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Article abstract

A l'été de 1985, la traversée du Passage du nord-ouest par le brise-glace américain *Polar Sea* retint substantiellement l'attention du Gouvernement et des médias au Canada. Bien que les États-Unis n'aient pas eu alors pour but de mettre en question la juridiction du Canada sur les eaux du Passage du nord-ouest, le Canada fut néanmoins obligé de réévaluer sa position quant au statut juridique des eaux internationales de même que la nature imprécise de ses prétentions sur certaines d'entre elles.

L'article qui suit examine certaines questions, juridiques et extrajuridiques, soulevées par le voyage du *Polar Sea*. Il s'intéresse spécialement à la position prise par le Gouvernement canadien à cette occasion.

L'attachement à la liberté de naviguer fit prendre aux Américains une attitude qui rendit difficile la riposte canadienne. Les mesures que prit le Canada, à savoir le tracé de lignes de base droites et l'annonce de la construction d'un nouveau brise-glace, furent minutieusement pesées afin qu'elles n'amènent pas les États-Unis à contester directement les prétentions canadiennes tout en ayant pour effet de rendre plus crédible l'affirmation voulant que les eaux du Passage du nord-ouest soient des eaux intérieures canadiennes dans lesquelles un bateau étranger ne peut naviguer sans permission.

In the Wake of the « Polar Sea » : Canadian Jurisdiction and the Northwest Passage

Ted L. McDORMAN *

À l'été de 1985, la traversée du Passage du nord-ouest par le brise-glace américain Polar Sea *retint substantiellement l'attention du Gouvernement et des médias au Canada. Bien que les États-Unis n'aient pas eu alors pour but de mettre en question la juridiction du Canada sur les eaux du Passage du nord-ouest, le Canada fut néanmoins obligé de réévaluer sa position quant au statut juridique des eaux internationales de même que la nature imprécise de ses prétentions sur certaines d'entre elles.*

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Introduction

In late July and early August of 1985 attention in Canada was focussed on the voyage of the United States Coast Guard icebreaker *Polar Sea* through the Northwest Passage. The vessel left from Thule, Greenland, passed through Lancaster Sound, Barrow Strait, Viscount Melville Sound, and the narrow Prince of Wales Strait (not M'Clure Strait as indicated in many of the press reports) and continued across the Beaufort Sea to Point Barrow in Alaska. (See Figure One) The *Polar Sea*, normally stationed on the U.S. West Coast, had to resupply Thule following the breakdown of the vessel normally used for this task, and still undertake its summer research requirements and contracts in the U.S. Beaufort Sea. Use of the Northwest Passage saved 30 days and $500,000 that would have been expended in renavigating the Panama Canal.

Several months prior to the navigation of the Passage, the proposed trip was made known to Canadian Coast Guard officials. The Canadian Coast Guard treated the voyage as a routine matter. It has been Canadian policy not to discourage use of the Northwest Passage, provided rigorous equipment and ship design standards are met. Because previous voyages of a U.S. vessel, the *Manhattan* in 1969 and 1970, had raised concerns of Canadian jurisdiction in the waters of the Arctic archipelago, the Canadian and American Governments exchanged diplomatic correspondence on the proposed voyage of the *Polar Sea*. Both countries were aware of their difference of opinion regarding the legal status of the waters of the Northwest Passage and they agreed to disagree on this divergence. The position adopted was that the voyage of the *Polar Sea* would be "without prejudice" to Canadian claims over the waters and to the legal status of the waters and that the voyage would not be intended as a challenge to Canada's jurisdictional claims in the Northwest Passage.

Despite this understanding between the two countries, great public concern was expressed in Canada that the passage of the *Polar Sea* was a violation of Canada's jurisdiction in the Arctic. The focus of media attention was that the United States did not and would not request from the Canadian Government permission for the *Polar Sea* to transit the Northwest Passage. Dismay was expressed about the Canadian Government not "standing up" to the Americans and that this failure of Canadian resolve would undermine Canada's jurisdictional claims to the waters of the Canadian Arctic archipelago. The United States was unwilling to ask permission since it was the U.S. view that that there was no legal requirement to seek permission and, although U.S.-Canada relations might have dictated a more flexible position by the United States, the Americans were concerned about the precedent that might be created by the United States asking for permission to enter legally-disputed waters.

A month following the passage of the *Polar Sea* the Canadian Government announced that it was going to undertake a series of actions designed to improve Canada's legal and diplomatic position that the waters of the Arctic archipelago were historic internal waters. The Government's action included:

— the signing of a cabinet order establishing straight baselines around the Arctic archipelago to become effective on 1 January 1986[1];
— announcing that a class 8 icebreaker would be constructed in Canada at a cost of $500,000,000; and
— the withdrawing of Canada's 1970 reservation to the compulsory jurisdiction of the International Court of Justice which had removed from the jurisdiction of the Court questions arising from Canada's claims to jurisdiction in the Arctic.

The purpose of this note is to look at the legal and non-legal issues that have arisen in light of the voyage of the *Polar Sea* through the Northwest Passage, and the Canadian Government's action taken in the wake of the passage. However, a brief review of Canada's response to the passage of the *Manhattan* through the Northwest Passage in 1969 is first provided since it provides the required background to the 1985 *Polar Sea* controversy.

1. The 1969 Passage of the *Manhattan*

The voyage of the U.S.-flag vessel *Manhattan*, an oil tanker sent through the Northwest Passage in 1969 to test the feasibility of polar travel for such

1. Territorial Sea Geographical Coordinates (Area 7) Order, P.C. Order 1985-2739, 10 September 1985, SOR/85-872.

vessels, forced Canada to attempt to clarify national views concerning jurisdictional claims over Arctic waters. The 1969 voyage had not been intended by the United States as a challenge to Canadian jurisdiction but the controversy aroused in Canada by the passage forced the Canadian Government to re-evaluate its position regarding the waters of the Arctic[2]. The response was not to assert *absolute jurisdiction* over Arctic waters, but to approach the problem functionally with the primary goal of protecting the unique environment of the Arctic that might be harmed by regular passage of oil tankers or other vessels incapable of navigating in ice-infested waters[3]. This functional approach was embodied in the 1970 *Arctic Waters Pollution Prevention Act*[4] which provided that Canada could legislate and enforce construction and design standards for vessels navigating in the pollution protection zone which was declared to exist to a width of 100-n. miles north of 60 degrees longitude around the Arctic archipelago. This legislation and its 100-n. mile zone was attacked by several countries, most notably the United States, as being in contravention of international law[5]. Much of the furor surrounding the Arctic Waters legislation arose because the extension of the 100-n. mile pollution zone came prior to the introduction of the 200-n. mile exclusive economic zone and many maritime states were apprehensive of the expansion of offshore jurisdiction by coastal states. A second concern of the protesting states was that the legislation allowed Canada unprecedented control over vessels navigating in the 100-n. mile pollution zone. The legislative requirements for ship design, construction, equipment and manning were perceived as a dangerous precedent that might be adopted by other states in protecting offshore areas.

