



Royal Commission on Renewing and Strengthening Our Place in Canada

The Conduct of Canadian Foreign Policy and the Interests of Newfoundland and Labrador¹

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The views expressed herein are solely those of the author and do not necessarily reflect those of the Royal Commission on Renewing and Strengthening Our Place in Canada.

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Introduction

The general mandate of the Royal Commission is to consider ways of renewing and strengthening the place of Newfoundland and Labrador (NL) in the Canadian federation. Among other things, this entails the need to offer recommendations for maximizing the return to the province of such opportunities as membership in the federation affords. The purpose of what follows is to pursue this objective with special reference to the question of how the particular interests of Newfoundland and Labrador can be reflected, to the maximum possible degree, in the conduct of Canada's foreign policy.

With this task in view, and in accordance with the Commission's request, the analysis begins with a general account of the Canadian foreign policy process and how it is conducted. It then offers a thematic survey of the principal foreign policy issues that have been, and continue to be, of particular interest and concern to Newfoundland and Labrador, and provides an overall assessment of the degree to which these issues have been reasonably and fairly treated, given the broader features of Canada's position in the international community. Finally, it discusses the ways in which the interests of Newfoundland and Labrador might be better reflected in Canada's foreign policy in the future, and in the light of that discussion, attempts to draw some practical conclusions for the consideration of the Commission.

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The Making and Conduct of Canadian Foreign Policy

This has become a complex subject. It used to be a simple one. There is a natural tendency to assume that it still is. To clarify the process, therefore, it may be helpful to place the current realities in their longer term historical context.

In the classical hey-day of the international state system – a European construct dating to the breakdown of the feudal era – foreign policy was concerned primarily with the so-called “high politics” of peace and war. Such politics were usually related to arguments over *who* should rule, and *where* they should rule. Later, in the age of imperialism, the quarrels of the European states over territory and domain were carried beyond the European theatre to other parts of the world. With the rise of industrialization, and with it the need for both raw materials and export markets, the stakes involved in these highly competitive international activities began increasingly to have an economic as well as political foundation. But imperial policy was a part of foreign policy, and it remained a tightly integrated enterprise.

In this general context, both the making and the conduct of foreign policy were relatively straightforward processes. The decisions were ‘made’ by the political leadership – typically by a monarch but later by more elaborately composed political executives – and they were carried out by the monarch’s plenipotentiaries. Over time, in a process originating in the Napoleonic period, the latter came to be assisted by increasingly elaborate diplomatic staffs.² If the practical implementation of foreign policy decisions required military action, as it often did, professional soldiers and sailors – sometimes they were mercenaries – were recruited (or impressed) to do the job. In none of this was there any expectation that public approval was required (although, as time went on, efforts were commonly made to ensure that the citizenry at large was emotionally ‘on side’). It was assumed by everyone concerned that international statecraft was a prerogative of the executive, that it was properly exercised at the level that we would now call the “summit”, and that others were neither politically entitled nor cognitively equipped to have useful opinions on the issues involved. Foreign policy, in sum, was ‘high politics’ stuff, and high politics was the business of kings, queens, and aristocrats, with the help here and there of trusted confidantes drawn from other estates.

These understandings – convenient as they were to those who enjoyed the luxuries of rule – were exposed to transient spurts of stress in the 19th century, not least because of the intensifying interest of European politicians in the use of nationalism as an instrument of political mobilization. It was certainly possible for those in charge of foreign affairs to be elitists and populists at the same time, but this was a delicate balance that depended on a high degree of unquestioning popular acquiescence, and it was unlikely to be stable over the long run.

All the same, traditional practice did not come under serious challenge until World War I. The change that began then to surface had partly to do with the development of compulsory education at the elementary level, which led to mass literacy and to the arrival in the wake of it of mass communications (the popular – often the jingoistic – press). But it was driven more by the process that we now call “democratization” on the one hand, and by the indiscriminate

horror of the first of the world's 'total' wars on the other. Given the slaughters in the trenches, it began to look as if the conduct of international affairs was too important to be left to political elites, or to the generals, admirals and diplomats by whom they were served. President Woodrow Wilson called in 1918 for "open covenants of peace, openly arrived at," and was lionized for doing so.

But the first run at the target that Wilson had set – at attempting, that is, to "open up" the foreign policy process – came to a bad end, and left the experimenters distrustful in principle of the enterprise itself. This was because it proved impossible for the bargainers at the Paris Peace Conference after World War I to make the concessions they knew their task required if they had to do the job in public view. As it turned out, every *demos* wanted its champions to win, and was inclined to repudiate them when they lost, or even when they accepted a compromise that would allow them to strike a deal. The most thoughtful of those who observed the wheelings and dealings in Paris and Versailles – Walter Lippmann of the United States,³ for example, and Harold Nicolson of the United Kingdom⁴ – left the scene with reservations. Perhaps foreign policy was not like other 'public policy' at all. Perhaps it was in a class by itself. Among other things, it could kill. It also involved the accommodation of complex political communities abroad whose interests, attitudes and dispositions were not well understood by untutored constituencies at home. That being so, there was a case, even in democratic societies, for arguing that the conduct of foreign affairs should be less subject than the other endeavours of government to the emotive whims and crudely fickle fashions to which domestic publics were so easily drawn. Perhaps, in short, the job ought to be left to the professionals after all.

This attitude, it has to be said, came to prevail also in the foreign service of Canada. The service's origins date to the period between the wars,⁵ and its early recruits – Lester B. Pearson among them – carried in their memories the vivid scars of World War I, which had seemed to result in part from the populist rivalries that had flowed from incompatible nationalisms in vigorous flight. There was a sense in any case that foreign policy was concerned with the *national* interest, with 'interests of state,' and not with *partial*, or *particular* interests. Hence it was, or ought to be, non-partisan. After all, its primary purposes were to protect both the state and its citizens from potential sources of external military menace, and to advance the commercial interests of the national economy, taken as a whole.⁶ These, presumably, were purposes that all the citizens shared.

It is true that in much of this period Prime Minister Mackenzie King liked to proclaim that, on matters of foreign policy, "Parliament will decide." But it rarely did, because it was rarely asked. In reality, King's purpose was not to be inclusive, but to lay grounds for shrugging his shoulders – to put himself in the position, that is, of being able to respond to politically-inconvenient importunities from abroad (usually from London) by asserting that the decision at issue was not his own to make.⁷ In reality also, except for his last two years in office, he was his own Secretary of State for External Affairs. Foreign policy – war policy – had divided Canadians deeply in World War I. In an obviously dangerous international environment, it could easily do so again. No one else understood as well as he the need to keep it at bay. It therefore required his personal attention. It was special.

Elements of this general attitude continued to prevail for much of the period following World War II, not least because of the high stakes (and the elevated security requirements,

the requirement for secrecy prominent among them) that were involved in the prosecution of the Cold War. Even as late as the 1960s, the then-Secretary of State for External Affairs, Paul Martin, was insisting in Cabinet that his portfolio was not a portfolio like the others, and that his colleagues should rest content with such briefings as he thought it appropriate to give them. Certainly they should not presume to debate the decisions that he and his ministry might make. His colleagues in External Affairs were “on the cables.” His colleagues in the Cabinet were not. The Prime Minister, his own interest in foreign affairs notwithstanding, did not demur.⁸

This view of how the Cabinet ought to function in relation to foreign affairs (even in the security field) did not survive the arrival in the Prime Minister’s Office of Pearson’s successor, Pierre Elliott Trudeau.⁹ But by then much more fundamental forces of systemic change were also in play. In the long run their practical impact on the way things had to be done would outweigh by far the effects on the decision-making process of the personal preferences and leadership styles of *any* Prime Minister, no matter how strongly willed.

The forces at issue here were rooted partly in the growth of government itself over the course of the 20th century, as democratized populations (taking advantage of the possibilities unleashed by a combination of economic growth on the one hand, and the development of the policy sciences on the other) began to demand an ever-expanding list of public services. Even more fundamentally, perhaps, they were grounded in the advance of communications and other technologies, a phenomenon that was beginning by the 1960s to create what Marshal McLuhan, with typical optimism, liked to describe as the “global village”. Eventually, this process was to lead to that complex array of structures and transactions in finance, industry, commerce, culture, the environment and politics that we now hazily describe as “globalization.” Governments that were trying to do more things were finding it increasingly difficult to do them in isolation.

This was not, of course, a sudden development. Its origins could be traced back to antiquity and to the very beginnings of inter-tribal trade. But it accelerated dramatically in the early phases of the modern era as a result of the industrial revolution, and it is now doing so once again – this time with even greater effect – as a by-product of the revolution in electronics.

In the present context, the significance of these various evolutions derives principally from two of their secondary consequences, the one closely related to the other. The first was that they greatly expanded the substantive agendas of international affairs, which came to include not merely the high politics of traditional statecraft, but a host of other, more prosaic matters – many of which were no less vital or urgent for being mundane. A technological science showed that a depleted ozone layer – itself the product of an exploited technology – could conceivably sicken and kill humanity the world over. Restoring it might require the elimination of certain of the gases used in pressure cans and refrigerators. Eliminating such gases in one country alone would not be enough. Members of the state system everywhere would need to respond. By such linkages of cause and effect, the regulation of the packages used to deliver hair spray and household cleansers became not only a proper, but a high priority, object of international diplomacy, and the attentions of statecraft were directed to the contents of cupboards in private homes all over the developed world.

The second consequence, concomitant with the first, was that ‘foreign affairs’ ceased to be a business that was confined to, or dominated by, foreign affairs departments. It became instead the business of almost everyone in government. This was particularly, but not uniquely,

true in the highly integrated regions of Europe and North America. As early as 1970, when the Trudeau government completed its foreign policy review, it found it useful to conceptualize the conduct of Canada's foreign relations as an inter-related series of functions and activities bearing directly or indirectly on the work of almost every minister in the Cabinet.¹⁰ Three decades later, when the Chretien government had to respond to the deep security anxieties aroused in the United States by the "9/11" attacks on Washington and New York, its task, although focussed on a 'security' concern, required the attentions of virtually every department and agency of the federal government, to say nothing of their provincial and municipal counterparts. In this enterprise, neither the Department of Foreign Affairs and International Trade nor the Department of National Defence was the natural 'lead' agency, and the Prime Minister thought it appropriate instead to create a special Cabinet committee to oversee and co-ordinate the government's response.

This discussion could be greatly elaborated, and there is no visible end to the number of examples that could be used to demonstrate both the complexity of the foreign policy community as a structure – it is a shifting thing, with neither a fixed composition nor clearly defined jurisdictional boundaries – and the way it works as a process. But perhaps enough has been said to provide a foundation for the following observations, which may have particular relevance for the ensuing discussion of issues more directly related to the work of the Commission:

- 1) At the bureaucratic level, Canada's 'foreign policies are no longer conducted solely, or even predominantly, by the Department of Foreign Affairs and International Trade. International affairs have been 'domesticated,' and in the process they have drawn the other ministries and agencies of government into the game. DFAIT has certain credentials, certain 'influence assets', that it can bring to the policy table. It has a representative diplomatic establishment abroad. It has extensive experience and expertise in the arts of international negotiation. In some areas – notably the ones associated with the traditional 'high politics' of international peace and security – it still plays a leading role on matters of substance. And the fact that international trade policy now lies largely (although not solely) within its purview gives it a central role in the increasingly important world of trade diplomacy. But in the end it shares its brief with a kaleidoscopic array of other government departments, many of which (in their respective fields of specialization) are the true custodians of the expertise upon which the construction of policy depends. Some of them have developed skills and capacities for international negotiation that more than rival those of the traditional diplomatic service.

This bureaucratic complexity – and the need that comes with it to disperse the foreign policy function – is now reflected even in the structure of the Department of Foreign Affairs itself, which has not one, but two ministers of its own, and a difficult but inescapably integrated relationship with a third.¹¹ Recently its position has been rendered even more uncertain by the assignment of responsibility for much of Canada's all-important relationship with the United States to John Manley, the Deputy Prime Minister and Minister of Finance. It would not be surprising if the current Minister of Foreign Affairs were in some puzzlement over the question of what there is left for him to do. Some of the Department's more reflective officials express

concern that their role is now less about the making of foreign policy and more about providing support services to departments elsewhere in government. Wags among them have been known to observe that they have become the “Department of Left-Overs.”

