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 ÉTRANGÈRES ET DU COMMERCE INTERNATIONAL
DIRECTION GÉNÉRALE DES AFFAIRES JURIDIQUES

DEPARTMENT OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE
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DROIT DE L'ENVIRONNEMENT

a) Accord nord-américain de coopération dans le domaine de l'environnement (ANACE)

En août 1996, le Canada était l'hôte, pour la première fois, de la session annuelle du Conseil des ministres de l'environnement de la Commission de coopération environnementale (CCE) créé en vertu de l'*Accord nord-américain de coopération dans le domaine de l'environnement*. À cette occasion, le Conseil de la CCE formé du ministre de l'environnement du Canada, M. Sergio Marchi, de la secrétaire à l'Environnement, aux Ressources naturelles et à la Pêche du Mexique, Mme Julia Carabias, ainsi que la directrice de l'*Environmental Protection Agency* des États-Unis, Mme Carol M. Browner, a notamment décidé : d'affermir l'application de la législation environnementale, de créer un centre d'information sur les écotechnologies, d'intensifier les mesures d'évaluation de la qualité de l'air, de créer un fonds pour la prévention de la pollution, de collaborer en vue de protéger le monarque, et finalement d'autoriser le Secrétariat à préparer un dossier factuel comme suite à la communication relative à l'application de la législation mexicaine dans le projet de construction et d'exploitation d'un port public à Cozumel, au Mexique.

Pour ce qui est de la préparation du dossier factuel dans l'affaire Cozumel, il s'agit de la première fois que le Conseil donne instruction au Secrétariat de constituer un dossier factuel suite au dépôt d'une plainte alléguant qu'une Partie, en l'occurrence le Mexique, omet d'assurer l'application efficace de sa législation de l'environnement. Il s'agit d'un mécanisme qui innove en droit international en ce qu'il autorise une organisation internationale à se pencher sur l'application efficace de la législation nationale par un pays. Cette question sera d'intérêt dans les mois à venir.

En ce qui a trait à la mise en oeuvre de l'ANACE par les provinces canadiennes, le Canada a signifié, le 31 juillet 1996, un avis au Mexique et aux États-Unis conformément à l'annexe 41 de l'ANACE listant les provinces de l'Alberta et du Québec au titre des provinces maintenant visées par l'ANACE.

b) Climate Change

Canada participated in the second meeting of the Parties of the Framework Convention on Climate Change in July 1996. Negotiations are currently underway with the objective of reaching agreement, in the form of an amendment or other legal instrument, on further commitments for developed countries beyond the year 2000. It is the objective of the Parties to conclude

negotiations by the third Conference of the Parties, scheduled for December 1997 in Japan. Canada will be pursuing its strong interest in parallel discussions on the development of a multilateral consultative process pursuant to Article 13 of the Climate Change Convention.

c) Air Pollution

Negotiations are at an early stage for a regional agreement on controlling persistent global pollutants. Canada has led the process of preparing a draft negotiating text. This treaty, being negotiated as a protocol under the UN Economic Commission of Europe Convention on Long Range Transboundary Air Pollution, will require Parties to implement a variety of controls on a number of persistent organic pollutants and may serve as a model for a future global treaty on persistent organic pollutants. A protocol to address transboundary pollution relating to heavy metals and a further protocol with respect to pollution arising from emissions of nitrogen oxides are also being negotiated under the LRTAP Convention.

NORTHWEST ATLANTIC FISHERIES AND THE FISHERIES JURISDICTION CASE BEFORE THE ICJ

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

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

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

On March 9, 1995, pursuant to the Coastal Fisheries Protection Act and Regulations, Canadian officials boarded and arrested the Spanish fishing vessel "Estai" in the NAFO Regulatory Area for fishing contrary to Canadian law. The Estai and its crew were taken to St. John's, Newfoundland, where formal charges were laid against the ship and its master. The master was promptly released on bail and the vessel was later released on bond.

