

## The Cod War Between Canada and France

Donat Pharand

Volume 18, Number 3, 1987

URI: <https://id.erudit.org/iderudit/1058695ar>

DOI: <https://doi.org/10.7202/1058695ar>

[See table of contents](#)

Publisher(s)

Éditions Wilson & Lafleur, inc.

ISSN

0035-3086 (print)

2292-2512 (digital)

[Explore this journal](#)

### Article abstract

In January 1987, Canada and France concluded an interim “arrangement” relating to French fishing off the east coast of Canada. This caused considerable public debate and confusion. The present Note studies the content of that arrangement, as well as the main provisions of the Fisheries Agreement of 1972 which constitutes the basis for all French fishing rights off the east coast.

### Cite this article

Pharand, D. (1987). The Cod War Between Canada and France. *Revue générale de droit*, 18(3), 627–640. <https://doi.org/10.7202/1058695ar>

# DROIT COMPARÉ

---

## The Cod War Between Canada and France \*

DONAT PHARAND  
Professor, Faculty of Law,  
University of Ottawa

### ABSTRACT

*In January 1987, Canada and France concluded an interim "arrangement" relating to French fishing off the east coast of Canada. This caused considerable public debate and confusion. The present Note studies the content of that arrangement, as well as the main provisions of the Fisheries Agreement of 1972 which constitutes the basis for all French fishing rights off the east coast.*

### RÉSUMÉ

*En janvier 1987, le Canada et la France conclurent un "arrangement" intérimaire portant sur la pêche française au large de la côte Est du Canada. Cet arrangement fut la source de débats publics et de confusion. Le texte qui suit étudie le contenu de l'arrangement de 1987, de même que celui de l'Accord de pêche de 1972 qui constitue la source de tous les droits de pêche de la France au large de la côte Est.*

---

### TABLE OF CONTENTS

I. The 1972 Fisheries Agreement .....	630
(1) Main Provisions of the Agreement .....	630
(2) The Right of Canada to Set Quotas .....	632
(3) Quotas Allocated by Canada 1978 to 1986.....	634

---

\* This paper draws upon a Note published in *Policy Options*, volume 8, 1987, and authorization is gratefully acknowledged.

II. The 1987 Interim Arrangement .....	635
(1) Quotas Allocated by Canada in 1987 .....	635
(2) Matters Agreed to be Negotiated .....	636
(3) Protective Measures Adopted by Canada .....	638
III. Conclusions .....	639