At the time of the enactment of the Arctic Waters legislation, Canada also deposited with the International Court of Justice a reservation to Canada's acceptance of the compulsory jurisdiction of the Court. Excluded from the Court's jurisdiction was

2. Canada's pre-*Manhattan* policy regarding the Arctic is outlined in J.L. GRANASTSTEIN, « A Fit of Absence of Mind : Canada's National Interest in the North to 1968 », in E.J. DOSMAN, ed., *The Arctic in Question*, Toronto, Oxford University Press, 1976, p. 13–33.
3. See : McCONCHIE and REID, « Canadian Foreign Policy and International Straits », in B. JOHNSON and M.W. ZACHER, eds., *Canadian Foreign Policy and the Law of the Sea*, Vancouver, Univ. of B.C. Press, 1977, p. 167–173.
4. Revised Statutes of Canada (RSC) 1970, (1st Supp), c. 2, amended S.C. 1977-78, c. 41.
5. The American protest and Canadian response are reprinted in *International Legal Materials*, Vol. 9, Washington, American Society of International Law, 1970, p. 605–615. See generally : A. GOTLIEB and C. DALFEN, « National Jurisdiction and International Responsibility : New Canadian Approaches to International Law », (1973) 67 *American Journal of International Law* 229–258 ; and R.M. M'GONIGLE, « Unilateralism and International Law : The Arctic Waters Pollution Prevention Act », (1976) 34 *University of Toronto Faculty of Law Review* 180–198.

> disputes arising out of or concerning jurisdiction or rights claimed or exercised by Canada in respect of the conservation, management or exploitation of the living resources of the sea, or in respect of the prevention or control of pollution or contamination of the marine environment in marine areas adjacent to the coast of Canada.[6]

Canada also extended the width of its territorial waters from 3-n. miles to 12-n. miles. With the 12-n. mile territorial sea it is impossible to navigate through the Northwest Passage without passing through the territorial sea regime of Canada at certain "geographical choke-points", where the waters are less than 24-n. miles in width. With the 3-n. mile limit a vessel could have traversed the Northwest Passage, provided it used the difficult M'Clure Strait instead of the Prince of Wales Strait, without entering Canada's territorial waters. No demarcation of the outer limit of the territorial sea was ever done in the Arctic so the exact location of Canada's Northern territorial waters was uncertain. Throughout the 1970s, as the 12-n. mile territorial sea gained international acceptance, the United States steadfastly continued only to recognize the traditional 3-n. mile width. In 1983, as part of President Ronald Reagan's proclamation of a U.S. 200-n. mile exclusive economic zone, the 12-n. mile territorial sea of other states was also accepted[7].

During the 1970s, Canada expended considerable energy in having the international community recognize the legitimacy of the 1970 Arctic Waters legislation. The Canadian Government has claimed success in this quest with the inclusion in the 1982 United Nations Convention on the Law of the Sea[8] of Article 234.

> Coastal States have the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment would cause major harm to or irreversible disturbance of the ecological balance. Such laws and regulations shall have due regard to navigation and the protection and preservation of the marine environment based on the best available scientific evidence.

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6. Text of the reservation is reproduced in *International Legal Materials*, Vol. 9, Washington. American Society of International Law, 1970, p. 598. See generally: R.St.J. MACDONALD, « The New Canadian Declaration of Acceptance of the Compulsory Jurisdiction of the International Court of Justice », (1970) 8 *Canadian Yearbook of International Law* 3–38.
7. Presidential Proclamation 5030, 48 *Federal Register* 10605 (10 March 1983) and reprinted in *International Legal Materials*, Vol. 22, Washington, American Society of International Law, 1983, p. 461–465.
8. Done at Montego Bay, 10 December 1982; not yet in force; U.N. Doc. A/Conf. 62/122, 7 October 1982; reprinted in *International Legal Materials*, Vol. 21, Washington, American Society of International Law, 1982, p. 1261 (hereinafter referred as the LOS Convention).

This Article permits coastal states bordering ice-covered waters to prescribe and enforce laws for the protection of the marine environment that are more stringent than internationally accepted standards. However, two important matters remain uncertain. First, whether Article 234 supports the Canadian Arctic Waters legislation despite the fact that the Article was included in the LOS Convention at the insistence of Canada [9]. Secondly, whether Article 234 would permit Canada to apply the design and construction standards of the Arctic Waters legislation to the Northwest Passage if the waterway were an international strait [10].

The international legal validity of Article 234 is in question since the 1982 LOS Convention is not yet in force [11]. Canada has signed the Treaty but has not yet ratified it. The United States has declined to participate in the LOS Convention, although general statements exist that the United States accepts all parts of the LOS Convention except those dealing with deep seabed mining. The U.S. Government has not been explicit on this general policy. It has been posited that Article 234 is part of customary international law and therefore binding on all states [12]. The United States has not specifically "faulted" Article 234 and some indications exist that the provision has or will be accepted by the United States as part of customary international law [13]. The comments of the former Canadian Ambassador to the Law of the Sea Conference, Alan Beesley, made in 1983 are of interest:

> [...] I would hesitate, for example, to say that the Arctic exception, the ice-covered waters provision, is already existing international law. However, I am relieved to hear others say it is, and I will take that into account.[14]

The *Polar Sea* did, as far as Canada was concerned, comply with the Arctic Waters legislation [15] and consultation did exist between the Canadian

9. D.M. McRae and D.J. Goundrey, « Environmental Jurisdiction in Arctic Waters: The Extent of Article 234 » (1982) 16 *University of British Columbia Law Review* 197-228 and see: T.L. McDorman, « National Legislation and Convention Obligations: Canadian Vessel-Source Pollution Law », (1983) 7 *Marine Policy* 302, p. 308.
10. K.M. Shusterick, « International Jurisdictional Issues in the Arctic Ocean », in W.E. Westermeyer and K.M. Shusterick, eds., *United States Arctic Interests: The 1980s and 1990s*. New York, Springer-Verlag, 1984, p. 255-256.
11. The 1982 LOS Convention will come into force one year after the deposit of the sixtieth ratification. As of May 5, 1986, 29 states had deposited instruments of ratification.
12. D. Pharand, *The Northwest Passage: Arctic Straits*, Boston, Martinus Nijhoff, 1984, p. 120.
13. *See*: Shusterick, *supra*, note 10, p. 254 and B. Hoyle, « The United States Government Perspective », in L. Juda, ed., *The United States Without the Law of the Sea Treaty: Opportunities and Costs*, Wakefield, R.I.: Times Press, 1983, p. 135.
14. J. Beesley, « Comment » in Juda, *supra*, note 13, p. 141.
15. U.S.C.G.C. « Polar Sea » Exemption Order, P.C. Order 1985-2409, 1 August 1985, SOR/85-722.

and American Coast Guards concerning the legislative requirements, although it is uncertain whether the United States explicitly recognized the legislation. One report stated:

> Lawyers went through appropriate laws with fine-tooth combs and the Canadians took meticulous care over detail, down to the state of every piece of environmental equipment on the vessel.[16]

The legal status of the waters of the Northwest Passage was not resolved by the voyage of the *Manhattan* and many of the same issues that arose in 1969-70 surrounded the trip of the *Polar Sea*. The passage of the *Manhattan* did sensitize Canadians to problems of Canadian jurisdiction in the waters of the Arctic archipelago. The Canadian functional response was the result of the realization that a more "heroic" assertion of jurisdiction would be met by stiff American protests and possible direct confrontation.