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

and modifying the Canadian and EU quotas of Greenland halibut for 1995. The Agreed Minute provided that Canada and the EU would submit joint proposals to that end to NAFO, which were finally adopted on September 15, 1995.

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

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

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

Spain has continued this case in spite of the agreement reached between the EU and Canada.

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

On April 17, 1996, the President of the Court convened the Agent for Spain and the Agent for Canada to a meeting in The Hague to discuss the next steps of the procedure. At this meeting, Spain asked for a second round of written pleadings. Canada was of the view that a new round of pleadings was not

necessary. By an Order of May 8, 1996, the Court considering that it was "sufficiently informed, at this stage, of the contentions of fact and law on which the Parties rely with respect to its jurisdiction in the case and whereas the presentation, by them, of other written pleadings on that question therefore does not appear necessary", decided, by fifteen votes to two (Vereshchetin and Torres Bernárdez dissenting), not to authorize the filing of a Reply by the Applicant and a Rejoinder by the Respondent on the question of jurisdiction.

The written proceedings in the jurisdictional phase have thus come to an end. The Registry of the Court has indicated informally that, given the other cases on the Court's list, this case (jurisdictional phase) may not come up for hearing until late 1997, at the earliest.

The NAFO conservation and enforcement measures agreed in 1995 have been working well and recently saw the Spanish fishing vessel "Frieremar Uno" inspected at sea by Canadian officials and ordered back to port for a full inspection on suspicion of breaching NAFO regulations. Canada is nonetheless continuing its efforts to reform and strengthen NAFO.

The September 1996 NAFO meeting took place in St. Petersburg. A significant outcome of the meeting from Canada's point of view was the recognition by NAFO of the Canadian right to set the TAC for Northern cod, a straddling fish stock. In return, other NAFO Contracting Parties can harvest a small share, five percent, outside of Canada's 200 mile fishing zone. This resolves for the future a dispute that contributed to the depletion of Northern cod from 1986 to 1992.

As a result of a Canadian initiative, NAFO also agreed to establish a working group on dispute settlement to examine, inter alia, ways to institute a binding dispute settlement procedure with respect to NAFO's objection procedure. This procedure has been used in the past by some NAFO Contracting Parties to overfish quotas set for them by NAFO. Canada intends to take the lead in the working group in the coming months to ensure that any dispute settlement mechanism recommended to the NAFO Parties is practical, relevant, and capable of resolving the real problems faced by Canada and other countries concerned with effective conservation of NAFO stocks.

PACIFIC SALMON TREATY

The implementation of the 1985 Pacific Salmon Treaty (PST) and the accompanying Memorandum of Understanding (MOU) has been a source of strong disagreement between Canada and the USA.

The Parties agreed in the PST to conduct their fisheries within the framework of two broad principles: conservation and equity. The conservation principle requires each Party to conduct its fisheries and its salmon enhancement programs so as to prevent overfishing and provide for optimum production. The equity principle provides that each Party should receive benefits equivalent to the production of salmon from its waters.

The MOU gives definition to the equity principle. It establishes and expands upon the Parties' obligations to identify and rectify any existing equity imbalance. At the time of signing of the PST and the MOU in 1985, the Government of Canada articulated its belief that an imbalance of interceptions existed in favour of the USA. However, disagreement about the relevant scientific data and valuation techniques meant that equity could only be fully implemented once more data was collected. Since 1985, data collected indicates that the imbalance does indeed favour the USA and has been increasing consistently for every salmon species. While there is agreement between the Parties that an imbalance exists, the Parties have yet to agree on how to value and redress that imbalance.

Following two years of unsuccessful government-level negotiations, Canada made a proposal to submit the equity dispute to binding arbitration in 1995. The USA rejected that proposal but agreed to non-binding mediation. The mediation process took place between October 1995 and February 1996, but ultimately failed, although the mediator, Ambassador Chris Beeby of New Zealand, did submit a proposal for a solution to the equity issue (the Agreement between the Parties specified that it could not be released publicly).