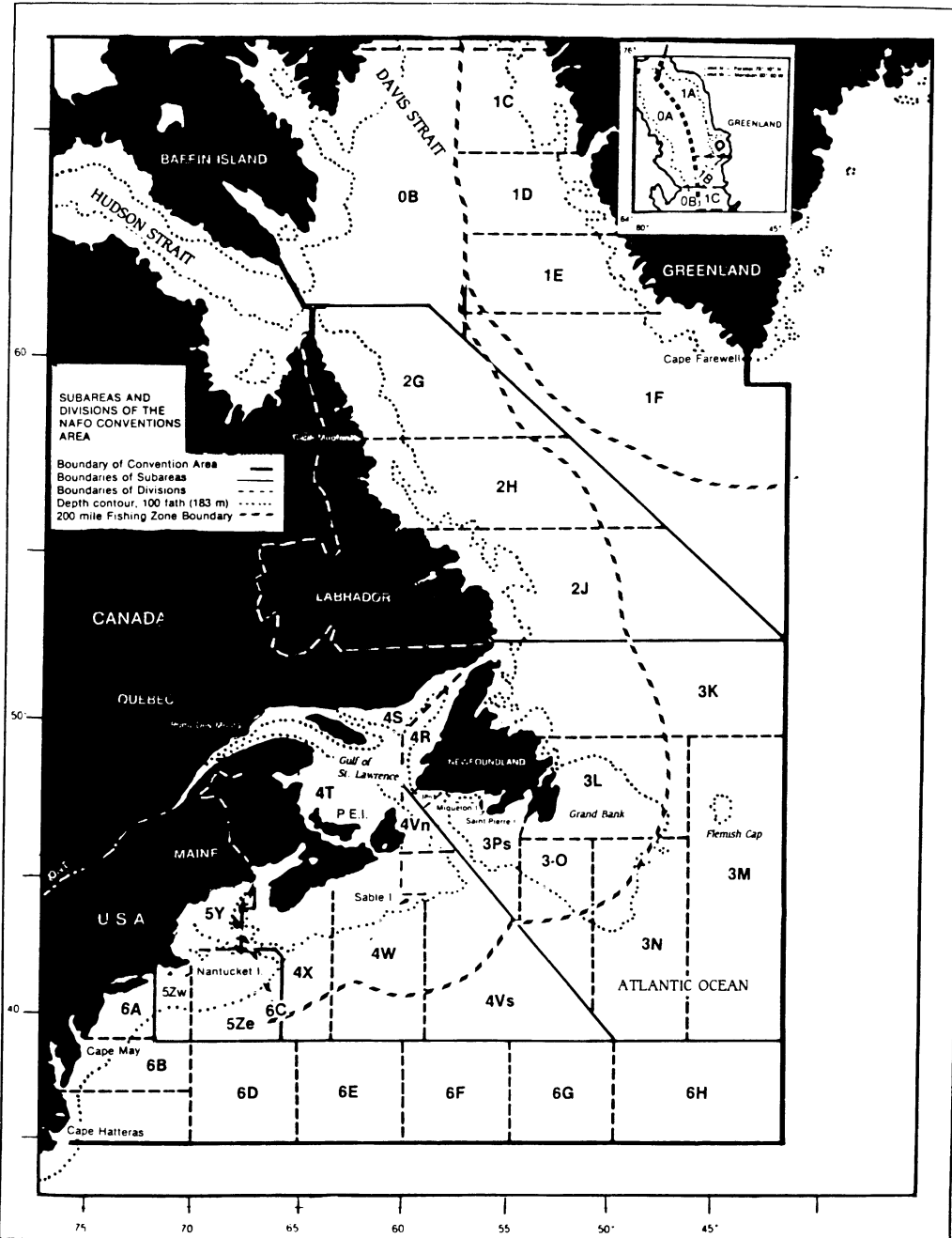
---

On January 24, 1987, Canada and France concluded an interim agreement in Paris relating to French fishing off the east coast of Canada and to the settlement of the maritime boundary off the Islands of Saint-Pierre and Miquelon. Because of its interim and tentative nature, the agreement could best be described as a simple "arrangement" and it will be referred to as such.<sup>1</sup> Newfoundland objected most strongly to this arrangement for two reasons: first, its representatives were excluded from the Paris negotiations and second, Canada committed itself to granting France some quotas (the amount to be negotiated) of cod in NAFO (Northwest Atlantic Fisheries Organization) Division 2J 3KL off the east coast of Newfoundland (see Map), during the period of 1988-1991, if the Parties succeeded in agreeing on quotas generally and on submitting the maritime boundary issue to third party settlement. In spite of the debate which followed in the House of Commons and a hearing by the Senate in Committee of the Whole, a certain confusion seems to persist as to what is the basis and extent of the French fishing rights. These rights relate to the 200-mile exclusive fishing zone of Canada and to the waters of the Gulf of St. Lawrence in so far as the inhabitants of Saint-Pierre and Miquelon are concerned.

In order to elucidate matters it is not sufficient to examine the terms of the 1987 Interim Arrangement, which is only an agreement to negotiate, but it is necessary to scrutinize the 1972 Canada/France Fisheries Agreement. This treaty will constitute the only source of all French fishing rights on the east coast of Canada, when a fishing agreement between Canada and the EEC expires at the end of 1987. It must be interpreted in the light of subsequent developments in the law of the sea relating to the rights of the coastal State in its exclusive fishing (or

---

1. The main source documents relating to this Arrangement consulted for the preparation of this paper, and not always referred to specifically, are the following: "Conclusions agréées" and Agreed Record (unofficial English translation), undated; Note No. 353 of Canadian Embassy in Paris to French Foreign Ministry, 30 Dec. 1986; Note No. 26 of Canadian Embassy in Paris to French Foreign Ministry, 27 Jan. 1987; Note of French Foreign Ministry to Canadian Embassy in Paris, 27 Jan. 1987; *House of Commons Debates* of 26 & 28 Jan. 1987 and 12 & 16 Feb. 1987; *Senate Debates* of 11, 12, 17 & 18 Feb. 1987 and 18 & 24 March 1987; and *Communiqué* by Department of Fisheries and Oceans, 17 March 1987.