2. Conflicting Views of the Legal Status of the Northwest Passage

International ocean relations during the last decades have been a process of reconciling the conflicting interests of maritime states, which have sought to protect their traditional rights of navigational freedoms or freedom of the seas, and coastal states, which have sought to exercise jurisdiction over ever-expanding offshore areas. Multilateral treaties such as the four 1958 Geneva Conventions on the law of the sea and the recently-completed 1982 LOS Convention are the written evidence of the compromises which have taken the form of different jurisdictional regimes applying in different ocean areas. A recent study determined that 58 different jurisdictional regimes are identified in the 1982 LOS Convention [17].

The jurisdictional regimes that are relevant to the Northwest Passage are:

(i) historic internal waters;
(ii) internal waters enclosed by straight baselines drawn in accordance with the 1951 *Anglo-Norwegian Fisheries Case* [18], a decision of the International Court of Justice;
(iii) internal waters enclosed by straight baselines where the waters enclosed were previously high seas or part of the territorial sea;
(iv) the territorial sea; and
(v) international straits.

16. « Northwest Passage not for the Soviets, U.S. envoy feels », *Toronto Globe and Mail*, 2 August 1985.
17. P. ALLOTT, « Power Sharing in the Law of the Sea », (1983) 77 *American Journal of International Law*, 1, p. 28-29.
18. [1951] *International Court of Justice Reports* 116.

If the waters of the Northwest Passage fall within one of the first two categories, the coastal state has absolute jurisdiction over all vessels navigating in those waters and vessels wishing to navigate in those waters could be required to seek permission for such navigation. If the waters of the Northwest Passage are either part of the territorial sea or enclosed by straight baselines not drawn pursuant to the *Anglo-Norwegian Fisheries Case*, then there exists a right of innocent passage for foreign-flag vessels.

The distinction between the second and third category is based upon the interaction between the 1951 Court decision and the more recent multilateral treaties. The International Court of Justice in 1951 accepted that Norway could draw straight baselines enclosing islands along its coast because of economic, sociological, geographic and historic factors that made the waters around the islands sufficiently closely linked to the land domain to be subject to the regime of internal waters. By drawing straight baselines Norway was able to use the outermost points of the coastal fringe of islands and connect these points with straight lines. More recent state practice regarding straight baselines has been to follow the Norwegian example of using prominent mainland points, or adjacent offshore islands, and connect these points using straight lines. The normal method of drawing coastal baselines is to follow the contours of the land using the low-water mark. The use of straight baselines, therefore, allows for a certain evenness in the baselines and allows a state to enclose greater areas of water landward of the baseline. Inherent in the Court's decision was that the waters landward of the straight baselines would not allow for a right of foreign vessel navigation [19]. The 1982 LOS Convention (Article 7) and the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone (Article 4) adopted the decision of the International Court regarding the criteria to be applied when drawing straight baselines. The two multilateral treaties, however, in Articles 8 and 5 respectively, state that in waters enclosed by straight baselines which were not previously considered as internal waters the right of foreign vessel innocent passage will apply. The prevailing view is that these provisions of the two multilateral treaties relating to the criteria for the drawing of baselines are part of customary law [20].

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19. *Ibid.*, p. 132; see: M.S. McDOUGAL and W.T. BURKE, *The Public Order of the Oceans*, New Haven, Yale Univ. Press, 1962, p. 120–122 and T. GIHL, « The Baseline of the Territorial Sea » (1967) 11 *Scandinavian Studies in Law* 145, p. 152, 171–173.

20. L. M. ALEXANDER, « Baseline Delimitations and Maritime Boundaries », (1983) 23 *Virginia Journal of International Law* 503–519. A more recent survey of state practice is found in Victor PRESCOTT, « Straight Baselines: Theory and Practice », a paper presented 19th Annual Conference of the Law of the Sea Institute, held in Cardiff, Wales, 24–27 July 1985.

There is uncertainty regarding the status of Articles 8 and 5. Article 5 of the 1958 Treaty has been described as "an innovation in international law" [21], although the wording has been repeated in Article 8 of the LOS Convention. When Article 5 was first proposed it was intended to have a narrow scope, as is clear from the following commentary of the International Law Commission.

> The question arose whether in waters which become internal waters when the straight baseline system is applied the right of passage should not be granted in the same way as in the territorial sea. Stated in such general terms, this argument was not approved by the majority of the Commission. The Commission was, however, prepared to recognize that if a State wished to make a fresh delimitation of its territorial sea according to the straight baseline principle, thus including in its internal waters parts of the high seas or of the territorial sea that had previously been waters through which international traffic passed, other nations could not be deprived of the right of passage in those waters.[22]

State practice does not provide any clear answers regarding the legal status of Articles 5 and 8.

The right of innocent passage is a careful balance between the security and economic interests of the coastal state and the navigational rights of vessels involved in passage. Vessels exercising innocent passage rights while having to comply with certain coastal state legislative requirements are entitled to navigate the waters without requesting the permission of the coastal state. The coastal state, however, can temporarily suspend the right of innocent passage for security reasons. Canada has long been troubled by the balance of interests in innocent passage, particularly regarding the ability of the coastal state to protect itself from threats of marine environmental pollution from vessels exercising their right of innocent passage [23].

If the waters are an international strait, the ability of the coastal state to control the passage of foreign vessels is even more restricted. Article 16(4) of the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone states that in an international strait non-suspendable innocent passage exists. The 1982 LOS Convention goes further in protecting the rights of user states by creating "transit passage" which is less rigorous from the navigating states' perspective than innocent passage. In this regard it is interesting that despite its non-participation in the 1982 LOS Convention, the United States has been quick to argue that the provisions of the Treaty dealing with straits

21. GIHL, *supra*, note 19, p. 171.
22. United Nations, *Yearbook of the International Law Commission*, Vol. II, 1956, p. 268.
23. See : McDORMAN, *supra*, note 9, p. 306-307.

and transit passage are part of customary international law and binding on all states [24].

As has been noted, some opinion exists that even if the Northwest Passage is an international strait transiting vessels would have to comply with Canada's rigorous Arctic Waters Pollution Prevention Act. Regarding warships and Government ships operated for non-commercial purposes, which is the classification into which the *Polar Sea* falls, coastal state control is virtually non-existent, even the Arctic Waters legislation does not apply to these vessels.

