

The 1904 Anglo-French Newfoundland Fisheries Convention: Another Look

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The 1904 Anglo-French Newfoundland Fisheries Convention: Another Look

THE EXISTING LITERATURE ON ANGLO-FRENCH RELATIONS at the turn of the century, as well as that which specifically addresses the 1904 *entente cordiale*, for the most part makes only passing mention of the Newfoundland fisheries issue. Understandably, the focus of these accounts tends to be on the changing relations between the great powers, and on the most important aspect of the *entente* itself, which was the definition of boundaries and spheres of influence in North and West Africa. The exceptions are P.J.V. Rolo's study of the *entente*, which does recognize the crucial place of the fisheries issue in the context of the overall negotiation, and F.F. Thompson's brief account of the Newfoundland settlement from a colonial perspective in his standard work on the French, or Treaty, Shore question.¹ This note expands these accounts of the evolution of the 1904 Anglo-French Fisheries Convention, reinforces the view that it was vital to the successful completion of the overall package, and looks at the aftermath.

This is not the place to discuss in detail the reasons for Anglo-French rapprochement which culminated in the 1904 *entente cordiale*. At the risk of oversimplification, one can point to several key factors. The Fashoda incident (1898) demonstrated, in time, to many French politicians that there was no hope of ending the resented British occupation of Egypt and the Nile valley. Confrontation with Britain in Africa was clearly futile, and accommodation potentially advantageous. Increasingly, the *parti colonial* urged the French government to consider giving up its financial and economic influence in Egypt, recognizing British predominance there, in return for British acceptance of France's ambition to establish a protectorate over Morocco and concessions elsewhere.² Once this reasoning had been accepted and advanced by the French government, the British government eventually proved willing to respond positively (if carefully). The South African war had been a humiliating experience, and both Britain and France were concerned about German military expansion. In addition, the Foreign Office hoped that France might be able to help reduce the threat which her ally, Russia,

1 P.J.V. Rolo, *Entente Cordiale. The Origins and Negotiation of the Anglo-French Agreements of 8 April 1904* (London, 1969); F.F. Thompson, *The French Shore Problem in Newfoundland. An Imperial Study* (Toronto, 1961), pp. 176-87. A summary can be found in A.M. Fraser, "The Convention of 1904", in R.A. MacKay, ed., *Newfoundland. Economic, Diplomatic and Strategic Studies* (Toronto, 1946), pp. 329-32.

2 Christopher Andrew, *Theophile Delcassé and the Making of the Entente Cordiale* (London, 1968), pp. 48, 52, 103; Ann Williams, *Britain and France in the Middle East and North Africa* (London, 1968), pp. 7, 69; Edmund Burke III, *Prelude to Protectorate in Morocco. Precolonial Protest and Resistance, 1860-1912* (Chicago, 1976), p.49; Pierre Guillen, "Les accords coloniaux franco-anglais de 1904 et la naissance de l'Entente cordiale", *Revue d'histoire diplomatique*, 82 (1968), pp. 322-9.

seemed to pose to the security of India. Finally, the British government wanted a free hand in Egypt. In these circumstances an agreement became a real possibility.

Since the 1870s, the traditional rivalry between France and Britain had been expressed in the imperial sphere — Africa, Southeast Asia and the Pacific. It followed that, initially, rapprochement would take the form of a settlement of imperial disputes: this was not to be a formal alliance so much as a removal of irritants. While the need to tidy up the African scramble was of central importance to both countries, there was agreement that a resolution of the long-standing Newfoundland fisheries dispute should be an important component of any overall settlement.

By the Treaty of Utrecht (1713), France had given up its claims to the island of Newfoundland, but had been granted the right to fish, in season, on the Newfoundland coast between Cape Bonavista and Pointe Riche.³ This privilege was renewed in subsequent Anglo-French treaties, though in 1783 the boundaries of the Treaty Shore were shifted to Cape St. John and Cape Ray. In addition, in 1763 Britain ceded to France the islands of St. Pierre and Miquelon. In effect, France had retained in North America what was necessary to maintain a viable migratory fishery: the right to an inshore fishery along a huge stretch of the Newfoundland coast, and an *abri* from which an offshore bank fishery could be pursued.

During the 19th century, however, a number of serious disputes brought the definition and exercise of these rights into question. By the 1820s the English migratory fishery at Newfoundland had died out. In its place, a resident fishery developed, operated by increasing numbers of permanent settlers, and in the mid-1820s the island (with Labrador) finally became a colony in the official sense. Not surprisingly, Newfoundlanders found the French seasonal presence on the Treaty Shore increasingly objectionable and the treaties which protected that presence anachronistic and frustrating. Supported by the British government, the colony argued that France held a *concurrent* right of fishery on the Shore: so long as French fishing operations were not impeded in any way, British subjects had every right to fish there, and to create settlements. Against this interpretation, France claimed, as it always had, that it possessed an *exclusive* fishery on the Treaty Shore, and that settlement there was strictly illegal.⁴ In some respects this was a not unreasonable position, since it had been the clear intention of 18th century negotiators to create separate French and English fishing zones, and in a declaration appended to the 1783 Treaty of Versailles the British government had promised to remove “the fixed settlements which shall be formed” on the Treaty Shore.

From this fundamental difference an array of subsidiary yet important disputes

3 J.K. Hiller, “Utrecht Revisited: The Origins of French Fishing Rights in Newfoundland Waters”, *Newfoundland Studies*, 7,1 (1991), pp. 23-39.

