourth session of the Conference should be the last.

CONVENTIONAL WEAPONS AND THE CIVILIAN POPULATION

From January 28 to February 28, 1976 a Conference of Government experts on weapons that may cause unnecessary suffering or have indiscriminate effects (cushie weapons) took place in Lugano (Switzerland) under the auspices of the International Committee of the Red Cross. (A similar meeting had been held in Lucerne in 1974).

A Canadian delegation headed by the former director of Legal Operations Division in the Department of External Affairs attended the Lugano Conference.

The objective of the Lugano and Lucerne Conference was to pave the way for a possible agreement on the restriction or prohibition of the use of such weapons.

The Lugano Conference produced over twenty proposals on various possible restrictions or prohibitions. However, it is clear that further debate and negotiations will be necessary before any meaningful ban or restrictions on certain conventional weapons can be obtained.

These Conferences of Government experts are part of the endeavour to update the norms of humanitarian law applicable in armed conflicts. A report on the Lugano Conference was presented to the Geneva Diplomatic Conference on Humanitarian Law.

The Diplomatic Conference considers the Cushie weapons item separately from its study of the Two Additional Protocols to the Geneva Conventions (e.g. in an Ad Hoc Committee on Conventional Weapons).

PRIVATE INTERNATIONAL LAW

The work of the Private International Law Section, as its name implies, involves matters of interaction between the domestic law of Canada, both federal and provincial, and the domestic law of foreign states. The volume of work of the Section has increased substantially during recent years, as a result of increased international travel for private and commercial purposes. There has been a marked increase in the service of legal documents originating in Canada on persons residing abroad and vice versa. Canada has civil proceedings conventions with 19 states for this purpose. However, even in the absence of a convention, the Section has often been successful in arranging for the service of documents abroad on behalf of the legal profession in Canada. In addition, the number of Commissions Rogatory for the taking of testimony in both civil and criminal matters abroad has increased. The Section assists both provincial governments and practising lawyers in this field. The Section also liaises between provincial governments and foreign governments on such matters as reciprocal enforcement of maintenance orders and foreign judgments. The demand for the authentication of signatures on legal documents required for use abroad has increased particularly with respect to the People's Republic of China, where Canadian companies are becoming commercially involved. Finally, requests for extradition and rendition of fugitive offenders to and from Canada have increased greatly, specifically between Canada and the United States of America in relation to drug offences.

In response to a growing number of requests from private groups and individuals concerned with inter-provincial and international adoption, the establishment of a National Adoption Desk and Central Registry was approved by the Conference of Welfare Ministers in Ottawa in February, 1975 and was announced by the Honourable Marc Lalonde, Minister of National Health and Welfare, at that time. The aim of the Desk is to standardize and harmonize both international and inter-provincial adoption policies and procedures. A member of the Section serves on the Committee whose role is (a) to formulate a Canadian policy and position on international adoption generally, and (b) to develop procedural standards and guidelines in connection with the Desk's operations. The nature and degree of involvement of our missions and consular officers abroad in the adoption process has been carefully outlined in accordance with international practice and accepted functions of diplomatic and consular posts abroad. The formal announcement of the Desk's inter-provincial operations took place on August 15, 1975 and it is hoped that the international side of the Desk will be in operation by November 1, 1976. It is expected that our member will continue to serve in an advisory capacity to the Desk for the foreseeable future.

At present Canada has extradition treaties with some 41 countries. Most of these treaties predate 1925 and the majority were concluded by Britain on behalf of Canada in the latter part of the 19th century. For some time now consideration has been given to up-dating these treaties to bring them more into line with current requirements and also to concluding extradition treaties with other countries. In February 1975 meetings were held with the West German authorities and a draft extradition treaty was initialled. Negotiations by correspondence have been continuing and it is anticipated that a final agreed text will soon be completed. In 1976 Extradition Treaties with the United States and Sweden were ratified and are now in full force and effect. In October 1975 Extradition Treaty talks were held with Italy and negotiations are continuing. In May 1976 Extradition Treaty negotiations were held with Denmark and Finland. Texts of draft treaties were agreed on and it is anticipated that Treaties between Canada and these states will be signed shortly. Extradition Treaty talks are planned with France in the fall of 1976 and with other countries.

