

ARCTIC INSTITUTE OF NORTH AMERICA
TECHNICAL PAPER NO. 27

**LEGAL AND REGULATORY FRAMEWORK FOR
ARCTIC MARINE COMMERCE**
With Special Reference to the United States

By

ANDREAS G. RONHOVDE



PUBLISHED FEBRUARY 1974

THE ARCTIC INSTITUTE OF NORTH AMERICA

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Technical Editor

WADE W. GUNN

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PREFACE

This paper originated with an assignment given to me by the Arctic Institute to produce a basic descriptive analysis of the laws and rules, mainly international, under which arctic marine commerce will probably have to operate for the remainder of this century. The paper, as it was originally written, was then incorporated as a chapter in the Arctic Institute's final report to the Maritime Administration, U.S. Department of Commerce. That report was based on a comprehensive study of the future of arctic marine commerce.

The first draft of this paper was written in the spring of 1973. Its production, therefore, paralleled in part the preparation of the comprehensive study of "The Law of the Sea of the Arctic," by Professor Donat Pharand of the Faculty of Law, University of Ottawa. His book has now been published, and its title carries the subcaption, "With Special Reference to Canada." This Technical Paper, for reasons of origin and content, is subtitled, "With Special Reference to the United States." The paper, of course, has no official sanction of any agency of the U.S. Government.

The present paper is both retrospective and prospective. Because international law in the past has paid relatively little attention to the regional peculiarities of the Arctic, the retrospective sections become mainly summary analyses of the rules of customary international law as generally applied. In addition, some attention has been focused on treaty laws and municipal legislation which now have significant importance in arctic waters.

The prospective discussion reflects my personal biases and evaluations of the special needs of the arctic marine areas, both in terms of the interests of the circumpolar states and of other states that might in the future expect to engage in commercial or other activities in the Arctic. Finally, an effort has been made to relate the subject matter of the marine commerce study to the broader concerns of the world, currently concentrated in the UN Law of the Sea Conference activities.

I acknowledge with special appreciation the constructive criticisms from three reviewers of the manuscript. These include P. D. McTaggart-Cowan, Executive Director, the Science Council of Canada; W. O. Kupsch, Director, Churchill River Study; and Donat Pharand, Faculty of Law, University of Ottawa. Let me emphasize, however, that the viewpoints reflected in this paper are my own and that they are not necessarily those of the Arctic Institute or of anyone else.

A.G.R.

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ABSTRACT

The legal rules under which future arctic marine commerce will be required to operate will be found in international law, either customary law or treaty law; in multilateral and bilateral agreements; and in municipal laws and regulations of the circumpolar states. This study provides an introduction to existing rules insofar as they are formally agreed to or are generally accepted.

Subjects dealt with include such basic matters as the delineation of territorial seas; coastal and other state rights in such seas; special problems regarding the status of straits and bays; existing rules on the continental shelf and contiguous zones; and the meaning of, and current national views on, the validity of the so-called "sector principle" as applied to the Arctic. Attention is called to recent national worldwide concerns regarding pollution of the seas by ships and the actions that have been taken by Canada and the U.S.S.R. to control such pollution in arctic waters. Reaction to the Canadian actions is also noted.

The concluding section looks at the need for further study and consideration of the special legal problems that exist or may be anticipated in the Arctic as a result of current UN efforts to formulate universal rules. The question is posed whether there should be a regional law of the sea regime for the Arctic, and a suggestion is advanced that an effort should be made soon to study this and related questions while attention is focused on worldwide rules.

LEGAL AND REGULATORY FRAMEWORK FOR ARCTIC MARINE COMMERCE

With Special Reference to the United States

Andreas G. Ronhovde*

During the past century, and particularly in the last half century, the so-called law of the sea has attracted great attention from governments and international jurists. The major developments have been of two kinds: unilateral state actions, and the convening of international conferences in attempts to achieve some degree of uniformity and concensus on rules.

International Laws Affecting Maritime Commerce

One may note with some irony that when, in the late 1920's, the League of Nations set out on a project to attempt the progressive codification of international law one of the three subject areas chosen as "ripe" for codification was the law of the territorial sea. The subsequent conference at The Hague found that no agreement was then possible. Now, more than 40 years later, after some intervening conferences, such as those in Geneva in 1958 and 1960, the United Nations is convening another great Law of the Sea Conference. Extensive preliminary discussions have already been held in Geneva, and various proposals and draft articles have been advanced by national delegations, including several by the United States.

There is, of course, no guarantee that the UN conference will succeed in producing universal or even regional agreements on the many thorny issues on the agenda. It is valid, therefore, to pause now to take stock of what present conventional (treaty) or customary rules of international law have to say regarding the many issues that vitally affect maritime commerce and other marine activities. The rules, to the extent they exist, are mostly universal; that is, there are few rules of regional law as such. The arctic region is, therefore, not one which has been signaled out for very much special treatment. The consequence,

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then, is that the customary rules that govern generally also presumably govern in the marine areas of the Arctic.

