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

MINISTERE DES AFFAIRES ÉTRANGÈRES ET DU COMMERCE INTERNATIONAL
DIRECTION GÉNÉRALE DES AFFAIRES JURIDIQUES

DEPARTMENT OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE
LEGAL AFFAIRS BUREAU

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THE INTERNATIONAL CRIMINAL COURT

Canada played a leading role at the 47th Session of the UN General Assembly on a resolution calling on the International Law Commission (ILC) to give priority to establishing an International Criminal Court (ICC).

In 1993, an International Meeting of Experts on this subject took place in Vancouver. The work done at that meeting contributed substantially to the ICC draft statute, as well as to the statute for the International War Crimes Tribunal for the former Yugoslavia.

In 1994, the ILC forwarded a draft ICC statute to the UN General Assembly (UNGA) for consideration. That fall, UNGA established an ad hoc Committee to review the major issues arising out of the draft statute.

During its two sessions in April and August 1995, the Committee made significant progress, both substantively and procedurally, towards the development of an ICC statute. The Canadian delegation, which was comprised of officials from the Departments of Foreign Affairs and International Trade, Justice and National Defence, was active in the discussions.

As currently conceived, the Statute of the Court would oblige all States Parties to prosecute or extradite to the ICC those accused of serious international crimes, such as genocide, war crimes and crimes against humanity. However, there remain a number of substantive issues to be resolved, including the exact relationship with the UN, the role of the Security Council, the crimes over which the Court will have jurisdiction, the criminal procedure to be followed by the Court, and the primacy of the Court vis-à-vis national courts.

In its final report, the Committee recommended that States begin drafting a consolidated text of a Statute for consideration by a future Diplomatic Conference. Specific decisions on the precise nature and name of the new negotiating forum, next sessions and its program of work will be taken by the UN Sixth Committee in the fall.

Canada strongly supports the establishment of an international criminal court and will continue to participate actively in the UN's deliberations on this subject during the upcoming session of the UN General Assembly.

International Criminal Tribunal for the Former Yugoslavia

At the London Peace Conference in August 1992, Canada was one of the first countries to call for an international tribunal to try those individuals responsible for war crimes and crimes against humanity committed in the former Yugoslavia. At the October meeting of CSCE Ministers in Stockholm, the then Secretary of State for External Affairs also endorsed the creation of a war crimes tribunal.

In response to similar calls for a tribunal, the UN Security Council (UNSC) adopted Resolution 780 which requested states to collate information in their possession relating to violations of humanitarian law, to make such information available to the UN Commission of Experts (UNCOE) which had been established and "to provide other appropriate assistance". In accordance with this resolution, Canada submitted several reports to the Secretary General. The reports contained information from a variety of sources, including more than 60 reports from non-governmental and regional organizations, governments, the United Nations and Canadian individuals.

Canadian defence personnel were involved in on-site investigations in the former Yugoslavia. In addition, Canada was the first country to make a substantial financial contribution to the voluntary fund for UNCOE ($300,000).

On February 22, 1993 the UNSC adopted Resolution 808, which established a war crimes tribunal to prosecute those responsible for serious violations of international humanitarian law in the former Yugoslavia. The UN Secretary General was asked to report on how the tribunal might operate.

An International Meeting of Experts on the Establishment of an International Criminal Tribunal was held in Vancouver from March 22-26, 1993. Although initially the meeting was scheduled to discuss the proposed Permanent International Criminal Court, because of the UNSC Resolution 808 most of the discussion was directed to the war crimes tribunal. The final report of the meeting was forwarded to the UN Secretary General for his consideration.

On May 25, 1993 the UNSC adopted Resolution 827 and the Statute of the International Criminal Tribunal for the Former Yugoslavia which was annexed to a report of the Secretary General.