4 Thompson, *French Shore Problem*. See also Peter Neary, “The French and American Shore Questions as Factors in Newfoundland History”, in James Hiller and Peter Neary, eds., *Newfoundland in the Nineteenth and Twentieth Centuries: Essays in Interpretation* (Toronto, 1980), pp. 95-122; and J.K. Hiller, “The Newfoundland Fisheries Issue in Anglo-French Treaties, 1713-1904”, *Journal of Imperial and Commonwealth History*, 24, 1 (1996), pp. 1-23.

over jurisdiction and land use developed. In effect, French insistence that Newfoundlanders had no right to fish, settle, farm or mine on the Shore delayed the development of local government and political representation, and prevented the colonial government from making clear grants of land. In addition, France claimed that its fishermen were not subject to local law. From the 1860s the Newfoundland government had ambitions to control and develop the Treaty Shore, and found French objections increasingly irritating — all the more so as the French fishery there declined steadily, becoming relatively insignificant by the end of the 19th century.⁵ After 1850 the French offshore fishery became far more important, the banking fleet expanded, and St. Pierre boomed as a fishing base and trading centre. This development in turn created another set of difficulties. French bankers habitually used bait fishes (herring, caplin, squid) sold fresh at St. Pierre by Newfoundlanders from the island's south coast. The Newfoundland government disliked this trade because it both encouraged smuggling and assisted the French fishery, whose product was, by the 1880s, competing successfully with Newfoundland fish in glutted European markets. To make matters worse, French outfitters and exporters were subsidized by their government in the form of bounties. The colony's discontent found expression in the 1887 Bait Act, which was primarily designed to prevent bait sales at St. Pierre and so damage the French bank fishery. This legislation was much resented by French fishing interests, and was viewed by the French government as a hostile act. As a form of retaliation, and to strengthen its bargaining position, France responded by asserting and defending its rights, and those of the comparatively few French subjects who still fished on the Treaty Shore.

Despite sporadic attempts to reach a settlement, it proved impossible to find a formula which would satisfy both France and Newfoundland — or, more precisely, all political groups in the colony. By the 1890s the general position was that France was prepared to make significant concessions on the Treaty Shore, so long as Newfoundland guaranteed French bankers free and unimpeded access to bait. But Newfoundland would only concede bait if France lowered or removed its fishery bounties, thereby restoring what was considered to be “fair” competition. The situation was effectively deadlocked.

In 1898 Théophile Delcassé became French foreign minister, and late that year Paul Cambon was appointed ambassador in London with instructions to seek a settlement of the points at issue between the two countries.⁶ This did not mean that substantive discussions began immediately. The Boer War created a postponement, and Delcassé hesitated, clinging to the hope that it might be possible to end Britain's occupation of Egypt. Moreover, he wanted firm evidence that Britain was prepared to come to terms over Morocco.⁷ There were hesitations on the British side as well, where a number of senior politicians and officials, among them Arthur

5 James Hiller, “The Railway and Local Politics in Newfoundland, 1870-1901”, in Hiller and Neary, eds., *Newfoundland*, pp. 123-47.

6 Andrew, *Delcassé*, p. 112.

7 *Ibid.*, chapter 8.

Balfour and Lord Lansdowne, needed convincing that an accommodation with France made sense.⁸

Such factors did not prevent Cambon from probing the possibilities for settlement — indeed, it has been argued that it was he rather than Delcassé who initiated the *entente*.⁹ So far as Newfoundland was concerned, his initial suggestion, in 1901, was that French treaty rights there might be exchanged for the Gambia, a British possession which France had wanted for a long time. Lansdowne, the British Foreign Secretary, refused, but indicated that compensation might be found elsewhere in West Africa — perhaps on the Nigerian border in the region of Sokoto.¹⁰ The idea of linking Newfoundland to Morocco, which Cambon also raised, was dismissed as far-fetched.¹¹ Cambon made other probes in 1902, but it was not until the beginning of 1903 that Delcassé, fearful of Germany and anxious to prevent Britain from checking French ambitions in Morocco, reluctantly came round to the position of Cambon and the *parti colonial* — that is, France would recognize Britain's position in Egypt in return for an agreement on Morocco.¹² Once this linkage was accepted in London, where officials were seriously disturbed by the possibility that Russia might defeat Japan in a Far Eastern War,¹³ it was possible for negotiations to begin. Another strand would, of course, be the link between Newfoundland and West Africa.¹⁴

Though Cambon's early initiatives had had little impact on British policy, the Colonial Office had nevertheless begun serious discussions with the Newfoundland government, whose co-operation was vital to the success of any future negotiation and agreement. This was no doubt an initiative of the Colonial Secretary, Joseph Chamberlain, who was an early convert to a French *entente*. The Liberal government led by Sir Robert Bond reacted in the traditional manner: free access to bait would be included as part of the deal only if France abandoned or modified its bounties, or if the British government provided Newfoundland with financial compensation. Exasperated officials were unable to shift the Newfoundland premier, even after telling him that inflexibility might be punished by denial of permission to open reciprocity talks with the United States — permission which Bond was anxious to obtain. The premier apparently thought that an arbitration on the treaties could well be favourable to Newfoundland, and thus remove the need for compromise. But in July 1903 legal experts in London advised the Newfoundland government that an arbitration would be unwise. As a result, Bond

8 Rolo, *Entente Cordiale*, p. 131; Andrew, *Delcassé*, pp. 124-5, 178.

9 M.B. Hayne, *The French Foreign Office and the Origins of the First World War, 1898-1914* (Oxford, 1993), p. 102.

10 Rolo, *Entente Cordiale*, pp. 131-3; Andrew, *Delcassé*, p. 49.

11 Andrew, *Delcassé*, p. 181.

12 Hayne, *French Foreign Office*, p. 105.

13 Guillen, "Les accords coloniaux", p. 320; Zara S. Steiner, *Britain and the Origins of the First World War* (London, 1977), pp. 28-9.

14 Rolo, *Entente Cordiale*, p. 149; Andrew, *Delcassé*, p. 194.

had little option but to accept the necessity of a negotiated settlement.¹⁵

This development coincided with the opening of substantive discussions between Delcassé and Lansdowne in London. With reference to Newfoundland, Delcassé pointed out that while bait supply was of great importance, the considerations that had to be taken into account were "largely of a sentimental nature". By this he meant that although the French fishery on the Shore was small, it could possibly revive in the future, and the surrender of rights there would be much resented unless there was adequate compensation. For his part, Lansdowne indicated that, in order to gain Newfoundland's co-operation and agreement, France should consider making concessions on the bounty question. If this were done, a deal might be possible on the basis of French renunciation of treaty rights in return for financial indemnity and free access to bait. Delcassé gave the usual French reply that bounties were a domestic matter, and the conversation moved on to Morocco, Egypt and other areas of the globe.¹⁶

The French price for surrendering Newfoundland treaty rights was threefold: a financial indemnity to outfitters and others adversely affected; a guarantee that French fishers could freely buy or catch bait; and territorial compensation.¹⁷ The reaction in London was that these demands were excessive and impractical. Given that the French Treaty Shore fishery had become insignificant,¹⁸ territorial compensation seemed out of the question, certainly on the scale which France seemed to be contemplating. As for bait, this depended on colonial legislation, and Newfoundland had indicated that free access would depend on France either reducing bounties, or removing them from the St. Pierre and Miquelon fleet.¹⁹ Nevertheless, the Foreign Office continued to seek a comprehensive Newfoundland settlement. The Colonial Office was far less optimistic.

