

CANADA-FRANCE: AGREEMENT ESTABLISHING A COURT OF ARBITRATION
FOR THE PURPOSE OF CARRYING OUT THE DELIMITATION OF MARITIME
AREAS BETWEEN FRANCE AND CANADA*
[Done at Paris and Toronto, March 30, 1989]
+Cite as 29 I.L.M. 1 (1990)+

I.L.M. Background/Content Summary

In 1977, Canada declared a 200-mile fishing zone. France also claimed a 200-mile zone around the French Islands of St. Pierre and Miquelon, located off the south coast of Newfoundland. The result has been a conflicting claim affecting the maritime boundary, the fish stocks and the continental shelf in a rather large zone. Repeated efforts at negotiation have not led to a settlement. On March 30, 1989, two agreements were signed, one referring the boundary dispute to international adjudication and the other providing France with interim fish quotas in disputed waters for the adjudication period, expected to be from 1989 to 1991.

TEXT OF AGREEMENT - I.L.M. Page 2

[Preamble: To submit their dispute to binding arbitration]

- Art. 1 [Establishment of the "Court of Arbitration," naming five members; replacements]
- Art. 2 [The issue for adjudication is set forth; designation of a technical expert]
- Art. 3 [Quorum; decisionmaking by majority vote; procedures]
- Art. 4 [Designation of Agents by each party within 30 days]
- Art. 5 [The Court sits in New York City; appointment of registrar; staff; procurement]
- Art. 6 [Description of general procedure: written and oral phases]
- Art. 7 [Procedures: pleadings; language used (English or French); translations; verbatim record; access by and to the public; use of diplomatic or other confidential correspondence]
- Art. 8 [Expenses of the Court to be borne equally by the parties]
- Art. 9 [Opinions of the Court]
- Art. 10 [Binding effect of the Court's decision]
- Art. 11 [Entry into force upon signature]

[Signatures (blank)]

[Authentic texts: English and French]

*[Reproduced from the text provided to International Legal Materials by the Government of Canada. The Agreement of March 27, 1972, referred to in Article 2 below, appears in 862 UNTS 214 (1973). The Agreement of March 30, 1989, relating to fisheries for the years 1989-91 appears at 29 I.L.M. 7 (1990).]

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AGREEMENT ESTABLISHING A COURT OF ARBITRATION
FOR THE PURPOSE OF CARRYING OUT THE DELIMITATION
OF MARITIME AREAS BETWEEN FRANCE AND CANADA

The Government of the Republic of France and the Government of Canada (hereinafter "the Parties");

Considering that by an agreement signed in Ottawa on March 27, 1972 the Parties partially delimited the maritime areas appertaining respectively to Canada and France;

Considering that, in view of the differences between them, the Parties have been unable to complete the delimitation;

Considering that the Parties have expressed a common desire to resolve the dispute arising from these differences by submitting it to third-party binding arbitration;

Have agreed as follows:

Article 1

1. - A Court of Arbitration (hereinafter "the Court") is hereby established, consisting of five members, namely:

- MR. PROSPER WEIL, appointed by the French Government;
- MR. ALLAN E. GOTLIEB, appointed by the Canadian Government;
- MR. GAETANO ARANGIO-RUIZ;
- MR. EDUARDO JIMÉNEZ DE ARÉCHAGA;
- MR. OSCAR SCHACHTER.

The President of the Court shall be MR. EDUARDO JIMÉNEZ DE ARÉCHAGA.

2. - If a member of the Court appointed by one of the Parties is unable to act, that Party shall name a replacement within a period of one month from the date on which the Court declares the existence of the vacancy.

3. a) If another member of the Court is unable to act, the Parties shall agree on a replacement within a period of two months from the date on which the Court declares the existence of the vacancy.

b) In the absence of an agreement within the period mentioned in paragraph a) the Parties shall have recourse to the good offices of the President of the Court or, if the office of the President is vacant, the Secretary General of the United Nations.

Article 2

1. - Ruling in accordance with the principles and rules of international law applicable in the matter, the Court is requested to carry out the delimitation as between the Parties of the maritime areas appertaining to France and of those appertaining to Canada. This delimitation shall be effected from point 1 and from point 9 of the delimitation referred to in Article 8 of the Agreement of March 27, 1972

and described in the Annex thereto. The Court shall establish a single delimitation which shall govern all rights and jurisdiction which the Parties may exercise under international law in these maritime areas.

2. - The Court shall describe the course of this delimitation in a technically precise manner. To this end, the geometric nature of all the elements of the delimitation shall be indicated and the position of all the points mentioned shall be given by reference to their geographical coordinates in the North America Datum 1927 (NAD 27) geodesic system.