The Section has become extensively involved in the international aspects of "civil kidnapping" or "child napping". The Extra-Provincial Custody Orders Enforcement Act recommended in 1974 by the Uniform Law Conference of Canada has been acted by Manitoba, Prince Edward Island, Nova Scotia and Newfoundland. The Attorney General of Canada at the Federal-Provincial Conference of Attorneys General held at Halifax in October 1975 urged all provinces to adopt similar legislation. As an example of the work of the Section an interesting case arose recently when a Canadian born child was taken to Germany by his German citizen mother without the knowledge and/or consent of his Canadian father. Since that time the father has been granted custody of the child by order of the Ontario courts. Because the Order is ineffective in Germany, the father was forced to commence litigation in Germany to enforce his rights. Three levels of courts in Germany considered the question of whether they had jurisdiction to hear the case and finally concluded that they did. Only at this point did the German courts consider the substantive issue of who should have custody. The Canadian Consulate in Berlin has facilitated the hearings in every way possible, and arranged for visitation rights whenever the father has been able to go to Berlin. The present situation is that the Canadian father has been successful on the substantive issue of custody at the first two levels of court, and only one possible final appeal may lie.

This case points out the need for a greater cooperation internationally in the mutual respect and enforcement of not only custody orders but also maintenance orders. It is for this reason that the Section is taking a considerable interest in the possible accession of Canada to the several international conventions in these fields, in consultation with the appropriate federal and provincial authorities.

Law of the Sea: The 1976 New York Sessions

The Third U.N. Conference on the Law of the Sea held two sessions in New York in 1976, the first from March 15 to May 7, with the second taking place from August 2 to September 17. These sessions were respectively the fourth and the fifth of the Conference and although considerable progress was achieved during the spring session, the summer session was somewhat disappointing in that it did not see the solution of the outstanding contentious issues, particularly with respect to the regime to apply in the deep seabed area.

It will be recalled that at the end of the 1975 Geneva session, each of the Chairmen of the three main Committees presented to the Conference an "Informal Single Negotiating Text" covering the subjects entrusted to his Committee. These texts consisted of some 300 articles, as well as annexes, which for the first time attempted to provide formulations for the resolutions of complex and interrelated problems.

The overall achievement of the 1976 spring session was the issuance of a "Revised Single Negotiating Text" (RSNT), which further refined the text produced at Geneva. The summer session, in contrast, was to concentrate on the negotiation of some key outstanding issues as identified by the Chairmen of the three Committees. Although these issues were thoroughly discussed and in many cases the differences narrowed, no concrete decisions were reached. A review of the results of the spring session will lead us to a more realistic appraisal of the performance of the summer session, and the prospects for the sixth session, which will open in New York on May 23, 1977.

1976 Spring Session

Although the Conference had before it a "Single Negotiating Text", it was quickly realized at the beginning of the spring session that the decision stage had not been reached. First, delegations had not had a chance to comment on the text which had been presented only on the last day of the Geneva session. Secondly, the three texts, plus an additional document entitled "Dispute Settlement Procedures", prepared by the President of the Conference on his own initiative, were still far from being generally acceptable to the Conference participants. Many of the most important provisions were highly controversial and thus incapable of producing a wide consensus. It was, therefore, decided that each of the three main Committees, and the Conference itself in plenary session, would adopt its own procedures for reviewing the texts, negotiating the controversial issues and eventually enabling each Chairman (or the President) to produce revised single negotiating texts.

It had been hoped that these revised texts would be available mid-way through the session, but they were eventually issued on the last day of the session.

First Committee

The RSNT for the First Committee, which deals with the regime of exploration and exploitation of the resources of the international seabed area beyond the limits of national jurisdiction, contained the most substantial modifications of the Geneva text. In general terms, the new formulations struck a more equitable balance between the views of the technologically-advanced states and those of the developing countries. Provision was made, for example, to allow activities to be conducted in the international area by the International Seabed Authority directly and exclusively, but also by other entities (whether states parties, state enterprises or other natural or juridical persons) in association with, and under the control of, the Authority.

Further improvements were to be found in the more precise and more detailed provisions pertaining to the rights and duties of the Authority itself, the "Enterprise" (the operating arm of the Authority) and the other entities operating in the international area. While dispute settlement procedures and a precise statute for the Enterprise had been conspicuously absent from the Geneva text, these questions were now covered in two annexes to the RSNT.

