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

Ministère des Affaires extérieures

Bureau des Affaires juridiques

octobre, 1974

Department of External Affairs

Bureau of Legal Affairs

October, 1974

TABLE OF CONTENTS

DROIT DE LA MER

Troisième Conférence des Nations Unies sur le Droit de la Mer

Au cours des derniers douze mois, le développement du droit de la mer reçut une nouvelle impulsion suite à la convocation par les Nations Unies d'une troisième Conférence sur le droit de la mer dont une session d'organisation s'est déroulée à New York en décembre 1973 et une session consacrée aux questions de fond eut lieu à Caracas du 20 juin au 29 août 1974. Le Canada attendait depuis longtemps la tenue de cette conférence parce qu'il estime que le droit de la mer traditionnel ne donne pas entièrement satisfaction notamment en ce qui concerne la question des ressources de la mer et la protection du milieu marin.

Session de New York

La premiére session qui ne dura que deux semaines eut à régler un certain nombre de questions administratives que soulève une conférence réunissant plus de 130 délégations et qui a pour mandat d'adopter une convention traitant de toutes les questions relatives au droit de la mer. C'est alors que furent élus l'ambassadeur S.H. Amerasinghe du Sri Lanka au poste de président de la conférence et les autres membres du Bureau; l'on décida également de la création de trois commissions plénières et d'un groupe de rédaction plus restreint dont la présidence fut confiée à l'ambassadeur J.A. Beesley du Canada. Le mandat de chacune des commissions plénières correspond à celui qui avait été accepté pour chacune des trois sous-commissions du comité qui avait depuis 1970 la responsabilité des préparatifs de la Conférence, le Comité des fonds marins. Faute de temps, les délégations ne purent terminer en décembre leur examen du règlement intérieur.

Session de Caracas

Après avoir consacré les premiers dix jours de sa session de Caracas à régler cette question de procédure, la Conférence utilisa les huit semaines qu'il lui restait à étudier les questions de fond, en premier lieu, dans le cadre d'un débat général au cours duquel le Ministre de l'Environnement, l'Honorable Jack Davis, intervint au nom du Canada et, dans une seconde phase, au sein de chacune des trois commissions plénières. Quel bilan faire de cette longue session? Selon toute apparence, il faut constater que les délégations n'ont pas réussi, malgré leur travail intense, à présenter à la communauté internationale un texte juridique portant sur quelqu'aspect du droit de la mer. Il n'en demeure pas moins qu'au cours de la session de Caracas un pas important a été franchi dans la direction d'une solution globale. Ainsi, des projets d'articles relatifs à la protection du milieu marin et à la recherche scientifique ont reçu l'assentiment - conditionnel, il est vrai - de la grande majorité des délégations. Mais, fait encore plus significatif, l'on a pu déceler à Caracas quels seraient les principaux éléments du futur traité sur le droit de la mer. En effet, il est devenu manifeste qu'un accord portant sur le régime juridique de l'espace océanique ne pourrait être réalisé que s'il était fondé sur l'acceptation d'une mer territoriale de 12 milles jointe à une vaste zone économique s'étendant au-delà et à l'intérieur de laquelle l'Etat côtier bénéficierait de droits efficaces pour la gestion des ressources biologiques et minérales et pour la protection du milieu marin.

Dans le but de faire progresser les négociations vers un tel accord, le Canada s'est joint à huit autres Etats côtiers (le Chili, l'Islande, l'Inde, l'Indonésie, Maurice, le Mexique, la Norvège et la Nouvelle-Zélande) pour saisir la Conférence d'une proposition fondéé sur le concept de la zone économique. Les principaux articles de ce document prévoient que: (1) la mer territoriale s'étend à douze milles;

(2) dans une zone économique de deux cents milles, l'Etat côtier jouit de droits souverains et exclusifs en matière de pêcheries et de ressources minérales et qu'il exerce d'autres droits qui lui sont nécessaires pour protéger le milieu marin et réglementer la recherche scientifique; (3) les Etats constitués uniquement d'îles ou possédant un important groupe d'îles peuvent renfermer ces îles ou archipels au moyen de lignes de base droites à partir desquelles seraient mesurées la mer territoriale et la zone économique; et enfin (4) le plateau continental à l'égard du el l'Etat côtier exerce des droits souverains s'étend au-delà de la mer territoriale jusqu'à la limite des 200 milles et sur toute la prolongation naturelle du territoire de l'Etat côtier lorsque cette prolongation franchit la limite des 200 milles. Compte tenu de la tendance majoritaire qui s'est manifestée à l'appui du concept de la zone économique, il fait peu de doutes qui l'on retrouvera dans le traité devant être élaboré par la Conférence plusieurs éléments du texte soumis par le Canada et les autres pays côtiers.

C'est pleinement conscientes du rôle crucial que jouera le concept de la zone économique dans la recherche d'une solution globale aux problèmes du droit de la mer que les trois commissions plénières entreprirent leur examen minutieux - et par conséquent laborieux - des vingt-cinq sujets importants que comporte l'ordre du jour de la Conférence.

Première Commission: La Zone Internationale des Fonds Marins

Le mandat de la première commission est double: tout d'abord, préparer des articles relatifs aux principes juridiques devant régir la zone internationale des fonds marins - zone que l'Assemblée générale des Nations Unies désigna en 1970 comme étant le patrimoine commun de l'humanité - et ensuite, élaborer l'acte constitutif de la future Autorité internationale des fonds marins qui veillera au respect de ces principes juridiques. Au risque de schématiser, identifions les dux thèses opposées que soulève le thème de la zone internationale des fonds marins. D'un côté, nous retrouvons les pays en voie de développement qui désirent

être les premiers à bénéficier des profits que l'on peut tirer de l'exploitation des ressources de la zone internationale. Les ressources en question sont des nodules en forme d'oeuf se trouvant en grande quantité dans certaines régions du sol océanique et le plus souvent avec une teneur élevée en cuivre, nickel, manganèse et cobalt. De l'autre côté, nous avons les pays industralisés, gros consommateurs de matières premières, qui veulent avoir facilement accès à ces nouvelles sources de minéraux, quitte à payer une redevance à la future Autorité internationale afin de satisfaire aux exigences découlant de la notion de "patrimoine commun de l'humanité".

Afin d'amener un rapprochement entre ces deux doctrines si divergentes et dans le but d'en arriver à un accord sur les principaux principes juridiques, la commission tenta de trouver réponse à trois questions fondamentales.

1. Qui peut explorer la Zone internationale et expoiter ses ressources? Au dire des pays en voie de développement, seule la future Autorité internationale devrait avoir le droit de mener des activités dans la Zone, l'Autorité restant libre de faire accomplir certaines tâches pour son propre compte par d'autres. Selon les pays développés cependant, c'est principalement aux Etats et aux personnes juridiques ou naturelles qu'il revient de mener des activités dans la Zone.

2. Quelles seront les conditions juridiques dans lesquelles se dérouleront les activités dans la Zone internationale? Les pays en voie de développement mirent au point une série de conditions laissant à l'Autorité une grande marge de discrétion et lui permettant de maintenir en tout temps un contrôle direct et efficace sur tout genre d'activités dans la Zone. A l'inverse, les conditions très détaillées conçues par les pays plus riches tendent justement à limiter le pouvoir discrétionnaire de l'Autorité puisqu'elles seraient incorporées au texte même du futur traité suir le droit de la mer.

3. De quels mécanismes devraient être dotés l'Autorité afin de protéger les pays en voie de développement producteurs de cuivre, de nickel et de cobalt et susceptibles d'être sérieusement affectés par l'exploitation des fonds des mers? Ici encore opposition entre pays riches et pays pauvres: ceux-ci favorables à l'octroi de larges pouvoirs à l'Autorité, y compris celui de contrôler la production, alors que ceux-là sont davantage préoccupés par le prix des minéraux et voient d'un mauvais oeil toute intervention de l'Autorité pour contrôler les prix ou la production.

Evidemment, la solution à des questions comme celles-ci qui touchent au vif du sujet requiert une certaine pérode de gestation. Cependant, lorsqu'elle sera trouvée, elle facilitera grandement la conclusion d'un accord et sur les principes fondamentaux et sur les pouvoirs et les fonctions de la future Autorité internationale. Le Canada partageant certains des intérêts des pays en voie de développement et certains de ceux des pays plus riches s'est employé à rechercher des formules propres à rapprocher les deux thèses et certaines d'entre elles pourraient s'avérer fort utiles lors des négociations futures.

Deuxième Commission: Sujets Traditionnels et la Zone Economique

La deuxième commission était chargée des aspects les plus traditionnels du droit de la mer tels que la mer territoriale, les pêcheries, le plateau continental, les archipels, les détroits, les îles et la haute mer, ainsi que d'un sujet de conception plutôt récente, à savoir, la zone économique. Sur chacune de ces questions, la commission tint un débat général qui permit de dégager les principales tendances et de les consigner dans un document de travail propre à chaque sujet. Dans ce contexte, l'objectif principal du Canada était de s'assurer que, parmi les tendances principales identifiées pour un sujet donné, il y en ait une qui corresponde à la position canadienne. Deux questions cependant ont requis des efforts spéciaux de la part de la délégation canadienne: le plateau continental et la pêche des espèces anadromes.

Si la Conférence sur le droit de la mer acceptait l'idée d'une zone économique donnant des droits à l'Etat côtier dans une zone de deux cents milles uniquement, le Canada risquerait de se voir contester les droits juridiquement acquis qu'il revendique à l'endroit de la partie de sa marge continentale se trouvant au-delà de la limite des deux cents milles, sur la côte Atlantique. La difficulté est de taille puisque seul un petit nombre d'Etats possède une marge continentale aussi étendue. Il s'agit donc pour ce petit groupe de convaincre la majorité des délégations du bien-fondé de sa revendication. Dans le document déposé par le Canada et les huit autres pays côtiers, il ya a justement une disposition reconnaissant à l'Etat côtier des droits souverains sur tout son plateau continental même lorsqu'il s'étend à plus de 200 milles des côtes. Il n'est pas impossible qu'en fin de compte la Conférence reconfirme l'Etat côtier dans ses droits au plateau situé au-delà des 200 milles à condition que cet Etat accepte de partager avec la communauté internationale les profits qu'il en tire.

