

10-1-1998

The Pacific Salmon War: The Defence of Necessity Revisited

Michael Keiver
Dalhousie University

Follow this and additional works at: <https://digitalcommons.schulichlaw.dal.ca/dlj>



Part of the [Law of the Sea Commons](#)

Recommended Citation

Michael Keiver, "The Pacific Salmon War: The Defence of Necessity Revisited" (1998) 21:2 Dal LJ 408.

This Article is brought to you for free and open access by the Journals at Schulich Law Scholars. It has been accepted for inclusion in Dalhousie Law Journal by an authorized editor of Schulich Law Scholars. For more information, please contact hannah.steeves@dal.ca.

In 1994, frustration with the Pacific salmon dispute between Canada and the United States, caused the Canadian government to impose a transit fee on American fishing vessels. The author reviews the legality of the measure vis-à-vis three legal regimes: the United Nations Convention on Law of the Sea, the defence of countermeasures, and the defence of necessity. In addition, the effectiveness of retaliatory measures are examined in view of recent developments. The author concludes by recommending a two-track strategy: an alliance with Native American groups as well as environmental non-governmental organizations.

En 1994, le gouvernement canadien a imposé des frais de transit à des vaisseaux de pêches américains, suite aux frustrations entre le Canada et les États-Unis au sujet du conflit du saumon du Pacifique. L'auteur critique la légalité de la mesure par rapport à trois régimes juridiques : la conférence des Nations Unies sur le droit de la mer, la défense des contre-mesures, et la défense de nécessité. De plus, l'efficacité des mesures de représailles est examinée en tenant compte de développements récents. L'auteur conclut en recommandant une stratégie à deux volets: une alliance avec des groupes autochtones américains ainsi que des organismes environnementaux non gouvernementaux.

Introduction: A Bellicose Spirit

- I. *The Defence of Necessity and International Environmental Law*
- II. *The Inequity of the Equity Principle: The Pacific Salmon Treaty*
- III. *Anatomy of a Salmon War: The 1994 Transit Licence*
 1. *The Legality of the Transit Licence and LOSC*
 2. *The Defence of Countermeasures and the Transit Licence*
 3. *The Defence of Necessity and the Transit Licence*

* B.A. (Dalhousie), M. relations internationales, LL.L. (Laval), LL.B. (Western). The author wishes to dedicate this paper to Professor Hugh D. Sproule (retired) of Dalhousie University's English Department. The author would also like to acknowledge the assistance of Professor Natalie Des Rosiers of the Faculty of Law at the University of Western Ontario and Professor Ted McDorman of the University of Victoria Faculty of Law.

IV. *The 1997 Salmon War and a Two-Track Strategy*

1. *Track One: An Aboriginal Alliance*

2. *Track Two: Environmental NGOs and NAFTA*

Epilogue: The 1998 Coho Accord

Introduction: A Bellicose Spirit

Is this want of national pride?

*No, it is want of a bellicose spirit that would seek
to impose its ideals on any other people.*

*We have other fish to fry, and they are
fish we catch in our own waters.¹*

Canada has proven that it has a bellicose spirit by its recent actions in the salmon dispute with the United States. In 1997, hundreds of Canadian fishermen blockaded the Alaskan tourist ferry, *Malspina*, for three days in the port of Prince Rupert, British Columbia, to protest the Alaskan fishing fleet catching salmon which they considered Canadian.² In an effort to gain leverage, the government of British Columbia announced the cancellation of the seabed lease for the Canadian Forces' Base at Nanoose Bay where there is a military testing range frequented by American naval ships.³ In addition, the Canadian government began the

1. R. Davies, "Literature in a Country without a Mythology" in *The Merry Heart: Selections 1980-1995*, (Toronto: McClelland & Stewart, 1996) at 47.

2. A. Zagorin, "Kettle of Fish" *Time* (4 August 1997) 20-21. Chris Wood, "Darn Yankees" *Maclean's* (4 August 1997) 12-17.

3. R. Howard, "B.C. Cancels Military Lease" *The Globe and Mail* (23 May 1997) A-1, A-4. The province has jurisdictional control over the seabed, but the actual waters at Nanoose Bay are under federal control. U.S. nuclear submarines use the site under the terms of a joint defence agreement. The cancellation would take full effect six months after notice. Another retaliatory action considered by the provincial government was to disrupt the flow of the Columbia River, which passes from Canada into the United States and is used for the generation of hydro-electricity.

enforcement of a hailing protocol that resulted in the subsequent arrest of four American ships.⁴

The dispute erupted after the collapse of negotiations to resolve the four-year deadlock on the division of the Pacific salmon catch under the terms of the 1985 Pacific Salmon Treaty. The main controversy concerned the increased American interception of salmon as they swim through Alaskan waters to Canadian breeding grounds. Frustration over the talks provoked the Canadian government into taking retaliatory actions. In 1994, the government imposed a transit fee on American fishing vessels passing through Canadian waters. Despite American outrage at these measures, they can be justified under the international law doctrine of the defence of necessity.

The first part of this article examines the defence of necessity and its role in the development of international environmental law. Second, the legal and environmental issues resulting from the Pacific Salmon Treaty are analysed. Third, the legality of the 1994 transit fee is reviewed vis-à-vis three legal regimes: the United Nations Convention on Law of the Sea (LOSC), the defence of necessity, and defence of countermeasures. The paper discusses the question of whether the defence of necessity continues to be effective in the context of the current salmon dispute. Part four of the paper suggests a two-track strategy which would involve a Canadian alliance with Native American groups as well as environmental non-governmental organizations (NGOs). There are indications that these two options are presently being either considered or attempted by the Canadian government. Recently, a legal opinion was drafted for the Canadian government by Garvey, Schubert and Baker, a Washington, D.C. law firm, which advised that Canada should pursue a legal action jointly with an Indian band in order to ensure standing in a U.S. court.⁵ Regarding the second option, Canadian Fisheries Minister David Anderson, recently met with several American environmental groups to discuss

4. Four American ships were seized, fined \$300 each, and allowed to resume passage. The regulations came into effect last year but only recently began to be enforced. The protocol requires that foreign fishing boats must radio hello or stow their fishing gear below decks when entering Canadian waters. Department of Foreign Affairs and International Trade, *News Release* No. 91, "Canada Takes Action Following Deadlock in Salmon Talks" (21 May 1997). Fisheries and Oceans Canada, *News Release* NR-HQ-97-28E, "Fisheries Officials Arrest Three U.S. Fishing Vessels" (26 May 1997). See also, R. Howard, "No sign of truce in Pacific salmon war" *The Globe and Mail* (29 May 1997) A-4; R. Howard, "Canada plans to slash salmon quotas" *The Globe and Mail* (28 May 1997), A-4; and M. Cernetig, "Canada seizes U.S. boats" *The Globe and Mail* (27 May 1997) A-3.

