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

Dept. of External Affairs
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Department of External Affairs

Bureau of Legal Affairs

October 14, 1972

TABLE OF CONTENTS

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1- Bureau of Legal Affairs

The Bureau of Legal Affairs, headed by the Director General and Legal Adviser, Mr. J. Alan Beesley, comprises two divisions: the Legal Advisory Division and the Legal Operations Division. The Legal Advisory Division includes three sections: Economic; Advisory and Constitutional; and, Treaty. The Legal Operations Division includes four sections: Environmental; Law of the Sea; United Nations and Legal Planning; and, Private International Law. Together the two divisions provide a general advisory service to the Department of External Affairs and other departments and agencies on issues of international law and act as the operational arm of the Department in international law activities. As the names of the divisions indicate, the accent in the Legal Advisory Division is on the advisory function and, in the Legal Operations Division, on the operational function. The Bureau functions, however, as a co-ordinated unit, responsible for the total of the Canadian Government's international law interests.

In performing its responsibilities, the Bureau provides the Department of External Affairs with the means of exercising an international law function directly related to foreign policy. In addition the Bureau maintains liaison with the Departments of Justice and the Solicitor General, the Office of the Judge Advocate General in the Department of National Defence and the legal services branches of other departments and agencies on a variety of international law issues, both public and private, effecting the interests of those departments. On a number of international law issues, for

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example environmental law, fisheries, air law, humanitarian law, narcotics, economic law, trade law and communications, the Bureau provides advice to departments and agencies, and acts as the co-ordinator of domestic and international law interests. The Bureau participates actively in the United Nations on international law interests, having responsibility for Canada's position on subjects under consideration by the Sixth Committee, the Legal Committee, of the United Nations General Assembly. The Bureau has responsibility for Canada's role in the development of international law, including Canadian participation in force such as the International Law Commission and United Nations committees of a specialized legal nature.

At present, there are twenty-five officers in the Legal Bureau. Fifteen, including the Director General, are legally trained Foreign Service Officers, two are Legal Counsel, two are administrative officers and six are legally trained officers under training as foreign service officers. In addition, the Bureau is supported by secretarial and clerical staff, and has a library clerk in charge of the International Law Library. The Bureau also enjoys the assistance of teachers of international law, the most recent of whom, Professor Charles Bourne of the University of British Columbia, completed a one-year assignment with the Bureau on September 1 of this year. In addition, each summer, a number of law students spend several months with the Bureau.

A number of foreign service officers who are part of the Department's complement of legally trained officers are currently on assignment abroad or are serving elsewhere in the Department or

in other departments in Ottawa. Some are serving in legal or quasi-legal positions in Ottawa or at missions abroad such as the Permanent Mission New York, the Permanent Mission Geneva, in Washington, D.C., London and elsewhere. Others, as members of a professional foreign service, are serving in the variety of functions which contribute to the exercise of foreign policy.

2- Law of the Sea

Arctic Waters

The Arctic Waters Pollution Prevention Act received Royal Assent on June 26, 1970, and was proclaimed in force on August 12, 1972. At the same time, appropriate regulations were promulgated under the Statute. The Act responded to Canada's view of the special status of Arctic waters and ice and the special rights and responsibilities of the Arctic coastal states, with particular respect to the preservation of the Arctic ecology. It reflected also the Canadian Government's policy on the environmental implications of economic development.

The Act makes clear that the Arctic waters are open for the passage of shipping of all nations. However, such passage might be precluded if the ships do not meet certain requirements designed to prevent pollution of the environment. Moreover, persons or vessels responsible for pollution damage are liable for cost of clean-up and compensation without proof of fault or negligence.

Some countries, while understanding and sympathizing with Canada's anxieties on the subject of marine pollution and recognizing that the ecological problems affecting the Arctic might require different methods of treatment from those suitable in other parts of the world, questioned this legislation on the ground that Canada had no right to extend its jurisdiction over waters lying beyond Canadian territorial waters up to 100 miles from the coast of Canada.

However, the Arctic Waters Pollution legislation does not make and does not require an assertion of sovereignty. The legislation is related to pollution control in Arctic waters only. It represents an extension

of a limited form of jurisdiction which was required to ensure the preservation of the Arctic environment, having regard to the unique nature and the particular vulnerability of this environment, the disastrous consequences which could flow from its pollution or degradation, and the especially severe risks involved in the navigation of Arctic Waters. The exercise of various forms of jurisdiction by coastal states beyond the limits of their territorial waters is a well-established principle of customary international law, as reflected in the practice of numerous states including the major maritime powers.

Arctic and multilateral action

The view has often been expressed that the preservation of the Arctic marine environment called for international solution rather than for unilateral action. The Canadian Government has always considered that the action taken by Canada was wholly consistent with the development of internationally-agreed standards of navigation safety and pollution control in Arctic waters, which should take into due account the special rights and responsibilities of the Arctic coastal states. The Government has carried out a series of intensive negotiations with the U.S. and the USSR and other Arctic countries concerning the possibility of developing a multilateral agreement to ensure the prevention of pollution and the safety of navigation in Arctic waters. However, this possibility is not yet in sight.

Territorial Sea and Fishing Zones

The Act amending the Territorial Sea and Fishing Zones Act received Royal Assent on June 26, 1970 and was promulgated on March 10, 1971. The Act extended Canada's territorial sea from 3 to 12 miles: the 12-mile territorial sea is now virtually a rule of law which has been established by

state practice. The Act also laid the basis for the establishment of exclusive fishing zones in special bodies of water off Canada's East and West coasts, in pursuance of the well-established concept under customary international law, of the contiguous fishing zones. New fishing zones have since been created within "fishery closing lines" established across the entrances to the bodies of water not enclosed within territorial sea baselines by the 1967 and 1969 Orders in Council, that is, the Bay of Fundy, the Gulf of St. Lawrence, Dixon Entrance, Hecate Strait and Queen Charlotte Sound.

Bilateral Fisheries Negotiations

Canada undertook the negotiation of a series of agreements phasing out the fishing activities of other countries affected by its fisheries legislation.

It negotiated a completely new agreement with France, which entered into force on March 27, 1972, and provided for a reciprocal fishing agreement for a limited number of Canadian and St. Pierre-Miquelon fishermen in the areas off the coast of St. Pierre-Miquelon and Newfoundland where they had fished traditionally, and for the termination of the long-standing treaty rights French vessels registered in metropolitan France had enjoyed. The Agreement also provided for the delimitation of the territorial waters and fishing zones between St. Pierre-Miquelon and Newfoundland.

Canada also negotiated agreements with several other countries, which determined the dates on which vessels registered in these countries would discontinue their traditional fishing operations in the Gulf of St. Lawrence and in the outer nine miles off Canada's territorial sea, with the latest terminal date being before the end of the present decade. The agreements with Britain, Denmark and Portugal entered into force on March 27, 1972. The agreement with Norway entered into force on July 15, 1971, and was

accompanied by an agreement on sealing and the conservation of the seal stocks in the North West Atlantic which came into force on December 22, 1971. The agreement with Spain is not yet in force.

Moreover, Canada negotiated a reciprocal fishing agreement with the U.S., which entered into force on April 24, 1970, whereby the nationals of either country may continue the commercial fishing activities which they have traditionally carried out up to three miles off the coasts of the other country. The agreement covers both East and West coasts of Canada and the USA and covers all the species involving commercial fisheries affecting both countries, except those specifically banned by it. This agreement was renewed on April 24, 1972, for another year.

Canada also negotiated a fishing agreement with the USSR, which entered into force on February 19, 1971, and is to be reviewed soon. This agreement is applicable to waters off Canada's West coast. Canada is engaged in negotiating an analogous agreement with the USSR covering waters off the East coast.