Le deuxième sujet qui occupa l'attention de la délégation canadienne a trait au régime d'exception qu'elle préconise pour les espèces anadromes qui naissent en eau douce, qui passent la plus grande partie de leur vie adulte en haute mer et qui reviennent à leur fleuve ou rivière d'origine pour y frayer et mourir. Le régime juridique proposé par le Canada tiente compte des investissements importants que doit faire l'Etat d'origine pour assurer la survie et la reproduction de cette espèce de poisson; en fait, il prévoit une interdiction de pêcher ce poisson hors de la zone économique et des droits de gestion exclusifs à l'Etat d'origine. Dans ce cas-ci également, peu de pays possèdent des substances anadromes et, par conséquent, la majorité des délégations est peu encline à insérer dans le futur traité sur le droit de la mer une clause spéciale pour proteger les espèces anadromes. Afin de faire comprendre la portée du problème (certaines espèces de saumon sont en danger d'extinction), la délégation du Canada a pris au cours de la session de Caracas une série d'initiatives qui semblent avoir porté fruit: dépôt d'un document de travail en deuxième commission expliquant le cycle biologique du saumon, distribution d'un album de luxe à toutes les délégations et projection d'un film.

Lors de la prochaine session, la deuxième commission commencera donc ses négociations sur la base des divers documents de travail qu'elle a mis au point à Caracas. Ces négociations pour être fructueuses devront avoir comme pôle d'attraction le concept de la zone économique de 200 milles pour lequel il reste encore à définir la nature précise des droits des Etats côtiers, notamment en ce qui a trait aux pêcheries et à la protection du milieu marin.

Troisième Commission: Protection du Milieu Marin et Recherche Scientifique

Au cours de la session de Caracas, la troisième commission s'est surtout attardée aux questions relatives à la protection du milieu marin et à la recherche scientifique et n'a traité du domaine du transfert des techniques qu'à l'occasion.

Pour ce qui est de la protection du milieu marin, la commission, constatant qu'il y avait un grand nombre de délégations favorables à l'élaboration d'un traité de base portant sur toutes les sources de la pollution des mers (traité qui serait étayé par d'autres conventions à caractère plus limité et plus technique déjà en vigueur ou devant être élaborées), entreprit la rédaction de principes généraux à inclure dans ce traité. L'on peut résumer les principaux projets d'articles qui ont reçu l'assentiment provisoire de la commission de la façon suivante: (a) tous les Etats ont l'obligation de protéger et de préserver le milieu marin; (b) les Etats ont des droits souverains pour exploiter leurs ressources selon leur politique en matière de la protection du milieu et en accord avec leur obligation de protéger le milieu marin; (c) les Etats doivent veiller à ce que les activités menées sur leur territoire ne soient source de pollution au-delà de la limite de leur juridiction nationale; (d) les Etats doivent coopérer sur le plan international et sur le plan régional afin de promouvoir l'adoption de normes et de réglements pour lutter contre la pollution des mers, etc.

Par contre, la commission, faute de temps, ne put en arriver à un accord sur les aspects les plus litigieux du futur traité et qui ont trait, par exemple, à la juridiction de l'Etat côtier ou à celle de l'Etat d'enregistrement du navire en matière d'adoption et de mise en application de règlements ou normes pour combattre la pollution dans la zone économique; à l'immunité de juridiction des navires de guerre; au règlement des différends, à l'indemnisation pour les dommages causés, au droit d'intervention, etc.

La question s'est trouvée posée au cours de la session de Caracas à savoir si la juridiction en matière de protection du milieu marin doit faire partie intégrale du concept de la zone économique. En effet, certains Etats tentent de limiter la portée de ce concept à une juridiction de l'Etat côtier en matière de ressources uniquement. Afin de faire valoir clairement son point de vue sur cette remise en question, le Canada, avec sept autres Etats côtiers, a saisi la commission d'un document de travail reconnaissant aux Etats riverains une juridiction en matière de protection du milieu marin à l'intérieur de la zone économique de 200 milles.

Un autre problème qui s'est fait jour au cours de la session est celui que pose à certains pays en voie de développement l'adoption de normes internationales réglementant les décharges qu'ils estiment trop élevées. Ces Etats sont désireux de mettre sur pied leur propre marine marchande et, à cette fin, ils font quelqes fois l'acquisition de navires vétustes qu'ils ne veulent pas voir soumis à des normes à ce point strictes que la zone maritime d'autres Etats et mème la haute mer leur seraient fermées. Selon ces Etats, les pays en voie de développement devraient être soumis à des normes moins sévères. Le Canada partage les préoccupations des pays en voie de développement à cet égard mais craint, d'un autre côte, que l'instauration d'un système de normes moins sévères n'ait comme résultat de réduire à néant les bènèfices découlant des normes plus élevéées.

Il recherchera donc une solution qui réponde à la fois aux besoins en matière de développement des pays du Tiers-Monde et aux besoins de la communauté internationale tout entière en ce qui concerne la protection du milieu marin.

Sur le sujet de la recherche scientifique sur les mers et les océans également, la commission s'est entendue à titre provisoire sur quelques principes généraux relatifs à la poursuite des activités de recherche en mer et à l'encouragement qu'elles doivent recevoir de la part de tous les Etats. Quelques articles ont également été mis au point sur la coopération à laquelle doit donner lieu la recherche en mer au niveau international et régional et sur l'échange et la publication des données scientifiques. Comme pour le domaine de la pollution, la question des pouvoirs à conférer à l'Etat côtier pour réglementer les activités de recherche menées dans sa zone économique par des citoyens d'autres Etats a constitué une véritable pierre d'achoppement sur laquelle ont buté les délégations. Il ya a les délégations qui estiment que de telles activités ne devraient pas être interdites si l'Etat côtier en a été avisé et il y a celles qui prétendent, au contraire, qu'un tel avis préalable n'est pas suffisant et qu'il faut en premier lieu obtenir le consentement de cet Etat. Avec d'autres pays comme l'Australie, la Nouvelle-Zélande, l'Espangne, le Mexique et le Vénézuela, le Canada a soumis un texte proposant une solution intermédiaire selon laquelle l'Etat côtier ne refuserait de donner son consentement si les personnes voulant s'adonner à la recherche dans sa zone maritime satisfaisaient à un certain nombre de conditions concernant entre autres la participation des nationaux de l'Etat riverain aux activités, l'échange de données, etc. Cette proposition se révélera sans doute utile pour faire avancer les négociations lors de la prochaine session.

Session de Genève

Nonobstant les progrès marqués accomplis à Caracas dans le but de conclure un accord global sur le droit de la mer, la Conférence s'est rendu compte qu'elle aurait besoin d'au moins une autre session pour remplir son mandat. Si l'Assemblée générale des Nations Unies accueille la recommandation que lui a faite la Conférence, celle-ci se réunira de nouveau à Genève du 17 mars au 10 mai 1975.

PLATEAU CONTINENTAL:

Accord Canada-Danemark

Au cours de la dernière année, le Canada et le Danemark ont ratifié un accord qu'ils avaient signé le 17 décembre 1973 et portant sur la délimitation du plateau continental entre le Groenland et le Canada.

Il s'agit du premier accord portant sur la délimitation du plateau continental que le Canada a conclu avec ses voisins. Par cet accord, le Canada et le Danemark ont décidé d'établir dans les régions du plateau continental entre les îles canadiennes de l'Arctique et le Groenland une ligne de séparation en deçà de laquelle chaque partie peut étendre ses droits souverains aux fins de l'exploration et de l'exploitation des ressources du plateau continental conformément à la Convention des Nations Unies sur le Plateau Continental de 1958.

La ligne de séparation qui mesure quelque 1430 milles marins et qui représente la plus longue délimitation d'un plateau continental dans le monde a été déterminée d'après le principe de l'équidistance et en tenant compte de certaines modifications jugées nécessaires pour en arriver à une solution mutuellement acceptable et équitable.

Environmental Law

Efforts in the field of environmental law were concentrated in three main areas during the past year: first, the development of a legal regime for the prevention of ocean pollution; second, the prevention of other forms of pollution that have global implications; third, the prevention of pollution along the Canadian-American border.

Canadian legal experts have contributed to efforts by the Inter-Governmental Maritime Consultative Organization to combat marine pollution. A landmark in these efforts was the conclusion of the international Convention for the Prevention of Pollution from Ships at a Conference held in London during October and November 1973. This Convention improved international standards governing the discharge of substances other than oil and raised discharge standards for oil. In Canada's view the means that the Conference provided for enforcing these standards can be improved upon. Future Canadian activity within IMCO will seek to strengthen enforcement procedures.

At the Conference Canada attempted to make enforcement of the convention more of an equal partnership between flag and coastal states. First Canada successfully pressed for the inclusion of the term "waters under its jurisdiction" rather than the more narrow "territorial sea". The inclusion of this term together with a saving clause defers resolution of the question of the "nature and extent" of flag state and coastal state jurisdiction for the prevention of marine pollution to the Law of the Sea Conference. This approach is similar to that adopted in the London Dumping Convention where jurisdictional issues were also left open for resolution by the Law of the Sea Conference. Secondly, Canada unsuccessfully attempted to persuade the IMCO Conference to recognize the 'port state jurisdiction' concept which would allow a contracting state to prosecute a ship when it enters its ports for an offence contrary to the Convention committed in waters beyond any state's jurisdiction. Also, if an offence occurs within another state's jurisdiction, that state may request the port state to commence prosecution whenever the ship enters its ports.

In November 1973 IMCO established a new sub-organ, the Marine Environment Protection Committee (MEPC). The new Committee is responsible within IMCO for work relating to the prevention and control of marine pollution from ships. The MEPC is responsible for preparing a list of substances to be annexed to the Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil. The first session of the MEPC, March 1974, was devoted primarily to procedural and organizational matters.