5. W. Cox, "Injunction could stop Alaskan over fishing, Canada told" *The Globe and Mail*, (14 November 1997) A-4. The law firm's document, dated July 22, 1997, also advised that an injunction would include a restraining order that could immediately force the Alaskans to stop fishing for up to 20 days.

the salmon dispute.⁶ The article also proposes that Canada should convince the environmental NGOs to apply pressure on their respective governments in order to remedy the overexploitation of salmon by the Alaskan fishing industry. This could be achieved via the procedures available under the North American Agreement on Environmental Cooperation (also known as the NAFTA side agreement on the environment).

1. The Defence of Necessity and International Environmental Law

The defence of necessity has been used in the past to justify a number of unilateral conservation measures which normally would be considered contrary to international law. In 1893, the Russian Imperial Government issued a decree that prohibited the hunting of seals in an area *outside* Russian territorial waters. The measure was invoked to avert the total extermination of seals by British and American hunters. The Russian government justified its actions because of the absolute necessity of taking action prior to the imminent opening of the hunting season. More importantly, the Russian government emphasized the provisional nature of its action and proposed the negotiation of a permanent solution to the problem. Robert Ago, in his presentation on the defence of necessity to the International Law Commission, argued that the *Seal Fisheries Off the Russian Coast* case was a valuable example because not only did it illustrate the concept but also the strict conditions needed to be present in order to invoke it.⁷

A more recent example of a conservation measure being justified by the doctrine is the *Torrey Canyon* incident. In 1967, the United Kingdom bombed a Liberian oil tanker, *Torrey Canyon*, in international waters in order to prevent further pollution of the British coast. Even though the British government did not claim any "legal" justification, it did rely on the doctrine of necessity. It had emphasized that the danger was extreme and the decision to bomb the tanker was made only after other methods had failed. Indeed, efforts to disperse the oil with detergents had failed, as had an attempt to salvage the vessel. The bombing was successful

6. B. McKenna, "Anderson seeks U.S. allies in fish war" *The Globe and Mail* (4 December 1997) A-9. At a briefing session held at the Canadian embassy in Washington, the Fisheries Minister met with representatives of several groups including the American Rivers Association, Audubon Society, Friends of the Earth, American Sports Fishing Association, Natural Resources Defence Council, World Wildlife Association and Trout Unlimited. This was the second time in four months that the Minister met with American environmental groups regarding the current salmon dispute.

7. R. Ago, "State of Necessity", *Summary records of the meetings of the thirty-second session, Yearbook of the International Law Commission 1980*, Vol. 1, 5 May - 25 July 1980, UN Doc. A/CN.4/SER.A (1980).

because it burned off the oil before it could spread. This action was generally accepted because neither the flag state nor the ship's owner protested.⁸

The International Law Commission commented on the *Torrey Canyon* incident and concluded a state of necessity can be invoked "by way of exception, in order to avert a serious and imminent danger which, even if not inevitable, is nevertheless a threat to a vital ecological interest, whether the conduct is adopted on the high seas, in outer space or—even this is not ruled out—in an area subject to the sovereignty of another state."⁹ More importantly, the United Nations Convention on Law of the Sea recognized this type of action in Article 221:

Nothing [...] shall prejudice the right of States, pursuant to international law, both conventional and customary, to take and enforce measures beyond the territorial sea proportionate to the actual or threatened damage to protect their coastlines or related interests, including fishing, from pollution or threat of pollution following a maritime casualty.

It can be argued that the necessity principle is no longer presently applicable because of recent developments in international law. Nevertheless, the evolution of international law depends on the creation of customary law that is largely formed by the international practice of states. Therefore, without states occasionally "pushing the envelope" of international law, it would not evolve. Secondly, as with domestic law, despite legal institutions and regimes being created, there are always new situations that challenge the established norms. The question that should be asked is whether there is an accepted legal norm that still remains applicable to the particular case or should the envelope be pushed once again? A useful example of this approach is Canada's *Arctic Waters Pollution Prevention Act*,¹⁰ passed in 1970, establishing a pollution prevention zone to a distance of 100 nautical miles from the coast of Canada. Rather than a full-scale claim to sovereignty over the waters, it enabled Canada to immediately protect the Arctic marine environment. At the time, nevertheless, international legal norms considered this an illegal extension of jurisdiction. The Canadian government emphasized that it was acting not in the *breach* of international law but on behalf of the international community in the *absence* of applicable law.¹¹ It is

8. P. Kirsch, "Canadian Practice in International Law" (1994) 32 Can. Y.B. Int'l. L. 303 at 312.

9. *Ibid.* at 313.

10. R.S.C. 1970 (1st Supp.), c. 2.

11. I. Head & P. Trudeau, *The Canadian Way: Shaping Canada's Foreign Policy, 1968-1984* (Toronto: McClelland and Stewart, 1995) at 25-64.

significant that the 1973 Law of the Sea Conference later acknowledged the Canadian principle of Arctic environmental protection and incorporated the concept into Article 234 of the 1982 Law of the Sea treaty.¹²

This evolutionary approach to international law was argued during Canada's east coast fishing dispute with the European Union (EU). The Canada-EU dispute had come to a climax with the arrest of the Spanish vessel *Estai* outside the 200-mile zone. In what became known as the turbot war, the Canadian government also attempted to justify its actions by invoking the defence of necessity. The criteria enumerated by various jurists to assess the validity of this defence included:

- 1) An essential interest of the state has to be in peril;
- 2) The peril must be grave and imminent;
- 3) The action taken by the state is the only one that could safeguard its essential interest;
- 4) The action has not gravely prejudiced the interests of the state against which action was directed;
- 5) The action is temporary in nature;
- 6) The action taken is limited to what is strictly necessary to face the peril; and
- 7) The state relying on necessity has not contributed to that necessity.¹³