A Canadian, Mr. Justice Jules Deschênes, was elected as one of the judges for the Tribunal in September 1993. He sits as a member of the Appellate Chamber for the Tribunal. A former member of UNCOE and of the Canadian military, Cdr (Ret) William Fenrick is the Chief International Legal Adviser to the Prosecutor on issues of international law. Nine other Canadians

work for the Yugoslav Tribunal in various positions. The Chief Prosecutor is Mr. Justice Richard Goldstone from South Africa and the Deputy Prosecutor is Mr. Graham Blewitt from Australia.

In March 1994, the Tribunal adopted a set of Rules of Procedure and Evidence after having received comments from states. Canada submitted a report on evidentiary rules and procedures for the Tribunal dealing specifically with sexual assault cases and witness protection.

On October 7, 1994, the Tribunal laid down its first indictment, against a Bosnian Serb who was a former commandant of a prison camp. The Tribunal later requested the transfer of another Bosnian Serb who had been arrested in Germany (Tadic); the first oral hearings for this case by the Tribunal were held in July 1995.

On May 15, 1995, a Trial Chamber of the Yugoslav Tribunal approved a request for the Prosecutor for a deferral proceedings in respect of investigations involving, among others, the Bosnian Serb leader, Radovan Karadzic and Ratko Mladic, commander of the Bosnian Serb army. This is an attempt by the Prosecutor to have exclusive jurisdiction over these people and to bring them before the Tribunal.

Although the Prosecutor has not yet named these individuals in a public indictment, it is expected that he will do so within the near future. Although the Bosnian-Serb authorities do not recognize the competence of the Tribunal, if those persons travel outside of that region, they could be arrested and transferred to the jurisdiction of the Tribunal.

In March 1994 and April 1995, Canada made contributions of $233,000 and $240,000 to the Tribunal's Voluntary Fund. It is intended that the most-recently donated funds will be used to hire a Canadian prosecutor for the Tribunal.

The Departments of Foreign Affairs and Justice are currently considering amendments to Canadian law to implement the provisions of the Tribunal's Statute under Resolution 827, particularly those concerning extradition, transfer or surrender of persons to the tribunal and future "requests for assistance or orders issued by a trial chamber". In March 1995, the Government of Canada and the Prosecutors Office concluded an agreement related to the interviewing of witnesses.

International Criminal Tribunal for Rwanda

In response to events that occurred in Rwanda in April 1994, and upon the recommendation of the Independent Commission of Experts (established by Security Council resolution 935), the

Security Council adopted Resolution 955 and an accompanying statute establishing Rwandan Tribunal on 8 November 1994.

The Rwandan Tribunal was established for the purpose of "prosecuting persons responsible for genocide and other serious crimes of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring states" between 1 January and 31 December 1994". The resolution provides that all States "shall cooperate fully" with the Tribunal and urged States and organizations to contribute funds, equipment, services and expert personnel.

The Prosecutor for the Yugoslav Tribunal, Mr. Justice Goldstone, is also the Prosecutor for the Rwandan Tribunal. In addition, the Security Council elected Mr. Honoré Rakotomanana, former Chief Justice of Madagascar, as Deputy Prosecutor for Rwanda. The seat of the Tribunal is Arusha, Tanzania.

In May 1995, the Security Council elected 6 judges to form the Trial Chambers for the Tribunal. The Tribunal will share an appellate Chamber with the Yugoslav Tribunal.

The Deputy Prosecutor is now established in Kigali and has begun to commence the Tribunal operations there and the investigations have started. The Chief Investigator for the Rwandan Tribunal has speculated that there may be some indictments in the fall.

In May 1995, the Secretary of State for Latin America and Africa, the Honourable Christine Stewart, announced a Canadian contribution of $1 million to the Tribunal. This money will be used to cover the costs of investigating and gathering evidence on crimes, as well as operations of the Tribunal. CIDA is currently considering a proposal to provide a team of DND investigators to work with the Tribunal as part of this project.