The Court shall also indicate for illustrative purposes only the course of the delimitation on an appropriate chart.

3. - After consultation with the Parties, the Court shall designate a technical expert to assist it in carrying out the duties specified in paragraph 2 above.

Article 3

1. - The Court may perform its functions only when all members are present.

2. - All members of the Court shall be deemed to be present notwithstanding the existence of a vacancy in the following cases:

- a) where the only matter for consideration is the declaration of a vacancy for the purposes of Article 1, or
- b) where either Party has neglected to fill a vacancy as provided by paragraph 2 of Article 1.

3. - Subject to paragraph 4 of this Article, the decisions of the Court shall be made by a majority of its members.

4. - In the case of an even division of the votes in the circumstances referred to in paragraph 2 of this Article, the vote of the President shall be decisive.

5. - Subject to the provisions of this agreement, the Court shall decide on its procedures and on all questions respecting the conduct of the arbitration.

Article 4

1. - Each Party shall designate an Agent for the purposes of the arbitration within thirty days of the signature of this agreement and shall communicate the name and address of its Agent to the other Party and to the Court.

2. - Each Agent so designated shall be entitled to name a Deputy to act for him where necessary. The name and the address of the Deputy so named shall be communicated to the other Party and to the Court.

Article 5

1. - The Court shall sit in New-York City.

2. - After it has been constituted and after consultation with the Agents, the Court shall appoint a Registrar.

3. - The Court may hire staff and procure whatever services and equipment it deems necessary.

Article 6

1. - The proceedings shall include a written phase and an oral phase.

2. - The written pleadings shall consist of:

a) a memorial to be submitted by each Party to the Court and to the other Party not later than June 1, 1990;

b) a counter-memorial to be submitted by each Party to the Court and to the other Party not later than eight months after the submission of memorials;

c) any further pleading that the Court deems necessary.

The Court shall be empowered to extend the time periods so established at the request of either Party.

3. - The Registrar shall provide the Parties with an address for the filing of their written pleadings and of any other documents.

4. - The oral phase shall follow the written phase and shall be held in New-York City, at the place and on the dates determined by the Court after consultation with the two Agents.

5. - Each Party shall be represented in the oral phase of the proceedings by its Agent or, where appropriate, its Deputy Agent, and by such counsel, advisers and experts as it may designate.

Article 7

1. - The written and oral pleadings before the Court shall be in French or in English. Decisions of the Court shall be in both these languages. Verbatim records of the hearings shall be produced daily in the language used in each statement.

2. - The Court shall provide translations and interpretation services and shall keep a verbatim record of all the hearings in French and in English.

3. - The written pleadings may not be made public until the oral proceedings have commenced. Each Party shall communicate to the public only its own written pleadings.

4. - Members of the public shall be admitted to the oral proceedings on invitation by either Party.

5. - Each Party may make public the verbatim records of its oral pleadings.

6. - Each Party shall inform the other Party prior to introducing into evidence or argument any diplomatic or other confidential correspondence between Canada and France. Unless the Parties agree, neither Party shall invoke in support of its own position or to the detriment of the position of the other Party:

(a) the interim arrangements concerning fishing to be applied pending the award of the Court;

(b) proposals or counter-proposals made with a view to concluding this Agreement or the interim arrangement described in sub-paragraph (a).

7. - Unless the Parties agree, neither Party shall introduce into evidence or argument, or publicly disclose in any manner, the nature or content of proposals directed to a settlement of the delimitation issue referred to in Article 2 or responses thereto, in the course of negotiations or discussions between the parties undertaken since January, 1979.

Article 8

1. - The remuneration of the members of the Court and of the Registrar shall be shared equally by the Parties.

2. - The general arbitration expenses shall be shared equally by the Parties. The Registrar shall record these expenses in detail and render a final account of them.

3. - Each Party shall pay all the expenses incurred by it in the preparation and conduct of its case.

Article 9

1. - The Court's decision shall be fully reasoned. Each member shall be entitled to attach an individual or dissenting opinion.

2. - The Court shall inform the Parties of its decision as soon as practicable.

3. - Each Party may make public the text of the award or of any individual or dissenting opinion.

Article 10

1. - The decision of the Court shall be final and binding.

2. - Each Party may refer to the Court any dispute with the other Party as to the meaning and scope of the decision within three months of its notification.

3. The Court is empowered to correct any material error relating to its decision at the request of either Party, within three months of notification.