Sir John Anderson, who had long experience of Newfoundland affairs, had suggested in January 1902 that a partial settlement which avoided the bait and bounty questions was more practical, and the idea had been broached to the colonial government.²⁰ During the summer of 1903 Anderson returned to this theme, arguing that the bait-bounty equation should be dropped altogether, since neither France nor Newfoundland was likely to change its traditional position. He

15 Governor Boyle to Chamberlain, secret, 3 July 1903; Minute by Fiddian, 7 September 1903; CO 194/252, pp. 374, 463, Public Record Office, London [PRO]. Thompson, *French Shore*, pp. 177-81.

16 Lansdowne to Sir E. Monson, very confidential, 7 July 1903, printed in G.P. Gooch and H. Temperley, eds., *British Documents on the Origins of the War, 1898-1914*, II (London, 1927), pp. 294-7. Lansdowne to de Bunsen, 7 July 1903, CO 537/499, p. 9, PRO. The interview is summarized in Rolo, *Entente Cordiale*, pp. 179-83.

17 Lansdowne to Monson, very confidential, 29 July 1903, CO 537/499, p. 12, PRO; *British Documents II*, pp. 304-5.

18 There were a total of 394 French citizens on the Treaty Shore in 1903, of whom 97 were from St. Pierre and Miquelon. This compares with 1,731 in 1885 and 665 in 1892. "Annual Report of the Newfoundland Department of Fisheries for the Year 1903", *Journal of the House of Assembly* (1904), Appendix, p. 140.

19 Governor Boyle to Chamberlain, 3 July 1903, FO 27/3647, p. 425, PRO.

20 Minute by Anderson, 8 January 1902; Chamberlain to Boyle, conf., 22 January 1902; CO 194/249, pp. 504, 507, PRO.

suggested that France should be asked to negotiate

on the lines of internationalizing the waters of the Treaty Coast, and giving up their rights on shore or limiting them to the same right as the Americans enjoy on the greater part of the Treaty Coast - (i.e.) to land and dry fish on the unoccupied parts of the Coast Our best plan if not our only one is to try for an arrangement limited to the Treaty Coast.²¹

In addition, France could be guaranteed a right to catch bait on the Shore as part of an officially concurrent fishery. Given that their rights there were of little practical use any more, France might well agree to such a deal. For Newfoundland, the advantage would be the removal of all impediments to the economic development of the area. For British negotiators, a limited agreement of this nature would weaken the French case for territorial compensation.²²

Before adopting this suggestion, Lansdowne told Cambon in early October that, while Britain would provide a financial indemnity, territorial compensation would depend on the settlement of other points at issue, and France should bear in mind that its rights were not "an asset of much practical value" and had "sentimental rather than a substantial importance". The condition for bait was the exclusion of St. Pierre and Miquelon from the bounty system.²³ Cambon retorted that the value of French rights could not so easily be dismissed, and once again raised the possibility of Britain ceding Gambia. As for bounties, he thought it would be impossible to exclude residents of St. Pierre and Miquelon.²⁴

Lansdowne then reverted to Anderson's alternative, and suggested to Cambon that the two countries eliminate the main cause of trouble: "the obstacle presented to the development and utilisation of the coast by the French rights of drying their fish on the shore". French subjects could be allowed to fish and buy bait there, but not to use the land. There would be financial but not territorial compensation.²⁵ The French reaction replaced one deadlock with another: Delcassé and Cambon

21 Minute by Anderson, 5 August 1903, CO 537/499, pp. 16-17, PRO. Anderson's description of American rights on the Newfoundland coast under the 1818 Anglo-American Fisheries Convention was not completely accurate, in that Americans did not have the right to land and dry fish on the island's west coast — only on part of the south coast and the Labrador coast.

22 Anderson's other minutes are in CO 537/499, pp. 1, 26, PRO. His views, approved by Chamberlain, were incorporated in "Notes on Colonial Questions referred to in Lord Lansdowne's recent Conversation with M. Cambon", 19 August 1903, CO 537/499, p.45, PRO.

23 Lansdowne to Cambon, personal and confidential, 1 October 1903, *British Documents*, II, pp. 314-15. CO 537/499, pp. 55-6, PRO.

24 Cambon to Lansdowne, 26 October 1903, II *British Documents*, pp. 321-2. CO 537/499, p. 61, PRO.

25 Lansdowne to Cambon, 19 November 1903, *British Documents*, II, p. 326.

continued to insist on significant territorial compensation, preferably Gambia.²⁶

The British argued was that France was not making a sufficiently large concession to warrant extensive compensation. All France was losing was the use of the land, not the right of participating in the Newfoundland fishery. Moreover, in 1903 only about 400 French subjects had taken advantage of the privilege of using the shore, and the total value of this unprofitable fishery was no more than £14,000. It was arguable that the fishery survived only because of the tolerance of the British and Newfoundland authorities who, as the Colonial Office put it, overlooked "the departure from the Treaty stipulations which has taken place".²⁷ Nonetheless, in demanding such compensation France seemed to be assuming the possession of territorial rights in Newfoundland, a claim which had never been admitted.²⁸ In such circumstances the cession of Gambia was inconceivable; the most France could expect was a favourable but modest adjustment of the Nigerian boundary.²⁹

In response, Cambon argued that France was, in fact, giving up a great deal — the exclusive right first acquired in 1713 to use both the sea and the coast of the Treaty Shore for fishery purposes. Though he admitted that France's use of that right had declined significantly, it was possible that the fishery there would be of value to future generations. Moreover, France, in reality, did possess territory: not in the sense of being the proprietor, but having a usufruct which, if exercised fully, could prohibit British subjects from using the Shore at all. Thus, if France renounced the right to occupy the Shore it abandoned a territory, and deserved generous compensation. Cambon rejected the assertion that the fishery survived only as a result of British forbearance and refused to accept the argument that economic development had been seriously retarded.³⁰ He indicated that, unless the issue was resolved to French satisfaction, all the agreements which comprised the emerging *entente* would be endangered.³¹

Given this impasse, why did the negotiators not drop the Newfoundland question altogether and concentrate on the centrally important North African agreement? As Pierre Guillen remarks, "... on demeure aujourd'hui confondu que l'abandon de droits de pêche à Terre-Neuve contre de médiocres concessions en Afrique noir ait pu, pendant des mois, compromettre le règlement des questions de Maroc et d'Egypte, bien plus considérables, et ... le rapprochement politique entre les deux pays".³² The reason, he thought, was that public opinion had to be

26 Lansdowne to Monson, 9 December, 11 December 1903, *British Documents*, II, pp. 331, 334; Rolo, *Entente Cordiale*, p. 224.