Of more immediate concern to the Canadian delegation was the late introduction in the Committee of an annex related to the question of production controls over the exploitation of mineral resources consisting of polymetallic (manganese) nodules that lie at the surface of the deep seabed. Until that late stage, there had been every reason to believe that a meaningful and effective production control formula would be included in any revised text, to ensure that land-based production of the same minerals to be exploited from the seabed would be adequately safeguarded, and that market disruption due to artificially stimulated seabed production would not occur. Moreover, it had been assumed that a method could be devised that would allow both land and seabed production (not just the latter) to grow concurrently on the basis of percentages reflecting actual annual fluctuations in nickel demand. However, a production control formula (now in Annex 1 of the RSNT) was included in the text during the final days of the 4th session, based on an arbitrarily-established 6 percent figure. According to this formula, the International Seabed Authority could only apply nickel production controls to limit seabed production above an annual growth rate of 6% per annum. It would have no power to apply production controls below a level of 6% increase per annum. Thus, the provision would allow for seabed production to grow annually at a rate of up to 6% without fear of limitation. Were other states to apply artificial stimuli to favour seabed mineral productions, the present provision

could work to Canada's disadvantage. Based on concerns expressed by the Canadian delegation at the 4th session, the Chairman, in his introductory note to Part I of the RSNT, indicated his awareness of the need for more careful consideration of this matter, adding that specific attention would have to be directed to the projected rate of increase for nickel demand.

Second Committee

The Second Committee deals with most of the "traditional" law of the sea questions - the territorial sea, international straits, fisheries, continental shelf, islands, high seas, etc. - and with the most important new concept - the 200-mile "exclusive economic zone". The 137 articles on Second Committee matters commanded the widest support of the three parts of the Geneva text. There still remained, however, enormous difficulties to be surmounted - particularly concerning whether special rights or privileges would be granted to the group of land-locked and "geographically-disadvantaged" states.

Over 3,700 interventions were made and over 1,000 amendments proposed during the Second Committee's deliberations. It is remarkable therefore that the Geneva text emerged, for the most part, unchanged at the New York spring session. However, a number of serious issues remained outstanding as the Chairman conceded in his introductory note to the RSNT, Part II. These included: the problems raised by the claims of the land-locked and "geographically-disadvantaged" states; boundary delineations between adjacent or opposite states; a technical and precise definition of the "outer edge of the continental margin" worked out by Canada and a number of other broad-shelf states, which was received sympathetically but was left over for further study; the relationship between the "exclusive economic zone " and the "high seas".

Despite these problems, however, considerable progress was achieved. In spite of attacks made during the session on the concept of the 200-mile "economic zone", it emerged even more firmly entrenched in the RSNT. Improvements were made in the provisions concerning fisheries, especially in the "anadromous species" (salmon) article whereby the special interests and responsibilities of the state in whose waters these species breed is recognized. Furthermore, the RSNT reaffirmed the coastal state's sovereign rights over the resources of its continental shelf, even where the shelf extends beyond 200 miles. The RSNT combines this broad shelf approach with a system for the sharing of revenues from the exploitation of the mineral resources of the continental shelf beyond 200 miles.

Third Committee

The mandate of the Third Committee concerns the protection and preservation of the marine environment, marine scientific research and the development and transfer of technology. The text on the

marine environment embraces all sources of marine pollution. However, the negotiations largely focused on vessel source pollution since it involves the respective rights and obligations of coastal, flag and port states. It is essential, on the one hand, for coastal states to be assured that their marine environment will not be imperilled, but also, on the other hand, to guarantee that international commerce and communications by sea are not unjustifiably impeded.

The RSNT, Part III was a major improvement over the Geneva text, particularly in that it provided much more adequately for the control and regulation of vessel-source pollution. Coastal states could now enforce in their economic zones laws and regulations for the prevention of pollution from vessels "conforming to and giving effect to international rules and standards established through the competent international organization or general diplomatic conference". Together with a new article on "ice-covered areas" that would give international sanction to Canada's 1970 Arctic Waters Pollution Prevention Act, these provisions represented progress. However, the draft text still imposed severe restrictions on coastal-state powers to protect the marine environment with respect to actual or apprehended violations both within the territorial sea and in the economic zone.

With respect to marine scientific research, the key issue has been, and is likely to remain, whether the consent of the coastal state is required before any research activities are undertaken in its economic zone or on its continental shelf. The solution incorporated in the RSNT, Part III went some way towards a workable compromise, by making the consent of the coastal state necessary but also specifying that this consent would not be withheld unless the project:

"a) bears substantially upon the exploration and exploitation of the living or non-living resources;

b) involves drilling or the use of explosives;

c) unduly interferes with economic activities performed by the coastal state in accordance with its jurisdiction as provided for in this Convention;

d) involves the construction, operation or use of such artificial islands, installations and structures as are referred to in Part Two of this Convention."