The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter was adopted at an international conference held in London during 1972. The Convention will enter into force one month after the deposit of the fifteenth instrument of ratification which is expected to take place early in 1975. Canada is presently preparing legislation to implement the Convention prior to its coming into force.

The process of preventing marine pollution caused either by ships or by dumping is still unfinished. There will be further opportunities within IMCO to seek improvement in measures for preventing marine pollution.

Canadian activities to prevent forms of pollution that have global implications are based on the principles enunciated by the 1972 Stockholm Conference in the Declaration on the Human Environment, in particular principles 21 and 22. The primary forum for Canadian activities in the international field is the United Nations Environment Program (UNEP), which was established as a result of the Stockholm Conference. At the second session of the Governing Council of UNEP held in 1973 a decision was taken to carry out a study of weather modification and to consider the desirability of producing guidelines or a 'code of conduct' on international cooperation in this field; this study will be followed by the convening of legal and scientific groups at a later stage. The control of weather modification is a goal at the bilateral as well as the multilateral level. Bilateral discussions are at present underway with the United States on an agreement relating to weather modification experiments. Canada would like to see the eventual agreement include provision for prior notice of weather modification activities and reference to the principle of the duty to consult.

The 1972 United Nations Conference on the Human Environment recommended that a conference be called to adopt an international trade agreement for endangered species. At a conference held in Washington in 1973 the Convention on International Trade in Endangered Species of Wild Fauna and Flora was produced. Although it has been signed by 43 nations (including Canada) the Convention will not come into effect until it has been ratified by ten nations. The convention establishes a system of import and export controls which is designed to protect endangered plants and animals from depletion through illicit trade. A species may be listed in one of three convention appendices, depending on the degree to which it is considered endangered. Appendix I includes species near extinction. Trade in these will be permitted only under exceptional circumstances and will require both an export permit from the originating country and an import permit from the receiving country. Animals and plants listed in Appendix II are considered as threatened and unless special care is exercised could become endangered. Species described in Appendix II may only be imported if they are covered by export permits from the originating state. Species in Appendix III may not be endangered on a world-wide scale, but are considered rare or subject to control within a participating state.

In November an agreement for the conservation of polar bears was adopted at a conference of Arctic nations in Oslo. The agreement prohibits the hunting of polar bears in areas not under the management authority of any of the participating countries and also provides for closer collaboration among Arctic nations in the management and study of polar bears.

During 1973-74 the legal dimension of environmental problems along the Canadian-American border became increasingly important. One commentator described Canada's growing concern over U.S. border dam projects as being "the most tangled and potentially explosive subject of all the issues awaiting negotiation between Ottawa and Washington".

The most significant American project with a potential harmful effect on Canada is the Garrison Diversion which would irrigate one-quarter million acres of North Dakota farmland. If the project proceeds as it is envisaged at present, Canadian officials predict that it will degrade the quality of the waters of Manitoba's Souris and Red Rivers. Discussions with the Americans on the Garrison Diversion Unit have been based on the reciprocal obligations which Canada and the United States assumed in the Boundary Waters Treaty of 1909. Specifically, under Article IV of this Treaty, both countries agreed 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". The United States has indicated that it accepts this commitment, and intends to honour it. This situation could, then, be the setting for a new precedent in Canada/U.S. relations, viz that each country will take the necessary measures in advance to protect the other against activities which mighr result in trans-boundary water pollution.

Another major border dam concerns the Skagit Valley, in British Columbia. The roots of the problem date back to 1941 when the City of Seattle applied to the International Joint Commission (IJC) under the terms of the 1909 Boundary Waters 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 acres 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 1967 public concern over the environment has increased and British Columbia is now opposed to the proposed flooding, a position which is supported by the Government of Canada.

In June, the Government of British Columbia presented a "request" to the International Joint Commission challenging the legal validity of the 1942 Order. At the time of writing the Commission had asked the four governments involved for opinions on whether the Commission had jurisdiction to review its 1942 Order. The Canadian Government made a submission to the IJC in which the Government expressed the view that based on the wording of the 1942 Order the IJC had jurisdiction to receive and consider the British Columbia "request".

At the present time environmental issues involving Canada and the United States are wide in scope and are not restricted to dam and irrigation projects. On the Pacific and Atlantic coasts difficulties associated with the transport of oil by ships have a significant legal element. A positive step to minimize pollution threats to Canadian and United States coastal waters was undertaken in 1974 when the two countries exchanged Notes establishing a joint Canada/United States Marine Contingency Plan. The purpose of this Plan is to establish a framework whereby both countries can coordinate their responses to significant pollution threats from spills of oil and other noxious substances in waters of mutual interest. The waters to be covered in the Plan include the Great Lakes, and waters off the Atlantic and Pacific coasts. The Plan provides for cooperation with respect to the use of equipment and for coordination of personnel in responding to any accidents that may occur in the waters affected by the Plan. Among other things coordination of personnel involves provision for the selection of an on-scene-commander. The Plan also contains provisions relating to funding the costs of any joint response.

It is anticipated that other agreements relating to traffic management schemes and liability and compensation will be successfully negotiated in the near future. The spur behind this diplomatic activity is the intensification of tanker traffic in the Puget Sound area which will occur as a result of the transportation of North Slope oil from Alaska to the west coast of the United States.

On the Atlantic coast the proposal by the Pittston Company to build an oil refinery and terminal at Eastport Maine presents environmental dangers for Canada. The tankers supplying the Pittston refinery would have to pass through Canadian waters (pollution control zones/Bay of Fundy/territorial sea and internal waters) in order to gain access to Eastport, and there is a serious risk to the Canadian marine environment resulting from such traffic. The Canadian Government has expressed to the United States authorities the Government's strong opposition to the carriage of oil through the Canadian waters concerned.

Protection des Diplomates

Le 14 décembre 1974, sur proposition de la Sixième Commission (Affaires juridiques), l'Assemblée générale de l'O.N.U. a adopté sans opposition la Convention sur la prévention et la répression des infractions contre les personnes jouissant d'une protection internationale y compris les agents diplomatiques, appelée communément la Convention sur la protection des diplomates. Le Canada a signé la Convention le 26 juin 1974.

La discussion du projet élaboré par la Commission du droit international, et qui a conduit à l'adoption de la Convention, a occupé la majeure partie du temps de la Sixième Commission au cours de la session de l'automne 1973 de la 28 ème Assemblée générale de l'O.N.U.

L'initiative de cette Convention remonte à décembre 1971 lorsque l'Assemblée générale, préoccupée par le fait que les crimes contre les diplomates (et particulièrement les enlèvements) constituent une menace au maintien de relations internationales normales, demanda à la Commission du droit international de préparer un projet de convention sur la prévention et la répression des crimes contre les personnes ayant droit à une protection spéciale en vertu du droit international.

Au cours du débat préliminaire qui a eu lieu en octobre 1972 à la Sixième Commission, de même que dans les commentaires présentés au Secrétaire général en avril 1972 et juillet 1973, le Canada a exprimé son appui général pour le principe d'une Convention à ce sujet et pour le projet de la CDI.

La Convention suit de près les conventions connexes de La Haye et Montréal sur la piraterie aérienne, particulièrement en ce qu'elle exige que chaque partie soit extrade soit soumette aux autorités compétentes en vue d'une poursuite pénale tout présumé auteur d'une infraction trouvé sur son territoire. Toutefois, à la différence des Conventions sur la piraterie aérienne, elle contient des références, formulées d'une façon généralement acceptable suite à un débat difficile, au droit des peuples à l'autodétermination et à l'institution latino-américaine de l'asile. La nouvelle convention, si elle est appliquée de façon générale, aura pour effet d'éliminer les refuges pour les terroristes et devrait avoir un effet dissuasif sur les terroristes internationaux en puissance.

Le Canada entend ratifier la Convention lorsque les mesures législatives nécessaires à sa mise en application auront été adoptées par le Parlement. Elles devraient consister essentiellement en certaines modifications au Code criminel permettant, dans les circonstances prévues à la Convention, de poursuivre au Canada les présumés auteurs de crimes commis hors du territoire canadien.

L'adoption de la convention deux ans après la demande originale de l'Assemblée générale peut être considérée comme une preuve du fait que, lorsque confronté à un problème urgent, l'appareil juridique de l'O.N.U. est capable de produire des résultats dans une période de temps relativement courte.

Humanitarian Law in Armed Conflicts

The first session of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, convoked by the Swiss Federal Council in cooperation with the International Committee of the Red Cross (ICRC), was held in Geneva from February 20 to March 29, 1974. The Canadian Delegation was headed by the Director of Legal Operations Division of the Department of External Affairs and the Deputy Head of Delegation was the Deputy Judge Advocate-General of the Department of National Defence. A second session of the Diplomatic Conference will be held in Geneva February 3 - April 30, 1975.

This Diplomatic Conference represents the culmination of four years of preparatory work which has been conducted under the auspices of the ICRC in cooperation with the United Nations to which Canada has been a major contributor. It is hoped that the Diplomatic Conference will approve and adopt two Additional Protocols which will reaffirm and update the four Geneva Conventions of August 12, 1949 for the Protection of War Victims.

The need to reaffirm and supplement those four Conventions, in order that they might better reflect the realities of contemporary armed conflict situations, particularly "non-international" armed conflicts, was identified by the ICRC and acknowledged by the 21st International Conference of the Red Cross which was held in Istanbul in 1969.

In 1971 and 1972, two Conferences of Government Experts on humanitarian law were convened by the ICRC to assist in the preparation of the two draft Additional Protocols, which now provide the basis for discussion at the Diplomatic Conference.

At the two preparatory Conferences of Government Experts, Canada's representatives vigourously promoted the view that, building upon common Article 3 of the four Geneva Conventions of 1949, a basic minimum standard of humanitarian treatment should be elaborated which would apply in all armed conflict situations even if they are considered to be

"non-international" in character. To this end, Canadian experts prepared a draft protocol to apply in "non-international" armed conflicts and presented this draft for consideration by the Conferences of Government Experts; this draft has provided the inspiration and basis for the second draft Additional Protocol which is now before the Diplomatic Conference.