2.1. The Canadian Position

At the time of the *Polar Sea*'s trip through the Northwest Passage, ministerial comments and External Affairs memoranda arising from the passage of the *Manhattan* were all that existed as a record of Canada's claim to the waters of the Arctic. The position taken was that the waters of the entire Arctic archipelago were historic internal waters, but Canada's historic waters claim was never well-articulated, particularly respecting the implications such a claim would have on navigation. A 1980 Canadian Government memorandum stated:

> Canada continues to maintain the position that the Northwest Passage is not an international strait; that the waters making up the passage are internal; and that any navigation in the Passage will be subject to Canadian control and regulation for safety and environmental purposes.[25]

This statement is not inconsistent with the existence of a right of navigational innocent passage for foreign vessels. As has been noted, following the voyage of the *Manhattan* Canada responded by detailing a functional claim over the waters designed to protect the environment and not a claim designed to assert comprehensive jurisdiction. The United States reacted strongly to the Arctic Waters Pollution Prevention Act, presenting to the Canadian Government a detailed protest of the legislation. In the early 1960s Canada had contemplated enclosing the waters of the Arctic by straight baselines, but this drew criticism from both the United States and the United

24. *See*: B. A. HARLOW, « Comment », (1983) 46 *Law and Contemporary Problems* 125-135 and also « Discussion », in J. VAN DYKE, ed., *Consensus and Confrontation: The United States and the Law of the Sea Convention*, Honolulu, Law of the Sea Institute, 1985, p. 292-303.

25. Canadian Department of External Affairs Legal Bureau memorandum of 17 September 1980, (1980) 19 *Canadian Yearbook of International Law* 322.

Kingdom [26]. Against this background it is understandable why Canada has proceeded in a non-confrontationalist way in declaring and exercising jurisdiction.

Dr. Donat Pharand, the leading world legal authority on the Canadian Arctic, has examined the several options that might be available to support Canada's jurisdictional claims over Arctic waters. Concerning a claim of historic internal waters the onus is upon the claimant state to show that the necessary elements exist for a claim of historic waters : an exclusive exercise of state authority ; long usage or passage of time ; and acquiescence by other states. The major problem for Canada is that the official statements have been inconsistent regarding Canada's claim and a detailed articulation of its position has never been made. After carefully evaluating Canada's potential claim that the Northwest Passage and other Arctic waters are historic internal waters, he concluded that "it appears that Canada would not succeed in establishing an historic claim that the waters of the Arctic archipelago are internal waters" [27].

Dr. Pharand suggests that Canada's claim to the waters as internal might be supportable if reliance were placed on the 1951 International Court of Justice decision. Canada would have to argue its internal waters position on the basis of the 1951 *Anglo-Norwegian Fisheries Case* being customary international law not superseded by the two multilateral treaties. Canada is not a party to either treaty. It is Dr. Pharand's view that if Canada's Arctic could be equated with the islands along the Norwegian coast that straight baselines drawn on the basis of the wording of the Court's 1951 decision would be supportable [28].

Canada, however, had never asserted its internal waters claim on the basis of straight baselines and while having contemplated the proclaiming of such lines had at the time of the *Polar Sea*'s voyage not done so. It is interesting to note that a continental shelf boundary line was agreed upon between Canada and Greenland in 1973, largely based upon equidistance

26. McCONCHIE and REID, *supra*, note 3, p. 166 and A.E. GOTLIEB, « Canadian Diplomatic Initiatives : The Law of the Sea » in M.G. FRY, ed., *Freedom and Change : Essays in Honour of Lester B. Pearson*, Toronto, McClelland and Stewart, 1975, p. 145-147.

27. D. PHARAND, « The legal regime of the Arctic : Some outstanding issues », (1984) 34 *International Journal* 742, p. 748-769.

28. *Ibid.*, p. 769-784. American commentators have taken a different view, see : C. REINHARD, « International Law : Implications of the Opening of the Northwest Passage », (1970) 74 *Dickinson Law Review* 678-690.

between agreed upon baselines, but Canada did not make the baseline determination public [29].

A Canadian claim to the waters of the Arctic as historic internal waters or internal waters because of straight baselines would be assisted if reliance could be placed upon Inuit use of the waters and surrounding land since it would indicate a presence over an extended period of time. Should Canada vigorously voice its international position based on Inuit historic use it could create significant problems for the Government in its negotiations with the Inuit over outstanding land claims. This is one of the reasons for a reticence to detail an historic claim or one where historic use is a substantial component [30].

That Canada had not vigorously asserted its claim that the waters of the Arctic archipelago were internal waters that would not allow for innocent passage is evidenced by the 1980 Department of External Affairs memorandum noted above. Domestic ramifications of such a claim and almost assured resistance on the part of the United States had forced Canada to appear less than certain of its position. An international legal tribunal being seized with this issue at the time of the passage of the *Polar Sea* would have undoubtedly found Canada's claim to the waters of the Arctic as historic internal water as indifferently pursued and inconsistently expressed, which would have been severely damaging to Canada's position.

The voyage of the *Polar Sea* through the Passage will not have hurt Canada's claim in any material way at least regarding how an international legal tribunal would view the issue. The Governments agreed that the voyage was "without prejudice" to the legal position of either country, notification and consultation took place, and in the end Canadian observers were placed on the vessel and "permission" was granted, despite never having been requested. All of these, particularly the "without prejudice" understanding, would ensure that the trip of the *Polar Sea* would be unusable as a precedent against Canada's claim.

Concurrently, Canada's immediate reaction to the voyage of the *Polar Sea* would not be of great support to its jurisdictional claims over the Northwest Passage. Many of the critics of the Canadian Government's

29. Canada, *Treaty Series*, 1974 nº 9. Signed 17 December 1973; came into force 13 March 1974.

30. The issue of Inuit land claims, international jurisdiction and historic use is an extremely complicated one. See: David VANDERZWAAG and D. PHARAND, « Inuit and the Ice: Implications for Canadian Arctic Waters », (1983) 21 *Canadian Yearbook of International Law* 53-84 and P. JULL and N. BANKES, « Inuit Interests in the Arctic Offshore » in *Ocean Policy and Management in the Arctic*, Ottawa, Canadian Arctic Resources Committee, 1984, p. 85-114.

posture regarding the *Polar Sea* felt that it was an opportune time to strengthen Canada's legal position, for example, by officially protesting the voyage. Such a diplomatic protest would have put Canada's position most forcefully. However, it would have been very difficult for Canada to issue a protest following the reaching of "an agreement to disagree", the consultation between the Coast Guards of the two countries, and with the realization that Canada had neither the capacity nor the intention of attempting to stop the *Polar Sea* from navigating the Passage.