- 2) From the point of view of the professional foreign service, this general pattern of intrusions from the bureaucratic flank has been compounded by intrusions from above, and intrusions from below.

The intrusions from above are manifested mainly in the increasing involvement of the Prime Minister himself, along with his political and bureaucratic servants in the PMO and the Privy Council Office (PCO), in the conduct of summit diplomacy. This is partly a matter of Prime Ministerial preference, and the preference tends to intensify as incumbents become ‘old hands’. But here, too, there are more fundamental forces at work. In the first place, the ‘domestication’ of foreign policy has given it a greater salience for the course of domestic politics, even in peacetime, and the course of domestic politics is always a matter of considerable interest to the leader of a governing party. In the second place, and partly for the same reason, everyone else is doing it, too. During the Cold War, summit meetings were relatively rare occasions, and they occurred as often as not to achieve a symbolic effect or to lend public visibility to agreements already reached. The conventional wisdom was that serious negotiation at the summit (except, perhaps, among closely and routinely co-operating friends) was a hazardous exercise. Mistakes could be made. Backs could be put against the wall. And for obvious reasons, cornered summiteers had considerable difficulty in claiming the need to seek further instruction from their superiors as a means of escaping the more telling importunities of their adversaries.¹² In the current period, however, summit encounters are proliferating like rabbits, and the proliferation is becoming increasingly routinized – in the G-8, in the Commonwealth, through agreements with the European Union, under the auspices of APEC, by custom with the United States, and in the context of a seemingly endless array of trade initiatives (like the one entailed in the notion of a Free Trade Area of the Americas). To these are added the ones we like to launch ourselves – most notably in the current context the ‘Team Canada’ trade-promotion initiatives led by Prime Minister Chretien.

It goes without saying that, in all these enterprises, DFAIT plays an important role, and the summits themselves create agenda-advancing opportunities that the Department’s more skilful officials can exploit. Nonetheless, the Prime Minister is not a minister whom the Department can call its own, and his offices – political and bureaucratic alike – represent rival centres of power that seem to be of ever-increasing significance. They complicate DFAIT’s life. And they force it to share.

The intrusions from below are more multitudinous, and they reflect the intensifying demands of an ever-increasing array of domestic constituencies for more direct and immediate involvement in the processes by which public policy decisions, including foreign policy decisions, are made. There is nothing new, of course, in the clamouring of interest groups for the attentions of government. Lobbying for causes presumed to be in the public good, as well as lobbying for private and sectoral interests, are long-standing phenomena, and some would argue that they are an essential feature of the liberal democratic process in a pluralist society. But for various reasons that need not be considered here, the insistence on

participatory access has become far more vigorous in recent years, and the same factors that have led to the domestication of foreign policy in other respects have helped to domesticate it here, as well. The influence of many of the lobbies involved has been increased, moreover, by their now-very-sophisticated capacity to orchestrate their remonstrations, at little financial cost, in tandem with their counterparts abroad. Transnational public service interest groups now rival multinational corporations in the constituency politics of international affairs, and they have persuaded their governments – certainly they have persuaded the government in Ottawa – that they have the right to be taken actively, explicitly and visibly into account in the decision-making process. They argue for their entitlements on grounds that they link to the principles of democratic practice.¹³ In the real world, their case is often strengthened by the fact that they have information or expertise that the bureaucracy may lack, and sometimes also by their capacity to facilitate the delivery of the government programmes that they have successfully supported.. But for whatever reason, “consultations with Canadians” are now *de rigueur* in Ottawa as precursors to policy development, and the practice has intruded as much on the operations of the Department of Foreign Affairs and International Trade as on those of any other ministry.

How much impact this has really had on the substance of policy decisions is difficult to discern. Certainly it has had *some* impact, although the effects vary greatly with the issue at stake and the predilections of the ministers involved. That it has complicated the environment within which DFAIT has to function, however, cannot be doubted at all. One of the consequences has been the allocation of very substantial personnel and other resources to the consultative task. Another has been the inclusion of increasingly elaborate and eclectic arrays of semi-official advisers to the negotiation teams that are dispatched abroad to represent the interests of Canada in multilateral negotiating fora. For good or ill, we have come a long way since the Paris Peace Conference of 1919.

- 3) In the particular circumstances of the Canadian case, all these phenomena have been greatly intensified in addition by the pervasiveness of our relationship with the United States, and by the continuing process of continental integration. One of the realities of our time is that “globalization” is not yet “global” at all, but regional, and with the possible exception of the European Union, it can be argued that the North American region represents more than any other part of the world what a truly globalized environment might actually look like. Certainly the transnational (and transgovernmental) linkages between Canada and the United States are massive on almost every dimension, and the interactions, at multiple levels, between the various components of the governmental apparatuses on the two sides of the border are both continuous and to a surprising degree informal. Once again, almost everyone is involved, and one of the frustrations in DFAIT is that its own officers in both the Pearson Building and the Embassy in Washington are sometimes the “last to know.” When they find out, their preoccupation with other issues and considerations frequently leads them to put brakes on what other ministries are trying to do – a pattern that can cause them the next time round to receive even less notice than before of what their counterparts in other bureaucracies are cooking up. In foreign affairs, as in so much else, it is hard to foil a *fait accompli* – and other departments know it.

- 4) One of the by-products of the dispersal of the foreign policy function throughout the bureaucratic apparatus, with particular bureaucracies having in many cases their own constituencies to serve, has been the growth of a phenomenon that students of foreign policy decision-making have come to call “bureaucratic politics.”¹⁴ Since so many different bureaucratic players are involved in the processing of policy problems, often a final conclusion can be reached only through a series of incremental steps that are taken in successions of inter-departmental meetings. In these encounters, the representatives of the contending departments naturally seek to maximize their ability to pursue their own mandates and fulfil their own responsibilities. Since in most situations not all missions can be pursued with equal effect, and since occasionally they will be incompatible, trade-offs have to be made. This requires compromise, and the final result may thus seem imperfect from the particular vantage points of almost all of the players in the game. In such circumstances, what really recommends the ‘bottom line’ is simply the fact that all of the actors involved are prepared, or can be compelled, to live with its consequences. Perhaps no one is wholly satisfied, but most (if they do not lose the contest entirely) are at least *satisfied*.¹⁵ In these vaguely Byzantine contests, some (like the Department of Finance) routinely win more often than the others for the obvious reason that they are more powerful than the others. But everyone wins something some of the time. If they did not, the unbroken repetition of their failure would testify to their being redundant.

In this context, it should be noted that the players with the biggest advantage are usually the central agencies – the Privy Council Office, the Department of Finance, or the Treasury Board. This is because they have at their disposal the most important of the assets of bureaucratic power. In these particular examples, they control, respectively, access to the agenda of the Cabinet (and hence the power to set priorities), the power of the budget, and the spending power. Interestingly, there was an experiment during the Trudeau years at the behest of Allan Gotlieb, then the Under Secretary of State for External Affairs, to have the External Affairs Department added to the central agencies list. The initiative was founded on the view that there was need of a mechanism for co-ordinating and prioritizing the conduct of all of Canada’s external relations, and most importantly, its relations with the United States. The Prime Minister liked the rationality of the rationale, and accepted the argument. But in the end it had little effect, because the only power available to External Affairs in attempting to make the designation stick was the power of sweet reason – hardly enough in itself to encourage other departments, with mandates and obligations of their own, to subordinate themselves to a foreign service bent on controlling what would be done when, and by whom. Why, for example, would Environment Canada want to get hung up by External Affairs on a transborder environmental issue if it thought it could make progress more quickly and efficiently by working directly, and on its own, with its like-minded counterpart (the Environmental Protection Agency) in Washington?

- 5) In none of the foregoing, it will be observed, has any mention been made of the involvement in these matters of the governments of the provinces. But that is only because it is difficult to talk about everything at once. In practice, the same forces that have ‘domesticated’ foreign policy in a way that has stimulated the involvement of

other departments of the federal government (along with an impressive assemblage of constituency interests of various types and political disposition) have also served to bring the provinces into the foreign policy game. This phenomenon was not anticipated by the Fathers of Confederation, whose conception of foreign policy was the classical one, and whose expectation was that it would continue to be the business primarily of Whitehall, and not of the Dominion. The original British North America Act of 1867 was a ‘home rule’ statute, and there was no thought that it would lead to an independent Canadian voice in world affairs. The only reference to such matters was in Section 132, which concerned the implementation of such Canadian obligations as might arise from treaties concluded between the Empire on the one hand, and foreign countries on the other – a responsibility that was assigned to the federal, rather than the provincial, authorities. Given the substance of international diplomacy in the 1860s, this was not assumed to be problematic from the point of view of the distribution of powers as between the federal and provincial levels of government, because the responsibilities of the provinces were not expected to have international dimensions.

As it turned out, of course, this premise proved to be ill-founded, precisely because of the processes of change described above. It should be noted that it was only gradually, and with the help of a long series of incremental precedents, that even the federal government acquired the capacity to intervene directly in international matters affecting Canadian interests.¹⁶ This tale need not be re-told here, but over time the effect was to produce a situation in which the roles to be played respectively by the federal and provincial governments in foreign affairs, particularly in relation to the conclusion and implementation of formal international agreements, became a matter of substantive constitutional concern. What would happen if the purpose of such an agreement was to affect the conduct of public policy in relation to issues falling within provincial jurisdiction?

It should come as no surprise that two of the most important cases to come before the Judicial Committee of the Privy Council on this issue derived from the fact that new technologies were creating novel requirements for international regulation. The first had to do with aerial navigation (the so-called “Aeronautics Case” of 1932) and the second with communications by means of radio (the “Radio Case” of the same year).¹⁷ A third such case – and the one that still underlies Canadian constitutional doctrine in this area – resulted from the need to fulfil certain obligations arising from Canada’s participation in the International Labour Organization (the “Labour Conventions Case” of 1937).¹⁸ In retrospect, the ILO can be recognized as an early prototype for the plethora of “specialized agencies” that were to emerge with the creation of the United Nations after World War II. These were intended as vehicles for dealing with a growing list of what we now describe as “transnational” problems, many of them bearing very directly on the responsibilities of provincial governments.¹⁹

In plain English, the implication of the Labour Conventions Case was, and is, quite simple. The power to conclude treaties lies with the federal government. Federal authorities, however, cannot use this power to invade provincial jurisdiction, and hence they cannot compel the provinces, against their will, to implement the provisions of international agreements that happen to bear on provincial responsibilities. The practical implication is that Ottawa is well

advised to have the provinces ‘on side’ *before* it accedes to international responsibilities that, in whole or in part, the provincial governments will have to meet.

In this context, the question of whether the provinces have been adequately and reasonably consulted by federal authorities when provincial obligations (to say nothing of provincial *interests*) have been at stake in international negotiations is the subject of considerable argument and debate. There is a natural tendency among foreign service officials in Ottawa – ‘cross-pressured’ both internationally and domestically²⁰ – to assume that in recent decades they have been bending over backwards to be solicitous of provincial concerns, even to the point of frequently including the representatives of provincial governments on their delegations to international conferences. In some areas – trade, for example – such consultations are very useful, even essential, to the federal authorities, since they help the latter to define their negotiating objectives, to ensure that the provinces are fully aware of the practical implications of the various proposals under negotiation, and so on.²¹ In practice, however, their counterparts in provincial capitals frequently feel that they have been given insufficient advance notice of pending international negotiations affecting their interests, that the background information they have received has often (although certainly not always) been ‘too little, too late,’ that the consultations to which they have been invited have been more perfunctory than substantive, and that they have repeatedly been confronted with *faits accomplis* that have left them with little room – absent a willingness to create a major crisis – within which to pursue their own preferences.²² For some of the smaller provinces, in particular, these problems may be compounded by the fact that the expertise available to them within their own departments of government is sometimes very limited, so that they find it difficult to keep continuous track of what is going on, or to come up to speed on short notice.

It is difficult for a resident of the peanut gallery to assess the relative merits of the competing perspectives on these issues. The positions of the two sides are both understandable and predictable – not to say inevitable²³ – and it seems reasonable to suppose that God thinks that the justice lies with different parties in different cases. In general, however, it is probably safe to assume that touching base with the provinces is an enterprise that can cause considerable inconvenience (not to say expenditure of time and energy resources) at the federal level, and hence distracted federal officials are unlikely to welcome it unless they have a clear need for substantive advice. The ease of Internet communications makes the task a little easier, but on the whole there is no escaping the underlying implication, which is that the provinces are well-advised to keep the pressure up.