Although some government experts (and their governments) believe that the victims of international and non-international armed conflicts should be equally protected by a single additional protocol, experts from Canada and a good number of other countries are of the opinion that the nature of and conditions under which non-international and hence internal, armed conflicts are normally conducted are such as to necessitate separate treatment. It is generally agreed, however, that if two Additional Protocols are to be adopted, the form and language of both should be similar, but the provisions of the second Protocol should probably be less complex than those of the first.

The second draft Additional Protocol, as it is currently worded, would apply mainly to situations where non-international hostilities of a collective nature have occurred between "organized armed forces under the command of a responsible authority". The Canadian view is that such a Protocol would apply only in conflicts of relatively high intensity where both parties, including the rebels, have at least quasi-governmental authority, control of some territory and the capacity to abide by the protocol, whereas many contemporary armed conflicts, in which loss of life and injury among the civilian population is high occurs at a lower level of intensity and should, if possible, be brought within the scope of the protocol. Many experts, particularly those from the developing countries, believe that "wars of national liberation" should be regarded as being international in nature and thus be excluded from the scope of the second protocol and placed in the first protocol on international armed conflicts.

At the first session of the Diplomatic Conference a great deal of time was spent on the resolution of preliminary questions of a political and procedural nature. For example, the conference had been requested by the U.N. General Assembly and by the 22nd International Conference of the Red Cross, which met in Tehran in November, 1973, to consider inviting representatives of various national liberation movements recognized by regional inter-governmental organizations to participate in the work of the Diplomatic Conference. This issue provoked considerable debate and was resolved only after difficult behind-the-scenes negotiations, in which the Canadian Delegation had a leading role, resulting in a consensus resolution which allowed the representatives of about fifteen liberation movements from Africa and the Middle East to participate in the Conference as observers without the right to vote.

The self-proclaimed state of Guinea-Bissau was granted, also by consensus, the right of full participation at the Conference, but the Provisional Revolutionary Government of South Viet-Nam (PRG) was denied such right by the narrow vote of 38 to 37. The Canadian Delegation voted against full participation by the PRG since Canada recognizes the Republic of Viet-Nam as the sole legal Government of South Viet-Nam.

Because of the inordinate amount of time consumed on these questions and in the establishment of a geographically balanced Bureau and committee structure for the Conference, only about two weeks of this first session were devoted to substantive debate on the draft Additional Protocols. The three main committees, however, did consider some sixteen articles, of which seven were adopted (somewhat provisionally) at the Committee level.

The most contentious substantive issue raised at the Conference concerned the scope of the first Additional Protocol. The majority of non-aligned states, supported by Eastern European and several Latin American states secured majority approval in committee of a text of Article 1 of that Protocol which would have the effect of automatically converting into "international" armed conflicts all self-proclaimed wars of self-determination against colonial domination, alien occupation and racist regimes, regardless

of their level of intensity or the degree to which states, as opposed to movements, was actually involved. This would mean that all of the provisions of the four Geneva Conventions of 1949 would ostensibly apply to such conflicts regardless of the character of the parties to the conflict or their capacity to carry out their obligations under those Conventions. Although approved in Committee, this article, which if adopted in Plenary would have seriously undermined the need for the second draft Additional Protocol and in Canada's view would have had a detrimental effect on the existing non-discriminating foundation for the law applicable in armed conflicts, was not put to a vote in plenary, largely as a result of a Canadian initiative to have the implications of the article studied intersessionally. However, the problem posed by the wording of this particular draft article will have to be faced immediately when the Conference reconvenes next February, although it is hoped that some satisfactory solution can be found in the meantime through informal consultations among the geo-political groups.

Definition of Aggression

It is anticipated that the General Assembly will, at its twenty-ninth session this autumn, adopt a definition of aggression in the form of a solemn Declaration. If this is done it will represent a significant achievement and a source of encouragement for those concerned with the progressive development of international law. The search for a generally acceptable definition of aggression was begun by the League of Nations over fifty years ago, and has been continued intermittently since then by the International Law Commission and four U.N. Special Committees. The draft definition which is to be considered this year by the Sixth (Legal) Committee, and hopefully forwarded without amendment to the General Assembly for adoption, was drafted by the 35-member U.N. Special Committee on the Question of Defining Aggression which was established in 1967 with a membership chosen to reflect the principal legal systems and geographical areas of the world.[1/]

The draft definition is the result of extremely difficult negotiations in which Canadian representatives played an active part, particularly at the past two sessions when the Special Committee has been engaged in putting together a "package" definition containing elements from all three competing draft definitions proposed to it at various times by a thirteen-power non-aligned group, a six-power Western group (which included Canada), and by the Soviet Union. As the final result is a product of compromise, of necessity it contains some elements which some Special Committee members would have preferred to see omitted and does not go as far in other areas as some members had hoped; never-the-less, it received consensus approval from the Special Committee on the last day of its 1974 Session in April and is generally considered to be quite adequate.

As Canada had insisted upon at the outset, the definition as drafted does not purport in any way to limit the primary responsibility of the Security Council for the maintenance of international peace and security further to Article 24 of the U.N. Charter, nor does it purport to fetter

the ultimate discretion of the Security Council in making a determination under Article 39 of the Charter as to whether or not an act of aggression has been committed in a particular instance. However, the definition if adopted will serve as a useful guide to the Security Council, when it is required to make a determination under Article 39 of the Charter as to whether the direct or indirect use of armed force by a state has been such as to constitute an illegal use of force in contravention of the Charter. The definition should also have some deterrent effect on the resort to force by states as it will serve as notice to all U.N. members which particular uses of armed force are likely to be deemed by the Security Council to be illegal and thereby possibly result in measures being taken under Chapter 7 of the Charter.

The definition is not so general as to be merely repetitious of Charter language, and at the same time not so specific as to suggest that it is exhaustive of those acts constituting aggression. It incorporates the concepts of both direct and indirect aggression (in Articles 3(f) and 3(g)) and contains a useful reference to state complicity in acts of international terrorism (in Article 3(g)). It also includes, as the penultimate article a so-called self-determination "escape clause" which recognizes the right of peoples "to struggle" for self-determination in accordance with their rights as derived from the Charter and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States. It is perhaps worth noting that the definition does not make any reference to acts of so-called "economic aggression".

The definition as approved by the Special Committee is reprinted as Annex I to this paper.

NOTES: 1/ The members of the Committee are:

Algeria
Australia
Bulgaria
Canada
Colombia
Cyprus
Czechoslovakia
Ecuador
Egypt
Finland
France
Ghana
Guyana
Haiti
Indonesia
Iran
Iraq
Italy
Japan
Madagascar
Mexico
Norway
Romania
Sierra Leone
Spain
Sudan
Syrian Arab Republic
Turkey
Uganda
Union of Soviet Socialist Republics
United Kingdom of Great Britain and Northern Ireland
United States of America
Uruguay
Yugoslavia
Zaire

DEFINITION OF AGGRESSION

Basing itself on the fact that one of the fundamental purposes of the United Nations is to maintain international peace and security and to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace.

Recalling that Article 39 of the Charter states that the Security Council shall determine the existence of any threat to the peace, breach of the peace or act of aggression and shall make recommendations or decide what measures shall be taken in accordance with Articles 41 and 42 to maintain or restore international peace and security,

Recalling also the duty of States under the Charter of the United Nations to settle their international disputes by peaceful means in order not to endanger international peace, security and justice,

Bearing in mind that nothing in this definition shall be interpreted as in any way affecting the scope of the provisions of the United Nations Charter with respect to functions and powers of the organs of the United Nations,

Considering also that since aggression is the most serious and dangerous form of the illegal use of force, being fraught, in the conditions created by the existence of all types of weapons of mass destruction, with the possible threat of a world conflict with all its catastrophic consequences, aggression should be defined at the present stage,

Reaffirming the duty of States not to use armed force to deprive peoples of their right to self-determination, freedom and independence or to disrupt territorial integrity,

Reaffirming also that the territory of a State shall not be violated by being the object, even temporarily, of military occupation or of other measures of force taken by another State in contravention of the Charter, and that it shall not be the object of acquisition by another State resulting from such measures or the threat thereof,

Reaffirming also the provisions of the Declaration on Principles of International Law concerning Friendly Relations and cooperation among States in accordance with the Charter of the United Nations,

Convinced that the adoption of a definition of aggression ought to have the effect of deterring a potential aggressor, would simplify the determination of acts of aggression and the implementation of measures to stop them and would also facilitate the protection of the rights and lawful interests of the victim and the rendering of assistance to the victim,

Believing that, although the question whether an act of aggression has been committed must be considered in the light of all the circumstances in each particular case, it is, nevertheless, desirable to formulate basic principles as guidance for such determination,

Article 1

Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this definition.

Explanatory Note: In this definition the term "State"

(a) is used without prejudice to questions of recognition or to whether a State is a member of the United Nations, and

(b) includes the concept of a "group of States" where appropriate.

Article 2

The first use of armed force by a State in contravention of the Charter shall constitute prima facie evidence of an act of aggression although the Security Council may, in conformity with the Charter, conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances, including the fact that the acts concerned or their consequences are not of sufficient gravity.

Article 3

Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of Article 2, qualify as an act of aggression:

(a) the invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;

(b) bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

(c) the blockade of the ports or coasts of a State by the armed forces of another State;

(d) an attack by the armed forces of a State on the land, sea or air forces, marine and air fleets of another State;

(e) the use of armed forces of one State, which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

(f) the action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

(g) the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

Article 4

The acts enumerated above are not exhaustive and the Security Council may determine that other acts constitute aggression under the provisions of the Charter.

Article 5

No consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression.

A war of aggression is a crime against international peace. Aggression gives rise to international responsibility.

No territorial acquisition or special advantage resulting from aggression are or shall be recognized as lawful.

Article 6

Nothing in this definition shall be construed as in any way enlarging or diminishing the scope of the Charter, including its provisions concerning cases in which the use of force is lawful.