A summary survey of the rules, either agreed to or debated, that are now followed will indicate roughly the freedoms and the restrictions that exist which are of direct concern to maritime commerce in the Arctic as well as elsewhere. Some of the areas involve the definition and status of territorial seas; the drawing of base lines, straits, bays, and contiguous zones of many types; and even the status of the Arctic Ocean itself.

Territorial sea and contiguous zones.

Limits of the territorial sea. The sea areas over which the coastal state has the greatest collection of legal rights are those which, for one reason or another, are considered to be internal waters. Next in degree of control is the belt of territorial sea off a state's coasts. The term *territorial* signifies here that the sea belt, of whatever dimension it may be, is sovereign state territory, thus giving the coastal state the basic right to control the sea, the airspace above, and the seabed below. (As we shall note, the control over sealanes is limited in certain ways.)

There are innumerable statements in official documents, as well as in the writings of international lawyers and publicists, to the effect that the breadth of the territorial sea belt is prescribed in customary international law. The 3-mile or one marine league "rule" has been so described by many governments, including most consistently the United States. The British and French also have been traditional supporters of the 3-mile rule. In recent decades, however, the 3-mile rule has come under increasing attack by many states. At present, the rule is not generally supported by either state practice or state claim.

As noted above, in the late 1920's the League of Nations selected three international topics or subjects as being "ripe" for codification in an international law conference. One of the three selected was the territorial sea. The Hague Codification Conference in 1930, after much discussion, however, was unable to reach an agreement. In the U.S. view, that meant that the 3-mile rule remained as the law, and that 3 miles was "the maximum breadth of the territorial sea cognizable under international law" (Whiteman 4:17).

A second attempt to reach international agreement on the breadth of the territorial sea was made, this time under UN auspices, at the Conference on the Law of the Sea held in Geneva in 1958. The conference actually adopted a Convention on the Territorial Sea and the Contiguous Zone which eventually entered into force on September 10, 1964 (TIAS 5639, and Whiteman 4:1). That convention, however, failed to define the allowable or prescribed breadth of the territorial sea. The reasons for failure to reach agreement were suggested in the statistical table compiled by the UN Secretariat in connection with the Geneva conference. The table showed that of the 53 states which answered the UN questionnaire, only 22 adhered to the 3-mile rule; 31 states claimed a wider belt, including 10 states which claimed 6 miles and 13 which claimed 12 miles. The UN figures contrasted with an assertion in a *Stanford Law Review* article in 1959 which states that, "of 73 coastal states only 27 claimed a specific breadth of more than 3 miles" (Whiteman 4:17).

At the Geneva conference, Canada proposed a 6-mile territorial sea belt plus a 6-mile exclusive fishing zone (Whiteman 4:95). The United States advanced a proposal similar to Canada's, but it also fell short of the vote required for adoption (Whiteman 4:101).

In a further attempt to reach agreement on the territorial sea and fishing zones, a second UN conference was convened in 1960, again in Geneva. After some haggling the United States and Canada agreed to support a U.S. version of a 6 + 6 mile rule. The proposal received a favorable vote of 43 to 33 in the committee, but it was one vote short of the required two-thirds vote in the plenary. Thus the third international conference which had met to reach an agreement on the allowable breadth of the territorial sea also failed to achieve its goal.

Although the move toward national claims to territorial sea belts of widths greater than 3 miles had been noted before the Geneva conferences of 1958 and 1960, the movement was accelerated after those conferences failed to reach agreement. Thus, in a report to Congress in April 1970, the President of the United States attached a summary table which purported to indicate the breadth of the territorial sea and exclusive fishing jurisdiction claimed by selected countries as of January 1, 1970 (Marine Science Affairs, 1970). The tabulation showed that only 30 of the 102 listed states claimed as narrow a territorial belt as 3 miles. Of the remaining 72 states, 43 were listed as claiming 12 miles; 11 as claiming 6 miles; and five as claiming 200 miles. Clearly, the move toward wider sea belts had advanced rapidly. One of the late changes occurred in the case of Canada, which in 1970 adopted the 12-mile rule. In a note of April 16, 1970 to the U.S. Government, the Canadian Government refuted the U.S. 3-mile limit as a rule of international law and contended that the 12-mile rule being adopted by Canada was now the accepted rule, with 57 states claiming 12 miles or more, compared with 14 states that had the 12-mile rule in 1958.

As the matter now stands, state practice no longer supports the 3-mile rule espoused by the United States since Jefferson originally adopted it in 1793. The most generally favored breadth is clearly 12 miles. Note, however, that territorial sea belts of 100 to 200 miles are now claimed by more than half a dozen states.