Article 11

This agreement shall come into force on the date of its signature.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE:

at on the day of 1989,

AND

at on the day of 1989,

in duplicate, in the English and French languages, both texts being equally authentic.

FOR THE GOVERNMENT OF
THE REPUBLIC OF FRANCE

FOR THE GOVERNMENT OF
CANADA

CANADA-FRANCE: PROCES-VERBALE - AGREEMENT RELATING TO
FISHERIES FOR THE YEARS 1989-91*
[Done at Paris and Toronto, March 30, 1989]
+Cite as 29 I.L.M. 7 (1990)+

I.L.M. Content Summary

TEXT OF PROCES-VERBAL - I.L.M. Page 7

[Preamble: To establish quotas pending the adjudication of the boundary dispute (1989-91)]

[Conclusions: Setting forth the quota guidelines. See also the annexes]

[Signatures]

ANNEX I: QUOTAS - I.L.M. Page 10

ANNEX II: GULF OF ST. LAWRENCE - I.L.M. Page 11

Exchange of Notes between the Canadian Department of External Affairs and the French Ministry of Foreign Affairs, March 30, 1989 - I.L.M. Page 12

Diplomatic Note No. 220 (Canada)
[Disclaimer concerning France's interim fishing quotas]

Note Verbale (France)
[Response to Canada's diplomatic note, expressing disagreement over the legal significance of the quotas]

PROCES-VERBAL

Agreement between the Government of the Republic of France and the Government of Canada relating to fisheries for the years 1989-91.

Taking into account the consultations held on March 16 and 17, 1989 at Hull between a Canadian delegation led by Mr. Fortier and a French delegation led by Mr. Puissochet concerning, inter alia, their differences of opinion regarding the interpretation and the conditions of application of certain provisions of the Canada-France Fisheries Agreement of March 27, 1972;

*[Reproduced from the text provided to International Legal Materials by the Government of Canada. The exchange of notes between Canada and France concerning the fishing quotas appears at 29 I.L.M. 12 (1990). The Agreement Establishing a Court of Arbitration for the Purpose of Carrying out the Delimitation of Maritime Areas between France and Canada appears at 29 I.L.M. 1 (1990).]

Recalling that Canada and France, seeking an early solution to the dispute between them regarding the setting of fish quotas for French fishing vessels in Canadian waters, taking into account the Canada-France fisheries agreement of March 27, 1972, signed an agreement in Ottawa on April 30, 1988 providing for the establishment of a mediation procedure;

Noting that it is necessary to establish fish quotas for French vessels and other related arrangements for 1989, 1990 and 1991, during which period the dispute respecting the maritime claims of the two States will be submitted to international arbitration;

Considering the suggestions made by the mediator, Mr. Iglesias, appointed under the Agreement of April 30, 1988 on the setting of fish quotas;

The two delegations have reached the following conclusions for 1989, 1990 and 1991:

1. a) The fish quotas allocated annually to French fishing vessels while this procès-verbal is in force are set out in Appendix I.
- b) The total cod allocation for French fishing vessels registered at Saint-Pierre-and-Miquelon in the Gulf of St. Lawrence is subject to the provisions of Appendix II.
2. a) The fishery regulations made under Canadian legislation, including those provisions respecting the presence on board of Canadian observers and the fees payable for fishing licences, shall apply to French fishing vessels in Canadian waters outside the disputed zone.
- b) The fees payable by the fishermen of Saint-Pierre-and-Miquelon with respect to their activities in the Gulf of St. Lawrence shall be established in accordance with the conditions set out in articles 4(b) and 6(1) of the agreement of March 27, 1972, taking into account the interpretation given to those conditions in the arbitral award in the "La Bretagne" case.
3. Each party will provide the other with the information it has obtained under its regulations on the catches in 3Ps of the following species:
 - a) weekly: cod
 - b) monthly: haddock
 redfish
 pollock
 American plaice
 witch flounder
 yellowtail flounder
 scallops and coquille St. Jacques
4. The parties have agreed to the following provisions regarding the disputed zone which, for purposes of this procès-verbal, shall have the same meaning as it has had until now:

- a) The parties undertake not to change fundamentally the intensity, nature or method of fishing for the following species: haddock, redfish, pollock, American plaice, witch flounder and yellowtail flounder.
 - b) Subject to the right of pursuit which may be exercised under international law, the agreements whereby each party refrains from enforcement against vessels flying the flag of the other party and from conducting any drilling activity or exploiting the mineral resources of the seabed and subsoil shall remain in force until the expiry of forty-five days following the notification of the decision settling the dispute respecting the maritime claims of the two States.
 - c) When inspecting fishing vessels flying its flag in the disputed zone, each party will, at the request of the other party, take on board the inspection vessel an agent designated by the latter. Such agent shall be associated in the inspections as an observer. The frequency and the modalities of these inspections will be subject to appropriate arrangements. The information received by this observer will be protected by the rules of professional confidentiality and will be transmitted only to his own authorities.
5. Without prejudice to a possible agreement between the parties for any period subsequent to 1991, it is agreed that if the notification of the arbitral award respecting the maritime claims of the two States does not occur before November 1, 1991, this procès-verbal shall be extended in accordance with the following terms and conditions:
- a) The provisions other than paragraph 4(b) shall be extended until the end of the quarter during which the notification of the award occurs. If such notification occurs after the forty-fifth day of that quarter, these provisions shall be extended until the end of the following quarter, but shall not have effect beyond December 31, 1992.
 - b) The quotas specified in Appendix I shall be allocated to French vessels in 1992 in proportion to the period of extension, in accordance with the following quarterly division:
 - 40% if this procès-verbal is extended to March 30, 1992.
 - 60% if this procès-verbal is extended to June 30, 1992.
 - 75% if this procès-verbal is extended to September 30, 1992.
 - 100% if this procès-verbal is extended to December 31, 1992.

For the Gulf of St. Lawrence, the quarterly percentages shall be 60% as of January 1 and 100% as of April 1.

6. This procès-verbal and its annexes are without prejudice to the legal positions of either party, in particular with respect to:

- a) their maritime claims off their coasts, and
- b) the conditions of application and the interpretation of the fisheries agreement of March 27, 1972.

Jean-Pierre Puissochet
For the Government
of the Republic of France

L. Yves Fortier O.C., Q.C.
For the Government of
Canada

March 30, 1989

ANNEX I

QUOTAS

Cod: 4RS 3Pn	4,000t
4TVn (January-April)	
2GH	4,500t
2J3KL (1989)	2,950t
(1990-1991)	This figure shall be adjusted upward or downward in proportion to changes in the offshore allocation which is part of the Canadian TAC for 1990 and 1991. Upward adjustment shall not raise the annual quota beyond 3,800t.
Redfish: 2 + 3K	2,000t
4VWX	1,500t
Greenland halibut: 2GH	2,000t
2J3KL	3,000t

Silver hake:	4VWX	4,000t
Witch: flounder	2J3KL	500t
Squid:	3 + 4	2,000t

The cod quotas in 3Ps are the subject of the exchange of notes verbales of this date.

ANNEX II

GULF OF ST. LAWRENCE

The total allocation of French cod quotas in the Gulf of St. Lawrence shall be subject to the following conditions:

- a) The 4RS 3Pn cod stock quota shall be 3200t and the 4TVn (January-April) cod stock quota shall be 800t;
- b) Each year Canada may increase the 4TVn (January-April) cod stock quota beyond 800t and reduce the 4RS 3Pn cod stock quota by an equal amount, subject to a maximum increase of 800t. It shall inform the other party of this decision. Consultations between the parties may take place at the request of either;
- c) When the 4TVn (January-April) cod stock quota exceeds 800t, Saint-Pierre-and-Miquelon fishermen may harvest this quota both inside and outside the Gulf in subdivision 4Vn, notwithstanding the geographical restriction stipulated in article 4(b) of the 1972 agreement;
- d) The fishermen of Saint-Pierre-and-Miquelon may take the quota of the 4RS 3Pn cod stock both inside and outside the Gulf, notwithstanding the geographical restriction stipulated in article 4(b) of the 1972 agreement.

Department of External Affairs

Ministère des Affaires extérieures

Canada

No. 220

The Department of External Affairs of Canada presents its compliments to the Ministry of Foreign Affairs of the Republic of France and has the honour to refer to the discussions the drafting of the compromis on maritime boundary delimitation and the fishing activities off the coasts of Canada and Saint-Pierre-and-Miquelon.

The annual cod quota set by the Canadian authorities for French vessels in sub-division 3Ps, including the part of this zone which is claimed by each party (the "disputed zone"), will be 15.6% of the TAC set by the Canadian authorities annually. Fishing by French vessels in the undisputed Canadian part of subdivision 3Ps will be allowed each year up to the date on which a quantity equal to this quota has been taken by French vessels in the subdivision as a whole. For this purpose, "disputed zone" shall have the same meaning as it has had in practice up to now.