It should be understood that the ‘political’ case, or the case in ‘reason’ (as opposed to the case implied by judicial interpretations of what constitutes appropriate constitutional practice), for close consultations between the federal and provincial authorities in foreign affairs is not confined simply to issues that fall within the purview of provincial jurisdiction, or for which (more commonly) responsibility is shared. It extends also to situations in which the matters at stake, although constitutionally the objects of ‘last-say’ decision-making at the federal level alone, nonetheless have greater implications for the citizens of some provinces than for those of others. In other words, as a matter of political practice (and hence also of constituency expectation), the provinces are not merely the custodians of governmental responsibility in their own constitutionally assigned spheres of activity, but are also the champions of the interests of their respective populations in the politicized process that generates ‘national’ policy at the

federal level. In effect, the provinces ‘govern’ in their own areas of jurisdiction, but they also act as legitimate ‘lobbyists’ in the areas of federal jurisdiction that are of particular interest to them. In so doing, they help to sensitize federal decision-makers to the particular needs and preferences of citizens living in the various localities that make up the country as a whole. This sensitizing task is also performed by the federal-provincial distribution of powers itself, by Members of Parliament, by the formal provisions that determine the composition of the Senate, by the unwritten conventions governing the composition of the Cabinet, by the representations of private sector and public service interest groups, by the media, and so on. But the lobbying of the provinces is an important part of the process as a whole. The provinces ‘rule’ in their own spheres. They ‘play politics’ in the federal sphere. And their political responsibility for doing so gives them a legitimate ‘need to know.’

- 6) Finally in our discussion of the policy-making process in foreign affairs, it may be useful to take explicit note of the fact that everything that is done in foreign policy – certainly everything that is accomplished in foreign policy – is dependent also on circumstances abroad, and on the character of the opportunities and constraints to which these circumstances give rise. International politics is just that – ‘politics’ – and in pursuing it, the champions of Canada encounter the champions of other states. Interests often conflict, and capabilities vary. In some cases, Canada’s political and other assets may be very substantial, and importantly augmented by those of like-minded friends abroad. In others, the capacity of Canadian negotiators to get what Canadians want is extremely limited. Assessing the prospects for success is thus one of the more important of the many calculations that influence the decision-making process, and the assessment can be complicated by the need to keep diplomatic channels in good repair over the long haul, to recognize that not all issues are of equal importance and hence that priorities have to be set, to determine whether the ‘timing’ is right given the pertinent domestic circumstances confronting policy-makers in the other states involved, to decide which forum might be the most advantageous environment within which to pursue the Canadian objective, and so on. It is, in fact, the intrusion of these other considerations – central as they are to the practical conduct of diplomacy – that is most frequently responsible for DFAIT’s apparent thwarting from time to time of the preferences of other actors in government. The ‘big picture’ gets in the way of the ‘little picture.’ The inevitable result is a quarrel over what should be thought of as ‘big’ and what should be treated as ‘little.’ And in contests of that sort, a now-famous aphorism beloved by students of bureaucratic politics clearly applies: “Where you stand depends on where you sit.”²⁴

It follows from the foregoing that the making and conduct of foreign policy, taken as a whole, is a highly complex and politicized process, involving the interplay of a large array of governmental actors at home and abroad.. These in turn are often supported by powerful and vociferous – if frequently divided – constituencies. Occasionally, the policies required for the resolution of a particular problem will be so clear – and so important – that senior decision-makers will cut quickly to the chase. In other instances, the matters at issue will be so trivial or routine that they can be dealt with more or less mechanically, and with a minimum of fuss, at the administrative level. In most situations, however, multiple interests will be at stake, and

the politics of complexity will ensue. These are precisely the kinds of situations with which the authorities in Newfoundland and Labrador have been most concerned. It may be useful, therefore, to draw attention to their most central characteristics.

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The 'Foreign Policy' Agendas of Newfoundland and Labrador - Themes, Properties and Problems

It should be noted at the outset that there is nothing particularly new about the province's current frustrations in relation to the federal conduct of Canadian foreign policy. While the particular issues in dispute have sometimes varied from one jurisdiction to another, other provinces have had similar experiences and difficulties.

In the case specifically of Newfoundland and Labrador, there is a long history in particular of concerns arising in the context of international negotiations bearing on both multilateral and bilateral agreements for the governance of international trade, on the conduct of Canada-U.S. defence relations (with particular reference to the fate of American military bases on NL territory), on the further development of the international Law of the Sea in the middle 1970s (the creation of the 200-mile Exclusive Economic Zone being of particular importance), and on the dispute with France over the location of the maritime boundary with St. Pierre and Miquelon. Even in cases where there has been general agreement between the federal and provincial authorities on basic purposes and objectives (as in the case of the negotiation of the Canada-U.S. Free Trade Agreement), there has sometimes been a sense in St. John's (as elsewhere) that provincial acquiescence was being taken for granted, that provincial authorities were being left too much outside the loop. It was not uncommon in the early decades of the post-war period for provincial public servants and their political superiors to feel that they were being treated with indifference, and even with condescension, by their federal opposite numbers in what was then called the Department of External Affairs. The sensation was sometimes shared even by officials in other federal departments. The inhabitants of 'External' were widely regarded as a public service elite, and they sometimes put their status on tiresome display.

In some instances, of course, the resentments that ensued were compounded by substantive policy differences, or by the conviction in Newfoundland and Labrador that the provincial interest would be much better served if only the federal authorities tried a little harder, and there is no question that in some areas the vigour of the federal diplomatic effort on the province's behalf was constrained by preoccupations of a wider sort. Given the differing responsibilities of the two levels of government, and given that Ottawa has to be responsive to the country as a whole and not just to the residents of a single province, this was to some extent inevitable, and the phenomenon is likely to recur.

It is not, moreover, a misery common only to the 'have-nots'. The fury of Alberta over the federal approach to the management of energy exports to the United States at the time of the National Energy Policy is one example that comes readily to mind. The fury of British Columbia at various stages in the evolution of the Pacific salmon dispute is another. The underlying problem is thus not peculiar to Newfoundland and Labrador. That may or may not be a source of comfort. But in assessing the issues that are currently in play, it needs at least to be understood.

The matters on the ‘foreign policy’ agenda of Newfoundland and Labrador at the moment share a number of obvious characteristics, but some of them have clearly been more troublesome than others. In substantive terms, the list of contentious, or potentially contentious, issues with which the Commission has been provided by provincial authorities includes 14 items. Some of them have a long history, but they are distinguished here by virtue of their being continuing sources of grievance or concern. The observations that follow thus apply to matters that are still relevant to government policy and public debate. Issues that are no longer on the practical agenda (even if they are sometimes raised in public discourse as evidence from the past of the kinds of difficulties the province typically confronts) are *not* included in the analysis.

Five of the 14 currently-relevant issues relate directly to the fishery, as follows:

- 1) the loss of access to the European market for shrimp that results from the EU Tariff on Shrimp Imports;
- 2) the loss of access to the U.S. market for seal products as a result of the Marine Mammal Protection Act passed by Congress in 1972;
- 3) the need to establish a Canada-controlled custodial management regime for the nose and tail of the Grand Banks and the Flemish caps (areas that lie beyond the 200-mile limit);
- 4) the related need to deal with the inadequacy of NAFO as a resource-protection regime for the fishery outside the EEZ; and,
- 5) the reluctance of the federal government to make more aggressive use of port closures as a means of disciplining – and deterring – violators of NAFO conservation agreements.

The EU Shrimp Tariff and the U.S. Marine Mammal Protection Act are as much trade issues as fisheries issues, the damage to the interests of Newfoundland and Labrador emanating in the first case from a traditional tariff, and in the second from what amount to non-tariff barriers (or NTBs). In addition to these, three other trade-related issues seem to be of concern:

- 1) Newfoundland and Labrador would like to see a further strengthening of the North American Free Trade arrangements – an objective now very much on the Ottawa agenda – but *not* at the expense of certain protections at home;
- 2) Newfoundland and Labrador is anxious to ensure that any settlement of the softwood lumber dispute with the United States not be reached in a way that compromises the interests of Atlantic Canadian exporters, who have thus far escaped the adverse application of the pertinent American countervails; and,
- 3) Newfoundland and Labrador, in the context of the pursuit of a Canada-EFTA free trade agreement, is concerned that Ottawa may agree, under pressure from Norway, to give up the current 25 per cent tariff in support of the ship-building industry in Atlantic Canada in return for a Norwegian commitment to remove its own export subsidies in the same field.

Three other issues are linked to “defence,” but in fact are about money.

- 1) The first has to do with the desire of Newfoundland and Labrador to ensure that the maximum possible use is made of CFB Goose Bay for flight training purposes, recognizing that the current training arrangements with the United Kingdom, Germany, the Netherlands and Italy expire in 2006. The province would like to be directly involved in future discussions of this issue.
- 2) The second is concerned with the province's interest in seeing that the federal government take more aggressive action to ensure that the United States covers the cost of environmental clean-up at the former U.S. military base at Stephenville.
- 3) The third – not really a 'foreign policy' problem at all – reflects the advantage that would accrue to the province if a larger contingent of the Canadian Forces – more specifically, Maritime Command forces – were based in Newfoundland and Labrador.

A twelfth issue relates to boundaries, but it, like the first five, is really about the fishery. Specifically, it concerns the problem of how to ensure that the straddling fish stocks in the waters included in the territorial sea of St. Pierre and Miquelon and in the adjacent Canadian areas are effectively managed. In substance, this is a problem not unlike the one arising in relation to the nose and tail of the Grand Banks and the Flemish caps, except that the waters at issue are now clearly within the jurisdiction of France rather than being part of the "high seas."

Of the remaining two issues, one concerns the Newfoundland and Labrador interest in seeing that the federal authorities carry through with their commitment to ensure that new immigrants to Canada are concentrated in a reasonably equitable pattern across the country, instead of being concentrated (as they currently are) in a handful of major metropolitan areas. The other relates to the view of the Government of Newfoundland and Labrador that the Kyoto Accord on climate change and the emission of greenhouse gases not be ratified until an implementation plan has been worked out with the provinces (including Newfoundland and Labrador) and other stakeholders.

Ottawa has now publicly declared itself in support of the substance of the NL position on immigration – a position shared by all the other provinces except Quebec.²⁵ For a variety of reasons, however, the decision may prove difficult, not only from the legal²⁶ and political²⁷ but also the administrative²⁸ points of view, to put into practice. Time will presumably tell.