ENERGY CHARTER TREATY

The final text of the Energy Charter Treaty (ECT) was approved and opened for signature at the European Energy Conference held at Lisbon in December 1994. It has since been signed by fifty countries, and will come into force ninety days following the deposit of the thirtieth instrument of ratification with the government of Portugal.

The ECT has as its goal the establishment of the structural framework required to implement the principles enunciated in the European Energy Charter. The Charter, adopted at the Hague in December 1991 by representatives of Eastern and Western Europe, the Russian Federation and other members of the Former Soviet Union, the United States, Canada, Japan and Australia, resolved to promote a new model for energy co-operation in the long term in Europe and globally within the framework of a market economy, mutual assistance and the principle of non-discrimination.

The ECT is intended to catalyze economic growth by means of measures to liberalize investment and trade in energy products. The focus of this liberalization is on the promotion of East-West industrial cooperation, based on the provision of legal safeguards in the areas of investment, transit and trade. In respect of investment, the ECT contains provisions regarding the treatment of investment in the energy sector at the post-establishment phase.

Negotiations have commenced on a supplementary treaty regarding the application of non-discriminatory principles to the pre-establishment phase of investment activity, and the extension of ECT disciplines to trade in energy-related equipment. The current exercise also includes examination and adjustment of the ECT to take into account the results of the Uruguay Round of Multilateral Trade Negotiations completed in 1994.

FOREIGN INVESTMENT PROTECTION AGREEMENTS

The Canadian government initiated a foreign investment protection agreement (FIPA) program in 1989 in order to protect Canadian investment in developing countries and emerging economies. This program was implemented in response to consultations with Canadian business and reflected the need for an instrument to protect direct investment in regions not yet covered by international agreements on investment issues (such as the OECD Investment Codes). This program is consistent with similar programs initiated by other G7 countries.

In 1994, Canada sought and received Cabinet approval to a new model agreement to be used as a basis for Canada's negotiations in the area of investment protection. The evolution both of Canada's own situation (the conclusion of the NAFTA which contains substantial provisions on investment) and the international context (the completion of the Uruguay Round of Multilateral Trade Negotiations) led to a re-examination of Canada's 1989 model.

The new model retains the fundamental elements found in Canada's earlier agreements, including fair treatment in accordance with international law, MFN treatment for investors, state-to-state and investor-to-state dispute settlement, transfer of funds in freely convertible currency and the concept of prompt, adequate and effective compensation for expropriation. In addition, the new model introduces, inter alia, obligations based upon the national treatment principle, "standstill" provisions, stronger investor-to-state dispute settlement, and provisions regarding entry of personnel.

In the past year Canada concluded negotiations and signed Foreign Investment Protection Agreements with Ukraine, Latvia, and Trinidad and Tobago. Negotiations have been completed *ad referendum* with a number of other countries, and are pending or continuing with a number of Canada's trading partners in Asia, Eastern Europe, Africa and South America.

CLAIMS AGAINST IRAQ

During the period of 1992 to the end of 1994, the Government of Canada forwarded over 1,300 compensation claims to the United Nations Compensation Commission (UNCC) in Geneva, for losses resulting from Iraq's invasion and occupation of Kuwait between the period of August 2, 1990 to March 2, 1991.

The UNCC, a subsidiary organ of the United Nations Security Council, was established to give effect to Security Council Resolution 687 which affirmed that Iraq was "liable under international law for any direct loss, [or] damage,...to foreign Governments, nationals and corporations" resulting from Iraq's actions.

The creation of the UNCC introduced a unique system for dealing with international claims. Traditionally, under certain conditions, governments can espouse claims for losses or injuries on behalf of its nationals. Government espousal effectively renders the claim a state claim. Under the UNCC system, states are required to submit claims on behalf of their nationals, however the claim remains that of the individual or corporation, with governments providing more of a co-ordinating function. For the Government of Canada this involved a program to review claims to ensure they met UNCC requirements and to prepare consolidated claim submissions for onward transmission to the UNCC.