In light of the above-cited developments, it is clear that (1) the United States and other adherents to the 3-mile rule have been fighting a losing battle, and (2) that the problem of reaching international agreement on this issue at the UN Law of the Sea Conference in 1974 will be a most thorny one. As noted, the United States in 1958 and 1960 was willing to go to 6 miles under certain conditions, and Canada 10 years later opted for 12 miles and denied that its action was in violation of customary international law. The United States reportedly has now indicated willingness before the UN preparatory committees for the 1974 conference to go along with the 12-mile belt, subject to the acceptance of certain rules regarding free transit rights through and over international straits (*Law of the Sea Reports*, p. 124). The issue is a complex one involving a variety of interests and considerations. One fact should be noted as a caution: no unilateral national claim or assertion of a territorial sea belt of more than 3 miles has been struck down by any competent international authority. There is little prospect, therefore, that in the absence of formal multilateral agreements there will be any effective international control on this issue.

Juridical status of the territorial sea. The 1958 Convention on the Territorial Sea and the Contiguous Zone specified in Article 1 that "The sovereignty of a state extends beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the territorial sea." The convention continued in Article 2 to assert that "This sovereignty is exercised subject to the provisions of these articles and to other rules of international law." The article proceeded to state that "The sovereignty of a coastal state extends to the air-

space over the territorial sea, as well as to its bed and subsoil" (TIAS 5639). This latter provision was considered by the United States as merely declaratory of international law (Whiteman 4:9). In the famous 1923 case of *Cunard v. Mellon* (262 U.S. 100), the Supreme Court had supported the view that the coastal state possesses sovereignty or absolute territorial jurisdiction in its territorial sea. A 1958 Department of State background paper for the Geneva conference further defined the rights of the coastal state by contending that "it appears that a right of innocent passage is the only such limitation to the territorial sea as distinguished from the other parts of a state's territory." Note that the right of innocent passage through the superjacent airspace over the territorial sea does not find recognition and was not included in the Chicago Convention on International Aviation signed in 1944.

An exhaustive definition of "innocent passage" as a right sanctioned in customary international law will not be attempted here. The principal requirement is, of course, that the passage be "innocent"; that is, it does not aim to threaten the coastal state or violate its laws, such as customs, revenue, sanitary, and similar protective rules (TIAS 5639, Article 14). Observance of reasonable protective regulations by the coastal state is presumably permissible if they do not result in complete prohibition of passage (TIAS 5639, Article 17). The definition given to "innocent passage" may depend on circumstances, however. For example, recent coastal oil spills from tankers have called attention to the increasing need to adopt protective coastal regulations restricting what would otherwise be innocent passage, should such passage be deemed to constitute an unacceptable pollution hazard. As a case in point, Canada has adopted protective rules for such passage. As is discussed below, these rules contain specific regulations applicable to Canada's arctic waters. Not only do these regulations affect passage, but also they may, in fact, prohibit passage unless specified stringent preconditions are met.

The question of whether warships may have innocent passage rights has been argued. If the right exists, the coastal state may certainly "go quite far in verifying the innocence of such passage, in order to insure the security of the coastal state and guarantee its territorial integrity" (Pharand 1968). According to the 1958 Geneva convention, submarines are required to "navigate on the surface and to show their flag."

Base lines for delimiting the territorial sea. Not only is the acceptable breadth of territorial sea belts an unresolved question in international law, but also the permissible manner of drawing base lines from which the belts may extend is a matter of serious discussion and dispute. For the United States, the position stated by a State Department official was simply that "Normally the base line for the territorial sea is the mean low-water mark along the coast as well as bays and river mouths" (U.S. Senate 1972). He pointed out, however, that the Convention on the Territorial Sea and the Contiguous Zone also contains principles for "enclosing" certain other waters (such as bays) as internal waters. The recognition that certain "historic bays" may be considered as internal waters was not a new principle. The suggestion it raises in the Arctic, as in Alaska, will be noted later.

A fundamental question concerning the drawing of base lines is whether the base line must follow the sinuosities of the coast, or whether it may be drawn from headland to headland. Even the acceptance of the latter method would not provide clear answers, since the choice of headlands would still need to be resolved. The history of international discussions and disputes regarding the use

of the headland-to-headland method of drawing the base line is a long and acrimonious one. In one international dispute between the United Kingdom and Norway, which concerned Norwegian fishing regulations, the International Court of Justice was asked to decide. In that particular case the court held in favor of Norway's right to draw its base lines by the headland-to-headland method, but the opinion stressed that the Court did so because of the historic Norwegian rights over the bodies of water (bays) thus enclosed.

There has been increasing support for the headland method in other regions also. Iceland, Alaska, Indonesia, and other places have all found that the headland method is useful for several reasons, one of which is particularly significant in the cases of Iceland and Alaska; namely, the protection of fisheries against foreign exploitation. One of the most meaningful implications in the use of the headland method of drawing base lines is the prospect it offers for enclosing clusters of islands or archipelagos. The Indonesian claims in this regard are the most extensive. The United States has refused to recognize the validity of that claim. Several areas in the Arctic lend themselves to the archipelago enclosure method, and the issue is a live one in both Canada and the United States. (Actually, of course, the enclosing of archipelagos is not synonymous with applying headland methods, since the former has additional features and implications.)