The Kyoto Accord, on the other hand, has already been ratified, so that the federal authorities – contrary to provincial preference – are effectively seeking to secure internal agreements on how to meet the challenges of implementation *after*, rather than before, the fact.²⁹

A number of general observations can be made about this package of issues, among them the following:

- 1) All of the issues fall into the "functional" category rather than the "high politics" or "classical" issue-areas associated with traditional statecraft. Even the ones that ostensibly bear on the conventionally 'statist' domain associated with national defence are in fact about money, and not about security policy. More precisely, in two of the three defence-related cases they are about the way in which the administration of the defence apparatus could be used to stimulate the economy of Newfoundland and

Labrador. In the third case, the objective is to get the United States to shoulder the cost of cleaning up an environmental mess that its Air Force has left behind. Even in reference to the custodial management of the fishery beyond the 200-mile EEZ, the purpose that the authorities in St. John's seem to have in mind is the power only to manage the resource. While some commentators in the province appear to favour a more aggressive strategy – one that would entail the extension of the Exclusive Economic Zone beyond the current 200-mile limit – the official position is apparently more modest. If the intention actually *were* to establish full Canadian sovereignty over the area in question, of course, this *would*, in fact, put the issue into the “high politics” domain.³⁰

- 2) Ultimately, ALL of the issues are really about economics – at least, in the first instance. Given that the way in which we all live depends in large degree on the resources at our disposal, the issues obviously have social and public service implications as well, and in the case of Newfoundland and Labrador, these secondary consequences are particularly significant. This is partly because of the small size and lack of diversity that characterize the province's economy – features that ensure that a serious problem in any single area of economic activity will have an exceptionally significant impact. The variety of economic alternatives being very limited, the capacity to absorb shocks and re-allocate labour is tightly constrained. In the case particularly of the fishery, the severity of the problem is intensified also because the economic activities involved are so closely interlocked with the way in which communities are organized and with their social and cultural life. But, to repeat, all of the issues bear in the first instance on the underlying need to advance the economic development of the province and the prosperity of its citizens.
- 3) All of the issues, moreover, bear on policies (actual or potential) that clearly fall within federal jurisdiction, even though they may have a greater salience for the people of Newfoundland and Labrador than for anyone else. None of them represents a case in which the federal government is invading, or attempting to invade, the constitutional jurisdiction of the province. The underlying problem, therefore, is not a legal or constitutional one, but a political one. In essence, the province wants to ensure that the federal authorities exercise the powers that are properly at their disposal in a manner that more consistently serves that portion of Canada's citizenry who happen to live in Newfoundland and Labrador.
- 4) In the case of most (not all) of the issues on the list, any conclusion that would be regarded as satisfactory by the Government of Newfoundland and Labrador would depend on obtaining concessions from a foreign power or an international agency. This is particularly true of the following nine issues: the EU Shrimp Tariff, the U.S. Marine Mammals Protection Act, the custodial management of the fisheries beyond the 200-mile EEZ, the strengthening of the NAFO regime, the preservation of the Newfoundland Fish Inspection Act in the context of attempts to deepen the NAFTA, the continued maintenance of a protective tariff for Atlantic Canadian ship-builders under the provisions of any pending Canada-EFTA free trade agreement, the continued and/or expanded use by allied powers of the Goose Bay training facility, the reimbursement by the United States of the costs of the Stephenville clean-up, and the introduction of

a straddling stocks management regime in the waters around St. Pierre and Miquelon. The same circumstance could also apply to the softwood lumber dispute, although this would be true only if the Americans forced Ottawa to make concessions that would have to be borne by the lumber industry in Atlantic Canada as part of their price for agreeing to a compromise solution to the current problem (which is particularly difficult for British Columbia and Ontario).

- 5) In the case of four of the remaining five issues – and possibly in the case of the fifth as well – decisions that would be advantageous to Newfoundland and Labrador could conceivably be damaging to other provinces in Canada, and hence they, too, set up an environment of ‘cross-pressures’ for the federal authorities. A re-assignment of Canadian Maritime Forces, for example, could benefit St. John’s but do damage in Halifax. Similarly, the effective management of the immigration process to ensure that a reasonable number of immigrants took up residence in Newfoundland and Labrador might make it more difficult for communities elsewhere to meet their labour requirements.³¹ Still again, a more aggressive use of port closures to discipline the excesses of foreign fishing fleets might adversely affect the interests of ports elsewhere in Atlantic Canada without their having any prospect of reaping compensation in the form of enhanced income from the fishery.³² Similar inter-provincial trade-offs could conceivably be involved in a softwood lumber settlement (NL’s fear, after all, is that the trade-offs might be made to Atlantic Canada’s disadvantage), and the same could obviously happen in the context of intra-Canadian negotiations over the implementation of the Kyoto Accords (the already-announced exemption of the auto industry, for example, may have the effect of increasing the size of the burden that will have to be carried by other players).
- 6) Virtually all of the cases that have international dimensions arise in contexts in which Canada is dealing with other issues and interests on its agenda as well, so that, from the (federal) “conduct of foreign policy” point of view, it is difficult to treat the problems that are of particular concern to Newfoundland and Labrador as if they were unrelated to other considerations. More specifically, the Newfoundland agenda intrudes above all on relations with the United States, the European Union, and the international system at large (the latter being represented institutionally by NAFO and more functionally by elements of the international Law of the Sea). These are all contexts that have a bearing on a multiplicity of Canadian concerns, some of them substantive and others ‘procedural’. The matters that are of particular concern to Newfoundland and Labrador may not in practice be ‘linked’ – that is, NL issues may not be subject (*explicitly*, at any rate) to trade-offs against other issues on the Canadian agenda. In the case of the Canada-U.S. relationship in particular, Ottawa much prefers to deal with disputes on a case-by-case basis, which gives them a somewhat better chance than they would otherwise have of being resolved ‘on the merits’ and at the bureaucratic level. But even so, there will be concerns about over-loading the agenda and trying the patience of Canada’s opposite numbers abroad. More specifically, there is almost always a strong incentive, particularly in dealing with greater powers, to cultivate the general amicability of the international relationship concerned in order to preserve ‘access’ and maintain a favourable negotiating climate over the longer haul. Even in the case of NAFO and the ‘regime’ that is effectively imbedded in the international law of the sea, there will be a tendency to avoid ‘rocking the boat’ in order to pursue what academic students of foreign affairs have sometimes described as “milieu goals”

– goals related, among other things, to the general strengthening of a rule-ordered international environment.³³

Taken together, these various characteristics have the effect of converting the issues on the NL ‘foreign policy’ agenda into objects of ‘politics’, pure and simple – the kind of politics that determines who gets what, when and how. The play of this kind of politics *internally* (not externally) is in principle subject to the influence of constitutional change – for example, changes that would guarantee the placement of a much larger number of NL representatives in the institutions of power at the federal level – but in practice this is not a feasible option. The population of Newfoundland and Labrador currently accounts for only 1.7 per cent of the Canadian total, and in recent years it has been dropping dramatically. Like the other smaller provinces, Newfoundland and Labrador is already over-represented.

This means that any hope of giving the foreign policy interests of Newfoundland and Labrador greater play in federal priorities will have to depend on a combination of procedural practices and raw politics, rather than on constitutional adjustments. The implications of this conclusion will be taken up below.

Before turning to that issue, however, there is need to respond to something else.

The Federal Performance – An Assessment

The Commission has requested a general assessment of “how Canadian foreign policy has dealt with Newfoundland and Labrador’s interests, and the extent to which those interests have been treated reasonably and fairly within the confines of Canada’s international position.”

To some extent, this is a matter of raw, and highly subjective, judgment, and the aphorism cited earlier comes once again immediately to mind: “Where you stand depends on where you sit.” Sitting in the peanut gallery may serve in some measure to diminish the impact of self-interest – and certainly the interests of office – on the conclusions that are drawn. But in matters of this kind there is probably no such thing as complete freedom from predisposition. The observations that follow are not, and could not be, emanations from a well-established ‘science’. In response to them, even in the light of a shared body of evidence, honest folk can honestly disagree.

With this caveat firmly in mind, it may be useful at the outset to distinguish among cases in which the federal authorities (from the point of view of Newfoundland and Labrador) are:

- 1) not trying at all;
- 2) trying ‘for show’ – trying, that is, with a view to appeasing domestic demand, but with no expectation whatever of winning;
- 3) thinking about trying, but not having decided yet (or delaying fire while waiting for a propitious opportunity to act);
- 4) half-trying – trying, that is, for *some* of what the province wants, but not for all of it;
- 5) trying honestly and hard, but failing to win;
- 6) trying honestly, with the outcome still uncertain; and
- 7) trying and winning.

It should be noted that some cases may fall into more than one of these categories. On the other hand, the seventh category – “trying and winning” – need not detain us here at all, since cases of that sort are obviously not problematic from the NL point of view. Hence, there are no clear examples of them among the ‘problematic 14’. There is no evidence, either, of a Category (2) instance (“trying ‘for show’”), although there have certainly been examples of such behaviour – almost always in response to insistent domestic pressure – in other aspects of Canadian foreign policy.³⁴

There is also, perhaps, an eighth category, involving cases that may become problems for Newfoundland and Labrador in the future, and hence have attracted pre-emptive consideration in St. John’s already, but are not yet actively on the agenda. Two of the 14 cases – the protection of NL fisheries interests in the event of negotiations to deepen the NAFTA, and the continued exemption of the Atlantic softwood lumber interests from U.S. CVD action in any compromise settlement of the ongoing softwood lumber dispute – appear to be of this general type. In addition, the question of how newcomers to Canada are distributed across the country may fall

partly, although not entirely, into this category (since the federal authorities agree with NL on the policy principle, but have yet to indicate how they will deliver on the substance).

Leaving the NAFTA and softwood lumber cases to one side, 12 cases remain, and it seems reasonable to assign them to the five categories that are particularly pertinent to this analysis as follows:

Category 1 (not trying at all):

- 1) EU tariff on shrimp exports (To the extent that something might be done about this down the road, it may have a Category 3 (thinking about trying) dimension, as well, but at the moment the shot seems rather long).
- 2) Custodial management beyond the 200-mile limit.
- 3) Canada-EFTA Free Trade Agreement, and protection for ship-building.
- 4) Stephenville environmental clean-up.
- 5) Military presence – the stationing of a larger contingent of the Canadian Forces in Newfoundland and Labrador.
- 6) Implementation of the Kyoto Accord (The federal authorities ratified the Accords without first negotiating an implementation plan with the provinces; on the other hand, they are negotiating *now*. Some might therefore call this a Category 4 (half-trying). But it can also be argued that they are negotiating now only because they *have to* – that is, because the federal-provincial distribution of powers leaves them without any choice).

Category 2 (trying ‘for show’):

None.

Category 3 (thinking about trying):

- 1) The impact of the U.S. Marine Mammal Protection Act (1972) on the export of seal products to the American market.
- 2) Continued and expanded use of CFB Goose Bay for low-level flight training.

Category 4 (half-trying):

- 1) Port closures to discipline NAFO violators (Ottawa is prepared to do this in extreme cases, but not in as many cases as NL authorities would like).
- 2) St. Pierre and Miquelon - management of straddling fish stocks. (Ottawa supports NL’s underlying concern, but is not prepared to pursue it by the particular instruments advocated by the NL government).

Category 5 (trying but failing):

- 1) NAFO enforcement. (Ottawa has really tried very hard here, even to the point – in the context of the ‘Turbot War’ – of mobilizing Maritime Command and

other enforcement assets. One of the consequences was a quite significant deterioration in Canada's capacity to negotiate effectively with the EU on other issues. The residue of Spanish hostility, for example, led to the exclusion of Canada from the negotiations that led to the conclusion of a so-called "Action Plan" for closer trade, political and security co-operation between the EU and the United States, and forced Ottawa to pursue a second-best bilateral arrangement a year later.³⁵ On the other hand, it has NOT accepted the NL view that the problem warrants a unilateral take-over of custodial management and enforcement entitlements. Some might therefore prefer to assign the NAFO case to Category 1 (not trying at all).

Category 6 (trying honestly, with outcome still uncertain):

- 1) Immigration - internal distribution of newcomers to Canada.

Category 7 (trying and winning):

None.

In coming to general conclusions about the foregoing, while keeping in mind both the constraints on the behaviour of the federal authorities on the one hand, and the aspirations of the Government of Newfoundland and Labrador on the other, it may be useful to break the items down into three groups. The first group would include the issues upon which it is reasonable to suppose that Ottawa has significant room to manoeuvre, should it decide to pursue the NL interest; the second would be composed of issues over which it has *some* room to manoeuvre, but probably not much; and the third would be made up of the issues in which the interests of Newfoundland and Labrador, as these are now defined by the authorities in St. John's, are virtually certain to be overrun by competing considerations that the federal government has to take into account.

Seven of the issues seem to fall clearly into the first of these three groups. This is certainly true of the NAFTA, softwood lumber and Kyoto Accord cases. Negotiations to deepen the NAFTA are still on the drawing board, and may never occur; if they do occur, they may not threaten the NL interest. The softwood lumber dispute is still on-going, but there is every reason to suppose that vigorous action by the Atlantic Canadian provinces will prevent Ottawa from agreeing to a solution that would impose new (CVD) penalties on them in order to relieve the pressure on the lumber industry elsewhere in the country (even assuming that such a solution were to be advocated by the American side). In the case of the implementation of the Kyoto Accords, where negotiations are just beginning, the Government of Newfoundland and Labrador (like the governments of many of the other provinces) may have considerable bargaining leverage (a) because its position will be shared by other provinces, and (b) because it cannot be forced (although it can certainly be enticed) to act in its own areas of jurisdiction in ways that are contrary to its own will.³⁶

It also has considerable room to lobby Ottawa on flight training at CFB Goose Bay, not least because the facility has been regarded by several of the allied powers as particularly useful for the purpose. The main constraint here may be a function less of any drive in the

Department of National Defence for further base-rationalization than of training decisions taken by other countries as they assess their defence requirements in a rapidly changing international environment.