The UNCC system also permitted governments to determine their own definition of the term "resident". Under traditional international law, states only espouse claims on behalf of their nationals. The UNCC wanted all individuals who had suffered a loss or injury as result of the invasion of Kuwait to have recourse to a remedy, regardless of nationality (except for Iraqi citizens, who were required to have bona fide nationality of another state). Accordingly, the Government of Canada submitted claims not only on behalf of Canadian citizens, but also Canadian Permanent Residents, who had obtained residency status in Canada by March 31, 1993.

The UNCC has received over 2.6 million claims from 95 countries and 15 international organizations with a total asserted value of approximately US$180 billion. To date, three Panels of Commissioners have reviewed and made recommendations on over 350,000 individual claims in Categories A (Departure), B (Serious Personal Injury and Death) and C (Losses under US$100,000). Claims in these categories are considered to be the most urgent claims, to be processed using expedited procedures. These first instalments of claims have allowed the UNCC to formulate general criteria related to issues of causation,

evidence, and valuation, and to develop mass processing methods and techniques to be applied in future instalments.

The Compensation Fund will be financed by 30 percent of all Iraqi petroleum exports once Iraq complies with UN Security Council Resolution 687.

The Government of Canada has submitted some 1300 individual and corporate claims with losses totalling approximately US$141 million. A claim for government losses of nearly 56 million dollars was also submitted to the UNCC.

Canada continues to monitor the activities of the UNCC and keep Canadian claimants informed on the status of the claims review.

INTERNATIONAL CLAIMS PROCEDURES AND THE HELMS/BURTON BILL

The U.S. Congress is currently considering legislation (generally known as the Helms/Burton bill) that will tighten the U.S. embargo of Cuba.

The bill has many provisions that raise international law issues, but one part in particular has implications for generally accepted principles. That is the section of the bill dealing with international claims. Under international law, it is recognized that states are entitled to expropriate property for public purposes, including the property of foreigners. Such owners are entitled to full, fair and prompt compensation. If such compensation is not paid, states may espouse the claims of their nationals and negotiate a settlement on behalf of those nationals.

The drafters of the bill are dissatisfied with this process, at least as regards property expropriated from Americans. Their solution is unilateral assertion of jurisdiction by U.S. Courts. Underlying the views of the drafters of the legislation is the premise that sovereign states have no right to expropriate property of foreign nationals, hence the definition used of "confiscation" for expropriation. The bill then define "traffickers" in the expropriated property, most of whom we would otherwise consider subsequent purchasers for value. These "traffickers" would be subject to suit in a U.S. District Court by the owner of a claim to the expropriated property.

The effect of these provisions of the bill would put at risk the U.S. assets of foreign investors. Such investors who acquired valid title under domestic law of the expropriating state, could find their U.S. assets hostage to a dispute over compensation between the expropriating state and the former property owner.

The pool of potential claimants is also increased under the provisions of the bill. The customary practice at international is that states only espouse the claims of persons who were nationals of the state at the time off the expropriation of their property. The bill provides that, in the case of Cuba, persons who are now American citizens can bring actions in U.S. Courts. It is not only individuals who face losses if the bill becomes law - the bill takes away any defence of sovereign immunity, exposing sovereign states to the jurisdiction of U.S. Courts.

It must be emphasised that this bill has not yet, and may never, become law. Nevertheless, we think it significant that U.S. legislators are contemplating such a fundamental and unilateral change to customary international practice in claims matters.

CANADA - USA COMPETITION LAW COOPERATION

On August 3, 1995, an agreement between Canada and the United States came into effect. This agreement provides for cooperation in the enforcement of competition laws.

This is not the first such international agreement, although they are still quite rare. It is noteworthy, though, as an indication of a trend toward more international cooperation by economic regulatory authorities to match increasing economic integration worldwide.

Agreements between tax and customs authorities, for example, are now commonplace. The field of competition law, however, has presented a more difficult area upon which nations can agree. There can be an underlying tension resulting from different views on national economic organization and regulation. There have also been serious conflicts created by the jurisdictional reach of competition law authorities.