Continental Shelf

Canada has carried out intensive negotiations with Denmark and France concerning the delimitation of the continental shelf between Canada and those countries. It is believed that these negotiations will lead to a satisfactory conclusion within a near future. Canada has also undertaken the process of negotiating the limits of its continental shelf with the U.S. These negotiations will eventually involve the delimitation of respective jurisdictions in the areas of George Bank, Juan de Fuca Strait, Dixon Entrance and Beaufort Sea.

The United Nations Seabed Committee (The Preparatory Committee for the Third Law of the Sea Conference) And Canada's Contribution

Introduction

This paper is a review of the preparations in the United Nations for the Third Law of the Sea Conference and Canada's involvement in these activities.

Establishment of Seabed Committee

As a result of a proposal by Malta, in 1967 the General Assembly adopted Resolution 2340 (XXII) which established an Ad Hoc Committee of 35 members to study "the question of the reservation exclusively for peaceful purposes of the seabed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind".

In 1968 the General Assembly approved the creation of a Standing Committee of 42 members to succeed the ad hoc committee. The membership of the Committee was further expanded to 86 countires at the 25th session of the General Assembly in 1970 when the Committee's mandate was broadened to include preparations for the third Law of the Sea Conference. It was again expanded in 1971 to a membership of 94, including for the first time the People's Republic of China.

Canada has been a member of the Committee since the establishment of the ad hoc committee in 1967.

Developments at UNGA XXV

(a) Declaration of Seabed Principles

A major achievement at the 25th session of the General Assembly was the adoption of Resolution 2749 incorporating a declaration of principles governing the seabed and the ocean floor, and the subsoil thereof, beyond

the limits of national jurisdiction. The nature of the regime and machinery to be established for the seabed beyond national jurisdiction had been under study for more than three years before the General Assembly was able to agree on this first concrete step towards the establishment of that regime and machinery. In essence the declaration of principles affirms as follows:

(i) there is an area of the seabed and ocean floor which is beyond the limits of national jurisdiction and which constitutes the "common heritage of mankind";

(ii) this area is not subject to national appropriation or claims of sovereignty;

(iii) the exploration and exploitation of the resources of the area shall be governed by an international regime and international machinery to be established, and shall be carried out for the benefit of mankind as a whole, taking into particular consideration the interests and needs of the developing countries;

(iv) the area shall be reserved for exclusively peaceful purposes.

The declaration of principles for the seabed beyond national jurisdiction is not legally binding but represents the consensus of the international community and is intended to serve as the foundation and framework for the proposed international seabed regime and machinery. Canada played an active role in securing agreement on the declaration and was the first western state to signify acceptance of these principles at the 25th Session of the General Assembly. At the same time Canada made clear that the declaration did not necessarily meet its position on all points of detail but

was acceptable as a compromise which would remain open to review and further development in the mutual negotiation of the future regime and machinery.

(b) Decision to convene a law of the sea conference

A second major achievement at the 25th session was the adoption of Resolution 2750C (XXV) of January 14, 1971, by which the General Assembly decided to convene, in 1973, a conference which would deal with the broad range of issues of the law of the sea, including

(i) the establishment of an equitable international regime (including international machinery) for the seabed and ocean floor beyond the limits of national jurisdiction;

(ii) a precise definition of this area of the seabed,

(iii) the breadth of the territorial sea and the question of international straits;

(iv) fishing and conservation of the living resources of the high seas, including the preferential rights of coastal states;

(v) preservation of the marine environment and the prevention of pollution;

(vi) marine scientific research.

Both the agenda and timing of the conference are subject to review at the 27th session of the General Assembly, and by the terms of the resolution the conference may be postponed by the 27th session if its preparation has not sufficiently progressed by that time. As already noted, the task of preparing for the conference has been entrusted to the expanded Seabed Committee.

The adoption of resolution 2750C required lengthy and difficult negotiations in light of the wide divergence of views regarding the scope of the conference and the priority attaching to the various issues it will

consider. Canada was among these countries (including India, Sri Lanka, Nigeria, Norway, the Latin Americans, and ultimately, but to a lesser extent, the USA) favouring a conference bread in scope, in opposition to the eastern European states, the land-locked states and the western European states with major maritime interests. In the end it fell to the Canadian Delegation to chair the negotiating group seeking an accommodation among these conflicting views and to bring about agreement on the compromise resolution which was finally adopted. This compromise resolution was introduced by the Canadian Delegation on behalf of the co-sponsors; the Canadian Delegation also read into the record certain understandings which had made possible agreement on the draft resolution.

(c) Seabed Arms Control Treaty and Other Developments

A third major achievement completed at the 25th session of the General Assembly was the endorsement and recommendation for signature of an arms control treaty prohibiting the emplacement of nuclear weapons and weapons of mass destruction on the seabed and ocean floor not only beyond, but also within, the limits of national jurisdiction, as had been urged from the outset by Canada.

In addition to the foregoing major resolutions, the General Assembly also adopted Resolutions 2750A and B calling for a study of the possible impact of international seabed resource development on the economic well-being of the developing countries, and a study of the question of free access to the sea by landlocked countries and their special problems with respect to the exploration and exploitation of the international seabed area.

Recent Developments in Seabed Committee

The Canadian Delegation to the Committee on the Peaceful Uses of the Seabed and the Ocean Floor beyond the limits of National Jurisdiction has played an extremely active role on the range of issues being considered by the Committee (which is, in effect, the Preparatory Committee for the Third Law of the Sea Conference). Canada has tabled working papers on the proposed regime for the seabed beyond national jurisdiction; fisheries management principles; scientific research; and a proposed comprehensive treaty on marine pollution. The basic range of Canadian interests reflected in all of these working papers is that of Canada as a coastal state with an extremely lengthy coastline, an extensive and deeply glaciated continental shelf, with coastal rather than distant water fishing interests, with coastlines fronting on the Atlantic, Pacific and Arctic oceans, concerned to preserve its marine environment and conserve the living and non-living resources of the marine areas adjacent to its coast. Canada has called into question the viability of certain traditional concepts of the Law of the Sea which are based in large part upon the doctrine of the unrestricted freedom of the high seas, and has emphasized the need for the development of new concepts aimed at providing accommodations between coastal states and flag states, between coastal fishing states and distant water fishing states, between wide shelf and shelf-locked countries by placing a new emphasis upon the responsibilities of states as well as rights of states. The Canadian approach has been to present first a conceptual approach to each of the issues under discussion, and then to put forth specific Canadian positions on each of the major issues, followed by the tabling of working papers intended to provide the basis for the drafting of treaty articles. Obviously, this three-phase approach requires, at a certain point, an attempt to reorient the particular interests of

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Canada and the general interests of the international community - no small task. Canada has also taken a number of initiatives on specific issues, submitting a program of work for the Sub-Committee (concerned with marine, environment and scientific research), co-sponsoring with Australia a program of work for another Sub-Committee (concerned with the "list of issues"), and submitting together with Norway and the USSR a resolution on pollution prevention and control. The most important developments thus far in the Seabed Committee are the tabling of a number of proposals on specific subject areas, the setting up of working groups on the seabed regime machinery and on the preservation of the marine environment, and agreement, finally, on the "list of issues and subjects" intended as the draft agenda for the Conference. No treaty articles have as yet been drafted by the Committee, however, on any of the subjects within its mandate. Canada is now engaged in negotiations with a number of other countries concerning the form and content of a resolution to be discussed at the 27th UNGA intended to fix the time and place for the Third Law of the Sea Conference. As pointed out by the Secretary of State for External Affairs in his recent address to the 27th UNGA during the preliminary debate, it is hoped that the inaugural organizational session of the conference can be held during the early part of the 28th UNGA in New York and that the first substantiative session of the conference can begin early in 1974, possibly in Santiago. In such event, two further sessions of the Seabed Committee would be required in 1973 to complete the preparations for the Third Law of the Sea Conference.