27 Colonial Office to Foreign Office, 20 May 1903, FO 27/3647, p. 130, PRO.

28 Memorandum, "The Newfoundland Fishery", 13 November 1903, CO 537/499, p. 79, PRO.

29 Memorandum communicated to Cambon, 5 January 1904, *British Documents*, II, pp. 336-7.

30 Lansdowne to Monson, 9 December 1903, 13 January 1904, *British Documents*, II, pp. 331, 337; Cambon to Delcassé, 25 February 1904, *Documents Diplomatiques Français* (série II), vol. 316, p. 417.

31 Rolo, *Entente Cordiale*, p. 233.

32 Guillen, "Les accords coloniaux", p. 352.

prepared to accept sacrifices, and diplomats were obsessed by the principle of balance. Rolo broadly agreed: The British government saw a Newfoundland agreement as a balance to concessions in Morocco. For its part, the French government could only claim territorial compensation against concessions in Newfoundland, and without such compensation the Egypt-Morocco deal would be unacceptable.³³ This being the case, both sides continued to explore an acceptable compensation package, the British government being urged on by the influential Lord Cromer, its Agent in Egypt, who was anxious that a settlement be reached.³⁴ The result was considerably more generous than Lansdowne had originally intended. France gained favourable adjustments of both the Nigerian and Gambian boundaries, a right of transit on the River Gambia, and the Iles de Los off French Guinea. The only additional concession which Britain was able to obtain was French agreement to the appointment of a British consul at St. Pierre.³⁵ "L'Entente cordiale fut enfantée au milieu de marchandages sans grandeur."³⁶

With these issues settled, the parties began to negotiate the text of a convention. The main problem proved, predictably enough, to be French access to bait supplies. The British accepted a French draft (21 March 1904) which spelled out the right of French fishermen to buy or fish for bait on the Shore, but rejected a further draft article which would have allowed French subjects to buy bait anywhere on the Newfoundland coast on the same conditions as Newfoundlanders — in effect, a repeal of the Bait Act.³⁷ Under pressure from fishing interests at St. Malo and elsewhere, France persisted in this demand. Already bruised by the territorial concessions, Lansdowne refused to abandon the link between bait and bounties, and, in his turn, threatened to break off all negotiations. He also rejected the idea of a French bait depot on the south coast.³⁸ Having won the main point — Egypt against Morocco — and having provided evidence of fighting for the interests of French outfitters, Cambon and Delcassé accepted the situation. The convention was signed on 8 April.

In the final text, France renounced its privileges under the Treaty of Utrecht, retaining a right to a seasonal fishery on the Treaty Shore "on a footing of equality with British subjects", ending annually on 20 October. The French could take all kinds of fish and shellfish, fish at the mouths of rivers, and enter any port or harbour to obtain supplies (including bait) or to shelter, subject to local regulations. They were not to use "stake-nets or fixed engines" without local

33 Rolo, *Entente Cordiale*, pp. 237-9.

34 Andrew, *Delcassé*, p. 213.

35 There had been a French representative in St. John's for many years, but he was not officially recognized as a consul, since France had consistently refused to accept a British consul at St. Pierre. Lansdowne had raised the issue when conceding West African territory as compensation: Lansdowne to Monson, 1 March, 2 March 1904, *British Documents*, II, pp. 347-9. For the official notes, CO 880/18/199, p. 59, PRO. See also Rolo, *Entente Cordiale*, pp. 240 ff.

36 Guillen, "Les accords coloniaux", p. 353.

37 The drafts can be found in *British Documents*, II, pp. 374-84; Lansdowne to Monson, 22 March 1904, FO 27/3662, p. 210, PRO.

38 Lansdowne to Monson, 31 March 1904, FO 27/3662, pp. 247-8, PRO.

permission. All fishers were to be subject to local laws and regulations for close times or “the improvement of the fisheries”. However, the policing of the common fishery, and the control of smuggling, was to be the subject of separate regulations drawn up by the British and French governments and enforced by them. French citizens with establishments on the Shore would be compensated, the amounts to be decided by an arbitral tribunal.

The signature of the convention was followed by an exchange of notes on three points. The first confirmed the appointment of consuls at St. John’s and St. Pierre. Second, in response to an enquiry as to the meaning of “stake nets” and “fixed engines”, Lansdowne explained that these terms related to the salmon fishery, and meant all nets and other implements fixed to the soil, or made stationary in any other way.³⁹ Third, Cambon requested confirmation that the convention prevented the colonial government from stopping, on the Treaty Shore, the sale of bait to French subjects. In reply, Lansdowne agreed that article 2 “precludes the suppression of the liberty hitherto enjoyed by French fishermen of purchasing bait” on the Treaty Shore.⁴⁰

Yet another explanation was requested by the Newfoundland government: what was meant by the provision that “the usual fishing season” would close for “all persons on the 20th October of each year”? The answer was that, while the summer season would close for all fishers on that date, and the French would have to leave, Newfoundlanders could continue to fish since they alone had the right to exploit the autumn and winter fisheries. In fact, all existing rights of Newfoundlanders were maintained, augmented by equal fishing rights in the summer.⁴¹

This was only the most recent of a series of clarifications requested by a suspicious colonial government since it had been informed of, and had eventually accepted the new basis of negotiation in January 1904.⁴² Formal acceptance of the main principles of the proposed convention came in late January, on condition that France receive no new rights, and abandon all claims and right to use the land on the Treaty Shore.⁴³ Though the colony would have preferred to see French rights extinguished completely, the final agreement was greeted with enthusiasm by most Newfoundlanders, and was endorsed by the Legislature.⁴⁴

In France, however, the Newfoundland convention faced considerable opposition from fishing interests. The main complaint of the *armateurs* was that bait supplies

39 Foreign Office to Colonial Office, 8 April 1904, encl. Cambon to Lansdowne 8 April 1904, and a draft reply which the CO approved. CO 880/18/199, pp. 60-1, PRO.