Special problem of straits. If and when international navigation of arctic waters becomes commonplace, and especially if commercial navigation is expanded into new arctic channels, then the status of straits and the right to navigate them or, conversely, to control such navigation may become of critical importance. The basic questions that arise are such as these: Under what conditions is a strait "international" and therefore freely open to international navigation? What controls, if any, may the coastal state or states legally impose on such navigation? Under what conditions may coastal states declare navigable straits to be closed? In other words, what are the customary rules of international law governing the coastal states' control, even to the point of prohibiting passage through coastal straits? Or again, conversely, what are the rights of other states under customary or conventional international law to navigate freely, or subject to certain restrictions, through such waters? In the Arctic Basin, the general problem of finding clear answers to such simple questions may be further complicated by the complex land and/or water configuration in some areas, plus the seasonal or permanent presence of floating or fixed ice formations at or near the shore.

An attempt may be made here to provide some relatively simple answers. For example, if a strait connects two parts of the open sea and is on a generally used international sea route, the strait now would be considered open to navigation through those parts or channels which are outside the territorial sea of the coastal state or states. Thus, if the breadth of the territorial sea is limited to 3 miles, any strait wider than 6 miles would thus have a channel of open seas outside the territory of any state which, presumably, may be freely navigated by all states. If the above rule is correctly stated, it also may have the effect that a strait of less than 6 miles would be entirely under the territorial sovereignty of the one or more coastal states, and the right of others to navigate through the strait would be subject to the normal rules of innocent passage. (For air navigation even that right would not exist.)

From the above it may easily be seen that in terms of customary international rules, not modified by treaty or agreement or by voluntary renunciation

of rights by the coastal state, the critical question again becomes the same as that discussed above under *Limits of the territorial sea*. Thus any strait remains territorial if it is not wider than twice the breadth of the territorial sea. If, for example, the customary rule of law expands the width of permissible territorial sea belts from 3 to 12 miles, then all straits less than 24 miles wide would be territorial, as compared with the rule which the United States has traditionally insisted was the maximum allowable; namely, a 3-mile territorial sea and hence a 6-mile strait.

The cited figures are considered to be of prime importance to the United States and to a lesser extent to some other states. The U.S. Government, which has been a foremost defender of the 3-mile rule for the territorial sea, at the preparatory UN meetings in Geneva in the summer of 1971 came forth with a new proposition. It would accept a 12-mile territorial sea, *conditioned upon the acceptance of the right of free transit through and over international straits* (italics added). (See *Law of the Sea Reports*, p. 135.)

Two special facts should be noted about the U.S. condition. First, it would permit free air transit over international straits, even though such passage would be over the sovereign territory of a coastal state. Second, as far as surface or subsurface water navigation is concerned, transit would be "free"; that is, it would not be a restricted right, as is the normal rule regarding innocent passage through the state's territorial sea belt. Thus the U.S. proposal, if generally accepted, would actually expand, both in the water and in the air, the transit rights of third states through international straits.

One U.S. participant at the 1971 Geneva sessions reported that "There was no great debate about our straits proposal this past summer. It is fair to say, however, that there was more concern or opposition to the article expressed than there was support for it" (*Law of the Sea Reports*, p. 136). He emphasized that the U.S. proposal was misunderstood by some, who thought that the rule would deny the coastal state authority to prevent activities that could be inimical to its interest, such as smuggling, pollution, etc. The United States explained that its proposed article "Would protect only the right of transit to the other side without any restrictions imposed by the coastal state." With reference to pollution control over ships transiting international straits, the United States argued that such control would be better handled by international organizations such as IMCO (Intergovernmental Maritime Consultative Organization) than by the coastal state. Note, however, that no IMCO body has the authority to prescribe such protective regulations. An international convention would be required to impose them, a more cumbersome, slower process.

As a factual matter the issue of free transit through international straits which are wider than 6 miles but 24 miles or less is a far-reaching one. For example, the Strait of Gibraltar is 8.2 miles wide. Under traditional rules, therefore, there is a belt of more than 2 miles of high seas in which navigational freedoms can be exercised, including subsurface or aerial transit. In the Middle East and the Far East, the status of straits is of crucial importance to free navigation. One of special significance is the Malacca Strait between Malaysia and Sumatra. The two states now maintain that the strait is their territory. Several states, including the United States, Japan, the United Kingdom, and the Soviet Union, reportedly have protested this claim (*New York Times* 1972). A look at North America reveals that the following straits and channels would become "all territorial" if the territorial sea belt were increased from 3 to 12 miles:

Robeson Channel (Canada-Denmark)	10 miles
Strait of Belle Isle (Canada)	9 miles

Northumberland Strait (Canada)	7 miles
Santa Barbara Channel (United States)	11 miles
Strait of Juan de Fuca (United States-Canada) . .	9 miles
Hecate Strait (Canada)	24 miles
Unimak Pass (United States)	10 miles
Shelikof Strait (United States)	20 miles
Bering Strait (United States-Soviet Union) . .	19-20 miles

Status of bays. The delimitation of the territorial sea belt obviously has a bearing on the territorial status of bays. If, for example, no limitation existed on the headland-to-headland method of fixing the base line for the belt of territorial seas, it would be possible for the coastal state to enclose as territorial all bays indenting its shores simply by drawing straight base lines across the entrances to such areas. The temptation for the coastal state to do this may be seen in the actual practice of states (Iceland is one example). For this reason, the 1958 Geneva Conference on the Law of the Sea drafted provisions which would prevent indiscriminate use of the headland method.