It has been recognized, however, that while conflicts over extraterritoriality and questions of appropriate jurisdiction and differing national regulation remain, bilateral competition agreements provide mechanisms for consultation and cooperation.

ECONOMIC SANCTIONS

The imposition of economic sanctions against foreign states continues to be an extremely active area of international law.

Most commonly, the determination of whether such sanctions will be imposed against individual states is made at first instance by the United Nations Security Council. Under Chapter VII of the UN Charter, the Security Council is authorized, following debate among member countries, to adopt United Nations Security Council Resolutions requiring member states to impose sanctions.

Once adopted by the Security Council, such Resolutions become international law treaty obligations of Canada as a signatory of the UN Charter, and are implemented under Canadian domestic law via Regulations authorized pursuant to United Nations Act, R.S.C., c.U-3.

The following are the United Nations Security Council Resolutions which have been adopted under Chapter VII of the UN Charter imposing trade, commercial and financial sanctions, and which have been given effect in Canada pursuant to the United Nations Act, currently in force.

Iraq

Resolution 661 (1990) of August 6, 1990
Resolution 670 (1990) of September 25 1990
Resolution 687 (1991) of April 3, 1991

Federal Republic of Yugoslavia (Serbia and Montenegro)

Resolution 757 (1992) of May 30, 1992
Resolution 820 (1993) of April 17, 1993

Republic of Bosnia and Herzegovina

Resolution 942 (1994) of September 23, 1994

Libya

Resolution 748 (1992) of March 31, 1992
Resolution 883 (1993) of November 11, 1993

Angola/UNITA

Resolution 864 (1993) of September 15, 1993

Rwanda

Resolution 918 (1994) of May 17, 1994

NPT 1995 REVIEW AND EXTENSION CONFERENCE

Since its entry into force on March 5, 1970, the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) has constituted the cornerstone of the world's non-proliferation system. It provides a political and legal barrier to the legitimization of additional nuclear weapons, the legal foundation for the commerce in nuclear equipment, material and technology, as well as the basic commitments to be verified by the International Atomic Energy Agency (IAEA) - Safeguards System. More than 150 States have ratified the NPT since its signature in 1968.

Every five years since 1970, the Parties to the NPT have held a Review Conference in order to review the operation of the NPT with a view to assuring that the purposes of the NPT are being realized.

Pursuant to Article X (2) of the Treaty, a Conference was held in New York from April 17 to May 12, 1995 to determine whether the Treaty should be extended for a fixed period, for fixed periods, or indefinitely.

As a strong supporter of the indefinite extension of the NPT, Canada sponsored the resolution to extend the Treaty indefinitely and was successful in gaining the support of 103 countries as co-sponsors. The resolution to extend the Treaty indefinitely was adopted without a vote.

As a result, the NPT was reinforced by strengthening the review process and reaffirming principles and objectives relative to nuclear non-proliferation, disarmament and safeguarded peaceful use (which call for a comprehensive test ban by 1996 and a systematic program of action toward the ultimate elimination of nuclear weapons).

ENVIRONMENTAL LAW

Canada, Mexico and the United States signed the North American Agreement on Environmental Cooperation (NAAEC) on September 14, 1993. The NAAEC has established closer ties between the signatories in the development and coordination of their environmental policies through the establishment of the Commission for Environmental Cooperation (CEC). The CEC includes: a Council consisting of Ministers of the Environment of the three Parties; a Secretariat based in Montreal, staffed with professionals from the three Parties; and a Joint Public Advisory Committee.

Canada participated in the third meeting of the Conference of the Parties (COP) to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, held in Geneva in September 1995. We actively participated in the discussions to amend the Convention to impose a ban on the export of hazardous wastes from OECD to non-OECD countries, which was adopted by consensus. Prior to the next meeting of the COP in 1997 we shall participate in the Technical Working Group to Refine the Definition of Hazardous Wastes and we shall continue our involvement on the Draft Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal.