40 Cambon to Lansdowne, Lansdowne to Cambon, 8 April 1904, CO 880/18/199, pp. 61-2, PRO.

41 Lyttleton to Governor Boyle, tgm., 14 April 1904; 19 April 1904; CO 880/18/199, pp. 68-9, 71, PRO.

42 Lyttleton to Boyle, tgm., 14 January 1904, CO 880/18/199, p. 6, PRO.

43 Boyle to Lyttleton, tgm., 27 January 1904, CO 880/18/199, p. 11, PRO.

44 Boyle to Lyttleton, tgm., 28 April 1904, CO 880/18/199, p. 77, PRO. The colonial government claimed the right to ratify or at least formally to concur in the agreement. The Colonial Office had to explain that only the Crown could ratify, and that even formal concurrence was unnecessary since the rights of Newfoundlanders were being increased, not ceded or exchanged — if the latter had been the case, then formal approval would have been needed.

had not been adequately safeguarded. Many vessels had come to rely on the *bulot* (periwinkle), which they caught on the banks. If this supply ran out, which was thought likely, then Newfoundland bait would become even more important.⁴⁵ Thus it was argued that France should continue to press for the repeal of the Bait Act, which might be considered reasonable compensation for giving up traditional rights on the Treaty Shore. It was also pointed out that bait fishes were found in bays; the Newfoundland government might well claim that every bay on the Shore was the estuary of a river and prevent French citizens from fishing there.⁴⁶ The French government was sensitive to such pressure, particularly in the months before the convention passed through the Chamber and was finally ratified (8 December 1904). As a result, Delcassé and Cambon attempted to gain additional concessions with which to pacify their critics.

Cambon was successful in obtaining an assurance that the British government did not intend to exclude French fishermen "from any waters which have hitherto by common consent been recognised as forming part of bays in which they have the right to fish".⁴⁷ Thus French fishermen could enter bays on the Treaty Shore to catch bait. But on other issues the British were less flexible, in part, no doubt, because of the presence in London of Bond, who was helping to draft the regulations which would police the common fishery.

When Cambon ingeniously advanced the novel argument that French fishermen should be admitted to the autumn and winter herring fisheries on the grounds that the convention guaranteed "a footing of equality", and, if others continued to fish after 20 October, then the season had been lengthened, the claim was tartly rejected.⁴⁸ As for the complaint that United States fishermen were allowed to participate in the winter fishery, it was dismissed as irrelevant since the right derived from a different treaty, the 1818 Fisheries Convention.⁴⁹

Another ploy to appease the convention's opponents was an attempt to obtain additional guarantees relating to bait purchase and the bait fishery beyond those conveyed in Lansdowne's note of 8 April. It was a move fuelled also by a deep mistrust of the Newfoundland authorities: Cambon wrote that they were "*de si mauvaise foi qu'il y a lieu de craindre à mille tracasseries de leur part dans*

45 This is discussed in M. Hignette, *La Question de Terre-Neuve avant et après la convention du 8 avril 1904* (Paris, 1905), pp. 167-73.

46 Submission by the Bordeaux Chambre de Commerce to Delcassé, 13 May 1904, supporting the Comité Central des Armateurs de France. FO 27/3693, p. 383, PRO.

47 Foreign Office to Colonial Office, 17 May 1904, encl. Lansdowne to Monson, 13 May 1904; Foreign Office to Colonial Office, 10 June 1904, encl. Lansdowne to Monson, 6 June 1904. CO 880/18/199, pp. 101, 134, PRO.

48 Note submitted by Cambon, 10 June 1904, FO 27/3693, p. 491. Foreign Office to Colonial Office, 13 June 1904, encl. memorandum by Cambon, 10 June 1904; Foreign Office to Colonial Office, 18 June 1904, encl. draft memorandum on the winter fishery; Foreign Office to Colonial Office, 20 June 1904, encl. Lansdowne to Monson, 15 June 1904. CO 880/18/199, pp. 138, 147, 150, PRO.

49 The 1818 convention allowed U.S. inhabitants to fish "in common" with British subjects on the west coast of Newfoundland, part of the south coast, the Labrador coast, the North Shore as far west as Mount Joly, and at the Magdalen Islands. See note 21.

l'exécution",⁵⁰ Evidence of this seemed to him to be provided by the passage of the Cold Storage Act (4 Ed. VII c.2) in April 1904. This legislation endorsed a contract with the Newfoundland Cold Storage and Reduction Co., which, in return for government subsidies, agreed to erect between five and 13 frozen bait depots at places to be determined by the government. The bait could be sold only to Newfoundlanders. Though this was clearly an internal matter (like fishery bounties), Cambon loudly complained, claiming that the act created a monopoly, that it was discriminatory, and that if the company did not build a depot on the Treaty Shore, then France was being deprived of a right which it could justifiably expect. In short, the act contravened the convention.⁵¹ This preposterous argument was rejected. The act did not create a monopoly; there was nothing to prevent an unsubsidized company from establishing a depot on the Shore; there was no monopoly, and France had no right to claim either that frozen bait should be on sale to its citizens, or that Newfoundland was under an obligation to ensure that the company build a depot on the Treaty Shore.⁵²

While rejecting this demand, as well as a proposal that French fishermen be allowed to obtain bait at "un point d'approvisionnement" on the south coast in return for abandoning the eastern side of the Treaty Shore,⁵³ the Foreign Office was prepared to consider making additional assurances on bait supply. Lansdowne finally ruled that French fishermen on the Treaty Shore had the liberty to obtain bait on the same conditions as Newfoundlanders (thus without having to obtain licences under the Bait Act), but subject to local regulations. There was nothing to prevent them from taking the bait away to process or use elsewhere, but neither the British nor the colonial government would allow "a steamer of two or three thousand tons burthen to come in to the Treaty Shore, take on board a cargo of bait, and then convey it to the Banks".⁵⁴ Bond was told firmly that French fishermen had an equal right to purchase any bait that might be for sale, whether subsidized or not.⁵⁵

The French also remained concerned about "stake nets" and "fixed engines", and requested an assurance that seine nets, lobster pots, bultows, and salmon and herring nets would all be allowed. The Foreign Office suggested a formula proposed by Bond: French fishermen could use the same nets and "engines" as allowed to

50 He went on to refer to the Newfoundland premier, Bond, as "un homme âpre, grossier, qui veut tout pour lui ...". Letter to Henri Cambon, 8 July 1904, in Paul Cambon, *Correspondance, 1870-1924* (Paris, 1940), II, p. 148.