2.2. The American Position

On issues involving navigational rights the United States has persistently taken a strong stand to protect the right of navigational passage. In August 1981, U.S. aircraft and Libyan aircraft were involved in a brief skirmish in the Gulf of Sidra that Libya had declared in 1973 to be an historic bay and hence internal waters in which the U.S. vessels were not permitted [31]. While the trend in this century has been for coastal states to extend their jurisdiction ever seaward, the United States, along with other maritime powers, have sought to ensure a continued right of unimpeded navigation over as wide an area as possible. One must not underestimate the resolve of the United States regarding navigational issues and in particular regarding passage rights in international straits [32]. The U.S. position on the Northwest Passage has been consistent since prior to the voyage of the *Manhattan* — the Passage is an international strait.

An international strait is more properly referred to as a "strait used for international navigation". International treaty law has never formulated a meaning for a "strait used for international navigation". The source of law for the meaning to be given a "strait used for international navigation" is the 1949 International Court of Justice decision between the United Kingdom and Albania, the *Corfu Channel Case* [33]. Since the 1949 decision debate has raged whether an international strait can exist where it is "capable" of being used as a strait for international navigation (geographical approach) or, if it is necessary that the passage "has been used" as a strait for international navigation, and if the latter then how frequently must it have been used to

31. *See*: J. M. SPINNATO, « Historic and Vital Bays: An Analysis of Libya's Claim to the Gulf of Sidra », (1983) 13 *Ocean Development and International Law Journal* 65, p. 65–68.
32. See: A. HOLLICK, *U.S. Foreign Policy and the Law of the Sea*, Princeton, N.J. P.U.P., 1981, p. 234–237, 271–273 and E.L. RICHARDSON, « Law of the Sea: Navigation and Other Traditional National Security Considerations », (1982) 19 *San Diego Law Review* 553–576.
33. [1949] *International Court of Justic Reports* 4.

elevate the waterway to an international strait (functional approach). In looking at these issues as they affect the Northwest Passage, Dr. Pharand has recently written that there is a necessity for a waterway to have been used and "that the actual use has to be considerable", hence he concludes that the Northwest Passage is not currently a "strait used for international navigation". Dr. Pharand leaves open the possibility that should traversing the Northwest Passage become a common occurrence the waterway could become an international strait [34].

The amount of known traffic through the Northwest Passage has been insignificant, although promises of mineral wealth in the Arctic has led observers to speculate on the possibilities of increased traffic. An international legal tribunal viewing the current evidence would probably find that the Northwest Passage was in fact not a "strait used for international navigation".

In making the case that the Northwest Passage was an international strait, the United States could resort to the *Polar Sea*'s navigation as a piece of evidence. It would not be seen as a strong piece of evidence, since the United States did indicate that the voyage was "without prejudice" to the legal status of the waters. Moreover, there was notification and consultation regarding the passage and it is the United States' position regarding an international strait that no notification of impending travel is necessary.

2.3. The Middle Ground

If an international tribunal were looking at the legal cases of Canada and the United States at the time the *Polar Sea* traversed the Northwest Passage, the tribunal would reject the Canadian position that the Passage was internal waters which gave Canada jurisdiction to restrict vessel navigation. The tribunal would similarly reject the position of the United States that the passage was an international strait. The tribunal would be left with the option that the Northwest Passage was part of Canada's territorial sea in which foreign vessels would have the undisputed right of innocent passage.

3. The United States and the Voyage of the *Polar Sea*

U.S. policy on the Northwest Passage is the outcome of four considerations. The first is a domestic concern that there may exist an economic benefit to be derived from free access to the Passage. This commercial

34. PHARAND, *supra*, note 12, p. 88-121.

benefit would only be realized in the event of significant hard mineral or hydrocarbon development in the Arctic where Passage navigation would reduce transportation costs. The second consideration has already been noted, the United States' intense commitment to freedom of navigation. The United States has consistently fought against the creeping offshore jurisdictional expansionism of coastal states to the point that it is almost a reflex position. It is only to be expected that the United States would, at a minimum, reserve its position regarding the legal status of the waters, particularly so where on previous occasions, in particular at the time of the *Manhattan* voyage, the United States made its position very clear that it viewed the Northwest Passage as an international strait.

Linked to the second consideration is the concern that restriction of navigational rights in the Passage might be used by other states as a precedent against the U.S. policy of unimpeded vessel mobility. U.S. Ambassador to Canada, Thomas Niles, responding to the Canadian initiatives taken following the passage of the *Polar Sea* was explicit that one of the serious concerns that the United States had with Canadian action regarding the Arctic waters was that it might have a precedent value for other states arguing in favour of increased jurisdiction over waters and passing vessels [35]. Given the uniqueness of the Arctic environment, and the closeness of the Canada-United States relationship, it is questionable whether there is much danger of restriction of passage in the Northwest Passage being of much value as a precedent for other states.

The fourth consideration is the ideological posture of the current U.S. administration in general, and on ocean matters in particular. This ideological consideration underlies the first two considerations mentioned. The United States seeks to promote freedom from international and foreign control over its actions. The unwillingness of the United States, for example, to participate, even as an observer, at the Preparatory Commission, was principally an ideological decision based on objections to the Third World's hopes for a new international economic order and the international seabed regime [36]. This view that U.S. actions should be "unrestrained" would carry over to a posture on an issue like the legal status of the Northwest Passage.

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35. « Super-breaker and hard lines to assert Arctic sovereignty », *Victoria Times-Colonist*, 11 September 1985.

36. *See*: L. S. RATINER, « The Law of the Sea : A Crossroads for American Foreign Policy » (1982) *Foreign Affairs* 1006; BURKE and BROKAW, « Idelology and the Law of the Sea » in B.H. OXMAN, D.D. CARON, and C.L.O. BUREDI, eds., *Law of the Sea : U.S. Policy Dilemma*, San Francisco, Institute for Contemporary Studies, 1983, p. 57 and « Law of the Sea Convention », excerpts from a White House Office of Policy Information paper, dated 15 April 1983, reprinted in (1983) 26 *Oceanus* 74–76.

It is difficult to give much credence to any suggestion that the United States would be motivated by military considerations to seek to define the Northwest Passage as an international strait. Through NATO and NORAD the United States would be able to accomplish any military maneuvering it thought necessary to make in the Canadian Arctic. International legal navigational rights would add little to U.S. military designs for the Arctic.