The Convention on Climate Change entered into force in March 1994 and the first meeting of the COP took place from 28 March to 7 April in Berlin. The Parties agreed that existing commitments under the Convention were inadequate and that a further protocol or other legal instrument was necessary to strengthen those commitments for developed countries in the period beyond 2000. Canada will be an active participant in this upcoming round of negotiations, including discussions on the establishment of a multilateral consultative process for the resolution of questions regarding implementation (Article 13).

On April 27, 1995, Canada and the United States initialled *ad referendum* a Protocol to Amend the 1916 Convention Between the United Kingdom and the United States of America for the Protection of Migratory Birds in Canada and the United States (MBC) in Parkesville, British Columbia. The Protocol removes inconsistencies between the MBC and aboriginal and treaty rights protected under Section 35 of the Constitution Act, 1982 and ensures the accommodation of traditional harvesting by Aboriginal people. It also regulates the long-established Newfoundland murre hunt, extends hunting privileges to non-aboriginal residents of northern communities which depend on a subsistence life style and permits an earlier opening of the fall hunting season for northern recreational hunters, allowing them more

equitable access. The amendments are subject to conservation principles.

On May 16, 1995, Canada and the United States initialled *ad referendum* a new Annex B to the Agreement between the Government of Canada and the Government of the United States of America for Water Supply and Flood Control in the Souris River Basin of October 26, 1989. The Souris River is a transboundary river which traverses Saskatchewan, North Dakota and Manitoba. The new annex corrects an ambiguity contained in the original text which prevented equitable sharing of waters between Saskatchewan and North Dakota.

The World Trade Organization (WTO) held the first meeting of its Trade and Environment Committee on February 16, 1995. Canada took part in discussion of issues such as the integration of trade measures applied under multilateral environmental agreements with WTO rules, including those on dispute settlement, improvements to the transparency of trade-related environmental measures and international efforts to reduce or remove environmental problems associated with trade in hazardous and domestically-prohibited goods. Deliberations on the compatibility of trade and environmental multilateral agreements are particularly significant as they will set the stage for the future trade and environment dialogue.

NORTHWEST ATLANTIC FISHERIES

On September 24, 1994, the Northwest Atlantic Fisheries Organization (NAFO), on the advice of its Scientific Council, decided for the first time to regulate catches of Greenland halibut in the NAFO Regulatory Area. A Total Allowable Catch (TAC) of 27,000 tonnes was set for that stock for 1995. On February 1, 1995, at a Special Meeting of the NAFO Fisheries Commission, that TAC was allocated in the following way: 60% (16,300 tonnes) to Canada; 12.6% (3,400 tonnes) to the European Union (EU); 11.9% (3,200 tonnes) to Russia; 10% (2,600 tonnes) to Japan; and 5.5% (1,500 tonnes) to other Contracting Parties.

In reaction to the quotas described above, the EU invoked the objection procedure contained in the Convention on Future Multilateral Co-operation in the Northwest Atlantic Fisheries (NAFO Convention) and on February 22, 1995, set for itself a quota of 18,630 tonnes (more than five times the amount allocated to it by NAFO). As an internal EU matter, only Spain and Portugal would share the revised quota.

Faced with the imminent prospect of Spanish and Portuguese vessels irreparably depleting the Greenland halibut stock, on March 3, 1995, Canada added these two States to the Coastal Fisheries Protection Regulations in a separate list of flag States whose vessels could be arrested in the NAFO Regulatory Area pursuant to the Coastal Fisheries Protection Act and Regulations. Special conservation and management measures were also added to the Regulations to apply only to the vessels of States appearing on the new list. Canada accompanied these amendments with a call to the EU for a 60 day moratorium on Greenland halibut catches in the interests of conservation. On March 6, 1995, the European Council of Ministers formally rejected the proposed moratorium.