Article 7

Nothing in this definition, and in particular Article 3, could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist regimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration.

Article 8

In their interpretation and application the above provisions are interrelated and each provision should be construed in the context of the other provisions.

Outer Space Law

The Canadian Government has been an active participant over the past fifteen years in the development of outer space law, a branch of law which is becoming increasingly significant as more states become involved in activities in outer space.

This legal work has been done primarily under the aegis of the now thirty-seven member United Nations Committee on the Peaceful Uses of Outer Space[1] and its Legal Sub-Committee. That Sub-Committee usually meets for about one month each year, either in New York or Geneva, and has proven to be an exceptionally productive contributor to the international legislative process. The Bureau of Legal Affairs of the Department of External Affairs coordinates Canada's participation in the work of the Sub-Committee.

At its thirteenth session, held in Geneva last May, the Legal Sub-Committee dealt, inter alia, with the following subjects:

(a) Draft Convention on Registration of Objects Launched into Outer Space

The Legal Sub-Committee succeeded in putting the finishing touches to the text of a draft Convention on Registration of Objects Launched into Outer Space, which when adopted by the General Assembly will be the fourth international legal instrument elaborated by the Sub-Committee[2].

This draft Convention is the result of a joint proposal made in 1972 by Canada and France. The drafting of the text was almost completed at the 1973 Session of the Sub-Committee, but despite agreement on most of the text, the Sub-Committee was unable last year to reach consensus on a review clause and on a provision on "marking".

Agreement was, however, obtained subsequently on the text of a review clause during the 1973 meeting of the parent Outer Space Committee, but no similar agreement proved possible on a satisfactory system for marking space objects. The proposed compulsory marking provision advocated originally by France and others was unacceptable to several states, including in particular the U.S.A., which regarded such a requirement to be technically unfeasible and of little practical value.

During the first few months of 1974, officials in the Bureau entered into bilateral discussions with interested states, including the U.S.A., which resulted in the elaboration of the compromise formula which eventually gained general acceptance. This formulation makes marking a voluntary act, but provides that whenever an object is marked either with an appropriate designator or its registration number this information must be conveyed to the Secretary-General for inclusion in a central Register along with the other information about the object, furnished in accordance with the Convention.

With these outstanding problems resolved, the draft Convention was submitted to the parent Outer Space Committee in July for approval and after deleting a preambular draft paragraph referring to the non-existent Moon Treaty, the Committee forwarded the draft to the General Assembly for adoption at its twenty-ninth regular session. The successful adoption of the Registration Convention by the United Nations will mark another significant step in the progressive and orderly development of international law relating to Man's activities in outer space and should usefully complement, through the better identification of space objects, the Convention on International Liability for Damage Caused by Space Objects (1972).

As soon as the Registration Convention has been adopted it is likely Canada will sign and ratify it together with the earlier agreements on astronauts and liability.

(b) Draft Moon Treaty

A draft Moon Treaty was originally submitted by the U.S.S.R. to the General Assembly in 1971, which then referred it to the Outer Space Committee for consideration by the Legal Sub-Committee. Since that time the Sub-Committee has been able to agree only on a Preamble and six non-controversial articles. There are a number of important areas of disagreement which remain outstanding, the most important of which concerns proprietary rights in the resources of the Moon (and of other celestial bodies).

At its 1974 session, the Legal Sub-Committee had before it the original draft text and numerous other working papers, including a revised draft of a complete Convention by Bulgaria.

That comparatively little progress was made in the drafting of this Treaty is attributable primarily to recognition by the Sub-Committee that continuing differences of principle on the proprietary issue were too substantial to be effectively resolved. As a result, the U.S.S.R. was prepared to defer consideration of the draft Treaty in the interests of facilitating progress on other items before the Sub-Committee which seem more susceptible to agreement.

The proprietary rights over resources issue is of particular interest because of the parallel problem currently being faced on the resources of the international areas of the seabed.

Article II of the 1967 Outer Space Treaty which contains the principle of non-appropriation of the Moon, is silent about the exploitation of the Moon's resources. At the 1972 meeting of the Legal Sub-Committee, the U.S.S.R. strongly opposed incorporation of the concept that "the natural resources of the Moon and other

celestial bodies shall be the common heritage of all mankind". The Canadian Delegation, while expressing the view that the Treaty should affirm this principle, considered that at an appropriate time in the future, when exploitable resources are discovered, it would be necessary to establish an international régime based on generally agreeable institutional arrangements to govern the development of this common heritage. At the 1973 meeting there was disagreement between the space powers and the developing countries in particular as to whether space powers should enjoy any proprietary rights in the Moon's natural resources prior to the establishment of such an international regulatory régime.

The position of the U.S.A. is that while it supports the principle of the common heritage of mankind it has also advanced the proposition that only those resources "in place" on the Moon or other celestial bodies should not be appropriated by any state. The "in place" formulation would permit any state to acquire some rights over these resources once they have been removed, at least until an international régime had been established.

It is becoming more likely that the Legal Sub-Committee will not be able to resolve this issue until the U.N. Conference on the Law of the Sea has articulated a more precise definition of the concept of "common heritage of all mankind". Canada, as a country which is not a major space power but which does have extensive and recognized experience in outer space activities, should be able to play an effective role in resolving this issue. The Canadian Delegation at the thirteenth session of the Legal Sub-Committee has already expressed our willingness to participate actively in any discussions, on a formal or informal level, directed toward achieving compromise on these outstanding issues, particularly since articles in the draft Treaty already agreed upon contain genuinely useful provisions, relating especially to scientific exchange and environmental protection.

(c) Direct Broadcast Satellites (DBS)

A joint Canada/Sweden initiative led to the creation in 1968 of the Outer Space Committee's Working Group on Direct Broadcast Satellites, to examine the technological, social, cultural, political and legal implications of DBS. Canada and Sweden have jointly prepared detailed working papers in advance of each of five sessions of the Working Group and are recognized as being among the main proponents of guiding legal principles to govern future use of this technology.

At its fourth session in June, 1973, the Working Group considered a joint Canada/Sweden working paper which contained a draft of those principles designed to establish a realistic and responsible balance between the protection of a state's sovereign rights, and the facilitation of the important new technology, with obvious benefits for all countries. A draft convention tabled by the U.S.S.R. in the General Assembly in 1972 is thought by many countries to place too much emphasis on the former at the expense of the latter.

At its 1973 session, the General Assembly recommended that the Working Group should meet for a fifth session to continue its multi-disciplinary examination of the subject, with a view to making specific recommendations to the Legal Sub-Committee on the elaboration of appropriate principles.

The fifth session of the Working Group was held in Geneva in March 1974 and conducted a valuable comparative analysis of the principles which, by that time, had been proposed by the U.S.S.R., Argentina, U.S.A., and, of course, by Canada and Sweden.

The Legal Sub-Committee was able to draft preliminary texts of five less contentious principles covering applicability of international law, rights and benefits of states, international cooperation, State responsibility and the peaceful settlement of disputes. Agreement on the more difficult and fundamental principles pertaining to prior consent, the right of participation

by receiving states and the definition of technically unavoidable spillover, will be even more difficult to achieve because of the difference of opinion that exists on the apparently conflicting concepts of state sovereignty (stressed by the Eastern Europeans) and the free flow of information (stressed particularly by the U.S.A. and the U.K.).

No agreement was reached by the Outer Space Committee at its annual meeting in July as to the desirability of reconvening the Working Group on DBS, at least in the immediate future.

It is therefore likely that further consideration of the unresolved issues related to DBS will take place in the context of the Legal Sub-Committee, and will consequently acquire an increased significance in that forum.

(d) Remote Sensing of the Earth by Satellite

Remote sensing by satellite as a method of monitoring resources and environmental conditions on the earth is a relatively new space application of growing importance. Under a 1971 Agreement with the U.S.A., Canada established facilities able to "read out" and process data on Canadian terrain received from the ERTS-1 satellite and Skylab.

Because it was one of the first countries outside the U.S.A. to gain such practical experience, Canada has been able to provide much useful information to the subsidiary bodies of the Outer Space Committee in discussions on remote sensing. To date, most of the work on this technology has been done by the Outer Space Committee's Technical and Scientific Sub-Committee and its Working Group on Remote Sensing which had a broad mandate to examine all aspects of remote sensing, including the international legal implications.

However, this year for the first time the Legal Sub-Committee considered remote sensing, using the reports of the Technological and Scientific Sub-Committee and its Working Group as background documents.

Representatives of a number of countries, including Canada, have been stressing the need to begin drafting legal principles which, while firmly based on the technical requirements of remote sensing, would strike a responsible balance between the interests of the principal entities involved in the activity, i.e., sensing states, sensed states, user groups and the international community generally. These principles would govern the essential facets of remote sensing in its various phases, including the acquisition of raw data, the processing of the data into usable form, dissemination and interpretation of such data.

Although proposals for draft principles to govern remote sensing were submitted in the Legal Sub-Committee by a number of states, little progress was made at its 1974 session toward agreement on the need for a legal régime. There will obviously be a lengthy and intense international debate on this subject before any legal principles to govern the activity are elaborated.

At the 1974 meeting of the Legal Sub-Committee, the full spectrum of divergent views on the subject was reviewed. These views ranged from the pro-sovereignty approach advocated by Brazil and some other Latin American States, to the "open-skies" policy espoused by the U.S.A. The former would seek to recognize rights by sensed states over the collection and dissemination of data pertaining to their terrain. The latter holds that the present state of international law (particularly the Outer Space Treaty) adequately covers this activity and that sensing states do not require the consent of sensed states either to collect or disseminate data, even if the dissemination is to third parties. The basic issue is, therefore, whether a state has, or should have, any rights to date or information about its resources, as opposed to rights in the resources themselves.

While Canada is on record as recognizing the desirability of elaborating legal principles for remote sensing, Canadian Delegations have not articulated a definitive position, choosing rather to stress the experimental and developmental nature of remote sensing technology and the need to ensure that any legal principles which may be elaborated do not seriously impede the development of the technology.