A necessary consequence of the U.S. position that the Northwest Passage is an international strait would be that the Arctic waterway could be used by any state, including the Soviet Union. There have long been unconfirmed sightings and rumours of Soviet submarine activity in the Northwest Passage, as well as British and U.S. submarine activity[37]. External Affairs Minister Clark, in making his statement regarding the action to be taken by Canada in the Arctic[38], referred to the Soviet deployment of submarines under the Arctic ice pack (although not specifically in the Northwest Passage) as a factor in the decisions taken by Canada. This statement is believed to be the first official Canadian Government statement of fact regarding Soviet submarine activities but no further elaboration was given by the Minister[39]. A Canadian Rear-Admiral commented the next day that part of Canada's initiatives in the Arctic should include the establishment of a submarine detection system at the key entrance points to the Arctic archipelago[40]. The possibility of overt Soviet use of the Northwest Passage has a disquieting effect on U.S. spokesmen. Former U.S. Ambassador to Canada Paul Robinson felt that although the Northwest Passage was an international strait, if the Soviet Union used the waterway the United States would be upset[41]. The Soviet Union, however, supports Canada's claim[42] and have shown no interest in overtly navigating the Northwest Passage. Ironically, if this were not the case, the United States might be more disposed to ensuring that innocent passage rights did not exist in the Passage.

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37. « Unknown in Arctic worries Ottawa », *Toronto Globe and Mail*, 29 July 1985 and « Soviet sub rumours surface in wake of Polar Sea trip », *Toronto Globe and Mail*, 12 August 1985. See also : W. K. LYON, « The Navigation of Arctic Polar Submarines » (1984) 37 *Journal of Navigation* 155–179.
38. Canada, House of Commons, *Debates*, 10 September 1985, p. 6463.
39. « Ottawa acts to strengthen Arctic claims », *Toronto Globe and Mail*, 11 September 1985.
40. « Sub detection next step for North, experts say », *Toronto Globe and Mail*, 12 September 1985.
41. « Northwest Passage not for Soviets, U.S. envoy feels », *Toronto Globe and Mail*, 2 August 1985.
42. « Soviets support Canada's claim to Arctic passage », *Victoria Times Colonist*, 7 August 1985 and « U.S. remains silent over testing claim on Soviet passage », *Toronto Globe and Mail*, 8 August 1985.

While the United States is unlikely to officially retract its position on the Northwest Passage, it seems equally unlikely that the United States will deliberately challenge Canada's position by sending a vessel through the waterway expressly for that purpose. It has been suggested, however, that the voyage of the *Polar Sea* "is obviously the opening move in a large campaign" by the United States to challenge Canada's Arctic claims [43]. This is difficult to believe since the *Polar Sea* was expressly not intended to raise a problem over jurisdictional problems. The *Polar Sea* adventure inadvertently brought to the fore an issue that had remained conveniently out of the way for fifteen years and the United States "would have preferred if the dispute had never arisen" [44]. Moreover, at the U.S. State Department there was "surprise and disappointment" at the controversy that erupted [45].

4. Canada in the Wake of the *Polar Sea*

4.1. The Bilateral Dimension

Canada's problems regarding the legal status of the Northwest Passage lies solely with the United States. Few other countries are much concerned with Canada's Arctic claims. The Soviet Union, a state that might otherwise be interested, favours Canada's posture that the waters of the Arctic archipelago are internal waters in which there is no right of foreign navigation. The Soviet Union adopted an approach to its northern waters similar to that found in Canada's 1970 Arctic Waters Pollution Prevention Act [46]. Prior to 1983 the Soviet Union had not made clear its views respecting the legal status of the northern waters with different writers and pronouncements claiming internal seas and historic waters for northern areas [47]. Enabling legislation for straight baselines was enacted by the Soviet Union in 1983 [48] and a Council of Minister's Decree of 7 February 1984 established baselines in the Soviet Union, including the northern waters.

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43. Professor Gerald MORRIS as quoted in « A questionable claim », *Maclean's Magazine*, 19 August 1985, p. 21.
44. « U.S. voices regret over Canada's new Arctic claim », *Vancouver Sun*, 12 September 1985.
45. « Northwest Passage not for the Soviets, U.S. envoy feels », *Toronto Globe and Mail*, 2 August 1985.
46. See : W. J. DEHNER, « Creeping Jurisdiction in the Arctic : Has the Soviet Union Joined Canada ? » (1972) 13 *Harvard International Law Journal* 271-288 and W. E. BUTLER, *Northeast Arctic Passage*, Alpen aan den Rijn, Sijthoff and Noordhoff, 1978, p. 119-120.
47. BUTLER, *supra*, note 46, p. 79-90.
48. Law of the State Boundary of the U.S.S.R., reprinted in *International Legal Materials*, Vol. 22, Washington, American Society of International Law, 1983, p. 1055-1076.

On many issues it is customary for Canada to seek international support and recognition for its position as a means of finessing American objections. The existence of Article 234 is evidence of the success of that policy. At the moment, however, recourse to the international community to solve the problem of the legal status of the Northwest Passage would not seem to be available, since there are not appropriate international fora to deal with such a technical legal issue.

Since the issue is a bilateral one, it would appear reasonable to reach a bilateral accord with the United States whereby the United States would recognise Canada's legal position and Canada would concede certain navigational privileges. External Affairs Minister Clark indicated such bilateral discussions would be held and the United States indicated a willingness to conduct discussions. However, because of the sensitivity of navigational rights to the United States and the fear that such a public agreement could be used by other states which have conflicts with the United States regarding legal status of waters, it is extremely unlikely that any bilateral agreement will result from proposed discussions[49]. The United States has taken a strong position against bilateral treaties regarding navigational issues.

Canada has had to view carefully whether to move directly to deal with the issues raised by the voyage of the *Polar Sea* or proceed more discreetly and indirectly, with the same goal in mind, that of securing increased Canadian jurisdiction over vessel navigation in the Arctic. Referring to the efficiency of direct state actions regarding jurisdictional issues one authority commented:

> Claimant States are usually sufficiently astute to avoid direct confrontation with protesting States in making their claims effective, and will rely on probing to ascertain how far they can go in practice without exacerbating the diplomatic situation beyond what is necessary and proportionate in the circumstances. By a series of successful steps, the claim can be consolidated in fact, and the protests directed towards it can be undermined by a series of retreats on the part of protesting States.[50]

Canadian policy on the navigation of foreign vessels in waters claimed by Canada has been to exercise *control* over the vessels, not to take actions to *deny access.*

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49. See: B. HOYLE, « National Legislation », in JUDA, *supra*, note 13, p. 254 and B. BRITTEN, « Bilateral Agreements », in JUDA 239-243.

50. D.P. O'CONNELL, *The International Law of the Sea*, Vol. I, London, Clarendon Press, 1982, p. 42.

The Canadian Government's announced actions respecting the waters of the Arctic are a careful blend of direct and indirect action designed to maximize Canada's legal position without provoking the United States into a response that Canada would be unable to control and that would put the Canadian Government in a politically embarrassing position.

4.2. The International Legal Dimension

The most direct action Canada could have taken respecting the Northwest Passage would have been to get an agreement, if that were possible, with the United States to submit the issue to an international tribunal, such as the International Court of Justice. As has been indicated above, the legal issues are not so clear as to predetermine the outcome. Canada's claim to the waters as internal has never been well articulated. A clear pronouncement by an arbitration panel that the waters were an international strait or at least allowed uninterrupted foreign vessel passage (innocent passage) would be a loss for Canada and be an unacceptable alternative for the United States. Threatening to go to the International Court makes good headlines [51], and may provoke the United States to consider the implications of its stance, but it has potential grave losses and uncertainties.