On March 9, 1995, pursuant to the Coastal Fisheries Protection Act and Regulations, Canadian officials boarded and arrested the Spanish fishing vessel "Estai" in the NAFO Regulatory Area for fishing contrary to Canadian law. The Estai and its crew were taken to St. John's, Newfoundland, where formal charges were laid against the ship and its master. The master was promptly released on bail and the vessel was later released on bond. Several days later a second Spanish vessel was confronted but not arrested on the Grand Banks.

Soon after the arrest of the Estai, talks commenced between high level Canadian and EU delegations. These talks ultimately resulted in the signing, on April 20, 1995, of an Agreed Minute, aimed at strengthening enforcement of international conservation measures in the NAFO Regulatory Area and modifying the Canadian and EU quotas of Greenland halibut for

1995. The Agreed Minute provided that Canada and the EU would submit joint proposals to that end to NAFO, which were finally adopted on September 15, 1995.

While negotiations between Canada and the EU were proceeding, on March 28, 1995, Spain filed an application with the International Court of Justice alleging that Canadian actions were contrary to international law. Both Spain and Canada had made declarations pursuant to Article 36(2) of the Statute of the Court accepting its compulsory jurisdiction. However, the Canadian declaration contains a reservation that is pertinent to the present dispute, in that it excludes from the Court's jurisdiction

> "disputes arising out of or concerning conservation and management measures taken by Canada with respect to vessels fishing in the NAFO Regulatory Area, as defined in the Convention on Future Multilateral Co-operation in the Northwest Atlantic Fisheries, 1978, and the enforcement of such measures."

Spain has asked that the Court declare (i) that the Canadian legislation, as far as it presumes to exercise jurisdiction over vessels of another flag State on the high seas outside of Canada's fisheries jurisdiction, is not opposable to Spain; (ii) that Canada must refrain from repeating its enforcement actions on the high seas and must give Spain reparation, in an amount that will cover all the damages and prejudices suffered; and (iii) that the enforcement actions on the high seas against the Estai constituted a violation of the principles and norms of international law.

Spain has stated its intention to continue this case in spite of the agreement reached between the EU and Canada.

Canada has consistently argued that the previously quoted reservation to its declaration accepting the Court's compulsory jurisdiction clearly excludes this dispute with Spain. As a result, on May 2, 1995, the President of the Court decided that the initial phase of the Court's proceedings will concern only the question of jurisdiction. The deadline for the submission of Spain's Memorial is September 29, 1995. Canada must file its Counter-Memorial by February 29, 1996.

PACIFIC SALMON MEDIATION

The operation of the Pacific Salmon Treaty (PST) and accompanying Memorandum of Understanding (MOU), signed in 1985, has been a source of frustration for the Canadian and B.C. governments for a number of years. Much of this frustration has stemmed from the difference of views between the Parties regarding the interpretation and implementation of the so-called "equity" principle.

The Parties agreed in the PST to conduct their fisheries within the framework of two broad principles, often referred to as the conservation and equity principles. The conservation principle requires the Parties to cooperate to ensure adequate conservation of salmon stocks originating in the waters of one Party which are subject to interception by fisheries of the other Party. The equity principle requires the Parties to conduct their fisheries in a manner that provides each Party with benefits equivalent to the production of salmon from its waters, thereby implying that there should be a balance in the value of the salmon intercepted by the two sides.

At the time of signing of the PST in 1985, it was the view of the Government of Canada that an imbalance of interceptions existed in favour of the U.S. However, as there was some disagreement about the relevant scientific data, it was expected that the equity principle would only be fully implemented once more data was collected. Since 1985, data collected indicates that the imbalance has in fact grown in the U.S.'s favour.

Following two years of fruitless negotiation, Canada made a proposal to submit the equity dispute to binding arbitration. The U.S. rejected that proposal but agreed to non-binding mediation.