NAFO SUBAREAS AND DIVISIONS, AND 200 MILE FISHING ZONE

economic) zone, particularly with respect to the setting of quotas for other States to which fishing rights have been granted.

In the light of these preliminary remarks, this paper will review briefly the two agreements. Firstly, the 1972 Agreement and its implementation will be studied under the following headings : (1) the main provisions of the Agreement; (2) the right of Canada to set quotas; and (3) the quotas allocated by Canada. Secondly, the review of the 1987 Agreement will address : (1) the quotas allocated by Canada; (2) the matters agreed to be negotiated; and (3) the protective measures taken by Canada.

## I. THE 1972 FISHERIES AGREEMENT

### (1) Main Provisions of the Agreement

This Agreement superseded "all previous treaty provisions relating to fishing by French nationals off the Atlantic coast of Canada" (Art. 1).<sup>2</sup> Those provisions were contained in the following treaties : the Treaty of Utrecht (1713), the Treaty of Paris (1763), the Treaty of Versailles (1783) and the London Convention (1904). In the same Agreement, France specifically renounced "the privileges established to its advantage in fishery matters" by the London Convention (Art. 1) and the two countries agreed that fishing by metropolitan vessels (factory freezer trawlers) in the Gulf would terminate at the end of 15 years, namely on May 15, 1986 (Art. 3).

Canada undertook to recognize new French fishing rights in its future exclusive fishing zone off the Atlantic coast, "subject to possible measures for the conservation of resources including the establishment of quotas" (Art. 2). A reciprocal undertaking was made by France relating to Canadian fishing rights off the coast of Saint-Pierre and Miquelon. In addition, Canada granted special fishing rights to the inhabitants of Saint-Pierre and Miquelon as "an arrangement between neighbours" (Art. 4). Those special rights related to small fishing boats and to trawlers registered in Saint-Pierre and Miquelon. The Agreement provides that "coastal fishing boats... may continue to fish in the areas where they have traditionally fished along the coasts of Newfoundland" (Art. 4(a)), which means essentially along the "French shore" between Cape St. John and Cape Ray. Also, "a maximum of ten French trawlers registered in Saint-Pierre and Miquelin, of a maximum length of 50 meters,

---

2. This Agreement was not published in the Canada Treaty Series but a copy may be obtained from the Department of External Affairs and it has been reproduced in a number of places, in particular in this revue; see (1986) 17 *R.G.D.* 836-838.

may continue to fish along the coasts of Newfoundland, of Nova Scotia (with the exception of the Bay of Fundy), and in the Canadian fishing zone within the Gulf of St. Lawrence, on an equal footing with Canadian trawlers" (Art. 4(b)). Canadian fishing boats and trawlers were given reciprocal fishing rights along the coast of Saint-Pierre and Miquelon.

The 1972 Agreement also provides for the application of the national fishery regulations of the Parties in the exercise of their mutual fishing rights (Art. 6). In the event of disputes concerning the application of the Agreement, they are to be referred to a Commission which shall sit as an Arbitral Tribunal of three members if it is not able to reach a solution acceptable to both Parties (Art. 10).<sup>3</sup> The Agreement has no termination date, but neither does it have any provision that it is to continue in perpetuity.

With hindsight and considering the present difficulties with France, it might appear that Canada made a bad deal in 1972. However, it must be remembered that the withdrawal of the French fishing vessels (with the special exception for Saint-Pierre and Miquelon) from the Gulf was part of an over-all plan to phase-out all foreign fishing trawlers, so as to reinforce Canada's claim that the Gulf of St. Lawrence was comprised of internal waters. That claim was not beyond question and, in February 1971, Canada had established closing lines at the entrances of the Gulf for fishery purposes only. At that time, Canada assured France that its treaty fishing rights would be respected and that phasing-out agreements would be negotiated with it and the other countries which had traditionally fished in the Gulf. Canada thus concluded phasing-out agreements with Denmark, France, Norway, Portugal, Spain and the United Kingdom. Since these other countries did not have comparable treaty bases for their fishing rights, the phasing-out periods were shorter and, by the end of 1976, all foreign fishing vessels had been phased out of the Gulf except for the French and the Faroese. The latter were given the right to continue fishing for porbeagle shark by longline for successive periods of two years, subject to termination on a year's notice.