The use of force, in arresting a foreign vessel, remained an open question even under the doctrine of necessity. Yves LeBouthillier has argued that the International Law Commission was unable to resolve this issue, and therefore, the United Nations Charter could apply:

According to many people, the UN Charter allows resort to force in only two cases: self-defence, and actions under the authority of the Security Council. Even if we concede for argument's sake that necessity constitutes another exception permitting force, a state would have a hard time establishing that force was the only means open to it, given the clear obligation of states to resolve their disputes peacefully.¹⁴

This may be considered significant criticism of the Canadian action because it was not clear that Canada had explored all the options available for a negotiated settlement rather than to take unilateral action against the

12. M. Keiver, "The Turbot War: Gunboat Diplomacy or Refinement of the Law of the Sea?" (1996) 37 C. de D. 543.

13. R. Ago, *supra* note 7; Y. LeBouthillier, "Can Canada Plead Necessity in Seizing the Spanish Trawler?" *The Globe and Mail* (16 March 1995) A-23. Y. LeBouthillier, "L'affaire du Turbot" *Le Devoir* (13 April 1995) A-9. J.A. Beesley & M. Rowe, "Sound Basis in International Law for Canada's Action in the *Turbot War*" (1995) 1 *Can. International Lawyer* 177.

14. Y. LeBouthillier, *supra* note 13 at A-29.

Spanish vessel. Therefore, it could not be said that the action taken was the only one available in order to safeguard its essential interests. A further weakness regarding Canada's ability to invoke the defence of necessity was whether it had contributed to the state of necessity. It can be argued that Canada had created the state of necessity by forcing a last minute divisive vote regarding an unacceptable turbot quota upon the EU. Furthermore, it could be considered that Canada had contributed to the state of necessity by itself engaging in overfishing previous to the specific dispute.¹⁵ Unfortunately, the International Court of Justice (ICJ) will probably never rule on the legality of the Canadian defence since Canada invoked a reservation vis-à-vis the jurisdiction of the court to hear the dispute.¹⁶

II. *The Inequity of the Equity Principle: The Pacific Salmon Treaty*

The treaty has its slightly pathological aspects.

It is governed by a theoretical framework not unlike the "mutual assured deterrence" policy that prevailed between the U.S. and Soviet Union during the Cold War period.¹⁷

Fraser River sockeye salmon has been jointly managed by Canada and the United States since the 1930s as the result of the *United States-Canada Convention for the Protection, Preservation, and Extension of the Sockeye Salmon Fishery in the Fraser River System* (known as the Fraser River Convention). Despite the treaty, during the 1950s one of the first salmon wars erupted because of the interception of the valuable pink salmon stock on the Fraser River (the original agreement only related to sockeye salmon). The Canadian Fisheries Minister responded to complaints from fishers by suggesting that Canadians "wipe their noses, pull up their socks and catch a comparable number of Puget Sound [U.S.] pink salmon."¹⁸ In 1957, the Fraser River Convention was amended to include pink salmon. Several decades later, Canada realized that although the

15. M. Keiver, *supra* note 12 at 573.

16. Spain challenged the legality of the Canadian reservation to the ICJ. In a split decision, however, the court ruled "it had no jurisdiction to adjudicate" the matter. Paul Koring, "Hague court won't rule in Estai case", *The Globe and Mail* (5 December 1998) A-11. See also, Paul Koring, "Ottawa awaits decision on 1995 fisheries dispute" *The Globe and Mail* (4 December 1998) A-16. Erin Anderssen, "Canada's 1995 torbot war heads to court today" *The Globe and Mail* (9 June 1998) A-5. Dennis Bueckert, "Turbot war leads to trouble with Europe, World Court" *The Globe and Mail* (15 June 1998) A-3.

17. T. Glavin, *Dead Reckoning: Confronting the Crisis in Pacific Fisheries* (Vancouver: David Suzuki Foundation/ Greystone Books, 1996) at 43.

18. P. Larkin, *Pacific Salmon: Scenarios for the Future* 20 (1980), cited in R. J. Schmidt, Jr., International Negotiations Paralysed by Domestic Politics: Two-Level Game Theory and the Problem of the Pacific Salmon Commission" (1996) 26 *Environmental Law* 95 at 100.

direct costs of the Fraser River salmon fisheries were equally divided (such as enhancement programs), the indirect costs were not. These indirect costs were the opportunity costs of foregoing the hydro power developments as well as stricter pollution regulation and control. Therefore, it could be argued that while the Americans received 50 per cent of the Fraser River sockeye and pink salmon, they did not bear the true costs of maintaining a viable fishery.¹⁹

The Canadian reaction to this situation was an increased interception of chinook and coho salmon of American origin. In 1970, both countries realized that negotiations would have to be entered into regarding all Pacific salmon species: sockeye, coho, chinook, pink, and chum. A treaty would have to include salmon not only from the Fraser River but also from all other rivers in British Columbia, the Yukon, Oregon, Idaho, Washington and Alaska. The negotiators recognized it would be impossible to eliminate transboundary interceptions, however, they attempted to devise a formula that would result in a mutually beneficial division. The Canadian delegation proposed what became known as the equity principle. Ironically, the equity principle was defined differently in two international agreements, LOSC and the Pacific Salmon Treaty. The equity principle was also known as the state of origin principle during the LOSC negotiations. The state of origin approach emphasises that the salmon belong to the state where the salmon are produced. Canada managed to gain U.S. support for this principle during the Third United Nations Conference on the Law of the Sea (UNCLOS III) because the Americans were also concerned about high seas interception of salmon by third countries. This approach was adopted and became incorporated into LOSC Article 66: "States in whose rivers anadromous stocks [such as salmon] exist shall have the primary interest in and responsibility for such stocks."²⁰

Unfortunately, given the protracted fifteen years of negotiation that resulted in the 1985 Pacific Salmon Treaty, the equity principle became distinct from the LOSC approach. This modified version became incorporated into Article III, paragraph 1(b) of the Treaty: Art. 1. "With respect

19. G. R. Munro & R. L. Stokes, "The Canada-United States Pacific Salmon Treaty" in D. McRae & G. Munro, eds., *Canadian Oceans Policy: National Strategies and the New Law of the Sea* (Vancouver: UBC Press, 1989) at 21.