Thus Article 3 of the Convention of the Territorial Sea and the Contiguous Zone (TIAS 5639) provided that, "Except where otherwise provided in these articles the normal base line for measuring the breadth of the territorial sea is the low-water mark along the coast. . . ." Article 4 then went on to provide that, "In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight base lines joining appropriate points may be employed in drawing the base line from which the territorial sea is measured." However, Article 4 then continued to place limits on the straight-line method by providing that "The drawing of such base lines must not depart to any appreciable extent from the general direction of the coast," and also that "The coastal State must clearly indicate straight base lines on charts to which due publicity is given."

Although the 1958 Geneva conference was unable to reach agreement on the acceptable width of the territorial sea belt, it did include, in Article 7, an approach to a rule on the status of bays. That article provided that, "If the distance between the low-water marks of the natural entrance points of a bay does not exceed twenty-four miles, a closing line may be drawn from these two low-water marks and the waters enclosed thereby shall be considered as internal waters . . . the foregoing shall not apply to so-called historic bays, or in any case where the straight base line system provided for in Article 4 is applied." Note at this point that the convention adopted at Geneva on April 29, 1958 (U.S. ratification deposited April 12, 1961) entered into force on September 10, 1964. Presumably its provisions either declare existing international law, or they are weighty evidence of the rules. However, many specific questions regarding the status of special bays remain.

Beyond the imprecise rules regarding the use of the straight base line method, there is also the frequently disputed application of special status accorded to so-called historic bays. We have noted that the International Court of Justice, in the *Anglo-Norwegian Fisheries Case*, upheld Norway's exclusive fishing rights in certain historic bays. The 1958 Geneva convention, while providing that the 24-mile-opening rule need not apply to "so-called historic bays," also touched on the subject in its provision in Article 4 that, "Where the method of straight line base lines is applicable . . . account may be taken in determining a particular base line, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by a long usage."

Contiguous zones. Historically, states have long ago found that the marginal belt of sea which they claimed as their territory did not satisfy all their interests in some forms of control over the seas beyond the territorial sea belt. For a number of reasons, therefore, there has arisen the concept of contiguous zones, over which the coastal states have special rights of jurisdiction or of property. These zones have been of different types and of different breadths. Among the types of zones established by coastal states can be listed:

- (1) Customs enforcement zones.
- (2) Sanitary regulation zones.
- (3) Conservation of living resources zones.
- (4) Exclusive fishing zones.
- (5) Continental shelf zones.
- (6) Pollution control zones.
- (7) "Security," "self-preservation," or "impact" zones.

The more commonly mentioned and described zones have been established to protect the coastal state's security or inviolability through the declaration of a zone within which it claimed the right to enforce certain types of domestic regulations or, on a different basis, a zone in which it claimed special property rights, such as exclusive fishing rights. The proliferation of claimed contiguous zones has been an observable development in the practice of states during recent decades. The earlier declarations of contiguous zones relating to customs, fiscal, and sanitary regulations have been followed by additional claims for a variety of purposes.

The 1958 Geneva Conference on the Law of the Sea was unable to reach agreement on most of the outstanding issues involving a state's right to declare possession of exclusive or special rights in zones beyond its territorial sea, but a narrow beginning was made. In Article 24, the convention took cognizance of such zones by declaring that, "In the zone of the high seas contiguous to its territorial sea, the coastal state may exercise the control necessary to:

- (a) Prevent infringement of its customs, fiscal, immigration, or sanitary regulations within its territory or territorial sea;
- (b) Punish infringement of the above regulations . . . ;
- (c) The contiguous zone may not extend beyond twelve miles from the base line from which the breadth of the territorial sea is measured."

The 1958 conference failed to reach agreement on the increasingly troublesome question of exclusive fishing zones. At that conference, as has been noted, the Canadian and U.S. governments supported a 6-mile exclusive fishing zone. The failure of the conference to reach agreement on the fishing zones, as well as on the territorial sea, led to the calling of a second Geneva conference in 1960. At the second conference, a United States-Canadian supported proposal, essentially the same as Canada's 1958 proposal, fell one vote short of the required two-thirds vote (55 to 28). Thus the 1960 conference also failed to resolve the fishing zone question (Whiteman 4:121-35).

The present status of international law relating to permissible exclusive fishing zones is therefore unclear. The question is being given extensive consideration as one of the important items for discussion at the UN Law of the Sea Conference. In a general sense we may note that state practice has rapidly moved toward adoption of the 12-mile fishing zone, as indicated in Table 1.