Rather than challenging the United States directly to a court battle, Canada took the indirect action of removing its reservation withdrawing Arctic jurisdictional issues from the compulsory jurisdiction of the International Court. This gets the point across to the United States that Canada is willing to go to Court to argue its position. Canada's action of removing its reservation will give added weight to Canada's position on the legal status of the waters of the Arctic.

Canada's stance regarding jurisdiction over the waters of the Arctic archipelago has suffered from inconsistency and lack of clarity. For offshore jurisdictional claims to reach the stage of being beyond challenge they must be vigorously pursued by the coastal state and gain the acceptance of the world community. To be credible they must be well-articulated and action taken by the claimant state must be consistent with its claim.

The most vigorous action Canada could have taken regarding Arctic jurisdiction would have been to emphatically state and detail Canada's claim that the waters of the Arctic archipelago are internal waters in which no

51. « Clark might take sovereignty issue to International Court », *Ottawa Citizen*, 3 August 1985.

navigational rights for foreign vessels exist. The United States would most certainly have issued a diplomatic protest over Canada's assertion and might have been provoked into taking action that Canada would have been unable to control and hence would have put Canada in a very embarrassing position. Should the United States not have taken any overt action and merely protested, as happened regarding the Arctic Waters legislation, the stalemate of "agreeing to disagree" would have continued although Canada's legal position would have been improved. This direct action might have worked in Canada's interest but it might have also spelled political downfall for the Government should the United States have chosen to physically challenge Canada's assertion.

4.3. Balancing the Interests

What Canada has done is put in place a system of straight baselines but without articulating a "detailed" explanation of Canada's historic waters claim or without stating what the precise ramifications of the baselines are upon navigation.

External Affairs Minister Clark in his statement to the House of Commons on Canadian Arctic jurisdiction [52] indicated that the baselines were to "define the outer limit of Canada's historic internal waters" and commented that from "time immemorial Canada's Inuit people have used and occupied the ice as they have used and occupied the land". The minister made it clear that Canada was going to exercise "full sovereignty in and on the waters of the Arctic archipelago". Concerning navigation, however, he stated:

> The policy of the Government is also to encourage the development of the navigation in Canadian Arctic waters. Our goal is to make the Northwest Passage a reality for Canadians and foreign shipping as a Canadian waterway. Navigation, however, will be subject to the controls and other measures required for Canada's security, for the preservation of the environment, and for the welfare of the Inuit and other inhabitants of the Canadian Arctic.

The controls and measures outlined by the Minister to be exercised are not inconsistent with the right of innocent passage.

Since it remains uncertain whether vessels have the right of innocent passage in the waters landward of these straight baselines, the United States may feel content with a mere protest of the excessive length of the baselines and a reservation of its position regarding the legal status of the waters enclosed by the straight baselines. The immediate response to the Canadian

52. *Supra*, note 38, p. 6462-6464.

actions on Arctic waters jurisdiction has been to express "regret" and to indicate that consultation between the states is necessary [53]. This expression of "regret" is a mild American response and, although it is predictable that following a detailed analysis of the announced straight baselines a diplomatic protest will be forthcoming, it is unlikely that a more vigorous U.S. reaction will be made.

The establishment of straight baselines around the Arctic archipelago is a crucial step in the enhancement of Canada's legal claim that the status of the waters of the Arctic are internal waters within which foreign vessels are not permitted without permission. However, it is necessary for Canada to continue to take action to consolidate its position that the waters of the Arctic are internal in order to make its claim more "credible" and "legally opposable" against the conflicting claim of the United States.

Much of the adverse publicity surrounding the voyage of the *Polar Sea* centered on Canada's lack of icebreaking capacity. The most embarrassing aspect of the *Polar Sea* incident for Canada was not the perceived violation of sovereignty but the lack of Arctic class icebreakers that would establish a year round Canadian presence in Arctic waters. The United States and Soviet Union both have icebreaking capabilities far in excess of Canada. It has been suggested, tongue-in-cheek, that Canada should charter an Eastern Bloc icebreaker for duty in the Canadian Arctic. By announcing that the Canadian Government will build one of the largest icebreakers in the world, the Government has deflected much of the criticism levelled at it during the *Polar Sea* incident.

The building of the Class 8 Polar icebreaker, capable of breaking through ice eight feet thick [54], will provide Canada with year-round Arctic capabilities (except in the M'Clure Strait where a Class 10 icebreaker would be needed) and will give Canada an ability to enforce its jurisdiction in the Arctic. The element of enforcement or ability to enforce is significant in jurisdictional claims since where claims are enforced or can be enforced they tend to be recognized and are more quickly consolidated as part of international law [55]. The only Canadian appointed to the International Court, Judge John E. Read in the 1951 *Anglo-Norwegian Fisheries Case* commented "the only convincing evidence of state practice is to be found in

53. « U.S. voices regret over Canada's new Arctic claim », *Vancouver Sun*, 12 September 1985.
54. A Polar 8 icebreaker is described in « Polar 8 icebreaker designed to guard Arctic sovereignty », *Toronto Globe and Mail*, 12 September 1985. See generally : J. D. HARBRON, « Modern Icebreakers », *Scientific America*, September 1983, p. 49–55.
55. O'Connell, *supra*, note 50, p. 36.

seizures, where the coastal state asserts its sovereignty over the waters in question" [56].

In Arctic waters Canada currently has in place a voluntary vessel traffic system (NORDREG) intended to provide information and assistance to Arctic ship operators. The 1984 Beaufort Sea Environmental Assessment and Review Panel report recommended that to enhance marine environmental protection NORDREG should become mandatory. The Review Panel also recommended the establishment of other institutional mechanisms to increase the degree of control Canada exercises over vessels in the Arctic. The NORDREG system is a vessel traffic reporting system (VTRS) which would require vessels to request clearance to proceed in advance of entering Arctic waters. Canada already implements such a system on the East Coast called ECAREG without protest and the United States has taken a great interest in the ECAREG system [57]. Ship safety, not questions of legal jurisdiction, have promoted the use of vessel traffic reporting systems and vessel traffic management systems (VTMS). The 1982 Law of the Sea Convention talks only in terms of coastal states having rights to establish, in consultation with the International Maritime Organization (IMO), passive vessel traffic separation systems (VTSS). The mandatory implementation of NORDREG was under review by the Canadian Parliament prior to the *Polar Sea* controversy and will likely be in place shortly. The realities of ship safety and proper management, particularly in a harsh environment like the Arctic where Canadians have the best information of ice conditions, weather and other important navigational aids, will leave the United States with little grounds for complaint, while at the same time improving Canada's legal position.