The Canadian authorities have taken note of France's intention of unilaterally setting an annual quota of 15,600t for 1989, 15,100t for 1990 and 14,600t for 1991, for French vessels in subdivision 3Ps. They reaffirm as in the past that such a measure has no legal basis and that any fishing by French vessels in excess of the quota set by the Canadian authorities constitutes overfishing which can be tolerated only in consideration of the present special circumstances.

With regard to the fish quotas specified in the procès-verbal of this date, the Department emphasizes that these quotas exceed Canada's legal obligations under the Canada-France fisheries agreement of March 27, 1972, and that they have been allocated solely to facilitate the process leading to the settlement of the dispute between France and Canada concerning the maritime claims of the two States off the coasts of Canada and Saint-Pierre-and-Miquelon.

It is not without difficulty that these quotas have been granted. The French authorities have no doubt noted the radical measures Canada has been obliged to impose on its own fishermen in several zones, particularly in 2J3KL. It is therefore essential, for each stock affected by quotas for the French vessels, that the amount set in the procès-verbal be the maximum taken from that stock. The Canadian authorities also insist that fishing by French vessels remain as it has been in recent years with respect to the stocks in divisions 3L and 3NO beyond the Canadian fishing zone.

Ottawa, March 30, 1989

The Canadian authorities point out that compliance by French vessels with the provisions established by each of the two countries and those mentioned in this note, is essential to the exercise of the rights set out in the procès-verbal of this date.

These arrangements will remain in effect as long as the procès-verbal of this date is in effect and will be subject to the same conditions of extension.

The Department also notes that the provisions of this note can in no way prejudice Canada's legal position in relation to the Canada-France fisheries agreement of March 27, 1972, the maritime boundary delimitation between Saint-Pierre-and-Miquelon and Canada, or the law of the sea.

The Department of External Affairs takes this opportunity to renew to the Ministry of Foreign Affairs of France the assurances of its highest consideration.

Note Verbale (France)

The Ministry of Foreign Affairs of the Republic of France presents its compliments to the Department of External Affairs of Canada and has the honour to refer to its note No 220, dated March 30, 1989, as well as to the discussions concerning the drafting of the compromis on maritime boundary delimitation and fishing off the coasts of Canada and France (Saint-Pierre-and-Miquelon), and to the procès-verbal and the agreement regarding the establishment of an arbitration tribunal.

The Ministry of Foreign Affairs has taken note of the observations of the Department of External Affairs of Canada, which prompt the following clarifications by the Ministry of Foreign Affairs.

(1) The French authorities take cognizance of the mechanism described in paragraph 2 of the note from the Department of External Affairs of Canada. However, they note that the reference to 15.6% of the TAC set annually by Canada in the 3Ps sector has no justification. They object most strenuously to the statement that any fishing activity beyond the level represented by this percentage would constitute overfishing. As the Canadian authorities know, France is legally at liberty to set fish quotas in the "disputed zone", which constitutes its own exclusive economic zone over which it exercises sovereign rights as determined by international law. The French authorities point out, moreover, that the state of the stocks in this sector does not justify the assertion that any quota higher than that determined by the aforementioned percentage would represent over-exploitation of the biological resource, which France opposes as much as Canada does. They

confirm their intention to fix the total amount of the fish quotas allocated to French vessels in 3Ps at the levels recommended by the mediator.

2) The French authorities believe that the agreement resulting from the procès-verbal of this date constitutes an application of the France-Canada agreement of March 27, 1972, which is the legal basis for Franco-Canadian relations in the areas concerned. They categorically reject the statement that the agreed allocations of resources were determined only in order to facilitate the process of settling the dispute between Canada and France regarding the maritime claims of the two States off the coasts of Canada and France between Saint-Pierre-and-Miquelon and Newfoundland. In this respect, they recall that the only connection between the two problems is that established by the "conclusions agréées" of January 24, 1987, by which both parties agreed to establish simultaneously a procedure for third party boundary delimitation and to set fish quotas during the period required for this procedure.

3) The French authorities are aware of the measures Canada has imposed on its fishermen in the 2J3KL sector on the basis of a scientific report which it has undertaken to verify. They note, however, that the French quota in the 2J3KL sector for 1989 was set at a level which takes this situation fully into consideration, and that it will evolve in 1990 and 1991 through the application of a percentage equal to that applied to the Canadian off-shore quota in the same waters.

4) With respect to fishing in the international waters situated beyond the Canadian fishing zone, the French authorities have taken note of the statements made by the Department of External Affairs of Canada. They will of course ensure that their international undertakings are respected in these waters.

The Ministry of Foreign Affairs of the Republic of France takes this opportunity to renew to the Department of External Affairs of Canada the assurances of its highest consideration.

Paris, March 30, 1989.