Since this table was compiled, Canada and France have extended their territorial sea to 12 miles (ILM 11:153). Canada had adopted the 12-mile fishing zone in 1963 (ILM 2:664). The movement toward adopting the 12-mile zone has been rapid since 1960, and has included Denmark (for Greenland and the

Table 1. Breadth of territorial sea and fishing jurisdictions claimed by selected countries as of January 1, 1970.*

Breadth of seas claimed (miles)	Number of states	
	Territorial	Fishing limits
3	30	13 (Including UK overseas)
4	4	1 (Finland)
6	11	6
10	2	1 (Yugoslavia)
10.8 (20 km)	None	1 (Vietnam)
12	43	64
18	1 (Cameroon)	1 (Senegal 18 or 12)
130	1	1 (Guinea)
20-200	None	1 (Korea)
200	5	8
No claim or no specific mileage	5	5
Total	102	102

*Source: Marine Science Affairs, 1970, pp. 281-84.

Faroe Islands) and Norway. The most dramatic development of recent years was the adoption of a 50-mile fishing zone by Iceland on July 14, 1973 (ILM 11:1112). Iceland's action has been challenged by the United Kingdom and others in the International Court of Justice (ILM 11:1027). The contention of the U.S. delegate, Arthur Dean, at the conclusion of the 1958 Geneva conference that the vote on the six-plus-six proposal "left the three mile rule intact" would be difficult to defend today (Whiteman 4:102).

Continental shelf. In addition to the increasing emphasis on, and extension of, contiguous zones for a variety of purposes, there has developed, also, increasing interest among coastal states in the seabed of the continental shelf off the sea-coast and below the high seas. The continental shelf has taken on political and legal importance, mainly for economic reasons. The presence of valuable minerals and other resources in the seabed of the continental shelf has taken on greater practical significance because of the development of new technologies to exploit these resources. A number of factors make the evolution or agreement on international rules on this subject a complex one.

To the extent that an agreement or consensus on the rules defining the coastal states' rights is concerned, the most impressive evidence until now is to be found in Annex IV to the Final Act of the 1958 UN Law of the Sea Conference at Geneva. The Annex, known as the Convention on the Continental Shelf (TIAS 5578), was ratified by the United States (ratification deposited April 12, 1961) and entered into force on June 10, 1964. The UN conference of 1958 was able to agree on an impressive number of principles and specific rules. Since it will be the takeoff point for consideration at the UN conference, a summary of its principal provisions is in order.

Article 1 defined the term *continental shelf*, for the purposes of the convention, as "referring . . . to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters, or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas. . . ."

Article 2 provided that "The coastal state exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources." The Article provided further that "The rights are exclusive . . ." and that "The natural resources . . . consist of mineral and other non-living resources of the seabed and subsoil, together with living organisms belonging to sedentary species. . . ."

Article 3 affirmed that "The rights of the coastal state . . . do not affect the legal status of the superjacent waters as high seas, or that of airspace above those waters."

Article 4 placed limits on the coastal states' rights by providing that ". . . the coastal state may not impede the laying or maintenance of submarine cables or pipelines on the continental shelf."

Article 5 attempted to assure the continued freedom of navigation and other activities above the shelf by declaring that "The exploration of the continental shelf and the exploitation of its resources must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea, not result in any interference with fundamental oceanographic or other scientific research carried out with the intention of open publication."

Other articles of the convention dealt with installations constructed and maintained on the shelf, and provided that safety zones around them might extend to 500 meters but that installations must not interfere with sealanes.

Status of the Arctic Ocean

Maritime commerce and navigation in the Arctic also pose legal questions concerning the Arctic Ocean itself. Is it high seas, open to free international usage? Or, is it partially or wholly a closed sea, subject to the exclusive territorial jurisdiction of the nations surrounding it? The question has been discussed seriously and disputed by international jurists, parliamentarians, government officials, and others. The actual practice of the circumpolar states must clearly have evidentiary bearing on the issue, as would international agreements or adjudications.

If the answer is to be based on the practice of the circumpolar states during recent decades, then the open sea viewpoint appears to have by far the stronger case. No international treaties or adjudications have been found which substantiate a different conclusion. If the Arctic Ocean is in fact high seas, then a number of practical consequences follow. For if high seas in the Arctic mean what they do in the Atlantic, Pacific, or other seas, then there exists for the Arctic a legal regime which encompasses freedom to navigate under, on, or above the surface, including aerial overflight; freedom to fish; freedom to lay submarine cables or pipelines; freedom to engage in scientific research; freedom to explore and even exploit the seabed resources; in fact, all freedoms not restricted by international agreement.

The greatest challenge to the contention that the Arctic Ocean outside normal territorial seas is high seas has come from exponents of a so-called "sector" theory or principle. According to the most extreme version of the

principle, an Arctic Ocean rimland state is entitled to extend the meridians touching its east and west extremities to the North Pole, so as to enclose a "sector" which then is a "territorial" area belonging to the rimland state, inclusive of both land and water and/or ice areas.