3- ENVIRONMENTAL LAW

This subject area was not dealt with separately in the 1970 Summary but rather formed part of the discussion on developments respecting the Law of the Sea and marine pollution. International and domestic activity in the field of environmental law has intensified considerably in the period since 1970, in particular in connection with the preparation for the UN Conference on the Human Environment, which took place in Stockholm in June this year. The pace of activity continues to grow as increased attention is given to environmental considerations in the UN Seabed Committee in preparation for the forthcoming Law of the Sea Conference and in the Intergovernmental Maritime Consultative Organization (IMCO) in preparation for the 1973 IMCO Conference on Marine Pollution and in other UN agencies and intergovernmental bodies such as the NATO Committee on the Challenges to Modern Society and the OECD Environmental Committee.

Canadian participation within this framework has inter alia focused on the need for the development of international environmental law. The Declaration on the Human Environment adopted by the Stockholm Conference embodies legal principles relating to state responsibility in respect of activities causing extra-territorial damage. These principles are the result of proposals put forward by Canada at the Intergovernmental Working Group responsible for the drafting of the Declaration. At the Stockholm Conference the endorsement of a body of principles on the preservation of the Marine environment and the prevention of marine pollution were the result of the position first initiated by Canada in the Intergovernmental Working Group (IWGMP), which had been given the responsibility of preparing action proposals on marine pollution. In this area Canada has emphasized

the relationship between the activities of the Stockholm Conference and the preparations for the Law of the Sea and IMCO Conferences as well as Ad Hoc Conferences such as those relating to the elaboration of a global convention in the prevention of marine pollution by dumping. The marine pollution principles embody certain fundamental legal concepts upon which the development of international law in the form of a comprehensive and uniform treaty system could be based.

The second session of the IWGMP in Ottawa sponsored by the Canadian Government prepared a statement of objectives concerning the marine environment; this statement was endorsed by the Stockholm Conference. It recognizes the particular interest of coastal states with respect to the management of coastal area resources; it recognizes that there are limits to the assimilative and regenerative capacities of the sea; and it states the consequential conclusion that it is necessary to apply management concepts to the utilization of the marine environment, to exploitation of marine resources and to the prevention of marine pollution. This statement reflects a departure from the traditional laissez-faire freedom of use of the high seas and underlines the need for a sound and rational system of regulation.

Canada participated actively in the December 1971 IMCO-sponsored Conference on the establishment of an International Oil Pollution Compensation Fund. While not all of the Canadian objectives were achieved at the Conference, as constituted, the Fund when it comes into force will remove many of the defects of the 1969 Brussels Civil Liability Convention respecting compensation for damage suffered by oil pollution victims. Consideration is also being given to expanding the scope of the 1969 Brussels Public Law Convention on the right of intervention to take account not only of incidents involving oil but also other pollutants.

A draft convention (or possibly conventions) under consideration at IMCO in connection with the 1973 Marine Pollution Conference is intended to complete the range of measures required to eliminate intentional ship-generated pollution and to minimize accidental pollution from ships. In the preparatory work for the Conference Canada is proposing the adoption of enforcement measures which would enable coastal as well as flag states to prosecute vessels for the violation of the Convention's discharge standards. This sharing of responsibility is basic to the Canadian position in seeking to bring about an accommodation of interests in dealing with the conflicting uses of the sea.

Canada has adopted a similar position in participating in the preparation of a convention on ocean dumping. With respect to enforcement jurisdiction, the draft articles to be considered at a meeting in London in October/November this year are also based on the concept of enforcement by all parties, both coastal states and flag states, leaving basic jurisdictional questions open for final decision by the forthcoming Conference on the Law of the Sea.

Trans-National Pollution

Consultations are underway with the USA on a range of issues involved in this subject area, such as, for example, state responsibility for the Cherry Point oil spill. Discussions on the development of new law and procedures for the settlement of disputes of an environmental nature will be based upon Principles 21 and 22 of the Declaration on the Human Environment. From the Canadian point of view a desirable next step in the development of International Environmental Law is to now begin giving practical application to the principle of state responsibility for activities which may cause damage to areas beyond national jurisdiction.

4- Air Law - Unlawful Interference with Civil Aviation

Canada has been in the forefront of international efforts to come to grips with the inter-related aspects of the insidious problem of unlawful interference with civil aviation. It is axiomatic that the most effective way of dealing with the problem is by promoting the implementation of more rigorous national and international preventive security measures, and Canada will continue to be active in this area. However, the Legal Bureau of the Department of External Affairs, in consultation with other Bureaus of the Department and the Ministry of Transport, Department of Justice and Canadian Transport Commission, has also contributed significantly to the negotiation, under the auspices of the International Civil Aviation Organization (ICAO), of a series of international conventions which, in their totality, will make it difficult for individuals who commit acts of unlawful interference to escape prosecution.

(a) Unlawful Seizure of Aircraft (Hijacking)

Canada participated actively in the series of ICAO meetings which led to the adoption on December 16, 1970 of the Hague Convention for the Suppression of Unlawful Seizure of Aircraft (hijacking). Canada became a party to the Convention on June 19, 1972. Under Article 7 of the Convention, Contracting States in the territory of which an alleged hijacker is found have the option of either extraditing him or submitting the case to its competent authorities for the purpose of prosecution for an offence of a serious nature under the law of that State.

(b) Armed Attacks and Sabotage against Aircraft

From September 8 to 23, 1971 a diplomatic conference was convened in Montreal, under the auspices of ICAO, to consider a draft convention, which had been prepared by the ICAO Legal Committee at its 18th Session in London in September-October, 1970, covering acts of unlawful interference other than hijacking (which was already covered in the Hague Convention). On September 22, 1971 the Conference adopted the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. Canada ratified the Convention on June 19, 1972. Just as in the Hague Convention, Article 7 gives Contracting States in the territory of which an alleged offender is found the option of either extraditing or prosecuting.

(c) Canada/Cuba Negotiations

Since the Cuban Government has not wished to assume any multilateral obligations with respect to unlawful interference, Canada has been negotiating a bilateral unlawful interference agreement with Cuba which, it is hoped, will add "unlawful interference" as an extraditable offence to the 1905 U.K.-Cuba Extradition Treaty which is in force between Canada and Cuba, as well as provide for the expeditious return of hijacked aircraft, crew and passengers. The first round of negotiations was held in Havana in February, 1971. In March, 1972 Canada extended an invitation to the Cuban Government to send a delegation to Ottawa for the second and, it is hoped, final round of negotiations.

No reply has yet been received to the Canadian request of January 25, 1972 to the Cuban Government to extradite the alleged hijacker of the December 26, 1971 Air Canada flight.

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(d) Joint Action Against States Endangering Air Security

In April , 1971 representatives of Canada and the United States, at a session of an ICAO Legal Sub-Committee, co-sponsored a working paper containing the text of a draft multilateral convention creating international machinery for taking joint action against states who fail to live up to the legal obligations contained in the relevant international conventions such as the Tokyo, Hague and Montreal Conventions. However, after the initiative encountered opposition from a number of countries, the ICAO Assembly voted in July, 1971, over the strong opposition of Canada, to remove the subject of joint action from the active list on the ICAO Legal Committee's work programme. Taking their usually strict interpretation of the U.N. Charter, the U.S.S.R. and France argued that ICAO should not get involved in joint action since the subject of "sanctions" is reserved to the U.N. Security Council. Canada and the United States, however, contended that since under international law each state has exclusive sovereignty over its own air space, it is open to any state to become a party to a multilateral convention providing for the suspension of air services against states not living up to their international legal obligations.