It might be observed in passing that, since all foreign fishing vessels are now excluded from the Gulf with the special exception of a small number from Saint-Pierre and Miquelon, Canada should seriously consider transforming the fishery closing lines into straight baselines from which Canada's territorial sea would be measured. This would legally confirm that the waters of the Gulf are internal waters of Canada over which it has complete sovereignty.

---

3. Pursuant to this provision an Arbitral Tribunal was set up to determine if French fishing trawlers registered in Saint-Pierre and Miquelon could fillet aboard in the Gulf of St. Lawrence. The 1986 award in this arbitration, commonly referred to as "La Bretagne", was rendered in July 1987 and may be found in (1987) 17 *R.G.D.* 813-896; it includes the dissenting opinion of this writer, who was one of the arbitrators, at 871-896.

## (2) The Right of Canada to Set Quotas

The setting of quotas for France in the implementation of the 1972 Agreement has been relatively problem-free until recently. The Agreement is not very explicit as to Canada's authority in this regard. It simply provides that fishing by French vessels in the Gulf is subject to "Canadian fishery regulations" (Art. 6) and that fishing by the same vessels in the future 200-mile exclusive fishing zone is subject to "the establishment of quotas" (Art. 2). From 1974 to 1977, quotas for the Gulf and its entrance were established through consultations within the International Commission for the Northwest Atlantic Fisheries (ICNAF). Quotas in the Gulf, for the years 1977 to 1980 inclusively, were established through annual consultations with France. For the period of 1981 to 1986 inclusively, the quotas were fixed in a signed *Procès-verbal*. These consultations, in effect, were tantamount to diplomatic negotiations resulting in international agreements. In 1977, Canadian and French representatives met in Ottawa "to discuss French allocations for 1978" and the *Procès-verbal* records that "they have *agreed* on the following points".<sup>4</sup> Then follows specific locations for each area, in metric tonnes. In 1978, consultation meetings were again held in Ottawa to set quotas for the following year, this time France being represented by the European Economic Community in view of its delegation of negotiation powers to the Community. The consultations resulted in provisions set out in a *Procès-verbal* signed by the three officials, one for the Canadian side and the others for France and the Community. The same procedure was followed in 1979 for setting quotas for 1980.

In 1980, two series of discussions were held to fix global quotas for the following six years. The *Procès-verbal* states that "discussions were held in Paris, February 28-29, 1980 and, in Ottawa, October 1, 2 and 3, 1980, between a Canadian delegation led by Mr. L. Clark and a French delegation led by Mr. L. Roudié". It adds that "following these discussions, the two delegations reached the following *conclusions*".<sup>5</sup> The document then specifies the annual allocation of quotas in metric tonnes, and provides that these allocations will not be reduced, except in proportion to any reduction in the total allowable catch (TAC) below a specified number of tonnes and adding that further consultations would take place in advance of any decision by the Government of Canada to reduce either of the TACs mentioned. This *Procès-verbal* is signed by the two Heads of delegation.

---

4. See *Canadian Memorial* in the *La Bretagne* arbitration, 1986, Annex 50; emphasis added.

5. *Id.*, Annex 53; emphasis added.