Subject to the constraints already discussed, the distribution of immigrants is also a matter upon which Ottawa has considerable room to act, and is clearly in the process of doing so.

Finally, while the federal authorities regard port closures as an instrument of enforcement that they would prefer to avoid – they can generate serious diplomatic costs, and have unpleasant repercussions in other areas – the degree to which they are used is just that, a matter of degree. With appropriate pressure, in appropriate circumstances, it is not impossible that Ottawa could be induced to use them more, and there is support for doing so in the Department of Fisheries and Oceans. DFAIT's concerns are not necessarily the decisive elements in the decision-making.

Four of the issues are considerably more difficult from the federal vantage point than the first six, but from the NL point of view there may still be at least a little room for productive importunity. In the case of the Stephenville clean-up, it seems unlikely that the federal authorities at this stage will push the Americans very hard. This is partly because the issue, first unearthed in 1995 but pursuant to the closing of the base as long ago as 1966, is now somewhat 'cold'. That being so, the United States may feel little obligation to treat it as a serious issue on the Canada-U.S. agenda, an attitude that Ottawa will recognize as being difficult to overcome. More significantly, however, the federal authorities may be inhibited by the fact that they have so many other issues to pursue, and by their sense that the Americans are already dissatisfied with what they perceive to be Canada's 'cheap ride' performance in the defence field more generally. This problem has been greatly aggravated in recent weeks by the federal government's decision not to give direct military support to the American intervention in Iraq – a decision whose adverse impact on Canada-U.S. relations has been compounded by the prevarication that typified the manner in which the decision was reached, and by the stunningly tactless and irresponsible utterances of certain federal politicians and officials. The fact that the decision itself has been defended on 'process' grounds – the want of an adequate and appropriately distributed array of supportive votes in the United Nations Security Council – rather than on grounds rooted in national interest or in a serious analysis of the probable consequences of the intervention itself – has only made the problem worse. The Canada-U.S. relationship is thus in serious need of repair. In such circumstances, the Americans are bound to be even less willing than usual to respond favourably to requests of the kind that Newfoundland and Labrador would like Ottawa to make in the Stephenville case. The federal authorities know this very well, and hence will focus on more promising avenues for remedial initiative.

All that being so, and if the matter is truly serious, Newfoundland and Labrador might be better advised to renew its pursuit of compensation from Ottawa itself, rather than trying to persuade DFAIT to chase the Americans on NL's behalf. The damage, after all, came from activities pursuant to arrangements deriving from the federal responsibility to provide for the defence of Canada. The fact that the activities that originally caused the problem resulted from the operations of allied rather than Canadian forces is secondary. In the end, the question at issue is very simple: Who should pay? Newfoundland and Labrador did not create the problem, nor did the damage itself flow from the exercise, directly or indirectly, of a provincial

responsibility. On the face of it, it would seem that Ottawa should do the paying, and then, if it wishes, take up the matter of compensation with the Americans on its *own* behalf.

There is probably no more than a marginal prospect of success in the case of the proposal to increase Canadian Forces deployments in Newfoundland and Labrador, and it seems unlikely that any potential gains could be more than token. From the province's point of view, this may well be an infuriating circumstance. The Department of National Defence estimates that its net expenditures (that is, total expenditures less revenues "received by the Department for the provision of goods and services") in the province in fiscal 2001-2002 came to just over \$33 million – the lowest figure by far of any province in Canada. The number may seem particularly galling because the NL *revenue* figure (resulting mainly from the provision of flight training services to allied powers) is over \$102 million, and is narrowly exceeded only in the cases of Ontario (\$122 million) and Alberta (\$110 million).³⁷ The sense of irritation may be heightened by the widespread assumption (not without foundation) that the internal deployment of military assets within Canada has a long history of being driven by political rather than operational criteria – a phenomenon that extends also into the realm of defence procurement.³⁸

Part of the difficulty now, however, results from the fact that political leaderships in Ottawa in the 1980s and early 1990s took aim at the economic inefficiencies deriving from the excessive number of military bases across the country, and began a painful process of rationalization. In so doing, they ran into powerful opposition from both provinces and municipalities, and also from vested interests (sometimes rooted in inter-service rivalries) within the Canadian Forces themselves. A number of bases were successfully closed in 1989 (in Summerside, P.E.I., Portage La Prairie, Manitoba, and London, Ontario), along with four radar stations. But the rationalization process was so powerfully obstructed that in the early 1990s the government established a Minister's Advisory Group on Defence Infrastructure in an attempt to find a mechanism that would help it to deal with the political challenges involved. Additional closures and reductions followed.³⁹ Apart from the practical implications for CF operations, therefore, to say nothing of the probable opposition of other affected provinces, the Forces are unlikely to want now to recreate their original problem. Their natural inclinations in this respect are strengthened by their well-known resource constraints, and by the ensuing incentive to concentrate on getting the biggest bang for the buck.

From the point of view of Newfoundland and Labrador, this problem is compounded by the fact that modern military technology and the current strategic environment are not helpful to the province's cause. The most important bases at issue had their origins in the "destroyers for bases" deal in 1941, when the Americans, even before their entry into the hostilities, had a visible and well-defined security interest in forward deployment and replenishment facilities. In the Cold War period, their interest was reinforced by the need to provide forward surveillance and interception capabilities in order to deal with the threat of a strategic bomber attack by the Soviet Union. This preoccupation declined, however, with the development of Inter-Continental Ballistic Missiles, and now that the Cold War itself has dissipated, U.S. security requirements no longer entail the use of NL territory. Even Canadian deployments, moreover, are being affected by technological change. In 1989, for example, the government announced that the long-range radar establishment at C.F.B. Gander would be dismantled as part of a general modernization programme, and be replaced by more automated equipment requiring the attentions of considerably fewer personnel.

There may still be a little hope here at the margins. It is possible, for example, that appropriately intensive lobbying could lead to the deployment in the province of a larger Search and Rescue establishment. In the event, too, that flight training comes to an end at C.F.B. Goose Bay with the expiry of current allied contracts in 2006, there might be some prospect for making an effective case at the political level for a compensatory alternative investment. Even there, however, it might be wise to think ‘outside the box’ and not to focus only on military options. This is more easily said than done, but it might nonetheless improve the chances of success if the province did not confine its targeting to the Department of National Defence.

There may also be a potential for making gains in the management of straddling stocks in the waters around St. Pierre and Miquelon, but once again this is likely to happen only if the other player (France) comes to see the issue in positive-sum terms, and agrees to co-operate voluntarily. Absent that condition, the federal authorities are unlikely to press the case very aggressively because they think they have already expended too much diplomatic credit with Europeans on fisheries issues, to the considerable detriment of Canadian interests in trade diversification and related matters. It is possible, in other words, that Ottawa could be persuaded to put additional effort into working the file, but the techniques it would then deploy, in a context in which the French would continue to be very protective of hard-won entitlements, would have more to do with reasoned argument than with diplomatic *force majeure*.

Much the same can be said of the NAFO file, where there may be even less prospect of a significant advance because there are so many other uncontrollable players in the game. At the level of officials, certainly, Ottawa will not be willing in the current international climate to act unilaterally to secure a more effective management and enforcement regime. From the federal point of view, the costs would be too high, and the stakes too small. About all that could be expected from a more intensive lobbying effort by the pertinent private and public sector representatives of Newfoundland and Labrador would be a somewhat more vigorous – and perhaps more public – campaign by federal negotiating teams to extract more effective practices from the existing NAFO apparatus.⁴⁰

In the case of the remaining four issues, the obstacles in the way of attaining NL-friendly solutions seem to be so substantial that the prospects for happy outcomes in the near future are extremely remote. As already noted, there is support in some quarters for the notion that coastal states ought to have management rights even beyond the 200-mile limit (especially, but not solely, where the continental shelf extends that far). But the ramifications are far-reaching, and there is nothing to suggest that the international community as a whole wants to re-open the issue on a multilateral basis in the foreseeable future. Canada’s diplomatic capacity to take a constructive initiative here is greatly weakened in any case by its own failure thus far to ratify the Law of the Sea Treaty. On the other hand, it has already accepted the Straddling Stocks Convention, which effectively determines the procedures that it must now follow. That being so, Ottawa is unlikely to do more than make the best it can of the arrangements currently in place, acting pragmatically in response to such opportunities as may arise for useful action within the extant legal framework. Certainly in the foreseeable future, there is little prospect of an aggressively unilateral Canadian initiative on this issue, even if there have been occasions in the past when forceful undertakings of precisely this kind have ultimately triggered the negotiation of treaties – or parts of treaties – creating new international law.⁴¹ Such stratagems work best when the timing is right and the circumstances are opportune. They

also work best when their deployment is recognized by all concerned as a reluctantly-pursued exception to normal practice, launched only as a last resort and in response to visibly desperate circumstance. In the context under discussion here, these conditions do not hold.⁴²

A similarly overwhelming problem applies also in the case of the Marine Mammal Protection Act (1972), since there is no incentive on the American side of the border to support a modification of the existing legislation, and since the legislation itself is not in any case directed solely to Newfoundland and Labrador (or, for that matter, solely to seals). On the contrary, any attempt in Congress or elsewhere to respond to a Canadian diplomatic initiative in support of the NL position (a response that would effectively entail a special exemption for seal products shipped from Newfoundland and Labrador) would almost certainly arouse a howl of protest among environmentalists and wildlife conservationists in the U.S., and there would be little by way of countervailing political reward to attract members of Congress. In the particular case of the seal herds around Newfoundland and Labrador, the environmentalists may be ill-informed. It is even possible that some of them have intentionally exaggerated the issue for political effect, or to support their fund-raising, or to gain leverage for their advocacies in relation to entirely different marine mammal species. Notwithstanding these possibilities, however, Canada's reputation would receive a serious bruising if it attempted to prosecute the issue. Nor does it appear that there would be grounds under either the GATT rules or the WTO to pursue a remedy by the WTO route, since the restrictions in the legislation apply to potential producers in the United States as well as to imports from producers abroad (i.e., the restrictions amount to "national treatment"). Ottawa is therefore likely to continue its stalling stratagem, because it sees no practical point in doing otherwise. This is a windmill. Why repeat Don Quixote's mistake? Even, moreover, if there were a remote prospect of success, the enterprise would still be regarded as ill-advised, given the many other items on the Canada-U.S. agenda, and given the political costs of arousing the ire of environmental enthusiasts.

The case of the EU tariff on shrimp imports is in a somewhat similar category, there being no discernible incentive for change on the European side, and Ottawa not being in a position to introduce such an incentive at reasonable cost, or without engaging in punitive measures that would escalate the politics. In any event, this does not appear to be a case that can be dealt with on a stand-alone basis, and Ottawa's capacity to twist European arms is clearly very limited.

To repeat, the foregoing are judgments – nothing more, nothing less. Others – including others who have 'inside' information or greater technical expertise – might make them differently. But whether the specific judgments are right or wrong, there can be little doubt that there are greater opportunities for Newfoundland and Labrador in some issue-areas than there are in others. The real question, therefore, is whether there is anything that the province can do to maximize its influence over federal behaviour. To this issue, the discussion now turns.

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Canadian Foreign Policy and Newfoundland and Labrador: Strengthening the Hand

In Section 2, sub-section (3) above, it was observed that the ‘foreign policy’ issues of concern to Newfoundland and Labrador do NOT arise from attempts by the federal authorities to invade provincial jurisdiction. Hence the underlying problem is not legal or constitutional, but political. From the NL point of view, therefore, the real challenge is concerned with the question of how to maximize the province’s influence over federal behaviour.

It needs to be said at the outset that there is no ‘magic bullet’ answer to this question. Newfoundland and Labrador, like the other provinces in Atlantic Canada, and increasingly like Manitoba and Saskatchewan as well, suffers from at least two fundamental disadvantages: (1) it has, even by modest Canadian standards, an extremely small population, and (2) its economy lacks weight. Protected though it may be by Canada’s federal structure and the jurisdictional entitlements to which this leads, as well as by significant transfers of public resources from elsewhere in the country, it remains (with others) a have-not province, and its role in determining who gets to rule at the national level is very limited. These are irritating – sometimes debilitating – circumstances. But they are real, and they cannot be wished away. The question is how to make the best of admittedly disadvantageous political realities – how, in effect, to compensate for lack of political ‘clout’.