In the aftermath of the Lod Airport massacre, it was possible to get the ICAO Council to again assign a high priority to the question of joint action. On June 19, 1972 the Council adopted a resolution, proposed by the United States and co-sponsored by Canada, directing ICAO's Legal Committee"... to convene immediately a Special Sub-Committee to work on the preparation of an international convention to establish appropriate multilateral procedures within the ICAO framework for determining whether there is a need for joint action..." against states which fail to live up to legal obligations pertaining to international civil aviation. The Special Legal Sub-Committee met in Washington from September 4 to 15, 1972. Participating countries were Canada, Brazil, Chile, Egypt, Israel, Japan, Netherlands, Spain, Tanzania, the U.S.A. and U.S.S.R., with France, the U.K. and Jamaica participating as ex officio members.

Although a number of basic substantive differences still remain, the Washington meeting was able to achieve positive results, especially in light of the fact that just over one year before the subject of a joint action convention had been placed on the inactive list. Although some states continue to oppose any type of joint action, within an ICAO framework, against defaulting states, the Special Sub-Committee was able to agree that the subject entrusted to it by the ICAO Council (i.e. of preparing an international convention) was "ripe" for consideration by the ICAO Legal Committee which, as recommended by the Special Sub-Committee, should be convened as soon as possible. The Special Sub-Committee's report will contain the draft texts of provisions for (1) a "commission of experts" which would be convened to determine whether an accused state has contributed to a threat to the safety of civil aviation, and (2) machinery (proposed by Canada, the U.S.A., Netherlands and U.K.) for taking joint action after a determination of fault has been made under stage (1).

The ICAO Council will now have to decide when to convene the Legal Committee to continue work on the convention. Canada will be pressing for the earliest possible convening of the Legal Committee to be followed as soon as possible by a diplomatic conference which will, it is hoped, be able to approve a convention.

5- Outer Space Law

The Legal Bureau, which is represented on the Interdepartmental Space Committee's Sub-Committee on the International Aspects of Space Policy, coordinates Canadian participation in the legal aspects of the work of the U.N. Committee on the Peaceful Uses of Outer Space (Outer Space Committee) and its Legal Sub-Committee. The following are some of the main subjects currently or recently under consideration:

(a) International Liability Convention

After many years of difficult negotiation in the U.N. Outer Space Committee and its Legal Sub-Committee, on the recommendation of the Outer Space Committee the 1971 session of the U.N. General Assembly endorsed the Convention on International Liability for Damage Caused by Space Objects. Canada, Iran, Japan and Sweden were the only countries who abstained in the vote on the resolution commending the Convention. These countries expressed the view that the Convention was not sufficiently "victim-oriented" as it does not refer specifically to the law of the place where the damage occurs as the applicable law to determine the measure of compensation, and does not provide for binding arbitration in the event that the states directly concerned cannot reach agreement on responsibility for damage and the amount of compensation. These features were not included in the "compromise package" agreed to between the U.S.A. and U.S.S.R. at the 1971 session of the Legal Sub-Committee.

Most countries, while willing to endorse the Convention on the grounds that it was the best compromise achievable, would have preferred arbitration awards to be binding rather than merely recommendatory. Accordingly, Canada proposed in the General Assembly's First Committee that states consider making declarations, when they sign or ratify the Convention, to accept arbitration decisions as binding vis-à-vis any state which makes a reciprocal declaration. This option was incorporated in the resolution commending the Convention.

(b) Canada/France Draft Registration Convention

As announced by Canada at the 1971 sessions of the U.N. Outer Space Committee and General Assembly, at the April, 1972 session in Geneva of the Legal Sub-Committee the Canadian delegation tabled a Draft Convention on the Registration of Objects Launched into Outer Space providing for the establishment of an international system for registering all objects launched into outer space. In 1968 France had also tabled a draft convention but the emphasis in their draft had been on national registers rather than on an international register.

At the Legal Sub-Committee session the Canadian and French delegations were able to combine their separate drafts into a joint draft which was given detailed consideration by a working group of the whole. Although the U.S.A. and U.S.S.R. were not enthusiastic about the idea of a compulsory registration system, they were not obstructive. Accordingly, although no agreement was reached on some details in the joint draft, most of the important principles were accepted. For example, although it was not possible to reach agreement on the type of detailed information to be provided to the U.N. Secretary-General, there was no objection to the principle of furnishing information on objects launched into outer space.

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At its September, 1972 session the Outer Space Committee "expressed satisfaction that the Legal Sub-Committee had made suitable progress by approving the texts of the preamble and nine articles of the Draft Convention on the Registration of Objects Launched into Outer Space, noting at the same time that provisions on some articles, which are placed within square brackets, are yet to be agreed upon". It went on to express the hope that the Sub-Committee will be able to make further progress with a view to completing the Draft Convention and recommended that the Legal Sub-Committee should pursue work on it as a matter of priority at its 1973 session.

(c) Draft Moon Treaty

As a major initiative the U.S.S.R. presented a Draft Treaty concerning the Moon to the 1971 session of the U.N. General Assembly. The Soviet draft was given detailed consideration at the 1972 session of the Legal Sub-Committee. The U.S.A. delegation tabled separate working papers on each of the Soviet draft articles so that most of the detailed consideration in the Legal Sub-Committee focused on the U.S.A. as well as U.S.S.R. texts. The portions of the draft text upon which it was unable to reach agreement were placed in square brackets. Although the draft text approved by the Legal Sub-Committee is a considerable improvement over the Soviet draft, there are a number of ways in which it can still be improved. Accordingly, further consideration will be given to the Draft Moon Treaty at the 1973 session of the Legal Sub-Committee. Among the most difficult problems that must be resolved before a treaty can be approved are:

(i) Should the treaty apply to just the moon or, as well, to "other celestial bodies"? Although the U.S.S.R. took the position that it was premature to apply the provisions of the treaty to "other celestial bodies", it now appears that the U.S.S.R. will be willing to agree to the insertion of a new article which would make the provisions of the treaty applicable to "other celestial bodies" until such time as they are displaced by new provisions contained in future treaties governing particular celestial bodies. The Canadian Delegation supported this approach.

(ii) Exploitation of the moon's natural resources: Although Article VIII of the Soviet draft treaty reaffirmed in greater detail the principle of non-appropriation of the moon contained in Article II of the 1967 Outer Space Treaty, it remained intentionally silent on the question of the exploitation of the moon's resources. Filling this gap was the main thrust of the Argentinian "Draft Agreement on the Principles Governing Activities in the Use of the Natural Resources of the Moon and Other Celestial Bodies" tabled at the Legal Sub-Committee's 1970 session. Article 1 of the Argentinian draft states that "the natural resources of the Moon and other celestial bodies shall be the common heritage of all mankind". The substance of the 1970 Argentinian draft was incorporated in a Working Paper co-sponsored by Egypt and India at the Legal Sub-Committee's 1972 session. Moreover, the U.S.A. also accepted the concept of "the common heritage of all mankind" in one of their working papers.

The U.S.S.R. strongly opposed incorporation of the concept on the ground that it was premature to work out a legal régime governing exploitation of the moon's natural resources when there was no existing appreciation of the resources that might some day be subject to exploitation. The Canadian Delegation expressed the view that the

treaty should affirm the principle of "common heritage" but that at an appropriate future time it would be necessary to work out an international régime and generally agreeable institutional arrangements to govern the exploitation of our common heritage.