51 Foreign Office to Colonial Office, 13 June 1904, encl. memorandum by Cambon, 10 June 1904, CO 188/18/199, p. 138, PRO.

52 Colonial Office to Foreign Office, 18 June 1904, *British Documents*, III, pp. 4-5. Foreign Office to Colonial Office, 18 June 1904, CO 880/18/199, p. 147, PRO.

53 Foreign Office to Colonial Office, 24 June 1904, encl. Lansdowne to Monson, 24 June 1904 and "Memoranda communicated to M. Cambon, June 24, 1904", CO 880/19/199, pp. 154-5, PRO. Lansdowne to Monson, 5 July 1904, *British Documents*, III, p. 7.

54 Lansdowne to Monson, 5 July 1904; Lansdowne to Cambon, 5 July 1904, *British Documents*, III, pp. 7-9.

55 Colonial Office to Bond, 16 July 1904, CO 880/18/199, p. 190, PRO.

Newfoundlanders, and under the same conditions, except that they could not land or make use of the foreshore. Cambon objected: French citizens had the right to fish on “a footing of equality”; they used seines extensively; and they were hauled on shore. To forbid them from hauling as they always had done was to strain the convention.⁵⁶ Lansdowne replied that “French fishermen shall have the right of using the same implements as they have hitherto been in the habit of using and in the same manner as British fishermen on the Treaty Coast, subject, however, to any local regulations for the protection and improvement of the fishery”.⁵⁷ The debate rumbled on, and in December 1904 the British government decided to allow the use of the beach to haul seines.⁵⁸

This may have seemed an insignificant matter in London, but in Newfoundland the perspective was very different. The colony had assented to the convention only on condition that French rights on land were completely extinguished. Permission to dry fish had led, it was argued, to extensive claims of a territorial nature: here was the thin edge of another wedge. Thus the Newfoundland government refused to consider any such concession, threatening to refuse legislation implementing the policing regulations.⁵⁹ Such truculence caused offence in London, but officials had to admit that Bond had a point — depending on how one interpreted the phrase “footing of equality”. Did it mean “perfect equality”,⁶⁰ or something different? At the Colonial Office, C.T. Davis argued that France had been deprived of the use of the shore for fishery purposes, and therefore could not expect to be as advantageously positioned as local inhabitants: “equality” could only apply to “waterborne fisheries”. He also pointed out that Americans had the right to fish “in common” with British subjects in the same area, a phrase which the Law Officers had defined as “upon ‘an equality’”, but they could not land.⁶¹ Finally — and largely because colonial regulations to which the French would be subject already prohibited the use of seines in the major bays — it was agreed to try to convince the French that they were being unreasonable, and offer to arbitrate the issue if need be.⁶² In the end, the Newfoundland government solved the problem by prohibiting the hauling of seines from land anywhere in the colony.⁶³

The British and Newfoundland governments had assumed throughout the negotiation of the convention that fishery rules and regulations on the Shore would be the responsibility of the colonial authorities, and would apply equally to Newfoundland and French fishermen. The quite separate policing regulations were

56 Memorandum by Sanderson, 30 June 1904, *British Documents* III, p. 5.

57 Lansdowne to Cambon, 5 July 1904; and Lansdowne to Monson, 5 July 1904, *British Documents*, III, pp. 7-9.

58 Lyttleton to Governor MacGregor, 15 December 1904, CO 880/18/199, p. 299, PRO.

59 MacGregor to Lyttleton, 7 January 1905; 23 January 1905; CO 880/18/200, pp. 13, 36-7, PRO.

60 Minute by Ommanney, 20 March 1905, CO 194/256, p. 327, PRO.

61 Minutes by Davis 5 January 1905, March 1905, CO 194/256, pp. 2-4, 13, 328-39, PRO.

62 Minute by Ommanney, 20 March 1905, CO 194/256, p. 327. See also Colonial Office to Foreign Office, 31 March 1905, CO 880/18/200, pp. 112-16, PRO.

63 MacGregor to Lyttleton, 29 April 1904, CO 194/256, p. 481, PRO.

to regulate the fishery *inter se*. The British draft was formulated during 1904 by an interdepartmental committee, working closely with Bond. After consultation with the Admiralty and the Newfoundland government, the draft was given to Cambon in mid-February 1905. A French draft had been submitted a few weeks before. The process of negotiating a single document took so long that there was no possibility of introducing the new regime for the 1905 fishing season; and quite soon, serious difficulties began to appear. The resolution of these problems was complicated and delayed by the eruption of a serious dispute between Newfoundland and the United States which involved the question of American access to the Newfoundland herring fishery, and the interpretation of American rights under the 1818 Convention.⁶⁴

The first fundamental problem common to both disputes was the definition of territorial waters. Though the concept of a three-mile limit was generally accepted at this time, there remained uncertainty about how baselines should be drawn.⁶⁵ In connection with the Newfoundland regulations, France suggested using the formula contained in the 1882 North Sea Convention, which called for baselines to be drawn where bays reached a width of 10 miles. Britain upheld headland-to-headland baselines, regardless of a bay's width.⁶⁶ France objected that if lines were drawn across the mouths of the huge bays which indented Newfoundland's south and west coasts, its fishers would lose access to areas which, it argued, had always been considered open sea.⁶⁷ The Foreign Office's desire for compromise was opposed by Canada, which was also involved in the dispute with the United States (which advocated six-mile baselines), and by the Colonial Office. There it was suspected that France was trying to gain the right to fish in bays both inside *and outside* the Treaty Shore. Indeed, in June 1906 France advanced the astonishing argument that the British claim to sovereignty over all Newfoundland bays was not justified by the wording of the 18th century treaties, and that even if the treaties could be held to have created exclusive fishing rights within the bays beyond the three-mile limit, this zone could not be considered territorial waters.⁶⁸

France was, of course, trying to minimize the area within bays which would be under exclusive colonial jurisdiction. And even within the conventional coastal limit, where there would be joint policing, France (like the United States) was

64 A brief account of the early stages of this dispute can be found in James Hiller, "The Career of Robert Bond", in James Hiller and Peter Neary, eds., *Twentieth-Century Newfoundland: Explorations* (St. John's, 1994), pp. 28-32. See also Alvin C. Glueck, Jr., "Programmed Diplomacy: The Settlement of the North Atlantic Fisheries Question, 1907-12", *Acadiensis*, VI, 1 (Autumn 1976), pp. 43-70.