A variety of indirect actions can be envisioned which would fall within Dr. Pharand's term of "technical sovereignty" and which would improve Canada's legal position by exercising jurisdiction. These largely involve better information on Arctic conditions and improvement of Canadian capabilities in the North [58]. External Affairs Minister Clark indicated that actions of this type could be expected in the future. One possibility raised by Dr. Pharand would be to adopt the Soviet policy of issuing a brochure of charges to be levied on foreigners utilizing the services of the Soviet Union through the Northwest Passage. This would probably lead to a strong United States reaction since it would directly raise, not only the issue of the legal

56. *Supra*, note 18, p. 191.

57. E. GOLD, « Vessel Traffic Regulation: The Interface of Maritime Law Safety and Operational Freedom », (1983) 14 *Journal of Maritime Law and Commerce* 1-21.

58. PHARAND, *supra*, note 12, p. 112-113.

status of the Northwest Passage, but the entire problem of user fees for navigational aids and assistance and transit fees, all of which have been resisted by the maritime states [59].

Conclusion

An evaluation of the facts surrounding the legal issues favour long-term Canadian control of the Northwest Passage. The Passage is not a crucial international thoroughfare, it has limited strategic importance, it is used almost exclusively by Canadians, Canadian citizens have utilized the waters for centuries, it is geographically surrounded by Canada, Canada is the country with the unquestioned paramount interest, and Canada has taken measures to exercise legal jurisdiction.

The drawing of straight baselines will enhance Canada's legal claim since it identifies the waters involved in Canada's claim and provides hard evidence of Canada's position. The removal of the reservation to the International Court indicated that the Canadian Government has faith in its jurisdictional claim. The building of the Class 8 icebreaker will improve Canada's presence in the Arctic, provide a means of enforcement and show an exercising of claimed jurisdiction.

The actions by the Canadian Government taken in the wake of the *Polar Sea* will commence the process of bridging the factual presence of Canada in the Northwest Passage with the legal arguments necessary for the evolution of an unassailable Canadian claim that the waters of the Arctic are internal and foreign vessels cannot navigate within the waters without permission.

The legal uncertainties about the status of the Northwest Passage may continue for years, but with a careful policy of increasing the already extensive Canadian presence in Arctic waters, the legal problems may well become moot.

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59. The question of user or transit fees has arisen respecting the Straits of Malacca, see: K.L. KOH, *Straits in International Navigation: Contemporary Issues*, New York, Oceana Publications, 1982, p. 61-62; M.J. VALENCIA and A.B. JAAFAR, « Environmental Management of the Malacca/Singapore Straits: Legal and Institutional Issues », (1985) 25 *Natural Resources Journal* 695, p. 721, and generally on transit fees: R. MESZNIK, « Transit Fees for Ocean Straits and Their Impact on Global Economic Welfare », (1980) 8 *Ocean Development and International Law Journal* 337-354.

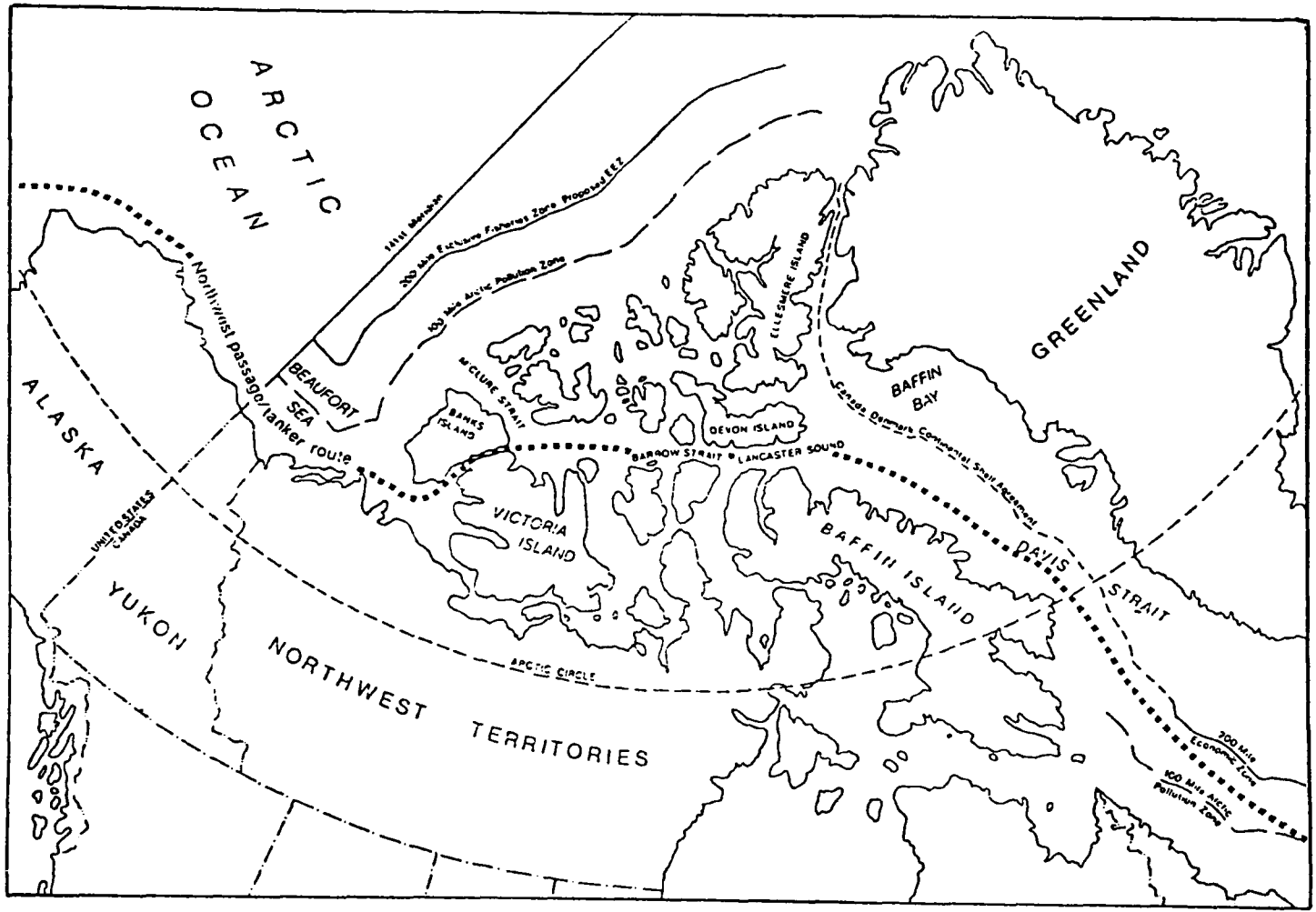

Figure One: Extent of Canada's Offshore Jurisdiction in the Arctic.
Source: H. MILLS, "Ocean Policy Making in the Canadian Arctic", in *Ocean Policy and Management in the Arctic*, (1984), p. 13.