Brief commentaries on what seem to be the available possibilities follow, along with one or two suggestions with regard to tactical-cum-strategic rules of play.

- 1) **Constitutional Change:** In theory, at least, the most obvious of the mechanisms for enhancing one’s influence in the political system is to re-arrange its institutions to one’s own advantage. In the current context, and in practical terms, this would entail above all increases in the number of NL representatives in the House of Commons, the Senate, or both, and possibly some re-structuring of the rules governing the amount of ‘power’ they actually possess (as in the case of proposals for a so-called “Triple-E” Senate). This is not, however, a very promising prospect for the foreseeable future. In the first place, there is serious resistance in most parts of the country to the very notion that a major process of constitutional revision ought to be launched. In the second place, if such a process *were* launched, it would be subject to an extremely complex array of political forces that would certainly not be very sensitive to NL influence. In the third place, Newfoundland and Labrador would enter the contest at a considerable disadvantage at the level of principle. This is because it is already over-represented, whereas the most significant – and perhaps more easily defended – drive for change would come from quarters that currently feel *under*-represented. Fixing the ‘foreign policy’ problem by re-arranging Canada’s representative institutions is not, in short, a viable proposition.
- 2) **Vigorous Political Representation Inside the Federal Government:** Not surprisingly, this is the peg upon which officials in Newfoundland and Labrador hang most of their hope. They do so because the province has sometimes gained considerable advantage

from the presence in the Cabinet of an unusually forceful and charismatic ‘regional minister’ – a minister capable in the appropriate circumstances of winning the support of the Prime Minister and, in the extreme, of bulldozing aside the importunities and hesitations of federal officials and others in pressing the NL interest. In relation to foreign policy, the performance of Mr. Tobin at the time of the ‘Turbot War’ is everyone’s favourite recent example.

There is no question that this can work. There are two problems, however. The first is that it cannot work every time, or even very often, since ‘bulldozing’ is a blunt political instrument and quickly arouses opposition if overdone. This is particularly the case where its success can only come at the expense of rival interests at home or abroad. Whenever they can, of course, wise ministers will try to fight their wars in gentler style, so that they can preserve the receptiveness of their colleagues to the spectacle of their fighting new wars, or the same wars again, another day. But this is a game of careful political calculation, and playing it well often entails not playing it too hard.

The second and perhaps more fundamental problem is that representation of this kind is contingent on a host of political circumstances, none of which is subject to control by public policy means. It is nice to have a charismatic representative at the Cabinet table in Ottawa. But this requires the recruitment of charismatic individuals into politics. It also requires that they be elected. It requires further that they be elected as members of whatever happens to be the governing party. And it requires finally that the Prime Minister appoints them to ministerial office. Newfoundland and Labrador has had an impressive history of success in meeting all these contingencies. But it has not done so *deliberately*. Certainly it has not done so as the result of carefully calculated initiatives launched by the provincial government. Able people in the province can be urged to run for office, and electors can be urged to vote for them. But this is not a matter for public policy management in the conventional sense.

- 3) **Procedural and Tactical Stratagems at the Parliamentary Level:** It is conceivable that more effective campaigning for the foreign policy interests of Newfoundland and Labrador could take place at the parliamentary level, but for various reasons related to the way in which Canada’s system of responsible government actually works, the prospects for improvement here are obviously somewhat limited. In the first place, the ability of NL Members of Parliament to concert their activities is seriously inhibited by the impact of party discipline. Members of the Opposition can pursue the NL interest against federal resistance in such use of Question Time as is available to them, and in the course of other pertinent parliamentary debates. But this will not be a congenial stratagem for those on the government side of the House, who (informal lobbying efforts aside) will instead apply the pressure in caucus, where they are out of public view. In effect, the divisions of party have the side-effect of weakening the influence of such representation as Newfoundland and Labrador actually enjoys.

To some extent this may be overcome in the proceedings of Standing Committees, where party loyalty is sometimes a less confining force. On the other hand, not all the Members from Newfoundland and Labrador will serve on the same committees, so that their influence as a collectivity is inevitably weakened by the way in which committee obligations are distributed.

The pertinent 'foreign policy' action, moreover, may itself be spread around the committee system. The Standing Committees of the House that are pertinent to the current NL 'issues list' include not only the Standing Committee on Foreign Affairs and International Trade, but also (among others) the committees dealing with National Defence and Veterans Affairs, Fisheries and Oceans, and Citizenship and Immigration. And on top of all this, the underlying reality is that systems of responsible government are 'executive-dominant,' so that the ability of parliamentary committees to influence government behaviour is entirely dependent on whether the Ministers concerned feel free to accept the advice they receive.

These and related realities mean that Members from Newfoundland and Labrador who are not actually at the Cabinet table have relatively limited ability to concert their efforts in attempting to move a resistant federal government to positions more favourable to NL interests. Tacitly and informally, perhaps (and assuming they are all agreed), they can undertake parallel initiatives in seeking out and actively lobbying promising targets of opportunity, but this is probably not a process that can be accelerated on the initiative of the provincial government.

- 4) **Procedural and Tactical Stratagems at the Bureaucratic Level:** There have been proposals from time to time that would see the placement of provincial officials, or officials explicitly charged with servicing specific provincial interests, in pertinent components of the federal bureaucracy itself. Except, however, on a very occasional basis (involving, for example, the temporary secondment of a provincial public servant to Ottawa for para-educational purposes), this would appear not to be a viable prospect for the foreseeable future, and in any case would be a far too elaborate exercise for the purpose of dealing simply with the matters under discussion here.

It should be noted in any event that in the case of fisheries issues, Newfoundland and Labrador already has its own bureaucratic 'home' in the federal sphere, to the extent that the operations of the Department of Fisheries and Oceans are heavily 'regionalized' for fisheries management, licensing, scientific research and other purposes, and one of its regions is defined so as to include only Newfoundland and Labrador. Among other things, officials assigned to the NL region have independent authority for the licensing, etc., of vessels under 19.8 metres (65 feet) in length.⁴³ From the point of view of provincial governments, no doubt, this organizational principle can sometimes be a mixed blessing, since it means that DFO will be inclined on many issues to deal directly with fisheries constituencies in a way that effectively leaves the provincial authorities 'out of the loop.' In practice, however, this appears to be less true in the case of the DFO's NL region than it is (say) in the Maritimes region. The climate of expectations in Newfoundland and Labrador seems to have made the Department somewhat more attentive to the consultative expectations of the authorities in St. John's than it sometimes is in other provincial capitals, where the division of labour is more clearly defined. The practice in Newfoundland and Labrador also appears to have been fortified in some respects by explicit agreements and understandings.

Taking all this into account, therefore, the real issue is whether anything can be done, within the broad parameters set by current bureaucratic arrangements, to enhance the attentiveness of federal officials generally to NL 'foreign policy' concerns.

For the reasons already indicated, this is not a question that in practice applies only to the Department of Foreign Affairs and International Trade, which in many areas will be acting abroad in the service of, and in conjunction with, another federal department. The lead federal department in dealing with NAFO, for example, is Fisheries and Oceans, not Foreign Affairs.⁴⁴ DFAIT representatives certainly attend NAFO meetings to ensure that DFO positions are consistent with the Canadian position on other relevant external issues, but beyond that Foreign Affairs is not the policy driver.

Having said that, in other areas it may well be the case that federal officials are sometimes loathe to invite their provincial counterparts to involve themselves in the policy-making process (at whatever stage) because they know this will only intensify irreconcilable differences, complicate their own capacity to develop a coherent and defensible negotiation position, inhibit their ability to make the compromises that they regard as essential to the successful conclusion of an international agreement, and so on. They may also be reluctant to deal at close quarters with provincial representatives if they feel the latter are under-informed and difficult to ‘educate’ in the time available; or that they are too bound (however understandable this may be) by the needs of their own constituencies to be helpful to the making of policies that need to accommodate ‘national’ requirements; and so on. In circumstances of this kind, the advantages, from the federal point of view, of the *fait accompli* can make it a magnetically attractive option.

That being so, it is entirely reasonable for provincial authorities to insist that they be reasonably treated – for example, that they be kept properly briefed by federal authorities on an on-going basis, that briefings on new issues be provided with sufficient advance notice to allow provincial authorities to investigate their implications and develop a considered view of their own interests, that they be given genuine (as opposed to merely cosmetic) opportunities to make their needs and preferences known at an early stage of the policy process, and that they be given opportunities in appropriate contexts to act as on-site advisers and observers to federal negotiating delegations.⁴⁵ It should be understood, moreover, that pressing for such entitlements is (a) completely in line with official DFAIT policy on how to accommodate the provinces in the conduct of foreign policy,⁴⁶ and (b) completely in line also with the putative purpose of the Department’s on-going commitment to “consultations with Canadians.” The personnel and other resources devoted to the latter have escalated enormously in recent years, often with no more than marginal results in ‘policy development’ terms. In many cases the process has clearly had more to do with ‘legitimation’ than with a genuine search for policy advice, and it can be argued that intensifying the consultative effort at the level of provincial officials would be a more useful and instructive expenditure of tax dollars.

In this context, the province may wish to consider whether it should press Ottawa to agree to some formal protocols that would define more clearly the circumstances under which it would be obligated to consult with the provinces in relation to foreign policy issues, and the mechanisms that would be employed for this purpose. Such an initiative would almost certainly be resisted by the Department of Foreign Affairs and International Trade, if only because such arrangements would diminish its own freedom to manoeuvre. That being so, it would have to have the strong support of at least some of the other provinces. The idea has apparently been mooted in the past by Alberta and Quebec, but without success, which suggests that other allies would need to be added to the mix.

Whether formalized or not, it should be emphasized that regular and reliable practices of consultation are no guarantee of happy outcomes. By themselves, they will not do away with countervailing political realities, and having the right to be consulted is not the same as having the right to win. But provincial authorities certainly have an entitlement to be heard, and if they are not, they should have no hesitation in banging hard on the door.

- 5) **Forming Alliances with Other Provinces:** One of the more obvious ways in which provinces that are politically weak can amplify their position is to take a leaf from Canadian diplomatic practice, and act in concert with others. It can be argued here that one of the major weaknesses in the behaviour of Atlantic Canadian provinces more generally has been their inability to concert their positions as effectively as they might have done when dealing with the federal government. When the provinces are able to combine their positions – as they are currently doing in significant degree, for example, in relation to the implementation of the Kyoto Accord – they can sometimes greatly enhance their influence. Unfortunately, in the case of many of the issues on the NL ‘foreign policy’ list, the formation of such alliances is difficult, either because the issue in question is uniquely the preoccupation of Newfoundland and Labrador and has no interest whatever for anyone else, or because other provinces have interests that actually conflict. Clearly in the case of softwood lumber, however, there is a comity of interest with other parts of Atlantic Canada, and to some extent Quebec. This seems to be true also of the shipbuilding tariff at issue in the Canada-EFTA negotiations, as well as the immigration and environment issues. On the other hand, a re-deployment of bases required by Maritime Command could generate a straight fight with Nova Scotia, among others.

This is not, in short, a strategy that can be employed every time, but it is nonetheless possible that it could be used more often.