Canada illustrated its continued commitment to solving the Pacific salmon dispute in April 1996 when John Fraser, Canada's Ambassador for the Environment, was appointed to take on special responsibility for salmon. At present, discussions with the USA are ongoing in an attempt to develop an independent public panel process to solve the PST dispute. The future viability of the salmon stocks on the west coast depends in great part on the ability of Canada and the USA to cooperate and reach agreement on this issue.

CONFÉRENCE DES NATIONS UNIES SUR LES ÉTABLISSEMENTS HUMAINS (HABITAT II)

La Conférence Habitat II (deuxième Conférence des Nations Unies sur les établissements humains) s'est tenue du 3 au 22 juin dernier à Istanbul. Il s'agissait de la dernière d'une série de conférences mondiales des Nations Unies. Elle fut conclue par l'adoption par les 171 pays participants de l'Agenda d'Habitat et du Plan global d'action qui a pour but de guider l'action des états au niveau local, national et international vers l'atteinte de deux objectifs: un logement adéquat pour tous et des établissement humains durables dans un monde en urbanisation.

Un des enjeux importants de la Conférence était la question de l'existence du droit au logement en tant que droit reconnu en droit international. Très tôt dans les réunions préparatoires, le Canada a adopté une position favorable à la réaffirmation de l'existence de ce droit en droit international, ayant pour alliés entre autres l'Union européenne et les pays nordiques. Par ailleurs, les États-Unis avaient adopté une position ferme refusant de reconnaître le droit au logement en tant que droit indépendant en droit international.

La position canadienne tend à considérer que le droit au logement, ou le droit à un logement adéquat tel que prévu à l'article 11 du Pacte international sur les droits économiques, sociaux et culturels, doit être reconnu en droit international. Il importe peu qu'il s'agisse d'un droit séparé ou d'une composante du droit à un niveau de vie adéquat. Comme les autres droits prévus au Pacte, il impose aux états une obligation d'assurer le plein exercice de ces droits progressivement et au maximum des ressources disponibles de l'état.

Plusieurs documents n'ayant pas de force obligatoire tels des déclarations et des résolutions font référence au droit au logement. Cependant, en ce qui concerne les documents juridiques, les composantes de ce droit ne sont pas clairement définies. Les textes issus de la Conférence d'Habitat reconnaissent néanmoins l'obligation de non-discrimination en matière de logement, de sécurité de tenure et l'accès à un logement abordable et sécuritaire comme parties de ce droit. C'est la pratique des états dans la mise en oeuvre des actions prévues aux documents d'Habitat qui formera éventuellement le droit coutumier.

Malgré des inquiétudes que la question de l'existence du droit au logement ne devienne un des points les plus contentieux de la Conférence, les références traitant du droit au

logement ont été adoptées par consensus dès la fin de la première semaine de la Conférence. Le Canada a joué un rôle de premier plan, ayant proposé des textes qui furent à la base des discussions dans le groupe de travail informel, permettant ainsi à la position canadienne d'émerger.

La prochaine conférence mondiale touchant aux droits économiques, sociaux et culturels sera la Sommet mondial de l'alimentation de la FAO qui se tiendra du 13 au 17 novembre prochain. De la même façon, le Canada a adopté pour cette conférence une position en faveur de la réaffirmation du droit de toute personne à une nourriture suffisante et du droit fondamental de toute personne d'être à l'abri de la faim, en vertu des articles 11(1) et (2) du Pacte sur les droits économiques, sociaux et culturels. Le Plan d'action pour ce sommet traite aussi de plusieurs autres domaines touchant la sécurité alimentaire en plus des droits de la personne, soit le droit humanitaire et le droit commercial. De plus, l'ébauche du plan d'action propose actuellement l'élaboration d'un Code de conduite sur la sécurité alimentaire, question sur laquelle les délégués devront se pencher en novembre prochain.