20. *Ibid.* at 24. LOSC, Article 66. Conversely, it could be argued that LOSC Article 56(1) allows the coastal state sovereign rights regarding the exploitation, conservation and management of living resources in the exclusive economic zone (the area beyond and adjacent to the coastal state's territorial sea). Nevertheless, Article 56(2) also requires that in exercising its rights within the exclusive economic zone, the coastal state shall have due regard to the rights of other states.

to stocks subject to this Treaty, each Party shall conduct its fisheries and its salmon enhancement programs so as to ... (b) provide for each Party to receive benefits equivalent to the production of salmon originating in its waters.”²¹ Even the term “benefits” required further definitions as there are two types of benefits. The first consists of benefits resulting from post-treaty enhancement and conservation programs; the second concerns “residual” benefits. Both parties have agreed with the concept of post-treaty benefits, but the residual benefits issue still remains controversial. The residual benefits formula would have to determine what was equitable in view of established interception patterns. The Americans knew that if their Fraser River interceptions were counted they would be in a deficit position. They argued that their interception was sanctioned by the long-standing Fraser River Convention whereas the more recent Canadian interceptions of American chinook and coho were not yet sanctioned by a treaty.²² Unfortunately, the equity issue was left to be resolved in the future according to the Memorandum of Understanding attached to the Treaty:

In order to implement the equity principle, each country must estimate the value of the salmon it produces that are harvested by the other country. Because the countries currently lack sufficient data on the value of the intercepted fish, the equity principle will be implemented through a phased approach, as data is gathered.²³

III. *Anatomy of a Salmon War: The 1994 Transit Licence*

It's time to scrap showboat diplomacy and use every legal means available to us.

— Alan Beesley,

*former Canadian Ambassador for Marine Conservation*²⁴

From 1985 to 1992, the number of American interceptions of Canadian salmon increased from 6 million to 9 million, while Canadian interceptions of American salmon decreased from 5 million to 3.5 million.²⁵ Moreover, Alaskan interceptions of Canadian-origin salmon had in-

21. *Treaty Between Canada and the United States of America Concerning Pacific Salmon*, 18 March 1985, Can. T.S. 1985 No. 7, [hereinafter *Pacific Salmon Treaty*] at Article 3.

22. Munro & Stokes, *supra* note 19 at 25.

23. *Pacific Salmon Treaty*, *supra* note 21 at Memorandum of Understanding Regarding Implementation of the *Pacific Salmon Treaty*, 28 January 1985, Implementation of Article III, para. 1(b).

24. “Canada: Net losses” *The Economist* (20 June 1998) 38.

25. T. L. McDorman, “Canada’s Aggressive Fisheries Actions: Will They Improve the Climate for International Agreements?” (1994) 2 *Canadian Foreign Policy* 12.

creased from 3 to 5 million.²⁶ The Canadians believed that they were being punished for practising better conservation measures while the Americans had profited with increased interceptions without foregoing commercial development which had damaged the U.S. salmon rivers.

In 1994, Canada realized there would be little progress made on the equity issue because of the nature of U.S. representation on the Pacific Salmon Treaty's Commission. Competing interests among the members from the States of Washington, Oregon, Alaska and representatives from Native American organisations made it difficult to achieve consensus on the American side. This was further complicated by each representative having a veto. The previous pressure tactic of aggressively fishing Washington and Oregon-origin chinook and coho salmon in retaliation for Alaskan interception of Canadian-origin salmon had become less effective because these stocks had greatly diminished. In June 1994, the Canadian Fisheries Minister, Brian Tobin, announced that a CAD \$1,500 transit licence fee would be imposed on all U.S. commercial fishing vessels crossing selected inside water passages along the British Columbia coast. This licence would affect about 300 U.S. fishing boats that use the waterway to travel from Washington and Oregon to harvest salmon in Alaskan waters.²⁷

1. *The Legality of the Transit Licence and LOSC*

Past analyses of the legality of the transit licence have examined two major international law regimes. The first analysis questioned whether the Inside Passage was an internal water or part of Canada's territorial sea where the right of innocent passage applies according to LOSC Article 8(2).²⁸ The second analysis argued that even if this action was illegal it could be justified by the defence of countermeasures.²⁹ The first analysis involves whether the waters between the British Columbia mainland and Vancouver Island, known as the Inside Passage, can be considered an internal water. Obvious internal waters are internal seas, lakes, rivers and closed bays. Generally, for coastal waters to be recognized as an internal water, baselines are employed to determine if the waters are located

26. Canada, Department of Fisheries and Oceans, Press Release, *Backgrounder* (April 1994) in Canada, Department of Fisheries and Oceans, Press Release, *Licence Fee Announced For U.S. Vessels* (9 June 1994).

27. *Ibid.*

28. T. L. McDorman, "The West Coast Salmon Dispute: A Canadian View of the Breakdown of the 1985 Treaty and the Transit Licence Measure" (1995) 1 *Loyola L.A. Int'l. & Comp. L.J.* 477.

29. C.B. Picker "Fishing for Answers in Canada's Inside Passage: Exploring the Use of the Transit Fee as a Countermeasure" (1996) 21 *Yale J. Int'l. L.* 349.

within the landward side of a baseline. The baseline method of determining internal waters is outlined in LOSC Article 7:

In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands in the immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baselines from which the breadth of the territorial sea is measured.³⁰

Although most of the channels in the area of the Inside Passage would qualify as internal waters, there remains the question if two channels, the Queen Charlotte Strait and the Strait of Georgia, are too large to qualify as internal waters.³¹ If the two large channels cannot be considered part of internal waters, then LOSC Article 17 would apply which affirms the right of innocent passage. Moreover, Article 26 of LOSC forbids the imposition of any fee by a coastal state on ships engaging in innocent passage.³²

A possible LOSC defence is provided under Article 21 which allows restriction of innocent passage if the regulation or law is in respect of "the conservation of the living resources of sea."³³ Furthermore, according to Article 25, it could be argued that the passage of the American vessels is not innocent, and therefore, the "coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent" such as the imposition of a fee or licence. The only caveat to this defence is whether the fee is applicable only to U.S. fishing boats or to all foreign vessels passing through those waters. If the fee were only applicable to American vessels, it would be discriminatory and contrary to Article 24.³⁴ There has been some debate whether the licence fee only applied to U.S. fishing boats. Nevertheless, it has been concluded that American vessels were previously exempted from requiring permission to use the Inside Passage and that other foreign fishing boats would also be required to obtain a licence to enter Canadian waters.³⁵

2. The Defence of Countermeasures and the Transit Licence

As outlined above, there is some uncertainty regarding the legality of transit licence vis-à-vis the Law of the Sea Convention. The defence of countermeasures has been suggested as a possible justification for what may be considered an illegal action. The International Law Commission commented on the nature of countermeasures:

30. LOSC Article 7, paragraph 1.

31. *Ibid.* at 373.