At this stage, the impetus toward international agreement seems to be in the area of the technical and organizational aspects of remote sensing activities. For instance, the Scientific and Technical Sub-Committee has recommended that the U.N. Secretariat undertake several studies on the organizational and financial requirements of establishing regional or international centres for education and training and data storage and dissemination, including the possibility of a future international space segment for global coverage.

It may be that such studies will have the effect of providing a focus for the legally-oriented questions, and in this context could conceivably clarify many of the legal issues currently the subject of sharply conflicting points of view. The interrelationship between the legal, technical and organizational aspects of the technology was recognized by the Outer Space Committee at its annual meeting in July which recommended that consideration by the Legal Sub-Committee of legal aspects of remote sensing should progress in parallel with future work on this subject undertaken by the Scientific and Technical Sub-Committee.

NOTES: 1/ The members of the Committee are:

Albania,	Argentina,	Australia,
Austria,	Belgium	Brazil,
Bulgaria,	Canada,	Chad,
Chile,	Czechoslovakia,	Egypt,
France,	German Democratic Republic,	Federal Republic of Germany,
Hungary,	India,	Indonesia,
Iran,	Italy,	Japan,
Kenya,	Lebanon,	Mexico,
Mongolio,	Morocco,	Nigeria,
Pakistan,	Poland,	Romania,
Sierra Leone,	Sudan,	Sweden,
U.S.S.R.,	United Kingdom,	United States,
Venezuela.		

2/ The other international instruments already adopted are:

1. Treaty on Principles Governing the Activities of States in the Elaboration and Use of Outer Space, including the Moon and Other Celestial Bodies (1967);

2. Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (1968);

3. Convention on International Liability for Damage Caused by Space Objects (1972).

Conventional Weapons and the Civilian Population

At the first ICRC Conference of Government Experts, a number of countries led by Sweden, proposed that the use of certain types of conventional weapons which are particularly dangerous to civilians should be outlawed in the Additional Protocols to the Geneva Conventions of 1949. During consideration of an item entitled "Human Rights in Armed Conflicts" in the Third Committee at the 1971 session of the General Assembly, Sweden tabled a resolution which, inter alia, requested the Secretary-General to prepare a report on napalm and other incendiary weapons, and invited the Second ICRC Conference of Government Experts "to devote special attention to ... legal restraints and restrictions on certain methods of warfare and weapons that have proved particularly perilous to civilians..." The Secretary-General's report on napalm and other incendiary weapons was given preliminary consideration at the 1972 session of the General Assembly in the First (Disarmament) Committee.

At the second ICRC Conference of Government Experts, Sweden and 18 other countries proposed that "the ICRC should arrange a special meeting to consult with legal, military, and medical experts on the question of express prohibitions or limitations of use of such conventional weapons as may cause unnecessary suffering or be indiscriminate in their effect. The Canadian intervention on this question was influential in persuading the ICRC that its report should confine itself to creating a solid factual basis for subsequent discussion of this subject in the most appropriate forum.

In February, 1973, the ICRC convened a meeting in Geneva of medical, military, and legal experts to assist the ICRC in preparing a documentary report which was published under the title, "Weapons that may Cause Unnecessary Suffering or have Indiscriminate Effects". In addition, at the 1973 session of the General Assembly, the U.N. Secretariat presented a two-volume survey on "Existing rules of international law concerning the prohibition or restriction of certain weapons".

At the XXIInd International Red Cross Conference held in Tehran in November 1973 a resolution was passed urging the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts to begin considering the question of the prohibition or restriction of use of conventional weapons which may cause unnecessary suffering or have indiscriminate effects (CUSHIE)weapons), without prejudice to its work on the two draft Additional Protocols. In addition, the resolution invited the ICRC to call, in 1974, a conference of government experts to study this whole question in depth. This resolution represents a compromise between the view that provisions banning specific weapons should be included in the draft Additional Protocols and the view that this question should not be discussed at all. The Canadian Delegation at this Conference was pleased with the resolution since it avoided the very real problem that to discuss prohibitions or restrictions of specific weapons in the Protocols would have jeopardized the success of any Diplomatic Conference called to consider the Protcols, and might prejudice the universality of acceptance of any Protocols adopted by such Diplomatic Conference.

At the opening session of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts held in Geneva during February and March of 1974, a mandate and work programme, based largely upon a Canadian draft, for an ICRC meeting of government experts was approved. This meeting is to take place in Lucerne, Switzerland from September 24 to October 18, 1974, and will discuss the possible limitation or prohibition of the use of CUSHIE weapons. The mandate and work programme were established in the Ad Hoc Committee on Weapons where the Canadian representatives actively participated in the debate and "behind-the-scenes" negotiations. In debate, discussion of certain specific weapons which allegedly cause unnecessary suffering or have indiscriminate effects took place and, not unnaturally, differing points of view were registered. Napalm, incendiary weapons and fleschettes

were the kinds of weapons most frequently referred to. Statements made by Sweden and Mexico illuminated the feeling of their delegations that most of the basic study on the characteristics of weapons, the criteria against which their lawfulness could be measured etc. had been done and agreed upon and that the law should now be progressively developed by adopting new rules prohibiting the use of certain specific conventional weapons. Other delegations questioned whether the process of doing the background research had in fact been completed and expressed the desire to study this matter further. In the event, a work program was adopted which can be modified by participants at the Weapons Conference.

It is expected that a report will issue from the Weapons Conference for the consideration of participants and that at the second session of the Diplomatic Conference the report will be reviewed and its future determined. Of course, Canada will participate fully at the Weapons Conference and field a delegation headed by an officer in the Bureau and capable of actively dealing with all of the legal, medical, military and political implications raised by this whole question. We have agreed to contribute the sum of $10,000 to help defray the cost of holding the Conference and are currently preparing position papers for use thereat.

Conference on Security and Cooperation in Europe (CSCE)

This Conference of thirty-four European States, the United States and Canada, currently in session, has as its objective the promotion of better relations among participating states and the fostering of conditions in which their people can live in peace free from threats against their security.

The origin of the present iniative goes back to a declaration of the members of the Warsaw Pact in 1969 reiterating an earlier (1966) call for a Conference on Security and Cooperation in Europe. This was followed by an invitation from the Finnish Government to the European States, the United States and Canada to hold such a Conference. The Western countries responded favourably and in late 1972, multilateral preparatory talks (MPT) were held in Helsinki. These meetings are now generally referred to as Stage I of the Conference. At Stage I a formal agenda was drawn up for Stage II of the Conference comprising four general categories for discussion. These four categories, or "baskets" as they are usually referred to, are as follows:

(i) Political and military aspects of security;

(ii) Economic, scientific and technical cooperation, including the environment;

(iii) Human contacts, freer movement of ideas, culture and education;

(iv) Follow-up arrangements to the CSCE.

The work of Stage II of the Conference, which opened in Geneva in September, 1973 and is still underway, is conducted by means of seventeen separate committees and subcommittees which correspond to the main sections of each point on the agenda. Substantive discussion of each agenda item is being carried on with a view to drafting final documents based on proposals submitted by participating states.

The final documents resulting from these negotiations will be approved and signed at Stage III of the Conference which will be held, in Helsinki, as soon as consensus can be reached on the content of the documents. Depending on the content and importance of these documents Stage III will be attended by Ministers of Foreign Affairs or Heads of Governments.

From the point of view of international law, the discussions of greatest interest and relevance are those being conducted in Basket I, i.e. the political and military aspects of security. Discussions of the military aspects of security, in view of the Mutual and Balanced Force Reduction Talks (MBFR) concurrently being held in Vienna and the Strategic Arms Limitation Talks (SALT) and the continuing work of the Combined Committee on Disarmament (CCD) etc. have been mainly limited to what are known as Confidence Building Measures (CBMs) such as prior notification of major troop manoeuvres and the attendance of observers at such manoeuvres.

With regard to the political aspects of security, agreement was reached at Stage I on a list of ten guiding principles to be elaborated by the Conference to serve as a guide to the conduct of participating states in the conduct of their relations inter se. These are:

- sovereign equality, respect for the rights inherent in sovereignty;
- refraining from the threat or use of force;
- inviolability of frontiers;
- territorial integrity of states;
- peaceful settlement of disputes;
- non intervention in internal affairs;
- respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief;
- equal rights and self-determination of peoples;
- cooperation among States;
- fulfilment in good faith of obligations under international law.

This final document, which will contain these principles as elaborated, will not be of a legally binding nature, nor is it the purpose of the Conference to attempt to elaborate new international law as such. Rather the objective is the elaboration of recognized principles of interstate relations in a form that can be supported by all participating states as a guide for the future relations among them. It was for this reason that the Committees dealing with the above listed principles were enjoined in the final recommendations of the Helsinki consultations (MPT) to take into account, in particular, the United Nations Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations. In fact, most of the principles mentioned above have been elaborated in that Declaration although the Friendly Relations Declaration does not specifically refer to the concepts of inviolability of frontiers and territorial integrity of states, both of which the Soviet Union in particular wished to see elaborated and approved by the Conference.

When the Conference recessed, at the end of July, 1974, the first six of the ten principles referred to above, plus a Western inspired floating text which provides for possible future changes in frontiers by peaceful means and a general disposition regarding the applicability and interrelationship of the principles had been provisionally registered. Despite this provisional registration, there are a number of words and phrases left in square brackets, an indication that further consultations will be required before final agreement on all texts is reached.

Although the "floating" text, on peaceful change of frontiers has been provisionally registered, there is as yet no indication as to where in the final document it will eventually be inserted.

Passing reference should be made to two other matters which have been discussed at length during the course of the Conference but which have, as yet, not received widespread support. These are proposals, first by the Romanians for the enunciation of a separate declaration on the non-use of force which would be additional to the principle elaborated on refraining

from the threat or use of force, and second, a Swiss proposal for the establishment of an institutional European system for the peaceful settlement of disputes which may arise amongst participating states.