The terms of reference and the choice of the mediator were settled in August. He is Christopher Beeby of New Zealand, a career diplomat and a renowned international lawyer with particular expertise in fisheries issues. The mediation will begin in October and is expected to be completed by the end of 1995. Its results will be taken into account in the negotiation of fisheries regimes for 1996 and beyond.

U.N. AGREEMENT ON STRADDLING STOCKS

At the end of its sixth and final session, on 4 August, 1995, the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks adopted, without a vote, the Draft Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. This brought to a successful conclusion six years of efforts by Canada to fill the gaps in the United Nations Convention on the Law of the Sea (UNCLOS) concerning high seas fishing, in order to effectively control fishing activities beyond 200 nautical miles, in the Northwest Atlantic and elsewhere around the world.

During its last session, the Conference concentrated on the few problems that had been left unresolved at the end of its April 1995 session. The most important of these was the question of enforcement, to which time most of the time available was devoted and on which agreement was only reached at the eleventh hour. The enforcement scheme finally approved is a significant improvement over previous rules of international law. While maintaining primary flag State responsibility, Articles 21 and 22 of the Agreement provide for action to be taken by non-flag State inspectors when the flag State is unable or unwilling to act. Even reasonable use of force is authorized if inspectors are obstructed in the execution of their duties.

The Agreement as a whole is a comprehensive body of rules which should go a long way towards ensuring the sustainable use of a much endangered resource. With its legally binding character, its well-developed provisions on conservation and management, its solid and practical enforcement system and its compulsory and binding dispute settlement procedures, the Agreement fully meets the objectives Canada had set for itself in the Conference.

The Agreement will be opened for signature in New York on December 4, 1995. It will come into force after thirty States have ratified it. At the Annual Meeting of the Northwest Atlantic Fisheries Organization (NAFO), held in Dartmouth from 11 to 15 September, 1995, Canada stated that it will be among the first to do so and encouraged all NAFO Contracting Parties to ratify the Agreement in the coming year.

CONVENTION SUR LA SÉCURITÉ DU PERSONNEL DES NATIONS UNIES ET DU PERSONNEL ASSOCIÉ

Le 9 décembre 1994, l'Assemblée générale des Nations Unies adoptait à l'unanimité la Convention sur la sécurité du personnel des Nations Unies et du personnel associé. Le texte de la Convention a été mis au point par un groupe de travail de la Sixième Commission, en l'espace d'à peine une année. Cet exploit, une première dans l'histoire des Nations Unies, témoigne du sentiment d'urgence entourant ce projet.

La Convention a pour but une protection accrue pour les personnels des Nations Unies et associés contre les attaques de plus en plus fréquentes auxquelles ils font face dans des situations de conflit. Trois types de dispositions sont prévues par la Convention: des dispositions définissant la portée et le champ d'application, des dispositions portant sur les droits et obligations des parties, et des dispositions de nature pénale.

Inspirée des récentes conventions anti-terroristes, les dispositions pénales sont basées sur le principe *aut dedere aut judicare* (poursuite ou extradition). La communauté internationale établissant des dispositions juridiques fermes pour sanctionner de telles attaques, pose en même temps un geste politique: de tels actes ne seront plus tolérés et aucun endroit au monde ne permettra à leurs auteurs d'être à l'abri de poursuites.

Le Canada a joué un rôle de premier plan dans l'élaboration de cette Convention non seulement grâce à la participation soutenue de sa délégation dans le processus de rédaction, mais aussi en assumant la présidence de l'ensemble des travaux par l'entremise du Conseiller juridique du ministère des Affaires étrangères et du Commerce international.

Un examen de la législation canadienne est actuellement en cours en vue de déterminer les modifications nécessaires à la mise en oeuvre de la Convention. Une fois cet exercice terminé, le Canada sera en mesure de ratifier la Convention. Celle-ci n'entrera toutefois en vigueur qu'à la suite du dépôt auprès des Nations Unies de vingt-deux instruments de ratification.