(iii) Obligation to provide information concerning moon missions: Not surprisingly, the U.S.A. preferred an obligation to provide some information before the completion of missions while the U.S.S.R. preferred that the obligation be limited to "completed missions". The Canadian Delegation suggested the compromise of deleting the word "completed" in the draft treaty and thus leaving it up to individual states to exercise their own discretion in deciding when to provide information.

Direct Broadcast Satellites (DBS)

A joint Canada/Sweden initiative led to the creation by the U.N. General Assembly in 1968 of the Outer Space Committee's Working Group on DBS. To date, the Working Group has met in February/1969, August/1969 and April/1970 to consider current and foreseeable developments in this field including the technological, social, cultural, political, economic and legal implications. Canada and Sweden presented joint working papers which formed the basis for discussion at the three Working Group sessions, the first paper dealing with the technological aspects of DBS, the second exploring the non-technical implications including the basic legal questions, and the third examining the problems inherent in DBS (e.g. in controlling the content of television programmes from satellites) and encouraging international cooperation with the initial emphasis on cooperation at the regional level. At its 1970 session the General Assembly agreed that the Working Group should be reconvened "at such time as additional material of substance on which further useful studies might be based may have become available."

At its September, 1972 session the Outer Space Committee agreed to a Canada/Sweden proposal to recommend to the 1972 session of the General Assembly that the Working Group on DBS should be reconvened in 1973 (it will meet from June 11 to 22 in New York) to review, inter alia, the following new developments:

(i) The decisions and recommendations adopted by the International Telecommunications Union (ITU) at the World Administrative Radio Conference for Space Telecommunications, Geneva, 1971. These decisions, which upon ratification will enter into force on 1 January 1973, deal with the allocation of frequencies for all kinds of space communications including satellite broadcasting, as well as with the technical and administrative regulations concerning the establishment and operation of satellite communication systems.

(ii) The UNESCO draft declaration of guiding principles on the use of satellite broadcasting for the free flow of information, the spread of education and greater cultural exchange, which will be before the UNESCO General Conference at its October-November, 1972 session.

(iii) The on-going work performed by UNESCO and the World Intellectual Property Organization (WIPO) with regard to the protection of television signals transmitted via satellites.

(iv) In August, 1972 the USSR requested the inclusion on the agenda of the 1972 session of the General Assembly of the question of the elaboration of an international convention on the principles of the use of artificial satellites by States for direct television broadcasting. The USSR has tabled a draft convention on this subject.

Remote Sensing of the Earth by Satellite

At its July, 1971 session the Outer Space Committee's Scientific and Technical Sub-Committee, at the request of the General Assembly, established a Working Group on Remote Sensing of the Earth by Satellite with a mandate to review all factors relating to this new space application and to make recommendations on its optimum use in scanning resources and monitoring environmental conditions. At its preparatory session in May, 1972 the Working Group established a task force, consisting of experts from Canada, Sweden, France, India, the USA and USSR, to assist the U.N. Secretariat in preparing a background document which will summarize information available on remote sensing in the fields of: the state of the scientific and technical art; economic and social benefits; users' needs and priorities; legal implications; and organizational requirements. This background document will be considered at the Working Group's first substantive session which will be held in New York from January 29 to February 9, 1973.

At the September, 1972 session of the Outer Space Committee, the Canadian delegation congratulated the U.S.A. on the successful launching on July 23, 1972 of the ERTS-1 (Earth Resources Technology Satellite) experimental satellite and described how, under a bilateral agreement with the U.S.A., Canada has constructed and is operating facilities to read out and process the Canadian data that flows from the ERTS-1 satellite. The delegation stated that Canada views its bilateral arrangements with the U.S.A. as an important example in the evolution of international cooperation in remote sensing.

The delegation also welcomed the fact that, as agreed at its preparatory session last May, the Working Group will study the legal implications and organizational requirements of remote sensing. It then went on to say that:

> "My delegation realizes that it will be necessary to await greater knowledge of the potential uses and the limitations of the technology before we are in a position to agree upon definitive international arrangements to maximize the benefits to all nations. Moreover, we do not underestimate the difficult questions involved in harmonizing the sovereign rights of states with the obvious advantages to be gained from an international approach. However, we expect that the Working Group will point the way to practical international arrangements which represent a responsible and realistic balance between national and international interests."

6- International Humanitarian Law in Armed Conflicts

(a) Up-Dating of 1949 Geneva Conventions

The Legal Bureau has been working closely with the Judge Advocate General's Office of the Department of National Defence and the Canadian Red Cross Society in the different stages of diplomatic activity, under the auspices of the International Committee of the Red Cross (ICRC), which it is hoped will lead to adoption in 1974 of two Protocols adapting the four Geneva Conventions of August 12, 1949 for the Protection of War Victims to the realities of contemporary armed conflict situations.

To its credit the ICRC was among the first to recognize the inadequacies of the Geneva Conventions. At the 21st International Conference of the Red Cross in Istanbul in September, 1969, the ICRC tabled a report entitled "Reaffirmation and Development of the Laws and Customs Applicable in Armed Conflicts". At the Conference Canada and Sweden co-sponsored a resolution requesting the ICRC to propose as soon as possible concrete rules to supplement existing humanitarian law, submit these proposals to governments for comment, and, if desirable, recommend the convening of diplomatic conferences of States Parties to the Geneva Conventions and other interested states to elaborate international legal instruments incorporating these proposals. Canada also co-sponsored a resolution recalling the unfortunate fact that since 1949 non-international armed conflicts had been increasing, and requesting the ICRC, with the co-operation of government experts, to devote special attention to this subject.

Encouraged by the U.N. Secretary-General, the ICRC convened a First Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts in Geneva in May, 1971. The ICRC prepared extensive background documentation for the Conference. 39 governments provided delegations composed of some 200 diplomatic, legal, military and medical experts. The Canadian Delegation was composed of senior officers from the Legal Bureau and the Office of the Judge Advocate General of DND. Among other things the Delegation promoted vigorously the view that, building upon common Article 3 of the 1949 Geneva Conventions, there should be a basic minimum standard of humanitarian treatment applied in all armed conflict situations whether these are characterized as "international" or "non-international". The Canadian experts presented a draft protocol embodying this concept for which a number of other experts expressed support or interest.

On the basis of the comments of government experts and further statements made by governments during consideration of this subject in the Third (Social and Human Rights) Committee at the 1971 session of the U.N. General Assembly, the ICRC formulated two draft protocols, and accompanying commentaries, to the Geneva Conventions - one, concerning international armed conflicts and the other, which was based on the draft proposed by Canada at the First Conference but which went far beyond the Canadian draft by introducing rules of combat as opposed to purely humanitarian rules, concerning armed conflicts not of an international character. After a preparatory meeting of National Red Cross experts in Vienna in March, 1972, the ICRC convened a Second Conference of Government Experts in Geneva from May 3 to June 3, 1972 to consider the two draft protocols. Over 460 experts attended from 76 states as well as observers from the United Nations and interested non-governmental organizations.

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At the Second ICRC Conference Commission II, which as at the First Conference was chaired by a Canadian expert, reviewed the second draft protocol dealing with non-international armed conflicts. Although the necessity for developing common Article 3 of the 1949 Geneva Conventions was largely accepted by the experts, the question of whether this should be done in a separate second protocol was discussed actively. Some declared that the victims of international and non-international armed conflicts should be equally protected by a single protocol, but most believed that the nature, conditions and fundamental differences of non-international conflicts necessitated separate treatment. It was generally agreed that whenever possible the language of the two protocols should be similar.