If the 1972 Agreement is not explicit as to the right of Canada, as the coastal State, to unilaterally establish quotas, it is perhaps that such a right was not yet fully established in international law when the Agreement was negotiated in 1971. It is now recognized, however, that the coastal State has sovereign rights over the exploration, exploitation and management of the biological resources of its exclusive fishing zone. It is also generally accepted that the provisions of the 1982 Law of the Sea Convention (Articles 56, 61 and 62) on the subject, although not yet in force, merely reflect customary international law. A three-step process is to be followed by the coastal State in the setting of quotas : firstly, it determines the TAC, taking into account the best scientific evidence available to insure that the stocks are not endangered by over-exploitation (Art. 61); secondly, it determines its own harvesting capacity (Art. 62); and, thirdly, in order to promote optimum utilization, it concludes agreements with other States and allows them quotas within the surplus, if any, of the TAC (Art. 62). These exclusive rights of the coastal State were recognized in the Fisheries Agreement between Canada and the European Economic Community of December 1981. This Agreement provides that each Party determines the TAC, its own harvesting capacity and, after "appropriate consultations", the quotas to be allocated to the other Party. In determining the quotas, it is specified that each Party is to take into account, among other factors, its own general interests, the level of the surplus, the traditional fishing of the other Party, the mutuality of access and other advantages in economic and commercial cooperation in fishery matters (Art. II).<sup>6</sup>

The right of Canada to unilaterally determine the quotas to be allocated to France was also confirmed in the 1986 international arbitration commonly known as "La Bretagne", after the French factory freezer trawler by that name. Canada argued in that case that, since a factory freezer trawler filleting aboard could store considerably more fish than the traditional wetfish trawler used by Saint-Pierre and Miquelin fishermen in the Gulf, there was a danger of over-exploitation. France replied that Canada could prevent such an occurrence through enforcement of the allocated quotas. Whilst agreeing with France, the Arbitral Tribunal recognized that Canada "bears sole responsibility for the conservation, protection and management of the living resources in its fishing zone".<sup>7</sup> With specific reference to quotas, the Tribunal referred to the position taken by France that "the trawlers mentioned in Article 4(b) of the

---

6. Copy of the Agreement provided to the writer by the Department of External Affairs.

7. See French version of the award, reproduced in (1987) 17 *R. G. D.*, at 870, end of para. 63.



Agreement are subject to *fishing quotas set by Canada*”<sup>8</sup> and held that, “irrespective of the storage capacity of a filleting trawler operating in the Gulf, any over-fishing on the part of that trawler would have to be treated as a breach of good faith involving liability on the part of France...”.<sup>9</sup> The Tribunal also recalled that “the Agent of the French Government constantly argued from the existence of quotas for the catch that a filleting vessel operating in the Gulf was thereby limited in its fishing effort, even going so far as to say... when speaking of the filleting trawlers, that whether they filleted on board or not, ‘they will not catch a single kilo of cod over and above the authorized quota’”.<sup>10</sup> It added that “having regard to the circumstances in which it was made, the Tribunal is bound to consider that such a statement commits France to use all the means in its power to ensure, in conjunction with the Canadian authorities, that the commitment is respected”.<sup>11</sup>

### (3) Quotas Allocated by Canada 1978 to 1986

The actual quotas allocated to France in the Gulf from 1978 to 1986, in terms of metric tonnes of cod, were as follows : 1978 = 19,000; 1979 = 20,775, plus 2,450 m.t. of witch, redfish and flounders; 1980 = 20,640, plus 300 m.t. of witch; 1981 to 1986 (inclusively) = 20,500. In addition and after consultations in some years within the Scientific Council of the Northwest Atlantic Fisheries Organization (NAFO), Canada has been allocating 6,400 metric tonnes of cod to France in area 3Ps on the Saint-Pierre Bank outside the Gulf, which is the area under dispute for the drawing of the maritime boundary between the Islands of Saint-Pierre and Miquelon and Canada. This allocation has not been strictly controlled by Canada, however, since both countries have periodically agreed since 1977 not to arrest each other’s fishing vessels in a large area off the south coast of Newfoundland which included 3Ps.

France has also benefitted from a fishing agreement between Canada and the EEC which entered into force in 1983 and will terminate at the end of 1987. Under this agreement, France was allocated a share of non-surplus northern cod in NAFO Divisions 2J 3KL, her quota for 1987 being 1,545 metric tonnes.

This was basically the situation when France had to withdraw its nine metropolitan vessels from the Gulf in May 1986 and sought to

---

8. *Id.*, at 868, para. 61; emphasis added.

9. *Id.*, at 869, para. 63(1).

10. *Id.*, at 870, para. 63(2).