32. LOSC Article 17 and 26, paragraph 1.

33. LOSC Article 21, paragraph. 1(d).

34. Picker, *supra* note 29 at 377.

35. McDorman, *supra* note 25 at 497-498.

While most writers believe, on the basis of well-known jurisprudential *dicta*, that lawful resort to countermeasures presupposes internationally unlawful conduct of an instant or continuing character, a few scholars seem to believe that resort to measures could be justified even in the presence of a bona fide belief on the part of the injured State that an internationally wrongful act is being or has been committed against it.³⁶

It has been suggested that the transit licence action met the required conditions for the defence of countermeasures.³⁷ The conditions and limits have been summarized as follows:

- a. There must be a violation of an international obligation causing injury to a state (or at least a good faith belief to that effect by the allegedly injured state).
- b. A countermeasure cannot be taken until the injured state has demanded cessation of the wrong and redress for the injury.
- c. The countermeasure must be directed to ending the violation and obtaining redress for the wrong and not to an outcome extraneous to the violation.
- d. The countermeasure must not be disproportionate to the violation and injury suffered.
- e. The countermeasure must not involve the use or threat of force contrary to the UN charter.
- f. The countermeasure must not violate international law obligations for the protection of human rights or peremptory norms of international law.³⁸

The criterion of a prior breach of international law could be argued by Canada since it believes that the U.S. has not respected its obligations vis-à-vis the Pacific Salmon Treaty and LOSC Article 66. Canada also made prior requests for cessation and redress for injury. The requirement that countermeasures be directed or narrow in scope can be justified by the narrow application of the transit fee to only commercial fishing vessels. Moreover, the transit fee was proportional to the problem in question and only affected those directly involved in the particular activity of salmon fishing. Regarding the use of force, Canadian officials limited their force to what was necessary to enforce the transit licence requirement. Lastly, there was no evidence of human rights or other fundamental international legal norms being violated as a result of this countermeasure.

36. "An internationally wrongful act as a precondition," *Documents of the forty-third session, Yearbook of the International Law Commission* 1991, Vol. II, U.N. Doc. A/CN.4/SER.A/1991/Add.1 (Part 1).

37. Picker, *supra* note 29 at 382- 387.

38. O. Schachter, "Dispute Settlement and Countermeasures in the International Law Commission" (1994) 88 Am. J. Int. L. 471 at 472-73.

3. *The Defence of Necessity and the Transit Licence*

Interestingly, the defence of necessity may be more appropriate regarding the transit licence dispute than the defence of countermeasures. The fundamental distinction between these two concepts was illustrated in memorandum written by the Legal Bureau at the Canadian Department of Foreign Affairs and International Trade:

Unlike self-defence and countermeasures, which also preclude wrongdoing, the operation of the doctrine of necessity does not presuppose the existence of wrongful act committed by another State whose right is infringed by the State acting out of necessity. In circumstances of necessity, the other State may be innocent or guilty.³⁹

The first condition of countermeasures requires that there be wrongdoing on the part of the other state. Despite the allegations of not respecting their engagements under the Pacific Salmon Treaty and LOSC Article 66, Americans could deny wrongdoing on the basis of the vagueness of these undertakings. With regard to the Pacific Salmon Treaty, the concept of equity remains undefined. Regarding LOSC, neither the United States nor Canada has ratified the Convention despite much of it being now accepted international customary law.

Therefore, the concept of necessity is more applicable because it does not require wrongdoing but only a state of necessity. The critical state of salmon stocks could be characterized as an essential interest in peril that is grave and imminent.⁴⁰ Regarding the criterion that the action taken by the state is the only one that could safeguard the essential interest, Canada could argue that applying pressure in the form of a transit licence was the only option available in order to restart stalled negotiations. The U.S. could not argue that their interests were gravely prejudiced by this action especially if balanced with the prejudice that Canada would have suffered if salmon stocks were further depleted. The action was temporary in nature and only used in a method to persuade the other parties to continue negotiations. Moreover, the action taken was limited in scope since the licence fee only applied to commercial fishing vessels. Nevertheless, Canada would have to prove that it did not contribute to the state of necessity by overfishing its salmon stock.

39. Memorandum dated April 19, 1994, Kirsch, *supra* note 8 at 312.

40. A significant criticism of this approach would be that some salmon stocks are in peril whereas others are not. For example, the Canadian Fisheries Minister recently announced a coast-wide ban on coho fishing because it is considered endangered. See C. Sankar & M. Cernetig, "Ottawa bans B.C. coho fishery" *The Globe and Mail* (22 May 1998) A-1, A-3. This would make the general application of a transit fee on all salmon fishing vessels difficult to justify.

Despite the legal debate regarding which defence doctrine is applicable vis-à-vis the imposition of the transit licence fee, the practical application of these defences has largely been rendered ineffective by the recent amendment to the U.S. *Fishermen's Protective Act of 1967* (FPA).⁴¹ The effectiveness of a measure, such as a transit fee, has been largely blunted by the 1995 Congressional amendment to the FPA which permits the reimbursement of "illegal" transit fees imposed on American fishermen. The amendment also allows the American Secretary of State to request a reimbursement from the offending country. Furthermore, the amendment empowers the President to place similar conditions on the offending state's vessels. In view of this amendment, Canada's future options have become more limited insofar as they involve the imposition of direct fees on American fishermen. Despite alternative measures such as the cancellation of a military lease or trade sanctions, these measures encourage American reactions such as linkage of the salmon dispute issue to unrelated issues. For example, in reaction to the announced cancellation of the naval seabed lease, a U.S. Senator has threatened to cancel the American participation in the \$100-million environmental clean-up of former NORAD radar stations in northern Canada.⁴² Nevertheless, the 1994 transit licence fee was successful insofar as it led to Vice-President Al Gore's direct intervention. In return for removal of the transit licence requirement, the Vice President promised Canada that the U.S. would reverse the trend of intercepting Canadian salmon, that it would regulate its fishery to protect sensitive stocks, and that a renewed salmon treaty would cover more than a single year.⁴³

IV. *The 1997 Salmon War and a Two-Track Strategy*

*The Queen and the Pope are pretty eminent persons too...
But they wouldn't be able to solve the salmon issue either
if they had to work with this treaty.*

—Robert Wright, a former Canadian
Commissioner of the Pacific Salmon Treaty⁴⁴

41. Codified at 22 U.S.C.A. § 1980a - 1980b (West Supp. 1998).

42. G. Gibson, "Volleys in the salmon wars" *The Globe and Mail* (22 July 1997) A-13.

43. K. Gram, "Canada catches concession in salmon scrap" *Vancouver Sun* (3 July 1994) B-1, cited in McDorman, *supra* note 28 at 496.