As mentioned earlier, it is as yet unclear as to what form the final documents will take and at what level they will be formally approved or endorsed. Much depends on the progress achieved in the other "baskets", particularly basket III (human contacts) to which the Western countries have attached a great deal of importance.

UNCITRAL - Multinational Enterprises

In 1972 the U.N. General Assembly decided, following a Canadian initiative, to have the U.N. Commission on International Trade Law (UNCITRAL) study trade law issues related to the activities of multinational enterprises. The first step taken by the Commission in its study of this subject was to direct the Secretary General to circulate to member states a questionnaire asking states to identify problems which they had encountered with respect to MNE activities and to indicate those which they considered might be amenable to solution by legal means. The replies to this questionnaire and other available material on this subject are to form the basis of a report by the Secretary General to the Commission suggesting the direction which its efforts on this subject might take.

The questionnaire was circulated to selected addressees in the private sector for comments. Subsequently an interdepartmental group prepared the Canadian reply, which was submitted to the Secretary General early in February of this year. In the introduction, the reply referred to Section 2 of the Foreign Investment Review Act as the most recent and authoritative statement of the Canadian Government's policy toward foreign investment. The replies to specific questions included the following:

> "9. Generally, the most widespread and difficult problem encountered by Canadian authorities in the administration of existing legislation and for which legal rules might help provide a solution has been the lack of complete information on the operation of MNEs. It should be possible, through national legislation, to obtain whatever information may be required concerning the operation in Canada of the Canadian element of the MNE. The problem arises in obtaining information concerning the activity of the non-Canadian element of the MNE which affects its Canadian element."

"10. Examples are given below of some areas of governmental responsibility in which more complete information would help identify problems created by activities of MNEs, and where legal solutions might be appropriate."

The examples given included

(i) taxation - "If the taxpayer is a foreign-based MNE with a branch in Canada or is the Canadian subsidiary of a foreign MNE, problems can arise in obtaining sufficient financial information to verify his return. ... The basic tax administration problem is the lack of power to examine records and require information from the related non-residents."

(ii) anti-dumping - "The structure of the multinational enterprise enables it to camouflage injurious dumping activity."

(iii) restrictive trade practices - "An independent Canadian corporation would run the risk of prosecution under the Combines Investigation Act if it entered into restrictive agreements with unrelated firms abroad. Arrangements having the same effect are frequently legal if the Canadian firm is a subsidiary of a multinational enterprise and if the arrangements are among corporations in different countries which are also direct or indirect subsidiaries ..."

In reply to a question on the objectives to be sought through the development of legal rules, the Canadian document stated in part:

"23. Legal rules relating to the activities of the MNEs should ensure that a climate conducive to technological development and economic growth is maintained on an international and a national level while, at the same time, ensuring that MNEs behave in a manner which accords with national policies and interests."

"24. More specifically, legal rules should be developed to permit access to information on the operations of the MNEs not otherwise available because the source is located outside the host country's territorial jurisdiction."

"26. One means of determining which objectives should be sought through the development of legal rules is to identify those areas where governments have sought to achieve policy objectives respecting the conduct of MNEs by means of national legislation. UNCITRAL could seek to identify these areas and, having done so, could then proceed to study the possibility of attaining a degree of harmonization and co-ordination in existing national legislation related to the activities of MNEs. Attainment of uniformity and co-ordination is most likely to be possible in those areas where existing legislation reflects widespread recognition of a common problem."

In reply to the question whether these objectives should be promoted through the development of international rules and, if so, how (e.g. international convention, model rules) the Canadian document stated, in part

"32. As a minimum, greater international co-operation and consultation is needed to deal with the problems created by the multinational enterprises. While different problems will require different solutions, it is doubtful that sufficient agreement exists at the moment among the international community to permit the achievement of uniform laws to be adopted by an international convention. If legal rules are to be developed, it may be that the most that can be attained in the immediate future is the development of model rules which might be employed or adopted in national legislation without the obligation of uniformity. Whatever the approaches, there is considerable merit in maintaining a fair degree of flexibility."

"33. One paramount consideration is that UNCITRAL select very carefully its objectives so as to ensure that it works only in those fields where there exists a significant chance of success. The selection should be based on as comprehensive an understanding as possible of the nature of national problems related to the MNE activities, as well as the Commission's own evaluation of probable success in working in a particular area. In this respect, one important criterion to be kept in mind in selecting areas for study by UNCITRAL is that the effectiveness of solutions sought by means of legal rules will depend primarily on their acceptance by the greatest possible number of countries, both 'home' and 'host' to MNEs. Co-operative action, through co-ordinated national legislation and/or international legal rules, can play a large part in ensuring that the activities of MNEs are subject to control by the governments in whose territories they carry on business."

"36. In the field of extraterritoriality, legal rules or principles could also be developed to ensure that foreign laws and regulations should not, in principle, be extended into foreign countries through the vehicle of the parent-subsidiary firm relationship, while at the same time ensuring to 'host' country authorities access to the information they require concerning the operations carried out within their jurisdiction."

Further action by the Commission on this subject will now await the report of the Secretary General referred to in the first paragraph of this section.

Immunité Diplomatique, Consulaire et Souveraine

Après plusieurs années de consultations avec les provinces, le Canada a déposé auprès du Secrétaire général de l'ONU en juillet 1974 son instrument d'adhésion à la Convention de Vienne de 1963 sur les relations consulaires. Le Canada a toujours considéré la convention comme étant déclaratoire des principes de droit international pertinents en la matière et en pratique s'est toujours efforçé de respecter ses dispositions. Aussi, en pratique, l'entrée en vigueur de la Convention pour le Canada ne devrait pas entraîner de changements dans la pratique canadienne en matière de relations consulaires. Essentiellement, la Convention stipule quels sont les privilèges et immunités dont jouissent les postes consulaires et les membres de leur personnel.

En général, au ministère canadien des Affaires extérieures, les aspects juridiques des questions ayant trait aux privilèges et immunités dont jouissent les représentants d'Etats et d'organisations internationales relèvent de la compétence de la section des consultations de la direction des consultations juridiques. La section a pour fonction de déterminer, dans les cas spécifiques qui peuvent survenir, quels sont les privilèges et immunités auxquels les Etats étrangers ou du Commonwealth, leurs représentants, et les organisations internationales au Canada, de même que les représentants canadiens à l'étranger ont droit en vertu du droit international, soit conventionnel ou coutumier. La section travaille en étroite collaboration avec la direction du Protocole du ministère.

Au Canada, par exemple, lorsqu'une ambassade désire acheter une propriété officielle, elle doit en premier lieu obtenir l'assentiment du Gouvernement canadien par l'entremise de la section, qui verra à ce que, lorsque cela est possible, la propriété soit exemptée des impôts fonciers. Lorsque des procédures civiles ou criminelles impliquent une ambassade et/ou son personnel, la section étudiera son statut et donnera les avis juridiques nécessaires.

En ce qui a trait à notre représentation à l'étranger, elle conseillera, par exemple, les missions canadiennes qui désirent soit invoquer l'immunité de juridiction ou y renoncer pour elles-mêmes ou pour leur personnel impliqués dans des procédures judiciaires. Elle s'occupe, de plus, de l'immunité d'Etat souverain, qui peut être invoquée lorsque le Canada ou un organe du Gouvernement canadien est impliqué dans des procédures judiciaires devant des tribunaux étrangers, ou lorsque des Etats souverains étrangers sont impliqués devant des tribunaux canadiens.

U.N. Charter of Economic Rights and Duties of States

The third and fourth sessions of the UNCTAD Working Group which is charged with drafting this Charter took place in February (in Geneva) and in June (in Mexico City). While it was at an earlier stage envisaged that the Charter might take the form of a treaty, binding upon States which accepted it, there now seems to be consensus, at least among the 40 States members of the Working Group and the several additional States which took part in the Group's work as observers, that the Charter take the form of a Declaration adopted by Resolution of the General Assembly. The intention is that it would take its place alongside other similar documents, such as the Friendly Relations Declaration and the Human Rights Charter, as a document establishing norms for the evolution of international law. The Mexico City session, which lasted three weeks, was the last authorized by the General Assembly and the report of the fourth session is to be submitted through the UNCTAD Trade and Development Board (TDB) to the U.N. General Assembly for consideration this fall and presumably for adoption of the text of a Charter by General Assembly resolution.

There is uncertainty, however, about the fate of the Charter in the forthcoming session of the General Assembly because the last session of the Working Group, despite intensive efforts spearheaded by the Canadian Delegation, was unable to reach agreement on the texts of the most important provisions of the Charter, in particular those dealing with foreign investment and related issues, with trade preferences and MFN and with producers' cartels and security of supply of raw materials. Of these unresolved issues, perhaps the most controversial and difficult is that related to foreign investment, including the control of foreign-based multinational corporations and permanent sovereignty over natural resources. This complex of issues is probably at the same time of particular interest to Canadians, because of its subject matter, and to international lawyers, because of the nature of the controversy to which it has given rise.

The basic principles that a state enjoys permanent sovereignty over its natural resources and the right to regulate all forms of foreign investment within its territory, including the activities therein of multinational corporations, were not in dispute. As they had done at the Sixth Special Session of the U.N. General Assembly in the spring of this year, however, the developing countries insisted that the affirmation of these basic principles be accompanied by a specific reference to the right to nationalize foreign investment. Developed countries took the view that, while they did not dispute the existence of a right to nationalize foreign investment, specific reference to it in the Charter must be accompanied by provisions specifying the conditions governing the exercise of this right, in particular the duty to pay compensation and the requirement generally to observe relevant provisions of international law. It was the view of most developing countries that issues arising from measures of nationalization or expropriation, including determination of the amount and method of payment of compensation, if any, are subject to the exclusive jurisdiction of the domestic tribunals of the nationalizing state, applying domestic law. Representatives of these countries expressed the view that the only relevant international law obligations are those which the nationalizing state may have undertaken by treaty freely entered into. In contrast to the view held by most industrialized countries, these developing countries deny the existence of any body of customary international law relevant to the taking of foreign property.