11. *Ibid.*

find replacement fishing grounds for them. It was at that time that a series of meetings between Canada and France began, with a view to reaching an agreement on quotas and on a process for third party settlement of the maritime boundary issue, in light of the fact that negotiations on the latter had been exhausted. At the very first meeting, France asked for a total of 30,000 metric tonnes : 12,000 for Saint-Pierre and Miquelon in the Gulf and 18,000 for metropolitan France outside the Gulf and outside 3Ps. For 3Ps, France claimed the right to set its quotas unilaterally and indicated plans to fish 26,000 tonnes of cod, that is approximately 20,000 tonnes more than the quotas allocated by Canada to France for this area. This being completely unacceptable to Canada, three more meetings were held in 1986 and 1987 but ended without agreement. Two of those meetings were held in January, one in Ottawa in the middle of the month and the other in Paris on January 23-24 which produced the famous Interim Arrangement of January 24, 1987. Representatives from Newfoundland, Nova Scotia and the fishing industry participated at all these meetings, except the Paris one on January 23. At the request of France, this last meeting was one between Heads of delegation only, and the Government of Canada has subsequently apologized to the Government of Newfoundland for its exclusion.

## II. THE 1987 INTERIM ARRANGEMENT

### (1) Quotas Allocated by Canada in 1987

The Arrangement, called "Conclusions agréées", translated as "Agreed Record", is not dated but refers to three documents which are : two Notes verbales by Canada dated December 30, 1986 and January 27, 1987 and a Note verbale by France dated January 27, 1987.<sup>12</sup> In its Note verbale of December 30, Canada informed France of the quotas to be allocated to it in 1987. The list of specific quotas by stock and area totals 17,355 metric tonnes. Of these, 9,995 m.t. are of cod, of which 1,600 of Gulf cod (for Saint-Pierre and Miquelon vessels) and the balance of 8,395 outside the Gulf. The latter tonnage is distributed as follows : 2GH(200); 3NO(250); 2J 3KL(1,545) and 3Ps(6,400). As a conservation measure, the Burgeo Bank is closed to French vessels from January to April inclusively. In its Note verbale of January 27, 1987 (obviously after the Paris meeting of January 23-24), Canada informs France of a modified allocation of cod as follows : 2GH(3,200); 4RS

---

12. Copy of these documents provided to the writer by the Department of External Affairs.

3Pn (2,300); 4Vn (1,300). This represents an increase of 5,000 m.t. of cod, of which 2,000 was Gulf cod. The grand total of the quotas is now 22,355 m.t., of which 15,000 are of cod. In addition to the increase in cod quotas, the prohibition against French fishing in the Burgeo Bank is lifted. The Note emphasizes that "these quotas exceed the legal obligations of Canada resulting from the Canada-France Fisheries Treaty of March 27, 1972 and have been granted only so as to facilitate the process leading to the settlement of the dispute".

In answer to Canada's Notes, the French Note verbale of January 27 strongly protests the unilateral establishment of quotas by Canada. It states that such action is contrary to both the letter and spirit of the 1972 Agreement and the practice followed by the Parties, specifying that "the fishing quotas allocated annually to France by Canadian authorities have, in fact, always been established by the two countries by agreement". The Note adds that the quotas are so low that they "will not permit French vessels to benefit effectively from the permanent fishing rights to which France is entitled". It is submitted that this Note of protest is without legal basis. The setting of quotas is specifically envisaged in the 1972 Agreement and Canada's right to set them was recognized by the International Tribunal in the *La Bretagne* arbitration, as previously seen.<sup>13</sup> It is true that Canada has gone beyond ordinary consultations in the past and has carried on virtual diplomatic negotiations resulting, in effect, in international agreements, but there was no obligation on Canada's part to engage in such negotiations and there is none now. Finally, the quotas allocated (22,355 metric tonnes) could not possibly be considered as depriving France of the effective exercise of its fishing right.