44. R. Wright, who recently resigned from the Pacific Salmon Treaty Commission, commenting on the appointment of two "eminent" persons: David Strangway, a former University of British Columbia president, and William Ruckelshaus, a former chief of the U.S. Environmental Protection Agency. They were appointed in order to find a solution to the ongoing

Despite the assurances of the American Vice-President, the outstanding issues of increasing interceptions and a lack of an "equity" definition still remained unresolved for another three years. In 1996, a New Zealand mediator, Christopher Beebe, produced a report that was rejected by the Americans.⁴⁵ Although the report was not released to the public by mutual consent, a Canadian newspaper, *The Globe and Mail*, obtained a copy. The newspaper's account suggests that the mediator largely agreed with the Canadian demand for a more effective application of the equity principle.⁴⁶

The failure of mediation resulted in a number of legal actions: the injunction and damages suit by the Alaskan government regarding the ferry blockade,⁴⁷ a counter suit by the fishing industry,⁴⁸ the suit filed by the B.C. government seeking damages for U.S. overfishing,⁴⁹ and a request for an injunction to block the Nanoose testing site cancellation.⁵⁰

dispute. Quoted in M. Cernetig, "Salmon treaty member resigns" *The Globe and Mail* (11 September 1997) A-1, A-12. On January 12, 1998, they released their report which suggested that Canada was justified in insisting on an equitable share of salmon, however, it could not expect its full share. They also recommended that the two governments should attempt to negotiate two agreements: a two-year agreement and a long-term agreement. See R. Howard, "Ottawa softens salmon line" *The Globe and Mail* (13 January 1998) A-1, A-17. 45. "Salmon war on two fronts" *The Economist* (28 June 1997) 36.

46. Fisheries and Oceans Canada, *News Release* NR-HQ-95-46E, "U.S. Agrees to Mediation on Pacific Salmon" (9 May 1995). J. Simpson, "Americans have a lot of vetoes when it comes to salmon" *The Globe and Mail* (27 November 1997) A-26. Beebe proposed three methods of "remedial action": "the adjustment of an intercepting fishery, the expansion of an existing (or creation of a new) enhancement program and cash payment."

47. Alaska Attorney-General Bruce Botelho asked a Federal Court of Canada judge in Vancouver for damages to cover losses caused to the ferry service, estimated between \$2.5 million and \$3 million. See, R. Matas, "Alaska ups ante over salmon" *The Globe and Mail* (29 July 1997) A-1, A-4. See also R. Howard, "Court orders U.S. ferry freed" *The Globe and Mail* (21 July 1997) A-1, A-4.

48. The United Fishermen and Allied Workers union [B.C.] filed a suit in a Canadian Federal Court which alleged the Alaskan government has been systematically over fishing Canadian salmon for years. See "B.C. fishermen retaliate against Alaskan government" *The Globe and Mail* (8 November 1997) A-14.

49. The B.C. government has filed a suit in a Seattle federal court that alleges the aggressive Alaskan interception of Canadian salmon violates the Treaty's principles of conservation and equity of harvest. The suit, cosigned by B.C. fishing interests, seeks damages in excess \$350 million to be paid to Canadian fishers. Furthermore, the suit seeks a court order certifying that the U.S. has violated its international obligations, and therefore should compel the U.S. federal government to force compliance. See R. Howard, "B.C. sues U.S. over salmon haul" *The Globe and Mail* (9 September 1997) A-1, A-4.

50. The Canadian federal government filed a suit in the Supreme Court of British Columbia to prevent the B.C. government from cancelling the lease on the basis that the termination would violate an international defence treaty with the U.S. The Canadian government also threatened to expropriate the seabed area if B.C. cancelled the lease. See S. Feshuk and R. Howard, "Suit may torpedo B.C. ploy" *The Globe and Mail* (15 August 1997) A-1, A-7. Also R. Howard, "Ottawa seeks ways to squelch B.C. fish fight" *The Globe and Mail* (10 July 1997) A-1, A-4.

On January 22, 1998, Alaska offered that it would withdraw its suit for the ferry blockade if Canadian fishers would cancel their counterclaim and promise never again to blockade a ferry. The Canadian government agreed to these terms and as part of the settlement it will spend \$2.7 million promoting tourism in both B.C. and Alaska.⁵¹

The very international nature of the dispute would have made one government reluctant to enforce a court decision against another country even if the court had jurisdiction. Moreover, there remain the constant calculations of leverage and linkage. The limited possibility of a litigated solution requires a review of the effectiveness of an action that could be justified by the doctrine of necessity. The recent amendment to *Fishermen's Protective Act*, however, seems to have largely blunted the utility of a measure such as a transit fee. The doctrine of necessity is still relevant because of the dire nature of the situation, nevertheless, the opportunity to take effective unilateral measures seems limited.

1. *Track One: An Aboriginal Alliance*

The bellicose spirit displayed by British Columbia's government has been criticized for its lack of strategy in building a coalition against Alaska. A more successful method would be a two-track strategy of joining forces with environmental non-governmental organizations (NGOs) and Native American fishing organizations. As mentioned at the outset, it has been suggested that Canada pursue a legal action with an American Indian band.⁵²

Indeed, the Native American fishing groups probably have been the most effective in using the court system against Alaskan intransigence. In 1995 Pacific Northwest tribes, with Canada and the states of the Northwest as *amici curiae*, sought a preliminary injunction in American federal district court in order to close Alaska's southeast chinook fishery. Alaska tried to have the suit dismissed on the grounds that the court did not have jurisdiction to enforce the Pacific Salmon Treaty. The judge responded that the issue was not whether that court had treaty jurisdiction, but whether Alaska had violated the settlement that, in part, resulted in Native Americans becoming members of the Pacific Salmon Treaty Commission. The judge concluded that the settlement issue concerned an issue of *contract* interpretation, and therefore, the court had jurisdiction. Moreover, the judge granted an injunction which prevented the fishing of

51. "Salmon stand-off" *The Economist* (31 January 1998) 38.