65 Sayre A. Swartztrauber, *The Three-Mile Limit of Territorial Seas* (Annapolis, Md., 1972), pp. 110-11.

66 Lyttleton to MacGregor, tgm., 30 May 1905, CO 880/18/200, p. 201, PRO.

67 Foreign Office to Colonial Office, 10 June 1905, CO 880/18/200, pp. 213-14, PRO.

68 Foreign Office, "Memorandum respecting Newfoundland French Fisheries", November 1907, FO 414/196, p. 40, PRO. See also Foreign Office to Colonial Office, 31 October 1905, CO 880/18/200, p. 560; Grey to Elgin, 8 January 1906, Colonial Office to Foreign Office, 30 January 1906, CO 880/19/202, pp. 25, 50-64. "Memorandum as to the extent of the British jurisdiction over the Bays of Newfoundland, and the existence of any French right to fish in the Bays of that Colony outside the Treaty Coast", CO 880/19/203, pp. 1-21, PRO.

reluctant to allow its fishermen to be subject to colonial fishery laws enforced by local officials. Cambon argued that the relevant laws and regulations should become an annex to the policing regulations, which allowed French offenders to be tried in French courts, since it was inconvenient for fishers to be subject to two modes of “surveillance et sanction”.⁶⁹ Cambon added that the Newfoundland authorities were unlikely to be impartial.⁷⁰ Here again was an important issue of principle which impinged on the American dispute. The British position was that all foreign vessels were amenable to British jurisdiction, except as otherwise provided. In this instance, French fishermen were subject to local law, and the French government was trying to vary the clear meaning of the convention, while at the same time insinuating that Britain could not properly implement an international agreement. There was also a political factor. Bond had very reluctantly agreed that French tribunals would deal with French offenders against the policing regulations, and only on condition that other matters would be dealt with by local courts. If this principle was changed, then the Newfoundland government might refuse the legislation necessary to enforce the regulations, thus creating a serious impasse.⁷¹

The British government adopted a policy of deliberate delay on these issues. The existence of the American dispute, and, from 1907, the virtual certainty of an arbitration at The Hague, made negotiations with France undesirable. In any event, there were very few French vessels using the Treaty Shore, and those that did so made no complaint about their treatment. If the French fishery was dying, then what was the point of entering into a very complex agreement which, among other things, would require Britain to send a naval vessel to the Treaty Shore each year? Perhaps the matter should be allowed to drop.⁷² The French government disagreed. In August 1907 Cambon addressed a personal letter to Lansdowne's successor as Foreign Secretary, Sir Edward Grey, urging a compromise on both the matters at issue.⁷³ But an official note maintained France's stand, and suggested that the only way to find a solution was through arbitration.⁷⁴ Though the British government had concluded an arbitration treaty with France in 1903, it did not want to have two arbitrations on its hands at the same time dealing with very similar issues. For this reason alone, arbitration had to be postponed; but could it be refused? The eventual consensus was that while the bays issue might have to be arbitrated at

69 Foreign Office to Colonial Office, 20 January 1906, encl. Cambon to Grey, 15 January 1906, CO 880/19/202, p. 33, PRO. See also Foreign Office to Colonial Office, 26 June 1906, encl. Cambon to Grey, 10 June 1906, CO 880/19/202, p. 196, PRO.

70 Foreign Office to Colonial Office, 15 March 1906, encl. Cambon to Grey, 13 March 1906, CO 880/19/202, p. 110, PRO.

71 Colonial Office to Foreign Office, 8 February 1906, and Foreign Office to Colonial Office, 17 April 1906, encl. Grey to Cambon, 17 April 1906, CO 880/19/202, pp. 67-8, 141-4, PRO.

72 Colonial Office to Foreign Office, 21 February 1907; Grey to Cambon, 18 March 1907; CO 880/19/208, pp. 101-7, PRO.

73 Cambon to Grey, personal, 19 August 1908, CO 880/20/212, pp. 29-32, PRO.

74 Foreign Office to Colonial Office, 2 September 1907, encl. Géoffray to Grey, 19 August 1907, CO 880/20/212, pp. 53-7, PRO.

some point, it was impossible to arbitrate over colonial fisheries jurisdiction. Therefore, in April 1908, Grey asked Cambon for a detailed response to British arguments on the bays, and in strong language registered a refusal to arbitrate on jurisdiction. The French request, he said, was tantamount to an accusation that Britain was unable to carry out its treaty engagements, combined with a claim to revive extraterritorial status.⁷⁵

At this point another major complication emerged. In June 1908, the Newfoundland government reported that “petits pêcheurs” from St. Pierre, with official approval, were fishing from shore on the Port-au-Port Peninsula, and complained that this breached the convention.⁷⁶ The French government explained that the fishers had rented shore premises, and claimed that this was acceptable under the convention. France had conserved a right to fish on the basis of equality with British subjects. How could there be equality if French fishermen could not dry their catch on shore? If Newfoundland fishermen could acquire shore premises for fishery purposes, why not French fishermen? Admittedly, French owners of shore establishments had received cash indemnity payments. But these had been given to fishermen holding “terrains domaniaux” whose free use would in future be prohibited, and as compensation for the loss of the exclusive use of the shore. It was surely not the case that the indemnities would forever prevent French citizens from renting or buying lands or “hangards” owned privately by Newfoundlanders.⁷⁷ In a later memorandum France went so far as to claim that it had given up only the exclusive right of fishery in 1904, and that its negotiators had always aimed to maintain usage of the coast.⁷⁸

Newfoundland law allowed foreigners to rent or buy land,⁷⁹ and some difficulty was posed by Lansdowne’s statement in 1904 that there was nothing to prevent a French subject from “acquiring or renting land or business premises” on the Treaty Shore.⁸⁰ Nevertheless, the British government responded that the clear purpose of the convention was to relieve Newfoundland of the burden imposed by French landing rights in connection with the fishery, and that the French had always been well aware that they would have to abandon use of the shore. If the French interpretation was admitted, then the financial and territorial compensation paid to France had been pointless. French citizens could indeed acquire land in

75 Foreign Office to Colonial Office, 28 January 1908, encl. “Memorandum by Mr. E.A. Crowe respecting the French Fishery in Newfoundland” [5 January 1908]; Foreign Office to Colonial Office, 14 April 1908, encl. Grey to Cambon, 10 April 1908, and Grey to Cambon, personal, 10 April 1908. CO 880/20/214, pp. 18-25, 106-12, PRO.