## (2) Matters Agreed to be Negotiated

The Agreed Record itself commits the Parties to meet before March 15, 1987 in order to initiate negotiations with a view to concluding, concurrently, two agreements. One agreement would be a *Compromis* or Special Agreement whereby the Parties submit to third party settlement the maritime boundary dispute of the coasts of Saint-Pierre and Miquelon and Canada. The other would be a *Procès-verbal* "establishing the annual fishing quotas for French vessels in Canadian waters for the period 1988-1991 inclusive". It is specified that "these quotas will include cod quotas in NAFO Divisions 2J + 3KL". Agreement on those two documents is to be reached before December 31, 1987 and each one is

---

13. See *supra*, note 8.

made contingent on the other. In order to assist the Parties in reaching an agreement on quotas, their scientists are to meet shortly "to prepare a report on the state of the cod stock and the annual total allowable catch (TAC) limits in NAFO Division 3Ps". The Parties also agree to keep in place the 1984 arrangement whereby each Party refrains from regulating the vessels of the other in the disputed zone until a decision has been rendered. On the scope of the obligations contained in the 1987 Interim Arrangement, it must be underlined that the Parties make only one basic commitment : to negotiate. There is no assurance — and, indeed, there cannot be — that the Parties will arrive at an agreement on the two matters being negotiated.<sup>14</sup>

On the question of the maritime boundary settlement, the Parties must agree on two basic elements : the third party mechanism and the terms of the actual submission. The third party mechanism may be either a special arbitral tribunal or the International Court of Justice. If the latter is chosen, it may be the full Court or a Chamber of judges. Considering the special nature of the problem, the Parties are likely to choose a special arbitral tribunal or a Chamber. A priori, France would probably favour a special tribunal, because it has withdrawn its general acceptance of the Court's jurisdiction some years ago. However, since the Parties are now given considerable freedom in the selection of the judges for a Chamber, it is possible that France might agree to accept the jurisdiction of the Court for this particular dispute. Regardless of the precise mode chosen, the Parties have the right to a national judge or arbitrator. If a Chamber is chosen, France will likely have a national judge already on the bench and Canada will appoint a judge *ad hoc*, presumably a Canadian, as it did in the *Gulf of Maine Case*. The French judge who died in March 1987 has not yet been replaced, but his replacement would sit unless he should be disqualified because of previous involvement in the dispute. In addition to the composition of the tribunal, the main element of the *Compromis* to be agreed upon is the precise formulation of the issue or question to be submitted for adjudication. Since the dispute relates to both the continental shelf and the exclusive fishing zone (the exclusive economic zone for France), the question submitted will be along the following lines : "What is the course of the single maritime boundary which should delimit the continental shelf and fisheries zones of Canada and France?" (Then will follow geographic coordinates indicating the area to be delimited to the south of Newfoundland and Saint-Pierre and Miquelon.)

The second matter to be negotiated is a *Procès-verbal* on quotas for 1988 to 1991 inclusively. The reason for this four-year period

---

14. At the time of writing, the Parties have not yet reached an agreement.

is that it represents the expected duration of the case, from the time of the signing of the *Compromis* to the rendering of the decision. Considering the average length of previous similar cases, including the *Gulf of Maine Case* which lasted five and one half years, this period might prove to be a little short. On the quotas themselves, there is no commitment by Canada to allocate any minimum amount but there is one that "these quotas will include cod quotas in NAFO Divisions 2J + 3KL". This is an area of non-surplus stock which Newfoundland considers vital to its fishermen, and it is anxious for France and the other EEC countries to withdraw from that area at the end of 1987. In his statement to the Committee of the Whole in March 1987, Premier Brian Peckford asserted that his government had advised the federal government that it would refuse to have this northern cod put on the table in the negotiations with the French, and that its refusal was the reason for its representatives being excluded from the Paris talks. Be that as it may, it appears obvious that the French must have been adamant on continuing to have access to some of that cod, and Canada finally acquiesced in order to improve the chances for third party settlement of the maritime boundary issue and thus put an end to massive French overfishing in the disputed area.

Getting the boundary issue finally adjudicated is important for Canada, as it is convinced that France has no adequate basis for its claim that the small Islands of Saint-Pierre and Miquelon are entitled to an exclusive economic zone and continental shelf equivalent to almost the size of Nova Scotia. This claim is advanced in the face of the fundamental criterion in international law that an equitable delimitation should aim at an equal division of the maritime projections of the coasts,<sup>15</sup> and the fact that the length of the respective coastlines in the area to be delimited constitutes one of the important factors to be taken into account.<sup>16</sup> In this case, the area to be delimited is south of Newfoundland where the coastline of the province is some 225 miles long as against only 10.5 miles for the French islands.