52. See note 5 for a discussion of the legal strategy.

the 55,000 chinook salmon by the Alaskan members of the Pacific Salmon Treaty Commission.⁵³

The Canadian Fisheries Minister at the time, Brian Tobin, had filed an *amicus curiae* brief that outlined the Canadian perspective on the joint chinook rebuilding program, established as part of the Pacific Salmon Treaty. The brief also described the conservation measures, such as a 50 per cent catch reduction, that Canada had taken to protect the chinook salmon and documented the potential impact of Alaska's unilateral plans.⁵⁴ Interestingly, the current Canadian Fisheries Minister, David Anderson, does not appear to have formed any alliances with Native Americans.

2. *Track Two: Environmental NGOs and NAFTA*

The second part of the two-track strategy is to gain the support of American environmental NGOs. The ability of Canada to gain the support of foreign environmental groups appears to be a characteristic that was present in past situations which required unilateral measures. For example, when Canada enacted extraterritorial powers, such as the *Arctic Waters Pollution Prevention Act* and the amendment to the *Coastal Fisheries Protection Act* (which extended its jurisdiction beyond 200 miles in order to protect straddling stocks), it emphasized the temporary and urgent nature of the environmental protection and received environmental NGOs' support for its actions. Canada's ability to build a consensus among environmental NGOs has increased with time, and currently, the Canadian Fisheries Minister is seeking to gain support from American groups.⁵⁵

A possible solution to the ongoing crisis is to seek the support of American and Canadian environmental NGOs in order to lobby their governments to revise or use more effectively the international legal frameworks available to resolve this crisis. For example, the North American Agreement on Environmental Cooperation (NAAEC), known as the NAFTA environmental side agreement, provides for the participa-

53. *Confederated Tribes & Bands of the Yakima Indian Nation v. Baldrige*, 898. F. Supp. 1483-84, (W. D. Wash. 1995), cited in Picker, *supra* note 29 at 368-369.

54. Fisheries and Oceans Canada, *News Release* NR-HQ-95-95E, "Canada Plans to Support Legal Proceedings Against Alaska" (7 August 1995). Fisheries and Oceans Canada, *News Release* NR-HQ-95-98E, "U.S. Court Decision Prevents Alaskan Chinook Fishery" (11 August 1995). Fisheries and Oceans Canada, *News Release* NR-HQ-95-105E, "Tobin Welcomes U.S. Federal Court Decision" (8 September 1995). Fisheries and Oceans Canada, *News Release* NR-HQ-95-107E, "Tobin Comments on U.S. District Court Decision on Alaskan Chinook Fishery" (12 September 1995).

55. See note 6 for more information regarding the Canadian efforts.

tion of NGOs. In fact, NGOs can make submissions to the treaty Secretariat asserting that a party country is not effectively enforcing its domestic environmental law.⁵⁶ The Secretariat, however, has considerable discretion in whether to proceed to a finding of fact. Indeed, this process has been criticized because very few of the NGOs submissions have triggered the Secretariat to order a finding of fact.⁵⁷

Criticism of the NAFTA environmental side agreement has resulted in a task force, headed by Maurice Strong, to review the role of the commission and its alleged lack of assertiveness.⁵⁸ One of the most difficult obstacles to overcome is the exclusion of natural resource management from NAAEC review. Interestingly, even though the NAAEC's preamble excludes resource management, it also requires that these activities "*do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.*"⁵⁹ Therefore, the agreement could apply to activities such as overfishing if that activity causes damage to the environment of another state. Moreover, the NAAEC provides for remedial measures such as monetary penalties and trade measures.⁶⁰

Interestingly, there have already been two submissions to the Secretariat by Canadian and American NGOs regarding the alleged destruction of salmon habitat by B.C. Hydro dams.⁶¹ In 1997, the Canadian government successfully argued the matter was the subject of a pending judicial or administrative proceeding, and therefore, the Secretariat could not proceed further with a finding of fact according to NAAEC Article 14(3).⁶² In 1998, however, in response to a request from environmental groups, the Secretariat called for an investigation into whether Canada

56. K. Raustiala, "The 'Participatory Revolution' in International Environmental Law" (1997) 21 Harv. Env. L. Rev. 549. See also, K. Raustiala, "International 'Enforcement of Enforcement' under the North American Agreement on Environmental Cooperation" (1996) 36 Va. J. Int'l. L. 721.

57. Alanna Mitchell, "NAFTA rejects complaint" *The Globe and Mail* (8 April 1997) A-4.

58. *Four-Year Review of the North American Agreement on Environmental Cooperation: Report on the Independent Review Committee*, released June 1998, online <www.cec.org> (visited August 1998).

59. Preamble to the NAAEC [13 September 1993].

60. Annex 34: Monetary Enforcement Assessments and Article 36: Suspension of NAFTA Benefits.

61. C. McInnes, "Protest enrages B.C. minister: Activists seek NAFTA censure of power agency for harming fish" *The Globe and Mail* (3 April 1997) A-4. See also A. McIlroy, "Canada may face NAFTA probe" *The Globe and Mail* (21 May 1998) A-1, A-3.