CLAIMS AGAINST IRAQ

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

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

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

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

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

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

The Compensation Fund will be financed by 30 percent of the annual value of exports of petroleum and petroleum products from Iraq. UN Security Council Resolution 986 (1995) was adopted as a temporary measure to provide for the humanitarian needs of the Iraqi people by permitting the export of petroleum and petroleum products. The Government of Iraq and the United Nations signed a Memorandum of Understanding on May 20, 1996, to implement Resolution 986. Once all the required mechanisms are in place, it is expected that the UNCC Compensation Fund will be in receipt of funds and thus be in a position to make payments on claims.

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

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

ECONOMIC SANCTIONS

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

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

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

Regulations made under the United Nations Act currently implement the following United Nations Security Council resolutions, adopted under Chapter VII of the UN Charter imposing trade, commercial and financial sanctions:

Iraq

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

Federal Republic of Yugoslavia (Serbia and Montenegro)

Resolution 1022 (1995) of November 22, 1995

United Nations Protected Area of Croatia

Resolution 820 (1993) of April 17, 1993

Libya

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

Angola/UNITA

Resolution 864 (1993) of September 15, 1993

Rwanda

Resolution 918 (1994) of May 17, 1994

FOREIGN INVESTMENT PROTECTION AGREEMENTS

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

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

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

In the past year Canada concluded negotiations and signed Foreign Investment Protection Agreements with the Philippines, Romania, Ecuador, Barbados, Venezuela, South Africa, and Panama. Negotiations are pending or continuing with a number of Canada's trading partners in Asia, Eastern Europe, the Middle East, the Caribbean, and Central and South America.

TRIBUNAL CRIMINEL INTERNATIONAL

a) pour l'ex-Yougoslavie

À la Conférence de paix de Londres en août 1992, le Canada a été l'un des premiers pays à demander la constitution d'un tribunal international pour juger les personnes responsables de crimes de guerre et de crimes contre l'humanité en ex-Yougoslavie. Lors d'une réunion des ministres de la Conférence pour la sécurité et la coopération en Europe (aujourd'hui l'Organisation pour la sécurité et la coopération en Europe) tenue à Stockholm en octobre 1992, le secrétaire d'État aux Affaires extérieures d'alors avait également approuvé la création d'un tribunal pour juger des crimes de guerre. En réponse à d'autres appels semblables, le Conseil de sécurité des Nations Unies (CSNU) a adopté la résolution 780, qui demande aux états de rassembler les informations en leur possession concernant les violations du droit humanitaire, de mettre ces informations à la disposition de la Commission d'experts des Nations Unies (UNCOE) et « de lui apporter toute autre assistance appropriée ». Des représentants du ministère de la Défense nationale du Canada ont participé aux enquêtes sur le terrain en ex-Yougoslavie. De plus, le Canada a été le premier pays à contribuer substantiellement au fonds volontaire de l'UNCOE (300 000 $).

Le 22 février 1993, le CSNU a adopté la résolution 808, qui crée un tribunal criminel international pour juger les personnes présumées responsables de violations graves du droit humanitaire international commises en ex-Yougoslavie, et demande au Secrétaire général des Nations Unies de faire rapport sur la façon dont le tribunal pourrait fonctionner.

Une réunion internationale d'experts sur l'établissement d'un tribunal criminel international s'est tenue à Vancouver du 22 au 26 mars 1993. Même si à l'origine la réunion devait porter sur le projet d'un tribunal criminel international permanent, la majeure partie des discussions s'est concentrée sur le tribunal criminel international pour l'ex-Yougoslavie, en raison de la résolution 808 du CSNU. Le rapport final de la réunion a été transmis au Secrétaire général de l'ONU pour examen.

Le 25 mai 1993, le CSNU a adopté la résolution 827, ainsi que le Statut du Tribunal criminel international pour l'ex-Yougoslavie, annexé au rapport du Secrétaire général.