### (3) Protective Measures Adopted by Canada

In spite of the importance for Canada to attain its main objective of having the maritime boundary issue adjudicated and the impossibility of any unilateral application to the International Court, there is a limit to the concessions which Canada can make without jeopardizing the vital interests of its fishermen. So, in the face of

---

15. See *Gulf of Maine Case* (1984) I.C.J. Reports 246, at 300, para. 115.

16. *Id.*, at 313, para. 157.

overfishing by France of some 20,000 tonnes of cod over its allocated quota of 6,400 in 3Ps for 1986 and its announced intention to continue overfishing in 1987, Canada took two measures. First, it withdrew its port privileges to French fishing vessels, on March 17, 1987. Second, it decided not to lift the prohibition against French fishing on the Burgeo Bank on the western side of 3Ps, from January to April, although this was already to have been done under the January 24 Arrangement. Fortunately, Burgeo Bank is outside the disputed area and France has no strict legal ground to object to this measure, other than to allege a lack of good faith in Canada's implementation of the Arrangement. As for the disputed area itself, Canada cannot take any enforcement measure against overfishing since, theoretically, France might be entitled to the whole of the area it claims. It is important for Canada, however, to continue setting the quotas for the whole of the area as it represents an assertion of its claim and an exercise of jurisdiction on its part. Not to set quotas might be interpreted by France as an abandonment of Canada's claim and invoked as such at the time of adjudication. Even after the establishment of the boundary, quotas may have to be set bilaterally as the cod stock will not respect any line established and there may be a need for joint management, if the line is far enough from the French islands. Canada has that problem now with haddock, cod and pollock in the Gulf of Maine, although it is perhaps not as serious as it would be here. In the same way, overfishing on the nose and tail of the Grand Banks outside the 200-mile line affects the stock inside. In other words, here even more than in most other types of dispute, the course of conduct of the Parties should be guided by a sense of moderation rather than one of confrontation.

### III. CONCLUSIONS

The main conclusions flowing from the preceding analysis may be summarized as follows : (1) the 1972 Agreement is the source of all French fishing rights in Canada's 200-mile fishing zone outside the Gulf, which applies to both metropolitan and Saint-Pierre and Miquelon registered vessels; (2) as a special arrangement, a maximum of ten Saint-Pierre and Miquelon trawlers up to 50 meters in length may continue fishing in the Gulf on an equal footing with Canadian trawlers; (3) all French fishing vessels are subject to Canadian fishery regulations and quotas; (4) the quotas allocated to France may be set by Canada unilaterally, after it has determined the total allowable catch on the best scientific evidence available and its own harvesting capacity; (5) Canada's right to set quotas has been recognized by France and by the International Tribunal in the *La Bretagne* arbitration of 1986; (6) if France is not satisfied with the quotas set by Canada, it may be possible

to have such quotas reviewed by an arbitral tribunal under the 1972 Agreement; (7) prior to its withdrawal from the Gulf in May 1986, the actual quotas of cod allocated to France were 20,500 tonnes in the Gulf, 6,400 in 3Ps and 1,545 in 2J 3KL under an agreement with EEC expiring in 1987; (8) after its withdrawal from the Gulf, France asked for 12,000 tonnes of cod in the Gulf for Saint-Pierre and Miquelon and 18,000 for metropolitan France outside the Gulf and outside 3Ps; (9) being unable to reach an agreement with France, Canada set quotas unilaterally in January 1987 at a grand total of 22,355 tonnes for that year, 15,000 being of cod and 3,600 of which in the Gulf (and its entrance) for Saint-Pierre and Miquelon; (10) although the quotas set by Canada were protested by France, the Parties agreed on January 24, 1987 to negotiate two interdependent agreements before the end of 1987 : a *Compromis* submitting the maritime boundary issue to third party settlement and a *Procès-verbal* setting quotas for 1988 to 1991 inclusively, such quotas to include an undetermined amount of northern cod in 2J 3KL; and (11) even after the maritime boundary has been settled, there may be a need for joint management of the cod stock in the presently disputed area.