The second draft protocol was defined to apply to all situations where hostilities of a collective nature occurred between "organized armed forces under the command of a responsible authority". As at the First Conference, experts differed over whether the application of the protocol should cover internal armed conflicts of relatively low intensity, or should be limited to conflicts of 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. Some experts considered that "wars of national liberation" were international in nature and thus to be excluded from the second protocol and treated differently from conflicts of secession or dismemberment of a territory.

Practically all experts agreed on the need to provide captured combatants with elements of humane treatment not now provided for in common Article 3. Although some favoured the granting of prisoner of war status, as in the Third Geneva Convention, to guerrilla fighters and other persons meeting certain minimum requirements, most favoured the more basic treatment extended to civilians deprived of their freedom for acts connected with the conflict. Some experts favoured the abolition of the death penalty for combatants who had respected the essential provisions of the laws of armed conflict. Others considered that the execution of combatants should simply be suspended until the termination of hostilities in the expectation that a general amnesty would then be granted.

Although many outstanding points remain to be resolved, considerable progress was registered at the Second ICRC Conference in further identifying and clarifying the main issues. On the basis of the work of the Second Conference and consideration of this subject in the Sixth (Legal) Committee at the 1972 session of the U.N. General Assembly, the ICRC intends to revise its two draft protocols by the end of the spring of 1973 and to distribute them to States Parties to the 1949 Geneva Conventions. The Swiss Government, in collaboration with the ICRC, intends to convene a diplomatic conference in Geneva in the spring of 1974 which, it is hoped, will adopt final versions of the two protocols.

(b) Draft Convention on Protection of Journalists

For the past two years, spearheaded by France, the U.N. General Assembly's Commission on Human Rights and Third Committee have been elaborating a Draft Convention on the Protection of Journalists Engaged in Dangerous Professional Missions in Areas of Armed Conflict. Under the Draft Convention the U.N. Secretary-General would appoint a 9-member International Professional Committee to make regulations concerning the issuance and withdrawal of identity cards to journalists engaged in dangerous missions. These cards

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would then be issued by the competent authorities of States Parties to the Convention. When a journalist possessing a card is in the territory of a State Party where there is an armed conflict, States Parties, and as far as possible all parties to the conflict, would then be required to, inter alia, "do all that is necessary to protect him from the danger of death or injury or from any other danger inherent in the conflict...".

Canada was one of a number of countries which expressed the fear that the granting of special protection to an increasing number of categories might weaken the general protection due to the civilian population (including journalists) by reason of the 1949 Geneva Conventions (especially the Fourth Convention on Protection of Civilian Persons in Time of War) and the Protocols which are now being worked out. However, Canada also realizes that it is in the common interest to facilitate the spread of information concerning armed conflicts in order to enhance the possibilities for settling disputes peacefully as well as to contribute to the more effective implementation of humanitarian law in armed conflicts. Moreover, journalists on dangerous missions differ from the general civilian population in that journalists must run risks voluntarily whereas civilians are usually involuntary victims of circumstances beyond their control.

The Second ICRC Conference of Government Experts was not able to spend much time on the protection of journalists. Since it appears that a majority of states believes that there should be a separate convention granting special protection to journalists, the Canadian Delegation to the 1972 session of the U.N. General Assembly's Third Committee will be cooperating with other delegations in proposing improvements to the Draft Convention to ensure that the details of the special protection afforded to journalists will be realistic and effective.

(c) 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 types of conventional weapons which are particularly dangerous to civilians should be outlawed in one of the protocols now being worked out to the 1949 Geneva Conventions. During consideration of "Human Rights in Armed Conflicts" in the Third Committee at the 1971 session of the U.N. 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 "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, which has just been published, will be considered at the 1972 session of the U.N. 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. This was consistent with the position taken in the Canadian comments on "Respect for Human Rights in Armed Conflicts" submitted to the U.N. Secretary-General in June, 1971

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when the view was expressed that examination of a ban on the use of particular types of weapons "might best be left for resolution by the international fora directly concerned with disarmament".

In February, 1973 the ICRC intends to convene a meeting in Geneva of medical, military and legal experts to assist the ICRC in preparing a documentary report on the problem, use and effect of "such conventional weapons as may cause unnecessary suffering or strike indiscriminately".

7. International Terrorism - Protection of Diplomats

The Secretary-General of the United Nations proposed the introduction of the topic "measures to prevent terrorism and other forms of violence which endangers or takes innocent human lives or jeopardizes fundamental freedoms" on the agenda of the 27th U.N. General Assembly. The topic provoked controversy both in the General Committee charged with the allocation of items to the various committees of the General Assembly and in the general debate which followed. The delegation of Jamaica introduced an amendment into the General Committee report to replace the phrase "terrorism and other forms of violence" by the phrase "international terrorism". The proposal was adopted by 55 votes in favour (including Canada), 27 against with 38 abstentions. The delegation of Saudi Arabia then introduced a further lengthy amendment to include causes of as well as measures to prevent international terrorism, which was adopted by 42 votes in favour, 35 against (including Canada), and 44 abstentions. The item was then adopted by a vote of 81 in favour (including Canada) with 18 against/27 abstentions in the following form: "Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms, and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to

sacrifice human lives, including their own, in an attempt to effect radical changes." After some further discussion, the item was allocated to the Sixth Committee.

As soon as the Sixth Committee began its first substantive session to consider the organization of its work, further controversy occurred concerning the placing of the item on terrorism in the programme of work of the Committee. The U.S.A. delegation, supported by the U.K., Canada and a number of other delegations, pressed to have the question considered as the first item on the agenda of the Sixth Committee. (The U.S.A. Delegation also introduced a draft resolution calling for adherence to the relevant civil aviation conventions, for a plenipotentiary conference on enforcement of civil aviation obligations, and calling upon states to become parties to the draft convention on the protection of diplomatic agents recommended by the International Law Commission.) A number of Arab and African delegations proposed instead that the item on terrorism be considered last on the agenda. In the light of the opposition to the U.S.A. proposal, the U.K. delegation suggested the setting up of a working group to consider possible measures and report back to the Sixth Committee. Opposition also developed to this proposal. After some further debate the Canadian delegation proposed that the item be considered fourth, and that the intervening period be utilized for consultations to be initiated by the Chairman with a view to determining the procedure and the direction of its work on this question. After two further days of

debate and negotiation the Committee voted on the Canadian proposal which was amended, as suggested by the delegation of Mauritania, so as to have the item considered sixth on the agenda. Consultations are now underway under the aegis of the Chairman as accepted by a vote of 94-0-7.

Amongst the possible approaches being discussed are: the setting up of an intersessional working committee to make recommendations on measures to prevent and control terrorism; the opening up for accession of the 1937 League of Nations Convention on the Prevention of Terrorism; the convening of a diplomatic conference for the purpose of drafting a convention on the prevention and control of terrorism; and the passage of a resolution calling for better enforcement measures by U.N. member states. It is too early to know how the item will, in the event, be treated by the Sixth Committee, although it appears increasingly likely that an intersessional working group will be set up, possibly with two sub-committees, one to consider measures and another to consider causes.

During the discussion of thereport of the ILC, further debate occurred in the Sixth Committee on certain aspects of terrorism during the consideration of the draft articles on the protection of diplomatic agents recommended by the ILC at its last session. Canada

and a number of other delegations are pressing for the early convening of a diplomatic conference for the purpose of reaching agreement on a convention for the protection of diplomatic agents. As in the case of the general question of terrorism, strong divergencies of views emerged on what action should be taken on this matter.