En mars 1994, le Tribunal a adopté un ensemble de règles de procédures et de règles de la preuve, après avoir pris connaissance des commentaires des états. Le Canada a présenté un rapport sur les règles de la preuve devant être suivies par le

Tribunal et portant spécifiquement sur les cas d'agression sexuelle et la protection des témoins.

En juillet 1994, le Conseil de sécurité a confirmé la nomination de M. le juge Richard Goldstone, d'Afrique du Sud, au poste de Procureur du Tribunal pour l'ex-Yougoslavie. Le 29 mars 1996, M^me^ la juge Louise Arbour, de la Cour d'appel de l'Ontario, était nommée par le Conseil de sécurité au poste de procureur des tribunaux pénaux internationaux, en remplacement de M. Goldstone, qui quittera ces fonctions en octobre 1996. Un Canadien, M. Jules Deschênes, a été désigné comme l'un des juges du Tribunal en septembre 1993. Il siège comme membre de la Chambre d'appel du Tribunal. Un ex-membre de la Commission d'experts des Nations Unies et des Forces armées canadiennes, le Commandant (retraité) William Fenrick, est conseiller juridique principal du procureur en matière de droit international. Un certain nombre d'autres Canadiens occupent divers postes au sein du Tribunal pour l'ex-Yougoslavie.

Le 7 octobre 1994, le Tribunal a déposé ses premières accusations, contre un Serbe bosniaque ancien commandant d'un camp de prisonniers. Depuis, des accusations ont été portées, et des mandats d'arrêt émis, contre 74 autres personnes, parmi lesquelles figurent Milan Martic, président de l'Administration serbo-croate, Radovan Karadzic, président de l'Administration bosno-serbe, et Ratco Mladic, commandant de l'armée de l'Administration bosno-serbe.

Le premier procès devant la Chambre de première instance, contre Dusko Tadic, présumé garde d'un camp de concentration, a repris en mai 1996, après que la Chambre d'appel eut rejeté l'objection préliminaire de l'accusé quant à la compétence du Tribunal. Celui-ci a également reçu son premier plaidoyer de culpabilité, de la part d'un Bosno-croate occupant un rang inférieur dans l'armée bosno-serbe, qui a avoué avoir tué 70 musulmans après la chute de Srebrenica.

En mars 1994, avril 1995 et mars 1996, le Canada a versé, respectivement, 233 000 $, 240 000 $ et 500 000 $ au fonds de contributions volontaires du Tribunal.

b) pour le Rwanda

En réaction aux événements qui se sont produits au Rwanda en avril 1994, et sur la recommandation de la Commission impartiale d'experts (établie par la résolution 935 du Conseil de sécurité des Nations Unies), le Conseil de sécurité a, le 8 novembre 1994, adopté la résolution 955, et le statut qui l'accompagnait et créait le Tribunal criminel international pour le Rwanda.

Le Tribunal pour le Rwanda a été « chargé de juger les personnes présumées responsables d'actes de génocide ou d'autres violations graves du droit international humanitaire commis sur le territoire du Rwanda et les citoyens rwandais présumés responsables de tels actes ou violations commis sur le territoire d'États voisins entre le 1er janvier et le 31 décembre 1994 ».

Le Procureur du Tribunal pour la Yougoslavie occupe les mêmes fonctions au Tribunal pour le Rwanda. Le Tribunal siège à Arusha, en Tanzanie. L'enquêteur principal du Tribunal est un ancien commissaire adjoint de la GRC, M. Al Breault.

En mai 1995, le Conseil de sécurité a nommé 6 juges pour former les Chambres de première instance du Tribunal. Celui-ci partagera une Chambre d'appel avec le Tribunal pour l'ex-Yougoslavie.