Although discussion served to narrow the issues outstanding between developed and developing countries on foreign investment questions, it was not possible to reach agreement on a form of words satisfactory to both sides on the law applicable to nationalization and other measures taken against foreign property. The issue was not the substantive content of customary international law in this area but rather the existence of any such law.

As the experience of Canada clearly demonstrates, issues relating to control of foreign investment are not always exclusively issues between developing and industrialized countries and, in the context of the Charter, the balance of Canadian interest corresponded to that of many developing countries. Canadian participation in the Working Group, reflecting this aspect of our national interest, has been directed at modifying some of the more traditional views held by some industrialized countries (e.g. prompt, adequate and effective compensation as determined by international disputes settlement machinery) while at the same time advocating the necessity for maintaining the principle of the rule of law in this area of international relations. Canada may differ with many other industrialized countries concerning the content of customary international law in this area, but has not disputed the existence of relevant principles. Thus the Canadian Delegation actively pursued the opportunity for encouraging the evolution and progressive development of customary international law through the Charter*.

One provision in a developing country proposal for the paragraph on foreign investment and related issues would assert that "Every State has the right and the duty to take all effective measures, inter alia, through the full exercise of permanent sovereignty over all its natural resources, to put an end to all forms of foreign occupation, apartheid, racial discrimination, colonial, neo-colonial and alien domination and exploitation". Given the highly subjective judgements required to determine whether a given situation is of a kind to which this provision applies, the issue raised by the proposal appears to be, in effect, whether economic coercion in the form of, e.g. embargoes on exports of vital national resources to a particular state or states, may be justified in pursuit of

---

* The ECOSOC "Group of Eminent Persons" report on Multinational Corporations, issued in New York at the fourth session began in Mexico City, recommended that nationalizing states "... should ensure that the compensation is fair and adequate and determined according to due process of law of the country concerned ..." The language leaves room for discussion whether the recommendation implies recognition of a "minimum standard" of treatment in accordance with customary international law. The Declaration which resulted from the Sixth Special UNGA asserts a right of nationalization in the particular context of permanent sovereignty over natural resources but is silent on the law applicable to disputes arising from measures of nationalization.

political objectives. The Canadian view has been that coercion of this kind is undesirable. Recent acts of this kind may lead in one of two directions; either towards the type of activity which this proposal seeks not only to justify but to make obligatory, or alternatively to recognition by all states, especially the industrialized states, that in light of the growing economic interdependence of the international community, extreme forms of economic coercion may well constitute conduct which is or should be considered to fall within the prohibition of the threat or use of force contained in the U.N. Charter. This position, advocated by the developing countries during the sixties, may well have more appeal now for the industrialized countries than was previously the case. Within the Charter exercise, in relation to trade in natural resources, the Canadian position has been to emphasize co-operative arrangements between producer and consumer states rather than the formation of producer cartels.

Private International Law

The work of the Private International Law Section, as its name implies, involves dealing with matters of conflict 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 the past year. This has been so particularly in arranging for 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.

During the past year the Section participated with officers from the Department of Justice in the Conference of the United Nations Commission on International Trade Law (UNCITRAL) and in the Conference on a Standard Form of International Will.

The UNCITRAL Conference was held at New York from May 24 to June 14, 1974 to consider a draft Convention on Prescription (Limitation) in the International Sale of Goods, i.e. where the goods sold are required to be transported from one state to another in order to effect the sale. A convention was approved providing a limitation period during which a buyer, seller, or party to an International Sale of Goods Contract must seek redress before the appropriate court before such right is extinguished. The most

important aspect of this Convention for Canada was the inclusion of a Federal State Clause without which Canada could not be a participating party. The sale of goods is, under the Canadian Constitution, primarily a matter of provincial jurisdiction and accordingly requires the agreement of the provinces to enact enabling legislation within their jurisdictions. The Department of Justice is seeking the views of the provinces respecting ratification of the Convention.

In October 1973 the first Diplomatic Conference in the field of Private International Law convoked by the Government of the United States, was held in Washington, D.C. The Conference's purpose was to develop a standard form of will which would simplify procedures regarding estates of deceased persons leaving assets in two or more countries. The Governments of forty-two states were represented at the Conference. The draft Convention and Uniform Law which formed the basis of the Conference's work were prepared by the International Institute for the Unification of Private Law, known familiarly as UNIDROIT. The Conference drew up a Convention providing a Uniform Law on the Form of International Will, with annex. The annex contains the Uniform Law which must be introduced into the domestic legislation of states before it can become effective. Its principal attractive feature is that the international will is valid as regards form irrespective of the place where it is made, of the location of the assets, and of the nationality, domicile or residence of the testator. The Department of Justice is in contact with the competent provincial officials with a view to eventual implementation of the Uniform Law into domestic legislation.

In response to a growing number of requests from private groups and individuals concerned with international adoption, the provincial Deputy Ministers of Welfare formed an International Adoption Committee for the purpose of standardizing and harmonizing both inter-provincial and international adoption policies and procedures. A member of the Section served on the Committee as Department representative. At the same time, at the request of concerned groups, the Canadian Embassy has intervened with the competent Vietnamese authorities to attempt to obtain an earlier release of Canada-bound adoptive children. Talks are continuing in this respect.

In May 1973, two Canadian girls visiting Rhodesia were killed by Zambian troops from their side of the border near Victoria Falls. The President of Zambia offered an ex gratia payment as a tangible symbol of the deep regret felt by his country. The Section participated in subsequent talks with the Zambian authorities as a result of the President's offer. The Zambian Government made an ex gratia payment of $50,000.00 to each of the families of the girls.

Canada Treaty Series

Activity in the field of treaty making continues unabated. On the Canadian scene during the past 12 months (July 1, 1973 - June 30, 1974) action was taken in connection with 53 agreements, 18 multilaterals and 35 bilaterals. Such action is reflected in the Canada Treaty Register which is maintained by the Treaty Section of Legal Advisory Division. From this Section come the answers to hundreds of enquiries, concerning treaties to which Canada may or may not be a party, posed by other divisions of the Department of External Affairs, other departments of the Government and the general public. A special effort has been made to bring up-to-date the Canada Treaty Series which had fallen badly behind. As a result the 1967 and 1968 Series lack only indices, which will be available shortly from Information Canada. For the years 1969-1974, in addition to the numbers already published, the Queen's Printer is processing the following number of treaties which have entered into force in those years:

1969	-	2 treaties
1970	-	2 treaties
1971	-	5 treaties
1972	-	13 treaties
1973	-	32 treaties
1974	-	18 treaties

It will be necessary to prepare for publication approximately 10 additional treaties which became effective during the years 1970-73 and to continue with the preparation for publication of the 1974 Series.

Greenpeace

Since 1972, the Canadian owned vessel Greenpeace III and French naval ships have been involved in two separate incidents within the zone de sécurité around Mururoa Atoll. In June, 1972, the Greenpeace III was in collision with a French naval vessel on the high seas beyond French territorial waters. In August, 1973, French seamen boarded the Greenpeace III, subdued its crew and sequestered it in Mururoa itself.

Greenpeace III (1972)

This matter is a complex one, both in law and as to the facts. Mr. McTaggart, the owner and skipper, alleges that his boat, the Greenpeace III, was rammed by a French naval vessel and that this was due to the fault of the French. On the other hand, the French authorities have since stated that the collision was Mr. McTaggart's fault and they have denied responsibility for it. The fact that the incident occurred on the high seas, beyond any national jurisdiction, and that it took place within an area of the high seas that the French had announced was to be closed because of nuclear testing activities, has created additional legal complications, both in terms of domestic and international law.

The Canadian authorities had been made aware of Mr. McTaggart's trip to the zone before his departure from New Zealand and we have been in almost constant contact with him or his lawyers since the accident. It will be recalled that in September, 1973, the Secretary of State for External Affairs, the Honourable Mitchell Sharp, issued a statement in which he set out the Canadian Government's view on the Greenpeace incident:

> "Mr. McTaggart is a private Canadian citizen with a legitimate grievance against the French Government, one who is at a distinct disadvantage because he cannot effectively pursue his claim without the Canadian Government providing, as at present, moral and diplomatic support to this end.

"As soon as the Canadian Government learned about this incident, we informed the French authorities not only that we considered that the creation of zones of security, for the purpose of nuclear tests, was an abuse of the freedom of the high seas, but also that we regarded the actions of the French seamen in boarding the ship in international waters, subduing the crew and removing it by force, as being a clear violation of international law."

After referring to consular assistance provided to Mr. McTaggart, Mr. Sharp added:

"We fully support and endorse Mr. McTaggart's claim. If the information which we are in the process of collecting from the 'Greenpeace' crew, together with that which we expect to receive in due course from the French authorities should, in our opinion, justify formal espousal of his claim, which would thus be raised to the Government-to-Government level, the Canadian Government would be quite prepared to do this. I believe, however, that until we have received all the depositions from the crew and until the French authorities have had an opportunity to respond to our formal request for an investigation, this would be premature."

On April 5, 1974, Mr. Sharp stated in the House of Commons that the Canadian Ambassador in Paris had been instructed to make further representations to the appropriate French authorities with a view to attempting once again to settle Mr. McTaggart's claims arising out of both the 1972 collision between the Greenpeace and a French naval vessel and the 1973 boarding and seizure of the Greenpeace by French naval personnel and the subsequent injury caused to its skipper. Mr. Sharp added that, should discussions between representatives of the French and Canadian Governments fail to materialize or fail to bring about a reasonable settlement, the Canadian Government would then, subject to Mr. McTaggart's wishes, formally espouse the claims in respect of both incidents.

Meetings took place in Paris between governmental representatives last May, at which time French officials intimated that they did not anticipate being able to provide any substantive response to Canada's representations on Mr. McTaggart's behalf until after the conclusion of the 1974 series of atmospheric tests. Following the French Government's announcement, on September 17, that the tests had been completed, Canadian Embassy officials in Paris were instructed to make further representations to the French authorities, in the hope that a response would be forthcoming shortly.