- 6) **Forming Alliances with Private Sector Interests:** In some instances it may be possible to amplify the capacity of the province to gain the attention of federal authorities by co-ordinating lobbying initiatives with those of private sector organizations, and perhaps even by working informally with friendly Members of Parliament. It seems likely that activities of this kind occur from time to time in any case, but perhaps more by happenstance (or even by federal invitation) than by deliberate orchestration at the provincial level. Such co-ordination is not always appropriate. It is never easy or cost-free. And it can lose impact if overdone, or too frequently done. Nonetheless, if provincial authorities feel that not enough of Ottawa’s attention is being given to their needs and preferences, there may be a case for enlarging the wheel and making it squeak. The problem is ultimately a political one, and dealing with political problems often requires the playing of politics.
- 7) **Maintaining a Provincial Office, or ‘Mission’ in Ottawa:** To facilitate action under items 3, 4, 5 and 6 above, it might be worth considering the establishment of a permanent provincial office, or ‘mission’, in Ottawa, reporting ultimately to the Premier, but perhaps bureaucratically to the Intergovernmental Affairs Secretariat. It is obviously difficult for an outsider to weigh (with conviction, at least) the ‘pros’ and ‘cons’ of

such a proposal. Clearly an initiative of this kind would entail on-going administrative costs for the provincial government. Some of these might conceivably be lessened if the effect of the arrangement were to reduce some of the current workload of the St. John's office of the existing Secretariat, so that personnel already on the payroll could be transferred to the Ottawa location. But it would be naive to assume that the job could be done properly without an injection of new resources. *Cognoscenti* in the NL public service are presumably in the best position to advise the government on the question of whether the gains would be sufficient to warrant the additional outlay. It is possible that electronic communications are now so pervasive, and so easily and cheaply accessed, that NL representatives at both the political and administrative levels consider their current contacts sufficiently continuous and widespread to meet their needs. To the extent, however, that effective lobbying can be enhanced by a physical presence in Ottawa – and this is certainly the judgment routinely reached by private and service sector interest groups, if they have the requisite resources at their disposal – establishing such an office might be well worth the effort. If thought appropriate, it could be created in the first instance as an experiment, on perhaps a three-year trial basis. The functions of an Ottawa-based staff, of course, would extend well beyond those associated only with so-called 'foreign policy' issues.

- 8) **Forming Alliances with the Like-Minded Abroad:** One of the strategies now frequently employed by the Department of Foreign Affairs and International Trade in dealing with the United States is to work wherever possible in tandem with American interests that share Canadian concerns. In the case of the dispute over acid rain, for example, there was a natural alignment between the environmental concerns of the Government of Canada on the one hand, and those of the New England states on the other – an alignment that also included certain elements of the American environmental lobby. The Canadian Embassy had no hesitation in “working the politics” accordingly.⁴⁷ This is a much more difficult challenge for under-resourced provincial governments – although the game has certainly been played from time to time by the larger provinces (e.g., Quebec, Ontario, Alberta, and B.C.), and there are traces of it in the annual discussions between the New England Governors and the first ministers of Quebec and the Atlantic Provinces. In any event, most of the issues on the current 'foreign policy' list seem not to be very susceptible to this sort of treatment. One possible exception might be the EU tariff on cooked and peeled shrimp, which on the European side seems to serve primarily the interests of processors in Denmark. Instead of trying to get Ottawa to fight the tariff head-on, it might conceivably be more useful to investigate the possibility of working out a constructive solution by promoting cooperation directly between the NL and Danish processors, or by having NL processors establish branch plants in Denmark so that they can do some of the processing in Newfoundland and Labrador, and the final processing in Denmark. Such solutions have apparently been achieved in response to similar problems in other jurisdictions. At the very least, it might accomplish more than a direct assault on the tariff itself is likely to produce.
- 9) **Concentrating on the Possible:** As already indicated, several of the issues of concern to Newfoundland and Labrador seem to be 'lost causes' from the start. The pursuit of an exemption from the application of the U.S. Marine Mammals Protection Act is probably the most dramatic example of an essentially futile endeavour, and it is highly

unlikely that the effort adds to the credibility of the province in DFAIT or anywhere else among the Ottawa-informed. The political need to make the attempt may be difficult for the provincial government to ignore, but attempting to respond to it in this case is almost certainly counterproductive. Ottawa will not accede to the pressure to try, and the province therefore cannot hope to deliver. It would be better advised to concentrate its efforts on the issues in which there is at least some hope for advance.

The foregoing may not be regarded as a particularly inspired account of the possibilities, or of their respective strengths and limitations. The basic realities of the position in which Newfoundland and Labrador finds itself in relation to its 'foreign policy' agenda, however, are very clear, and unavoidably daunting. Its underlying problem is the problem of exercising influence in a context in which other, often-more-powerful, influences are also at work. The challenge is thus in the end a political one, and political games require political play.

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Summary of Suggestions

- 1) Recognizing the limitations resulting from the requirements of party discipline and from general parliamentary procedures and politics, Members of Parliament from Newfoundland and Labrador should make maximum use of their opportunities in Ottawa to co-ordinate their strategies in advancing such interests of their province as they hold in common.
- 2) Provincial ministers and senior officials should lobby their opposite numbers in Ottawa aggressively and consistently to ensure that they are given – well in advance – the information they need and the consultative opportunities they require in order to ensure that their federal counterparts are fully aware of the interests of Newfoundland and Labrador before they embark on international negotiations that are potentially relevant to provincial concerns.
- 3) Further to Suggestion (2), the province should attempt to build a coalition with other provinces in order to press the federal government to negotiate a series of protocols to define more clearly the circumstances under which it would be obligated to consult with the provinces in relation to foreign policy issues, and the mechanisms that would be employed for this purpose.
- 4) More generally, provincial authorities, whenever possible, should seek to act in concert with other provincial governments in bringing the provincial interest to bear on federal decision-makers.
- 5) The province should also seek, in appropriate cases, to form coalitions with private sector interests in attempting to lobby the federal authorities.
- 6) The province should give careful consideration to the potential advantages of establishing a permanent office, or ‘mission, in Ottawa to enhance its capacity for influencing federal behaviour in areas that affect the interests of Newfoundland and Labrador.
- 7) In much the same way, the province should seek to identify and work actively with private sector interests abroad in cases where the support of such interests would facilitate the achievement of provincial objectives.
- 8) The province should concentrate on the causes it has a chance of winning, and avoid tilting at windmills. This may require some active (and possibly unpopular) ‘education’ of its constituents at home.

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Endnotes

1. The purpose of this paper is “to provide an assessment of Canadian foreign policy from the perspective of the interests of Newfoundland and Labrador.” It would not have been possible to write it in the time available without the extensive background briefings provided in writing by the Intergovernmental Affairs Secretariat in St. John’s. I am immensely grateful for their contribution, which was both indispensable and thoroughly professional. I am very grateful also to Genevieve Bouchard of the research staff of the Institute for Research on Public Policy, to my colleagues, Danford W. Middlemiss, Jennifer Smith and Gilbert R. Winham, all of the Department of Political Science at Dalhousie University, and Professors Dianne Pothier and Phillip Saunders of Dalhousie’s Faculty of Law, and to a number of federal government officials for their assistance in responding so helpfully to my inquiries on a number of technical points. None of them, however, has seen what I have written, and none of them should be blamed for it! I also wish to thank the Commission’s Director of Research, Dr. Douglas M. Brown, for his encouragement as well as his authoritative assistance on matters of substance. Finally, I would like to express my appreciation to the two anonymous reviewers of an earlier draft of the manuscript, both of whom offered helpful and constructive comments and suggestions.
2. The first of the new specialists were the military attaches, to be followed somewhat later by commercial agents, immigration agents, and a host of others.
3. See, for example, his *Public Opinion* (New York: Macmillan, 1961), esp. Ch. XVII. Originally published in 1922.
4. Consider, for example, his analysis of “democratic diplomacy” in his *Diplomacy* (New York: Oxford University Press, 1964), pp. 41-54.
5. Trade commissioners and immigration agents had been posted abroad much earlier, in the latter part of the 19th century, but they were not ‘diplomats’. Their task was simply to advertise Canada as a wonderful place to live, work and shop. The first full-dress history of the early Canadian foreign service was H. Gordon Skilling’s *Canadian Representation Abroad: From Agency to Embassy* (Toronto: Ryerson, 1945). The definitive account to date is John Hilliker’s *Canada’s Department of External Affairs: Vol. I - The Early Years, 1909-1946* (Montreal & Kingston: McGill-Queen’s University Press for the Institute of Public Administration of Canada and the Minister of Supply and Services Canada, 1990).
6. There was, perhaps, occasional dissimulation in the claim to be acting in the service of the latter, since what was asserted to be in the interest of the national economy as a whole (e.g., protective tariffs) were often actually in the interest of only a few (e.g., the manufacturing enterprises of central Canada).
7. For a full account of the role of Parliament in the foreign policy debates of the inter-war period, see James Eayrs, *The Art of the Possible: Government and Foreign Policy in Canada* (Toronto: University of Toronto Press, 1961), esp. pp. 103-112. See also Kim Richard Nossal, *The Politics of Canadian Foreign Policy*, 3rd ed. (Scarborough: Prentice-Hall Canada, 1997), p. 266. Nossal’s volume is currently the standard general treatment of the way Canadian foreign policy is made and the internal forces that affect the process.

8. Part of the reason for this was Pearson's concern not to allow his own prominence and reputation in international affairs to overshadow his foreign Minister. Later Prime Ministers proved to be less sensitive to such niceties.
9. Trudeau's approach to these matters has been discussed *ad nauseam* in the literature. For a full-dress early treatment, see Bruce Thordarson, *Trudeau and Foreign Policy: a study in decision-making* (Toronto: Oxford University Press, 1972). A somewhat more recent and sprightly account is J.L. Granatstein and Robert Bothwell, *Pirouette: Pierre Trudeau and Canadian Foreign Policy* (Toronto: University of Toronto Press, 1990), esp. Ch. 1.
10. The final product of the review took the form of a series of six pamphlets under the general title *Foreign Policy for Canadians* (Ottawa: Queen's Printer, 1970). The conceptual exposition is contained in the first pamphlet of the six, and it was sold in the Cabinet with the help of a hexagonal chart in which the various purposes and activities of government were shown to be inter-active with one another and with the domestic and international environments. The Cabinet appears to have enjoyed the intellectual exercise, but it is not clear that Canadian foreign policy behaviour was affected in any practical way as a result of the discussion.
11. The principal ministers are the Minister of Foreign Affairs and the Minister for International Trade. The 'shared' minister is the Minister for International Co-Operation.
12. Since heads of government are themselves the 'last-say' decision-makers, the only way they can attempt to achieve this sort of protective coating is to argue that their capacity to make concessions is seriously confined by public opinion or some other force of domestic politics – a strategy that is sometimes credible, but often not.
13. Whether these consultative practices really *are* more 'democratic' is a matter that has been hotly contested in the literature. See, for example, Kim Richard Nossal, "The Democratization of Canadian Foreign Policy?", *Canadian Foreign Policy*, Vol. 1, No. 3 (Fall 1999), pp.95-105, and "The Democratization of Canadian Foreign Policy: The Elusive Ideal," in Maxwell A. Cameron and Maureen Appel Molot, eds., *Democracy and Foreign Policy: Canada Among Nations 1995* (Ottawa: Carleton University Press, 1995), pp. 29-43. Other chapters in this volume also address the issues involved, albeit from different vantage points. For more recent discussions, see in particular Maxwell A. Cameron, "Democratization of Foreign Policy: The Ottawa Process as a Model," *Canadian Foreign Policy*, Vol. 5, No. 3 (Spring 1998), pp. 147-165; and Marc Neufeld, "Democratization and Canadian Foreign Policy: Critical Reflections," *Studies in Political Economy*, no. 58 (Spring 1999), pp. 97-119. I have ruminated on the problem myself in "Foreign Policy Consultations in a Globalizing World: The Case of Canada, the WTO, and the Shenanigans in Seattle," *Policy Matters*, Vol. 1, No. 8 (Montreal: Institute for Research on Public Policy, December 2000), and "Transnational Pluralism and the 'Democratization' of Canadian Foreign Policy at the Turn of the Millennium," in William Cross, ed., *Political Parties, Representation, and Electoral Democracy in Canada* (Don Mills: Oxford University Press, 2002), pp. 161-180.
14. In the field of foreign policy analysis, this genre of inquiry was kicked off by a famous study of American (and Soviet) decision-making in the context of the 1962 Cuban missile