62. Registry of Submissions of Enforcement Matters, SEM-97-01, and Response from Canada (21 July 1997), online <www.cec.org>. See also McIlroy, *ibid.* at A-1; this is the first time that Canada has been investigated in the history of the environmental agreement. There has been only one other occasion when the Secretariat ordered an investigation: the Cozumel port development in Mexico (the U.S. has never been investigated).

was enforcing its domestic environmental laws to protect fish habitat. The result of the investigation will be a finding of fact and a "factual record" (at least two of the three NAFTA countries' environmental ministers had to agree for the investigation to proceed: the Canadian Environment Minister, Christine Stewart, agreed).⁶³

It is ironic that British Columbia's salmon habitat policies were challenged by NGOs via the NAAEC mechanism since a significant amount of destruction to salmon stocks was caused by the past commercial and hydro developments of the salmon rivers in the American northwest. This underscores a limitation of the NAAEC, in that it cannot retroactively condemn past practices. Nevertheless, to its credit, the B.C. government recently cancelled the Kemano Completion Project, a hydro-electric project that would have destroyed the salmon habitat of the Nechako River.⁶⁴ Despite the NAFTA environmental agreement's dire need for reform, there remains a significant role for NGOs to play in the long term resolution of the salmon dispute. In conclusion, despite all the possible pitfalls of this approach, there is an existing legal framework, albeit in need of reforming, to resolve the salmon dispute.⁶⁵

Epilogue: The 1998 Coho Accord

*It was because Mr. Anderson acted to protect coho
that he was called the Anti-Christ.*

*It was because Mr. Anderson talked reason with Washington state
that Mr. Clark [B.C. Premier] called him a traitor.*

*Mr. Anderson tried to talk sense to the Alaskans, too, to no great effect.*⁶⁶

The need for creative and aggressive environmental diplomacy became apparent during the negotiations for the 1998 coho agreement between Canada, Washington State and Alaska. The Canadian Fisheries Minister, David Anderson, was faced with a tsunami of anger and criticism from B.C.'s fishing industry for not consulting with the provin-

63. P. Knox, "Stewart votes to probe enforcement of fishery laws" *The Globe and Mail* (30 June 1998) A-3. Environmentalists have also requested an investigation into three mining operations in B.C. See C. Sankar, "Probe three B.C. mines on dumping, groups say" *The Globe and Mail* (3 July 1998) A-4.

64. Fisheries and Oceans Canada, News Release NR-HQ-95-18E, "Tobin Responds to B.C.'s Cancellation of Alcan's Kemano Completion Project" (23 January 1995). M. Cernetig & A. Gibbon, "B.C. makes peace with Alcan" *The Globe and Mail* (6 August 1997) A-1, A-5, B-1, B-4.

65. One possible pitfall: Canada may not request consultations, a Council meeting, or a panel for the benefit of any government of a province not included in the declaration [see NAAEC Annex 41(3)]. B.C. has not signed the declaration.

66. T. Glavin, "Salmon's sea change" *The Globe and Mail* (18 July 1998) A-1, A-3. See also R. Howard, "Fish pact 'half a deal', says Clark" *The Globe and Mail* (27 June 1998) A-1, A-2.

cial government during negotiations.⁶⁷ The Canadian Fisheries Minister had already announced a coast-wide ban on fishing for coho prior to the negotiations.⁶⁸ Nevertheless, Mr. Anderson sought and received approval from Canadian and American environmental NGOs for his efforts in protecting the coho salmon from extinction.⁶⁹

The one-year coho agreement concluded between Canada and Washington state permitted Washington state fishermen 24.9 per cent of Fraser River sockeye or 1.25 million fish at the then current run projections. This is considered to be more in percentage terms than the 17.7 per cent share the U.S. fishermen have caught, but less in absolute numbers. In return, Washington state agreed to restrict fishing to the period between July 27 and August 21 which would protect sensitive early sockeye runs as well as endangered coho salmon. Washington state's coho catch will be reduced by a modest 22 per cent or perhaps 7,000. The Canadian fishermen are faced with a total fishing ban for Coho.⁷⁰

Alaska, however, refused to cease its interception of migrating coho and to make concessions during the negotiations.⁷¹ Alaska's negotiators steadfastly refused to accept there was a crisis in their own waters during negotiations. This tactic was later exposed as a negotiating bluff less than two weeks later when Alaska Governor Tony Knowles declared western

67. B.C. Premier Glen Clark announced that the provincial government plans to resume its lawsuit against the U.S. for overfishing as well as sue the Canadian federal government for allegedly violating its written agreement with the province to manage the west coast fishery jointly. Mr. Clark also asked the federal government to impose retaliatory transit fees on U.S. boats. R. Howard, "Clark fires new salvo in fish feud with Ottawa" *The Globe and Mail* (15 July 1998) A-3.

68. C. Sankar, *supra* note 40. See also J. Simpson, "Will Canada's coho ban shame Alaska, or will summer be hostile?" *The Globe and Mail* (27 May 1998) A-18. The entire 500-kilometre Strait of Georgia has also been closed for sockeye fishing. See R. Howard, "Sockeye ban hits sports fishery in Strait of Georgia" *The Globe and Mail* (16 July 1998) A-7.

69. Fisheries and Oceans, *News Release* NR-HQ-98-25E, "Minister Anderson Writes to U.S. Conservation Groups on Coho" (15 May 1998); S. Blore, "Environmental groups support coho measures" *The Globe and Mail* (3 July 1998) A-4.

70. B. Laghi & S. Blore, "New salmon deal a sellout, Clark says" *The Globe and Mail* (4 July 1998) A-1, A-5; R. Howard, "Fish war ends with a 'bad deal' as restrictions strand boats" *The Globe and Mail* (9 July 1998) A-11. Interestingly, a month after the agreement was signed there was an unexpected discovery of about one million sockeye salmon heading towards the Fraser River. See R. Howard, "Surprise discovery revives B.C. fishery" *The Globe and Mail* (19 August 1998) A-1, A-3.

71. R. Howard, "Salmon talks with U.S. Collapse" *The Globe and Mail* (10 July 1998) A-5. See also D. Benton (Deputy Commissioner, Alaska Fish and Game), "Canada's Perspective on Pacific Salmon: Long on Rhetoric, Short on Facts" (1997) online <www.state.ak.us/local/akpages/FISH.GAME/geninFo/hot/oped.htm>.

Alaska a disaster area because of the collapse of salmon stocks.⁷² The crisis should be considered a signal event to Alaska: all salmon species are intertwined and a more global conservation effort is needed. The admission by Alaska that there is a salmon crisis allows the NAAEC Secretariat the needed legitimacy to become involved in this seemingly intractable problem.

72. State of Alaska, *News Release* 98-205, "Knowles Declares Western Alaska Fisheries Disaster" (30 July 1998). The Alaskan Governor asked for a \$19-million (U.S.) program of federal and state emergency relief for 8,000 families in fishing communities. It was reported that salmon catches in Bristol Bay were estimated at 9.7 million fish this year, compared with 44 million three years ago. Alaskan officials refused to admit overfishing was the cause of the collapse, instead they blamed changes in ocean conditions. R. Matas, "Alaska discovers salmon crisis, seeks disaster relief for fishery" *The Globe and Mail* (1 August 1998) A-7.