What is usually referred to as a "sector claim" was officially announced by the Decree of the Presidium of the Central Executive Committee of the Soviet Government on April 15, 1926 (Whiteman 3:1268). The decree provides (in translation): "Are declared forming part of the territory of the Union of Soviet Socialist Republics *all lands and islands* already discovered as well as those which are to be discovered in the future . . . not recognized . . . as territory of any foreign state, and which lie in the Northern Frozen Ocean north of the coast of the U.S.S.R. up to the North Pole, within the limits between the meridian longitude $32^{\circ}4'35''$ East . . . and the meridian longitude $168^{\circ}49'30''$ West from Greenwich. . . ." (Italics added.) This 1926 decree remains as the basic definition of Soviet territorial claims in the arctic "sector." Expansion of the claim so as to include all water and/or ice areas within the "sector" has not been officially asserted (Olenicoff 1972).

Statements have been made by Canadian parliamentarians and officials which have asserted for Canada certain rights within a Canadian arctic "sector." A Canadian "sector claim" of the type decreed by the Soviet Union has not thus far been made formally; and, in any event, there is reason to doubt that one will be asserted which will claim as Canadian territory the areas of the open arctic seas. On August 3, 1956 the former Minister of Northern Affairs and Natural Resources, Lesage, stated in the Canadian House of Commons that "We have never subscribed to the sector theory in application to ice. We are content that our sovereignty exists over all the Arctic Islands. . . . We have never upheld a general sector theory. To our mind the sea, be it frozen or in its liquid state, is the sea; and our sovereignty exists over the lands and over territorial waters. . . . If you adhere to the general sector theory you claim that you have sovereignty over waters beyond your territorial waters. We have never done that. It is said that because it is ice we might claim sovereignty over it, but the ice is moving all the time. It is never the same ice. . . ." (House of Commons Debates 1956). One may conclude that, insofar as the Soviet Union and Canada are concerned, neither has officially asserted claims to sovereignty over arctic water or ice areas on the basis of a "sector principle" (the Soviet claim is only to "lands and islands"). The land areas within their respective sectors are not in dispute, and title to them does not depend on universal recognition of a "sector principle."

The United States has not recognized the "sector principle" as valid for claiming jurisdiction (Whiteman 3:1268). Denmark, Norway, and Finland have also not claimed arctic "sectors," nor have they recognized others (Brownlie 1966). One writer who incorrectly asserts that other northern nations (United States, Denmark, Norway) have also adopted the "sector theory" nevertheless admits that it is doubtful that the "sector principle" represents a rule of international law (Von Glahn 1970).

As a final indication that the Arctic Ocean is not considered as having been subject to national appropriation, one may observe what in fact has happened, and particularly what has not happened. None of the "freedoms" of open seas mentioned above has been officially denied by either the Soviet Union or Canada. On the contrary, surface and subsurface navigation by foreign craft has gone unopposed, as have research operations, even in the form of established ice floe or ice island stations. Overflights at high and low altitudes have been numerous and frequent over the waters within both sectors, all without an-

nounced protest by the coastal state. Other possible pertinent operations, such as fishing, laying submarine cables or pipelines, and exploring or exploiting sub-surface resources, have thus far been almost unpracticed in the central Arctic Ocean. Hence, there have not been the occasions for protest, even if a sector claimant had been so minded. The slaying of the U.S. station manager of Ice Island T-3 in July 1971 raised interesting questions of jurisdiction over ice islands floating in the Arctic Ocean. The T-3 incident did little to throw light on these questions, as will be noted later.

In summary, then, we may presumably conclude that there is little, if any, evidence that any of the circumpolar states have asserted sovereign claims to Arctic Ocean areas beyond their normal marginal sea boundaries. What may develop in the realm of contiguous zones, continental shelf rights, or other special rights is another matter. The Canadian antipollution measures in the Arctic are illustrative of the possibility for asserting jurisdictional, nonterritorial claims.

Special Agreements (General and Regional)

The future of arctic marine commerce will be affected by many legal rules, requirements, and freedoms which are not now and may never be found in the realm of universally accepted rules of either conventional or customary international law. The explanation for this is manifold, but a major one is the fact that the practical need for rules and regulations, in many circumstances, is regional rather than universal. Another explanation is that some of the needed regulations relate to technical or practical needs which are best dealt with through special agreements more in the nature of administrative regulations.

Because many of the rules in special agreements are regional in application, the only ones of direct concern here are those which will affect marine commerce in the arctic region or near it. In addition, there are broader multilateral agreements which presumably are universal in application, or are potentially so. Such, for example, are the rules proceeding from basic and other IMCO conventions.