New Part IV

In addition to the three parts produced in Geneva and revised in New York, a new Part IV, which was circulated after the Geneva session by the President of the Conference, was revised in light of the debate that took place during the New York spring session. Part IV is

concerned with the settlement of disputes, and is regarded by many countries, such as the USA, as a sine qua non of their acceptance of a new convention. In its revised form the text provided that, when ratifying the convention, states would be required to opt for one or more of four basic procedures: the International Court of Justice; a new comprehensive law of the sea tribunal; arbitration; or "special procedures". In the event of a dispute, the procedure used would be the one previously chosen by the defendant state. A certain amount of protection of the coastal state's jurisdiction in the economic zone was provided by the requirement that local remedies first be exhausted; but this protection, unfortunately, did not seem to extend to marine-pollution controls.

1976 Summer Session

It became obvious at the end of the spring session that the three main Committees should from then on try to isolate and attempt to negotiate solutions to the most difficult of the unresolved problems. This was the main reason for convening the summer session. Additionally, it was decided that the provisions for the settlement of disputes would be considered at Committee level, so as to bring Part IV of the text in line with the three main texts which had been revised at the spring session. Finally, it was hoped that after a general debate on the preamble and the final clauses of the future LOS Treaty these could also be elaborated and that a consolidated draft convention could emerge from the summer session. Unfortunately, this ambitious work programme was not accomplished. Although progress was achieved on some important issues in Committees II and III and the plenary was able to complete revision of the provisions on the settlement of disputes, the Conference is at an impasse, hopefully only temporarily, over the question of the legal regime to apply to the exploitation of the deep seabed, beyond the limits of national jurisdiction.

Committee I

Discussions in Committee I at the 5th session concentrated largely on questions of principle or philosophy regarding the legal regime to apply to mining of the deep seabed, defined as "the common heritage of mankind". This session brought into sharp relief differences of view between major industrialized states such as Japan, the USA and the EEC, and the developing countries. The industrialized states basically wish the future LOS treaty to provide guaranteed access to the deep seabed to private entities, while developing countries want access to private companies to be allowed only at the discretion of the International Seabed Authority and want the International Enterprise, as the operating arm of the Authority, to have a preferred position

in mining the deep seabed. The Socialist states of Eastern Europe, for their part, want guaranteed rights of access to states parties to the treaty, as opposed to private companies. Canada is taking a moderate position on this issue, holding that reasonable rights of access must be granted to private companies which might work parallel to, or in collaboration with, the Authority to mine the seabed, but equally opposing unregulated and unrestricted access to the seabed which would be contrary to the principle of the "common heritage of mankind".

Given the preoccupation of Committee I at the 5th session on these basic questions of principle, the Committee could not discuss other important provisions such as the production control formula referred to above. However, the Canadian delegation has achieved considerable success in having an alternative formulation accepted by the developing countries. This alternative Canadian formulation provides for a sharing of the growth segment in world nickel demand between seabed and landbased production on a 50-50 basis. The calculation of the growth segment is by reference to actual demand increases over a 10-year period preceding commercial nickel production in the seabed area. The developing countries draft text incorporates this approach and indeed goes somewhat farther in protecting landbased production.

Committee II

The Chairman of Committee II set up five distinct Negotiating Groups to deal with the main contentious issues left unresolved at the end of the spring session. These Negotiating Groups dealt respectively with (1) the legal status of the exclusive economic zone and the rights and duties of the coastal and other states in the zone; (2) the right of access of land-locked states to and from the sea and freedom of transit; (3) the definition of the outer edge of the continental margin and revenue-sharing in respect of the exploitation of the continental shelf beyond 200 miles; (4) the question of straits used for international navigation; (5) the delimitation of the territorial sea, the exclusive economic zone and the continental shelf between adjacent or opposite states.

The concept of an exclusive economic zone in which the coastal state exercises triple jurisdiction over living and non-living resources, marine pollution control, and marine scientific research, emerged unscathed at the last session. Differences remain, however, as to the legal status of the zone - that is, whether it is to be categorized as high seas or, as Canada has proposed, a sui generis zone which is neither high seas nor territorial sea, but which embodies the right of functional jurisdiction of coastal states.

The fisheries articles were not a focal point of discussion at the recent session and the concept of coastal state's sovereign rights

over the living resources in the economic zone remains firmly embodied in the draft text. This affords strong international support for action already taken by Canada and other states to extend national fisheries jurisdiction out to 200 miles. Moreover, there were encouraging indications that land-locked and geographically-disadvantaged states may be ready to moderate their claims and seek a reasonable compromise with coastal states on the question of access to living resources of the economic zone.

Good progress was achieved on the question of rights of access and transit for land-locked states although the Group was unable finally to reach an overall compromise due to last minute reservations on the part of some land-locked states. It would seem, however, that with some minor changes, agreement on the relevant text in the RSNT (Part II, chapter VI) could be reached at the next session.