76 MacGregor to Crewe, 27 June 1908, CO 880/20/212, pp. 190-4, PRO.

77 Foreign Office to Colonial Office, 13 February 1909, encl. Pichon to Bertie, 29 January 1909; Foreign Office to Colonial Office, 1 May 1909, encl. Pichon to Bertie, 16 April 1909; CO 880/21/216, pp. 79, 105-7, PRO.

78 Foreign Office to Colonial Office, 31 January 1910, encl. Pichon to Bertie, 10 January 1910, CO 880/212/218, pp. 13-19, PRO.

79 The colonial government claimed that the act [63 Vic c 7, 1900] applied to “domiciled aliens” only. Governor Williams to Colonial Office, 22 September 1909, CO 880/21/216, p. 208, PRO.

80 Lansdowne to Cambon, 5 July 1904, *British Documents*, III, pp. 8-9.

Newfoundland; but they could not use it for the purposes of the fishery.⁸¹

The existence of these disputes prevented the conclusion and implementation of the policing regulations. Though the French fishery had virtually disappeared — in 1910 there were only two St. Pierre schooners on the Shore and four St. Pierrais fishing from Red Island⁸² — France continued to press for an arbitration. This was in spite of the 1910 decision of the Hague Tribunal on the questions in dispute with the United States. The Court stated that the unilateral right to make fishery regulations was inherent in British sovereignty, so long as they were reasonable and did not diminish treaty rights. Second, the Court ruled that a baseline should be drawn in a bay at the point where it ceased to have “the configuration and characteristics” of a bay, and suggested the adoption of the ten-mile rule.⁸³ Grey concluded in 1911 that he would have to consult the Law Officers on two points: whether or not the British government could refuse to arbitrate; and whether the Newfoundland government could pass legislation preventing use of the shore by French subjects.⁸⁴

At this point the British documentary trail fades away, and so, it seems, did seven years of increasingly sterile argument. Though the reference to the Law Officers was still under discussion in 1913,⁸⁵ it never went forward, possibly because of the outbreak of war the next year. There was no arbitration,⁸⁶ and the policing regulations were forgotten. Without official explanation, the discussion of the meaning and implementation of the 1904 Convention terminated. In effect, France finally accepted that, following the award in the American dispute, it was unlikely to gain very much by arbitration; and it was hardly worth the contest, given that the metropolitan fishery on the Shore had disappeared, and the right to fish there was exercised only on an occasional basis by a few St. Pierrais, who were severely hampered by the prohibition on using the coast for fishery purposes. Moreover, as French outfitters turned away from banking schooners to steam trawlers, the availability of bait ceased to be an important issue. The French government had, in fact, been devoting considerable effort to protecting a dying Shore fishery and an obsolescent technology.

It is often assumed that the 1904 convention ended the “French Shore Question”.

81 Foreign Office to Colonial Office, 9 March 1909; Colonial Office to Foreign Office, 8 June 1909; Foreign Office to Colonial Office, 18 June 1909; CO 880/21/216, pp. 91, 147-68. Foreign Office to Colonial Office, 27 June 1910, CO 880/21/218, p. 39, PRO.

82 Admiralty to Colonial Office, 26 March 1911, CO 880/21/220, pp. 44-5, PRO.

83 St.J. Chadwick, *Newfoundland. Island into Province* (Cambridge, 1967), p. 122. Swarztrauber, *Three-Mile Limit*, pp. 119-21. The Court defined Conception Bay as an “historic bay”, wholly within Newfoundland jurisdiction, and suggested baselines for Placentia and Fortune bays.

84 The French government set out its arguments in a lengthy memorandum in August 1910; the Colonial Office reacted in January 1911; Grey’s decision to refer to the Law Officers was communicated in Foreign Office to Colonial Office, 25 May 1911, CO 880/21/218, pp. 59-107; CO 880/21/220, pp. 2-17, 59-63, PRO. The reasons for France’s determination to proceed to arbitration are not explained by British records, nor by the published French documents.

85 M.W. Furlong to Premier E.P. Morris, 3 October 1913, GN 2/5/367(6), Provincial Archives of Newfoundland and Labrador [PANL].

86 There is no report on these questions in the Law Officers’ Opinions collected in CO 885/16, PRO.

No historian who has examined the issue has ever said as much, and the fact that French fishermen did not make much use of their rights under the convention did not mean that it lapsed. There are scattered references to French rights in Newfoundland government papers. In the late 1930s, for instance, there was a revival of French interest,⁸⁷ and inquiries about local regulations were made as late as 1952.⁸⁸ It was not until 1972 that France finally renounced its Treaty Shore privileges, as part of the Canada-France Fishing Agreement, which also extinguished “all previous treaty provisions relating to French nationals off the Atlantic coast of Canada” — meaning the residual right, under the 1783 Treaty of Versailles, to fish in the Gulf of St. Lawrence. But in effect, if not in law, the 1904 convention did end the Treaty Shore dispute by speeding the demise of the French fishery there, and allowing Newfoundland to use and manage the area as it saw fit. Only a ghost of the French presence lingered on after 1914, a reminder of

... the rowdy days
when they thought
this shore
belonged to them.

.....
It must have been hard
for them to accept defeat
and leave the coves
where they cured their cod.⁸⁹

JAMES K. HILLER

87 The correspondence is in GN 13/2/A, box 372, PANL.

88 M. Moreaux to Newfoundland Fisheries Board, 18 September 1952. GN 2/5/317(9), PANL.

89 Tom Dawe, “The French Shore Man”, *In Hardy Country. New and Selected Poems* (St. John’s, 1993), p. 60.