8 - UNCITRAL: Multi-National Enterprises

The Canadian Delegation suggested, during the Sixth Committee debate on the report of the United Nations Commission on International Trade Law (UNCITRAL) during the 1971 session of the U.N. General Assembly, that consideration be given to the possibility of UNCITRAL devoting attention to trade law issues raised by the activities of multi-national enterprises. During the current session of the General Assembly, the Canadian Delegation has proposed in the Sixth Committee, during its discussion of the report of UNCITRAL, the appointment of a small group of international law experts to examine the influence of multi-national enterprise activities on international trade and investment and the effect of such activities on international trade law. The Canadian proposal is intended, initially, to enhance the amount of information available to national governments on the activities of multi-national enterprises and thus better equip goverments to regulate international trade and investment and even, conceivably, lead to the establishment of an international regime respecting the multi-national enterprise, a major step towards making the conduct of the multi-national enterprise a subject of international law.

It will be noted that the concern of the international community as to the influence and implications of the activities of multi-national enterprises has already been expressed in the ILO, at UNCTAD III and at the most recent session of ECOSOC, in all of which forums studies are going ahead on various aspects of the issues raised by the activities of multi-national enterprises. (The studies within the ILO concern the relationship between multi-national undertakings and social policy; resolutions passed at UNCTAD III recommend a proposed charter of economic rights and duties, and the further study of the effects of restrictive business practices; and ECOSOC has recommended the establishment of a "group of eminent persons" to study the role of multi-national enterprises and their impact on the process of economic

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development. Studies are also underway in the OECD.) The position being taken byCanada is that it is time for the legal aspects of the problem to be considered, and that UNCITRAL provides an appropriate forum in the light of its mandate to harmonize international trade law, and give its business - like and low - key approach to concrete problems of trade law.

Although the preliminary reaction to the Canadian proposal has been favourable, it is too early to say whether or not the Sixth Committee will agree to recommend that UNCITRAL take on this project in accordance with the proposal of the Canadian Delegation.

9- Role of the International Court of Justice (ICJ)

In August, 1970 Canada, Argentina, Finland, Italy, Japan, Liberia, Mexico, the U.S.A. and Uruguay asked the U.N. Secretary-General to inscribe on the agenda of the General Assembly's 1970 session a new item entitled "Review of the Role of the International Court of Justice". At the 1970 Session Canada co-sponsored a draft resolution which would have established an Ad Hoc Committee of 25 experts to study the role of the Court in order to make recommendations on enhancing the Court's effectiveness. Member States, States Parties to the Statute of the Court, and the Court itself were also invited to submit their views and suggestions to the Secretary-General. The resolution was opposed by the U.S.S.R. which felt that such a study was unnecessary. France and a number of non-aligned countries proposed a compromise resolution, which was adopted unanimously, deferring consideration of the establishment of an Ad Hoc Committee until the 1971 session but, in the interim, inviting Member States to submit to the Secretary-General their comments on the role of the Court.

At the General Assembly's 1971 session, the Sixth (Legal) Committee had before it a report of the Secretary-General containing the comments submitted by 31 countries including Canada. The U.S.S.R. expressed the view that the small number of comments received indicated a lack of interest in the subject. They maintained that if countries were not making use of the Court to settle international dispute, it was due to political considerations. It was their view that countries, although under obligation to settle disputes peacefully, were not obliged to use the Court as the means of arbitration. They could see, therefore, little use in establishing a committee to study the role of the Court. Canada and other countries argued that the malaise surrounding the Court also sprang from other factors such as inaccessibility to the Court, the formality and length of proceedings, high costs involved in pleading uses before the Court, etc... They considered that if an Ad Hoc Committee could study these problems, it could perhaps come up with a number of generally acceptable recommendations, not necessarily involving formal amendments to the Statute of the Court, which would remove many of the Court's present drawbacks.

Canada and 30 other countries again presented a resolution calling for the establishment of an Ad Hoc Committee to study the role of the Court. The U.S.S.R. presented a resolution which would have postponed further consideration of the item until the Court completed its review of its rules of procedures. A French resolution deferred a decision on the establishment of an Ad Hoc Committee until the 1972 session and, in the interim, invited states which had not yet done so to submit comments to the Secretary-General. The French draft was approved after the U.S.S.R. withdrew its resolution.

10- Definition of Aggression

The search for a generally acceptable definition of aggression has been going on since early 1927 when the Draft Treaty on Mutual Assistance was under consideration in the League of Nations. The subject was again discussed in the League in the 1930's and raised in the United Nations in 1950 when the General Assembly referred the matter to the International Law Commission which, however, failed to agree on a definition. Since that time the question of defining aggression has been considered intermittently by the General Assembly's Sixth Committee. After lengthy negotiations in the Sixth Committee at the 1967 session of the General Assembly, a reconstituted Special Committee on the Question of Defining Aggression, composed of 35 members (including Canada), was set up. The first session of this Committee was held in Geneva in the summer of 1968. At that time three draft definitions were submitted to the Committee, two by groups of non-aligned States and one by the USSR. In spite of extensive negotiations conducted between the co-sponsors of the first two proposed definitions, it was not possible to develop an agreed non-aligned text.

At the second session in 1969, Canada and the five other Western States (Australia, Italy, Japan, the U.K. and U.S.A.), while maintaining their traditional view that a definition is unnecessary since it is the Security Council which must decide in any particular case what is aggression, tabled a Western draft definition in order to ensure that a number of principles to which they attach great importance would be incorporated in any eventual definition adopted by the Committee and recommended to the General Assembly. Major among these principles are: (a) compatability with the U.N. Charter; (b) safeguarding the discretionary authority of the Security Council to determine whether aggression has been committed; (c) the applicability of the definition to "indirect" aggression; (d) its applicability to entities not generally recognized as states; (e) the non-automaticity of the definition, even in the case of first use of force; and (f) its political acceptability to all the Permanent Members of the Security Council and to the majority of the General Assembly.

At its 1970 and 1971 sessions, in spite of some examples of compromise (e.g. there is agreement that any definition must not tie the hands of the Security Council in exercising its discretion to decide what is an "act of aggression"), it proved impossible to reach a consensus on an appropriate definition. At the 1972 session the non-aligned group proved unwilling to modify their positions on a number of outstanding issues, such as their insistence that: (a) the first use of force always constitutes aggression; (b) states which are the victims of aggression are not bound by the principle of proportionality in responding; (c) there is no burden on the victim to prove aggressive intent on the part of the alleged aggressor; and (d) dependent people can use force to attain independence.

Both at the 1971 session of the General Assembly and during the 1972 session of the Special Committee, Canadian representatives expressed disappointment at the lack of progress being made. Canada indicated that a hiatus of one or two years might give governments more time to reconsider their positions and in the interim try to move forward on the basis of informal negotiations.

The only issue to be decided by the General Assembly at its 1972 session will be whether it should accept the Special Committee's recommendation that the Special Committee should be invited to continue its work in 1973.

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The Canadian view remains that the Special Committee should not be asked to meet in 1973 unless there are reasonable grounds for believing that all sides will, in a spirit of compromise not yet apparent, try to make a breakthrough.

11- International Law of Friendly Relations

Canada was one of the 31 members of the U.N. Committee on the International Law Principles of Friendly Relations which from 1964 to 1970 completed the drafting of a Declaration elaborating the following seven principles of international law:

(1) States shall refrain from the threat or use of force against the territorial integrity or political independence of any State (non-use of force);

(2) States shall settle their international disputes by peaceful means (peaceful settlement of disputes);

(3) States shall not interfere in matters within the domestic jurisdiction of any other State (non-intervention);

(4) States shall respect the sovereign equality of other States;

(5) States shall co-operate with one another in accordance with the Charter;

(6) States shall accord, and all peoples shall have, equal rights and the right of self-determination;

(7) States shall fulfil in good faith the obligations assumed by them in accordance with the Charter.

On October 24, 1970 the Declaration was adopted by acclamation by the U.N. General Assembly as one of the documents of the Commemorative Session on the occasion of the 25th anniversary of the United Nations.