Le Procureur adjoint, maintenant installé à Kigali, a commencé les opérations du Tribunal, et les enquêtes ont été amorcées. Vingt et une personnes ont été mises en accusation jusqu'ici, dont 10 sont incarcérées.

En mai 1995, la secrétaire d'État à l'Amérique latine et à l'Afrique, l'honorable Christine Stewart, a annoncé le versement d'une contribution de 1 million $ au Tribunal. L'ACDI a par ailleurs conclu avec l'ONU un accord où elle s'engage à couvrir les frais relatifs à l'embauche de policiers canadiens qui seront chargés d'enquêter et de rassembler des preuves sur les crimes commis, et à payer pour le fonctionnement du Tribunal.

LA COUR CRIMINELLE INTERNATIONALE

Depuis la 47e Assemblée générale des Nations Unies (AGNU), le Canada joue un rôle majeur dans l'établissement d'une cour criminelle internationale (CCI). Il a par exemple accueilli à Vancouver une réunion internationale d'experts sur cette question.

Un comité spécial, créé par la 49e AGNU, a accompli d'importants progrès, tant au point de vue du fond que de la procédure, concernant le statut d'une éventuelle CCI.

À sa 50e session, l'AGNU a mis sur pied un comité préparatoire chargé de rédiger le statut en question ainsi qu'un traité. Le comité s'est réuni pendant trois semaines en mars et avril 1996, et pendant trois autres semaines en août 1996. La délégation du Canada, composée de représentants des ministères des Affaires étrangères et du Commerce international, de la Justice et de la Défense nationale, a pris une part active aux discussions.

Tel qu'on le conçoit actuellement, le statut de la cour obligerait toutes les parties à extrader et déférer devant la cour les personnes accusées de violations graves du droit humanitaire international, par exemple le génocide, les crimes de guerre et les crimes contre l'humanité. Il reste cependant un certain nombre de questions de fond à résoudre, notamment la relation entre la cour et le Conseil de sécurité, les crimes au regard desquels la cour aura compétence, la procédure criminelle à suivre, et la primauté de la cour sur les tribunaux nationaux. L'intérêt porté à la création d'un tel organisme s'est intensifié depuis la constitution de tribunaux spéciaux pour l'ex-Yougoslavie et le Rwanda.

Le rapport de la réunion d'août 1996 du comité préparatoire recommande à la Sixième Commission des Nations Unies la tenue de réunions pendant neuf autres semaines (probablement en trois séances). Il recommande également l'organisation en 1998 d'une conférence diplomatique pour la négociation du traité qui établira la cour.

Le Canada soutient ardemment la création d'une cour criminelle internationale, et continuera de participer activement aux délibérations de l'ONU sur cette question.

LAND MINES AND THE CCW REVIEW CONFERENCE

The first Review Conference for the Convention on Certain Conventional Weapons (CCW) was held in Vienna in September 1995. During the course of the 3 week meeting, the Review Conference adopted a fourth protocol for the CCW which prohibits the use and transfer of blinding laser weapons. However, the Review Conference was unable to agree on changes to Protocol II of the CCW which deals with land mines, booby-traps and other devices. In response to a suggestion from Canada, the Review Conference held two additional sessions in January and April-May 1996 to complete negotiations on Protocol II.

A revised Protocol II was adopted on May 3, 1996, in Geneva and will place significant new prohibitions and restrictions on the use of land mines, in particular anti-personnel land mines (APM). Specifically, the revised Protocol will:

- apply to non-international armed conflicts;
- establish minimum technical standards to make all APM detectable and to eliminate the use of "dumb" mines outside of marked and monitored areas;
- place restrictions and prohibitions on the transfer and export of mines;
- enhance the protection of peacekeepers, humanitarian workers and mine clearance personnel; and
- include provisions on compliance with the Protocol.

Progress toward meeting these new standards will be reviewed on an annual basis at a meeting of states parties.