- crisis. See Graham T. Allison, *Essence of Decision: Explaining the Cuban Missile Crisis* (Boston: Little, Brown, 1971). A discussion of the applicability of the Allison model to the Canadian case can be found in Kim Richard Nossal, "Allison through the (Ottawa) Looking Glass: Bureaucratic Politics and Foreign Policy in a Parliamentary System," *Canadian Public Administration*, Vol. 22, No. 4 (Winter 1979), pp. 610-626.
15. The term is associated with the so-called "disjointed incrementalism" model of how public policy decisions tend to be made in modern states. See David Braybrooke and Charles E. Lindblom, *A Strategy of Decision: Policy Evaluation as a Social Process* (New York: The Free Press, 1963).
 16. Residents of Newfoundland and Labrador may be amused to know that one of the most important of the precedents, confirming Canada's capacity to sign an international treaty on its own behalf, was established at the time of the conclusion of the Halibut Fisheries Treaty of 1923, when American Senators agreed to accept a Canadian signature in lieu of the British. The halibut at issue, however, swam in the Pacific, not the Atlantic.
 17. A very useful documentary review of these and related matters can be found in Howard A. Leeson and Wilfried Vanderelst, *External Affairs and Canadian Federalism: The History of a Dilemma* (Toronto: Holt, Rinehart and Winston, 1973). The Ottawa view was explicated long ago in response to challenges from Quebec. See Honourable Paul Martin, Secretary of State for External Affairs, *Federalism and International Relations* (Ottawa: Queen's Printer, 1968).
 18. Honourable Paul Martin, *ibid.*
 19. The World Health Organization (WHO), for example, or the Food and Agriculture Organization (FAO).
 20. The provinces themselves, of course, do not always bay in unison, as the currently volatile example of the Kyoto Accord attests.
 21. For interesting recent discussions of these and related matters, see Grace Skogstad, "International Trade Policy and Canadian Federalism: A Constructive Tension?" in Herman Bakvis and Grace Skogstad, eds., *Canadian Federalism: Performance, Effectiveness, and Legitimacy* (Don Mills: Oxford University Press, 2002), and Stephen de Boer, "Canadian Provinces, US States and North American Integration: Bench Warmers or Key Players?" *Choices*, Vol. 8, No. 4 (Montreal: Institute for Research on Public Policy, November 2002).
 22. One of the more spectacular cases in relatively recent times concerned the negotiation of the Canada-U.S. Free Trade Agreement – the precursor to NAFTA – in the 1980s, when the Chief Negotiator for the Canadian Side, Simon Reisman, made it clear that he would not allow himself to be hamstrung (as he saw it) during the course of the negotiations by intrusions from provincial authorities (or even other components of the federal government itself). He was prepared to consult with the provinces from time to time, but insisted on having a free hand at the negotiating table. Provincial authorities received briefings, but few of them felt that they were really a part of the process. Interestingly, the way they were treated is differently assessed by different observers. Compare, for example, the

account of Michael Hart in his *Decision at Midnight: Inside the Canada-U.S. Free-Trade Negotiations* (Vancouver: UBC Press, 1994), pp. 137-140, with that of G. Bruce Doern and Brian W. Tomlin, *Faith and Fear: The Free Trade Story* (Toronto: Stoddart, 1991), esp. Ch. 6, entitled “No Seat at the Table.” In recent years, however, there appears to have been considerable improvement, at least with respect to the flow of information. This is partly a result of the ease of communications afforded by the Internet. Confidential interviews. See also Stephen de Boer, *op. cit.*

23. It is interesting to observe that they closely mirror the reactions of many officials and constituency groups to their experience with the practice of “consulting with Canadians” more generally.
24. The phrase is Graham T. Allison’s. See *op. cit.*, p.176.
25. Quebec appears not to be opposed to the objective, but, having its own immigrant selection system, it has no interest in federal initiatives in this area.
26. The initiative may be open to challenge under the mobility provisions of the Charter of Rights and Freedoms, although its application to “landed immigrants” rather than to “citizens” or “permanent residents” may give it some wiggle-room. At the moment, in any case, it appears that the Department of Citizenship and Immigration is reasonably confident of its legal position.
27. It is not impossible that it will be resented by various newcomer communities.
28. The principal problem here may have to do with enforcement. How will the immigration authorities seek to ensure that the new arrivals remain in their places of initially assigned residence, and how (if at all) will they respond in cases where the contract is violated?
29. In practice, this may actually give the provinces a great deal of bargaining power, since they can now embarrass the federal authorities by refusing to cooperate in the implementation of the agreement unless it is done on their own terms.
30. There is, of course, an argument in the literature on international law to the effect that sovereignty is really indivisible, and hence that a claim to an entitlement to ‘manage’ (and hence to regulate) even very limited activities in a particular territory really amounts to a sovereignty claim. But in practical terms that issue has been resolved by recent agreements on the international law of the sea, particularly in relation to the establishment of the 200-mile EEZ, and the arcane niceties of the problem need not detain us here.
31. This may work both ways, however, in that there is now at least some evidence that immigrants, however essential they are to the promotion of economic growth over the long run, can impose a ‘front-end load’ on local social service agencies during the period when they are settling in. It is not impossible that St. John’s, for example, would find itself paying this front-end cost, only to see successfully-aculturated newcomers move to central Canada or the West once their required period of NL residency had been fulfilled. But that’s another matter.

32. Having said that, there is no evidence to suggest that interests associated with other Atlantic Canadian ports would in practice be unduly concerned, and port closures in the past appear not to have been the cause of lamentation elsewhere in the region.
33. The phrase comes from Harold and Margaret Sprout, “Environmental Factors in the Study of International Politics,” *The Journal of Conflict Resolution*, Vol. I (1957), pp. 309-328.
34. In response to what Canadians regard as misbehaviours on the part of political leaders and others elsewhere in the world, for example, DFAIT quite routinely issues statements of condemnation. In the vast majority of cases, no one in Ottawa expects these to have any discernible impact on the behaviours in question. The purpose is simply to appease the indignant at home.
35. For an excellent analysis of the diplomatic and political complexities of the ‘Turbot War’ from both the Canadian and EU perspectives, see Donald Barry, “The Canada-European Union turbot war: Internal politics and transatlantic bargaining,” *International Journal*, Vol. LIII, No. 2 (Spring 1998), pp. 253-284. The public, as well as the bureaucratic, politics of the Canadian position has been treated in the context of more general interpretations of Canadian foreign policy behaviour by Andrew F. Cooper under the title “The Politics of Environmental Security: The Case of the Canada-Spain ‘Fish War’,” in his *Canadian Foreign Policy: Old Habits and New Directions* (Scarborough, Ont.: Prentice Hall Allyn and Bacon, 1997), pp. 142-72. International lawyers have tended to take a dim view of Canadian policy. See, for example, Ted L. McDorman, “Canada’s Aggressive Fisheries Actions: Will They Improve the Climate for International Agreements?” *Canadian Foreign Policy*, Vol. II, No. 3 (Winter 1994-95), pp. 5-28.

But there are dissenters among them, as in the case of J. Alan Beesley, Q.C., and Malcolm Rowe, Q.C., “The Basis in International Law for Canada’s Actions in the ‘Turbot War’,” *Canadian Council on International Law*, Vol. 22, No. 2 (December 1995). John Crosbie has expressed a preference for a traditional “quiet diplomacy” approach to matters of this kind. See his *No Holds Barred: My Life in Politics* (Toronto: McClelland & Stewart, 1997), pp. 392-97. Brian Tobin’s personal account of the episode – including the early resistance of his own officials – can be found in his *All In Good Time* (Toronto: Penguin Canada, 2002). It is possible, of course, to argue that the EU connection is weakening anyway, and that not much has come of Canadian efforts over the period since World War II to forge trans-Atlantic linkages by diplomatic means. For a review and assessment of this enterprise, see Denis Stairs, “The Pursuit of Economic Architecture by Diplomatic Means: The Case of Canada in Europe,” in Donald Barry and Ronald C. Keith, eds., *Regionalism, Multilateralism and the Politics of Global Trade* (Vancouver and Toronto: UBC Press, 1999), pp. 228-252.

36. The imaginatively inclined may wonder whether the federal government’s unilateral decision to sign the Kyoto Accord could be challenged in the Supreme Court on the basis of the principles underlying the Labour Conventions Case (discussed above in Section 1, sub-section (5)). It should be remembered, however, that the decision in that case did not challenge Ottawa’s right to conclude international treaties. It only asserted that the federal authorities could not use their treaty-making entitlement to invade provincial jurisdiction

– that is, to compel provincial governments to act against their own preferences within their own constitutional bailiwicks. In the Kyoto context, however, there are certain ambiguities in play, and these could impart to the Court some room for manoeuvre that it could easily decide to exploit in unpredictable ways. In the first place, some aspects of the regulation of the atmospheric environment fall into areas of shared, rather than purely provincial, jurisdiction. Given the scope of the ‘global warming’ problem, moreover, it is not inconceivable that the court could rule that the subject-matter of such issues as might be in dispute was of such national significance that it could properly be interpreted as falling entirely within federal jurisdiction under the “peace, order and good government” clause, the “trade and commerce” power, or some other convenient constitutional provision. In short, even if it is unlikely that the court would challenge *directly* the principles of the Labour Conventions Case with regard to treaty implementation, it might well find other grounds in the Kyoto context (and therefore potentially in others) for weakening their practical effect. All things considered, the wiser course would seem to be for the provinces to focus on the implementation issue, and more specifically on the question of who should foot the bill. Here they should have considerable leverage, particularly if they are able to act in concert. And since Ottawa has already made financial concessions to Ontario (the auto industry) and Alberta (tar sands), Newfoundland and Labrador (among others) has more-than-reasonable grounds for driving a hard bargain.

37. The data are available through the Department’s web site at <<http://www.forces.gc.ca/>>, with a link to <[fincs/financial_docs/expand/2002/Publications_final_e.asp](http://www.forces.gc.ca/fincs/financial_docs/expand/2002/Publications_final_e.asp)>. Net expenditures are highest in Ontario (just under \$4.6 billion) and Quebec (about \$1.9 billion), followed by Nova Scotia (\$885 million) and Alberta (\$772 million).
38. For a brief analysis of the politics resulting from provincial and municipal interests in these matters, see D.W. Middlemiss and J.J. Sokolsky, *Canadian Defence: Decisions and Determinants* (Toronto: Harcourt Brace Jovanovich, Canada, 1989), esp. pp. 126-129.
39. For a review of these matters in the context of a comparison of the Canadian and American experiences, see Lilly J. Goren and P. Witney Lackenbauer, “The Comparative Politics of Military Base Closures,” *Canadian-American Public Policy*, No. 43 (September 2000).
40. As an aside, it should be understood that Canada’s credibility in international discussions of this kind has not been enhanced by the obvious failure of its own attempts to establish effective management regimes for several of the species located, not outside, but inside the 200-mile limit. A multiplicity of variables seems to be at work here – changing water temperatures among them. The science, moreover, is imperfect, and the data to which it has been applied have not always been reliable (to say the least). But it would be blind folly to ignore the fact that over-fishing – pure and simple – has played a major role. The Europeans, among others, are fully aware of this reality. Their being so hardly advances the Canadian case.
41. Some students of the subject would argue that the Arctic Waters Pollution Prevention Act (1970) played precisely this kind of role. Interestingly, the initiative in that instance was taken by the Prime Minister’s Office, and not by the Legal Division of the Department of External Affairs, which was the primary author of all the other Canadian initiatives in

the context of the Law of the Sea negotiations in the 1970s. See Elizabeth Riddell-Dixon, *Canada and the International Seabed: Domestic Interests and External Constraints* (Kingston, Montreal, London: McGill-Queen's University Press, 1989), p. 65.

42. These matters have been assessed for the Royal Commission in much greater detail elsewhere by Professor Phillip Saunders of Dalhousie University's Faculty of Law.
43. In the case of vessels longer than 65 feet, the regional office has to co-ordinate with DFA headquarters in Ottawa.
44. The same is true in the case of the International Commission for the Conservation of Atlantic Tuna (UCAT) and a number of other fisheries-related regimes, including the ones that are devoted to the management of both the Atlantic and Pacific salmon fisheries.
45. In the case of NAFO, certainly, this is already standard practice, and NL representatives are reputed to play the dominant role in advancing the Canadian case. Clearly the results, from the NL point of view, have been frustrating and unsatisfactory, but the explanation seems to lie in the structure, mandate and politics of the organization itself, rather than in federal indifference to NL interests.
46. Honourable Paul Martin, *op. cit.*
47. The first Canadian ambassador in Washington to act in this way on a systematic basis was Allan Gotlieb. For an immensely engaging account of his experience, see his *I'll be with you in a minute, Mr. Ambassador: The Education of a Canadian Diplomat in Washington* (Toronto: University of Toronto Press, 1991). The acid raid case is considered from this point of view by Stephen Clarkson in his *Canada and the Reagan Challenge* (Ottawa: Canadian Institute for Economic Policy, 1982), pp. 183-203.