The last session may have also brought states closer to an agreement on a method of defining the outer edge of the continental margin (based on a formula drafted by Ireland and Canada) and on a formula for sharing the revenues derived from the exploitation of the mineral resources of the continental shelf beyond 200 miles, while safeguarding the sovereign rights of the coastal state over these resources. Some states, principally the land-locked and geographically-disadvantages states, are still attacking the idea of coastal state sovereighty over the broad margin to its outer limits, but there is growing evidence of an emerging consensus which will accept the basic view of broad-shelf states.

On the question of straits and freedom of transit through them, it appears that solutions will likely be evolved through direct consultations between the major straits states and the major maritime powers. Finally, the Negotiating Group set up to deal with the delimitation articles met only twice towards the end of the Conference and was not in a position to reach agreement on proposals put before it. These included an amendment by Canada which supported the equidistance line as the general rule for delimitation purposes, "taking into account special circumstances, where justified, in order to reach an equitable result".

Committee III

In Committee III, with respect to marine pollution provisions, negotiations at the summer session confirmed the emerging consensus in favour of a functional sharing of marine pollution jurisdiction between coastal, flag and port states. The long-standing Canadian support for a global "umbrella" treaty laying down basic environmental obligations now appears to be generally accepted and is already embodied in the draft text.

However, Canada must continue its negotiating efforts to obtain satisfactory results on certain outstanding issues. In the economic zone it is pursuing efforts to obtain adequate enforcement powers for the coastal state in respect of vessel source pollution. With respect to coastal states powers to control marine pollution in their territorial seas, many maritime states have construed the right of innocent passage in an absolute sense so as to impose severe restrictions on the powers of a coastal state to set standards relating to vessel source pollution. Canada, on the other hand, has insisted on the sovereign right of a coastal state to enact national laws within the territorial sea to regulate the design, construction, manning and equipment of vessels in the absence or anticipation of agreed international standards applicable to such matters, as well as to set more stringent discharge standards. Some progress was achieved on this issue at the recent session in that the Chairman's final report acknowledged that this was a key issue on which further negotiation was essential in order to reconcile the navigational rights of shipping states with the sovereign prerogatives of the coastal state to enact and apply environmental laws in its territorial sea.

In the area of marine scientific research, a few industrialized states remain opposed to a regime providing for the consent of the coastal state before research can be undertaken in its economic zone or over its continental shelf. Various proposals were discussed, and there were indications towards the end of the session that elements of a compromise may now be present, but intensive efforts will be needed at the next session to break the current impasse on this crucial issue.

Not much time was devoted to transfer of technology at either the spring or summer sessions although a number of amendments were submitted by developing countries who contend that the present text does not impose a sufficiently strong obligation on developed countries to provide assistance in this field. Since this part of the text must be coordinated with Part I provisions dealing with the role of the International Seabed Authority which the developing countries foresee as playing a key part in coordinating the collation and transfer of ocean-related technology, final agreement on a text covering transfer of technology must await further progress in Committee I.

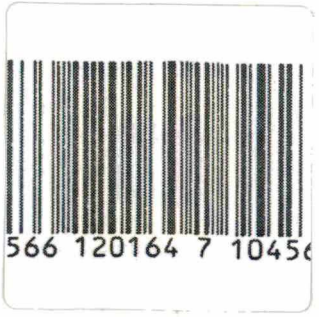
Revised Part IV

A clearly positive result of the last session was the complete revision in informal plenary meetings of the Conference, of Part IV of the Single Negotiating Text on the settlement of disputes relating to law of the sea. The Conference President will shortly be issuing a revised text for Part IV, which will undoubtedly reflect the general desire expressed in the plenary meetings for a simplified, and somewhat more restrictive, system for the settlement of disputes. At the same time, the text will probably confirm that states participating in the Conference are now ready to accept the principle of compulsory settlement of disputes relating to the law of the sea.

Conclusion

The next session of the Conference convenes in New York from May 23 to July 8, 1977. Between now and then, intensive inter-sessional discussions are expected particularly on deep seabed mining, the issue which has deadlocked the Conference. The President of the Conference has expressed a hope that the sixth session will produce an informal single composite text on the basis of which the Conference could attempt to prepare a draft convention.

In summary, given the magnitude and complexity of its mandate, the Conference has made substantial progress but, if it is not to founder, a further major effort will be required to overcome the differences which still exist on the few remaining contentious issues, particularly on the regime for the deep seabed. Canada remains firmly committed to the realization of a new constitution of the oceans and will play an active part in efforts to achieve that objective.



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