Recognizing the gravity of the humanitarian and socio-economic dimensions of the global land mine crisis, on January 17, 1996, the Ministers of Foreign Affairs and National Defence announced a comprehensive unilateral moratorium on the production, export and operational use of APM.

Notwithstanding the progress made at the CCW Review Conference, Canada believes that much more needs to be done. In particular, Canada is working with other like-minded states and Canadian and international non-governmental organizations (NGOs) to promote a rapidly growing international campaign seeking a comprehensive global ban on APM. In total, some 69 states now support the concept of a global ban on these types of mines.

Canada is co-sponsoring a resolution at the UN General Assembly calling on member states to implement bans and moratoria on the production, export and operational use of APM as steps towards the complete elimination of these types of mines. In June 1996 at the General Assembly of the Organization of American

States, Canada successfully co-sponsored a similar resolution which also called for the creation of a Western-Hemisphere-Wide Anti-Personnel-Land-Mine-Free-Zone.

Canada's Minister of Foreign Affairs hosted an international strategy session for states and NGOs in Ottawa on October 3-5, 1996 to develop a plan for systematic, coordinated international action to ban APM. The conference provided state participants with the opportunity to consult on the tactics and strategies related to moving the international community to a global APM ban. At the closing session of the conference, Minister Axworthy announced that Canada will host another meeting in Ottawa in December 1997 with the aim of concluding a comprehensive treaty banning land mines.

COMPREHENSIVE TEST BAN TREATY

The conclusion of a Comprehensive Nuclear Test Ban Treaty (CTBT) has been a priority for the international community since the 1960s. The UN General Assembly has adopted resolutions calling for a CTBT since 1958. Recent international commitments to the CTBT were made at the Nuclear Non-Proliferation Treaty (NPT) Review and Extension Conference in May 1995 and by a consensus resolution at the UN's 50th General Assembly (UNGA Res A 50/65) in which it was agreed to conclude a CTBT so as to enable its "signature by the outset of the 51st session of the General Assembly" (which began on September 17, 1996).

For the past two and a half years, intensive negotiations took place at the Conference on Disarmament (CD) in Geneva. When India and Iran blocked consensus at the CD, a group of countries, led by Australia and including Canada, quickly rallied to take the treaty directly from the CD to the UNGA.

On Tuesday September 10, 1996, the resumed session of the UN's 50th General Assembly passed a resolution adopting the text of the CTBT, with 158 countries voting in favour, 3 countries voting against, and 5 countries abstaining. The treaty was opened for signature on September 24, 1996, and the Minister of Foreign Affairs signed on behalf of Canada.

While not entirely satisfied with every aspect of the current text, the vast majority of negotiating countries believe that it represents the best achievable outcome and that it meets an essential objective: an end to nuclear test explosions for all time. The treaty will impose, for the first time, constraints on the qualitative improvement of nuclear weapons. It represents the fulfilment of the first critical step in the program of action on non-proliferation and disarmament as agreed at the NPT Review and Extension Conference in 1995.

To enter into force, the treaty requires the signature and ratification of the 44 countries listed in the treaty text (including India and Pakistan which have announced that they will not sign). However, even if it does not enter into force for some time, it places an obligation on its signatories not to do anything which could "defeat the object of the treaty", i.e. an obligation not to conduct any nuclear test. In addition, Canada put forward an idea, now part of the treaty, to hold a "positive conference" three years after the treaty has been opened for signature. At that time, participating nations will take stock of the status of the treaty and seek ways by which the treaty could enter into force.

U.N. AGREEMENT ON STRADDLING STOCKS

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

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

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

Canada was one of the twenty-five states which signed the Agreement when it was opened for signature in New York on December 4, 1995. The Agreement will come into force after thirty states have ratified it. So far four states (Vanuatu, Tonga, St. Lucia and the USA) have deposited their instruments of ratification to the Agreement. Canadian officials are currently reviewing domestic legislation for consistency with the Agreement in preparation for Canadian ratification, and are lobbying other states to encourage their signature and ratification.