The item originated at the 1961 session of the United Nations General Assembly as a result of a Communist initiative supported also by a number of non-aligned states to codify the "principles of peaceful co-existence". At the 1962 session the West resisted this Communist initiative and, led by Canada, called instead for an elaboration of seven fundamental U.N. Charter principles with a view to strengthening the rule of law.

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The Canadian Delegation at the last (1970) session of the U.N. Committee was instrumental in ensuring that there was no reference in the Declaration to the applicability of its provisions to the high seas or the seabed and sub-soil thereof, since these were matters being dealt with in detail by other U.N. Committees. The Canadian Delegation was also successful in ensuring that the Principle of Self-Determination of People enunciated that "every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country". The Canadian and Italian delegations were able to obtain the inclusion of a further provision in the Principle of Self-Determination which reads as follows:

> "Nothing in the foregoing paragraphs shall be construed as authorizing or encouragning any action which would dismember or impair, totally or in part, the territorial integrity, or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour".

12- Law of Treaties

When the first paper on "Some General Issues of International Law..." was being prepared by the then Legal Division of the Department of External Affairs, the Law of Treaties itself was a particularly important area of activity. The Vienna Convention on the Law of Treaties had been adopted approximately a year earlier and the Canadian Delegation had played an active role at both the 1968 and 1969 sessions of the Conference. Now the Convention has been signed by some 47 countries and has been ratified or acceded to by 15, including Canada, which acceded on October 14th, 1970. While there remain certain still-to-be-resolved issues arising out of the question of the right to become a party to the Convention, these issues are now essentially of a political nature rather than legal. They were included in the draft agenda of this year's XXVII General Assembly as provisional agenda item # 92 "Declaration on Universal Participation in the Vienna Convention on the Law of Treaties". When considered by the General Committee when it met after the opening of the General Assembly, however, this item was deferred until the next session.

Canada Treaty Series

Naturally, the Treaty making activity of states has continued undiminished, both in the multilateral and bilateral fields. The Treaty Section of the Legal Advisory Division of the Department continues to maintain the Canada Treaty Registry, which records Canada's own activities in this field. In recent years, the programme of bringing the Canada Treaty Series into print had fallen badly behind schedule. This situation, however, has now been rectified and the texts of treaties coming into force for Canada are being printed and made available much more rapidly. Thus, all volumes of the Canada Treaty Series covering the period up to the end of 1971 are already with the Queen's Printer and it is expected that they will soon be available to the public through Information Canada. University libraries should also be receiving their copies in the near future. It is now expected that, as a general rule, the printed texts of future Canadian treaties will become available through the Treaty Series approximately six to nine months after they have come into force.

13- Sovereign, Diplomatic and Consular Immunities

Questions involving the immunities enjoyed by the representatives of states and international organizations are a matter of the responsibility of the Legal Advisory Division. The Division has the function of determining, in specific cases, the immunities which representatives of foreign states in Canada and Canadian representatives abroad are entitled under international law, either conventional or customary. In addition, the Division is an active participant in the task of ensuring that the right of states, diplomats, consular officials, and international organizations to immunity from the jurisdiction of municipal courts is preserved. In this latter regard, it is interesting to note that in the past year a procedure has been evolved concerning writs served against ICAO or ICAO officials who are entitled to immunity. Such writs are sent to the Division by the ICAO Secretariat and, when in the Division's opinion the claim to immunity is justified, the writ is forwarded to the Department of Justice which then takes the necessary action to have the writ revoked in order to fulfil Canada's obligations under international law.

14- Espousal and Settlement of Claims

By the middle of the 1960's most Eastern European states had sufficient interest in improving their political, economic and other relations with Canada to enable the Canadian authorities to begin the process of settling long outstanding claims of Canadian citizens. Thus it became feasible to launch claims programmes with Bulgaria, Hungary, Poland, Romania and Czechoslovakia. By their nature, claims programmes are lengthy operations. They involve first the soliciting of the claims or prospective claims from the public at large, the processing of them by lawyers knowledgeable in the standards set by international law and practice for such claims, and then correspondence with the claimants seeking further details on such points as evidence of ownership, of loss, and of valuation. Only when this process is complete, or reasonably so, can the claims be submitted to the other government which, in its turn, must be given a reasonable period to check its records and establish its view on ownership, loss and valuation.

In due course, usually six months to one year after the submission of the claims, negotiations get under way between the authorities of the two sides. In the case of Canada, the delegation is usually composed of the Canadian Ambassador accredited to the state concerned, the Head of the Legal Advisory Division and the desk officer in the Section for the state concerned. The delegation on the other side is usually headed by a senior official of the Ministry of Finance or the equivalent of the Prime Minister's office. One or more such officials is normally a lawyer, while others are experts in the nationalization measures of their state.

It usually takes some years to conclude the negotiations. Among the numerous reasons for this is the reluctance of officials on the other side to provide documentary evidence of the type that would, for example, be required by Canadian courts. In addition, of course, the war and the post-war social upheavals have created very real difficulties in the location of thirty-year old records. Non-legal considerations include the understandable resistance by the debtors to such impositions on their limited foreign exchange reserves. There also exists an emotional obstacle with particular reference to Canada, where most of whose claimants are emigrants from the debtor states, of paying compensation to those of their nationals who emigrated while not paying compensation to those who stayed behind.

Nevertheless, settlements are being achieved. Bulgaria in 1966, Hungary in 1970, Poland and Romania in 1971 and we hope Czechoslovakia within the next twelve months. To take an active example, claims negotiations with Czechoslovakia were opened in Praque in May 1971. The venue then switched to Ottawa in October 1971, and then back to Prague in May 1972. Each period of negotiation lasted three weeks. Between these negotiations the two sides evaluate the information provided by the other side at the previous round, and gradually a narrowing of differences was taking place.

It is rarely if ever possible to reach complete agreement on validity and valuation of all the claims in question, and sooner or later the two sides agree to what are in effect three

categories of claims. The first are those that after the exchange of information prove to be insupportable; the second, those claims which appear to be valid; and third, those claims where there is agreement to disagree. This last category - always the largest - covers such matters as differences of view over legal and beneficial interests in the subject matter of the claim, the effective date of the nationalization measures in relation to the date of acquisition of Canadian citizenship, the effect of non-compliance with domestic legislation in the states concerned.

There comes a time, however, when the other side considers that it has exhausted its repertoire of arguments and that it has established in its own mind what it is prepared to pay for the improvement in relations with Canada that a settlement of claims will bring about. At this stage the negotiations take on a political colouration and the whole spectrum of relations between the two states becomes relevant. It is at this point that a number of other government departments become more closely connected with the negotiations, including in particular the Department of Finance and the Department of Industry, Trade and Commerce. In point of fact the final settlement serves more to reflect the state of relations between the two states than the legal merits of the claims themselves.

In addition to such lump sum claims settlements, the Legal Advisory Division concerns itself with particular cases of uncompensated taking of Canadian interests. Perhaps the most significant example is that of the Barcelona Traction Company. As

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you know, this dispute has been before the International Court for a number of years and the decision came in February 1970. The Division has been concerned with various aspects of the claim since it arose in the late 1940's. At first there were efforts to settle it through diplomatic channels. When these failed, the beneficial interests sought and obtained the espousal of the claim before the International Court by their national state, namely Belgium. The Canadian authorities followed closely the court proceedings as the outcome was of direct interest to Canada. Since receipt of the decision those in the Division and elsewhere in the government concerned with the case have been seized with the implications of the decision both for the settlement of this particular dispute and more generally for existing international law and state practice concerning the espousal of beneficial corporate interests.

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