At present, relatively few subject areas are treated in multilateral or even bilateral agreements which bear solely on the arctic region as such. Despite the current interest in, and great emphasis on, oil, gas, and possibly other mineral developments in and near the Arctic Basin, one searches in vain for bilateral or multilateral agreement or treatment of the rules which are to govern such development. Nor does one find special arctic agreements on navigation or pollution control. One subject which has been treated in special agreements covering northern waters is that of fishing. Even such agreements, however, have their principal concern or applicability in subarctic or nearby seas for the most part. Against this background, we may survey a few types of general or regional agreements that are of concern to arctic marine commerce.

Intergovernmental Maritime Consultative Organization (IMCO). IMCO was created by the Convention on the Intergovernmental Maritime Consultative Organization negotiated in Geneva and signed on March 6, 1948. The convention was ratified by President Truman for the United States on July 11, 1950 and entered into force on March 17, 1958 (TIAS 4044).

The first article of the convention sets forth its purposes: "(a) to provide machinery for cooperation among governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting ship-

ping engaged in international trade, and to encourage the general adoption of the highest practicable standards in matters concerning maritime safety and efficiency of navigation, (b) to encourage the removal of discriminatory action and unnecessary restrictions . . . affecting shipping, (c) consideration . . . of . . . unfair restrictive practices . . . , and (e) . . . exchange of information. . . .”

Article II clearly specified that the role of the organization was to be “consultative and advisory,” and Article III indicated some of the activities in which it might engage. These included the drafting of conventions and agreements, and the provision of machinery for consultation and for consideration of disagreements respecting restrictive practices.

The 1948 convention provided for broad membership, opening the convention to acceptance by United Nations members, to those present at the Geneva Maritime Conference, and to such states as wished to apply for membership. The convention, which was the basic constitution of IMCO, provided for four organs: an Assembly, a Council, a Maritime Safety Committee, and a Secretariat. The Assembly consists of all members. It elects its own officers, the members on the Council, and the Maritime Safety Committee. The Council of 16 members was empowered to appoint the Secretary-General and other Secretariat personnel. The Maritime Safety Committee of 14 members was empowered to “consider any matter within the scope of the organization” and be concerned with aids to navigation, construction, and other matters relating to safety, such as the drafting of proposed safety regulations or changes in existing regulations.

IMCO was organized as a Specialized Agency of the United Nations, operating under Article 57 of the UN Charter. Its headquarters was placed in London (Articles 44 and 45). During the 15 years of its existence, IMCO has been active in the promotion of navigation and other rules relating to safety and to the facilitation of maritime commerce. In recent years it has turned active attention to the subject of marine pollution, including oil pollution. Thus IMCO convened the November 1969 conference in Brussels known as the International Legal Conference on Marine Pollution (ILM 9:66) and the December 1971 conference in Brussels which produced the Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (ILM 11:284). More recently, IMCO also sponsored the Conference on Ocean Dumping, held in London in November 1972. From the above summary, one can conclude that, in the field of international consideration of measures relating to safety and to the protection of the oceans against acts damaging to their environment, IMCO has established itself as an initiating organization for discussion and for subsequent action by member states. Both UN and NATO pressures for continuing action may be anticipated in coming years.

Agreements affecting fisheries and living resources of the sea. International agreements for achieving regulation of ocean fishing have been mainly regional between states adjacent to the area involved. However, there have also been efforts to achieve broader rules, even to the extent of universal rules. These latter efforts have come to be a part of the broad UN effort to achieve conventional agreement on the Law of the Sea and Seabed.

For example, the 1958 UN conference in Geneva produced as one of its agreements the Convention on Fishing and Conservation of the Living Resources of the High Seas (TIAS 5969). The convention was signed on April 29, 1958 and acceded to by the United States on April 12, 1961. It entered into force on March 20, 1966, having been ratified by the United States and 26 other

states. The convention was a statement of agreement on broad and general principles rather than a set of regulatory rules concerning fishing rights. Since the forthcoming UN Conference on the Law of the Sea will also include detailed consideration of rules on the same subject, there is reason to examine a few of the general principles written into the 1958 convention.

The first article defined the scope of rights which states have for their nationals to engage in fishing on the high seas. Such rights were affirmed, subject "(a) to their treaty obligations, (b) to the interests and rights of coastal states provided in this convention, and (c) to the provisions contained in the following articles concerning conservation of the living resources of the high seas." The convention described its object as being the "optimum sustainable fish yield"; enjoining states to encourage conservation of fisheries by their own nationals; and proposing that if two states' nationals fish in the same area, cooperative conservation should be sought through agreement. The convention provided in Article VI that the rights and interests of coastal states should be observed and that agreements are encouraged between coastal states and states which engage in distant fishing off the coasts of other states. The interests of coastal states were further recognized in the Article VII provision that the coastal state may unilaterally adopt its own conservation measures appropriate for any stock of fish. The convention even took cognizance of the interests of nonfishing states in providing that they may request fishing states in certain areas to take necessary measures of conservation.

Additional articles of the convention outlined procedures for settling disputes and setting up the prospect of special commissions of five members to which states might submit their disputes for settlement. It seems obvious that the 1958 convention contained no regulations, imposed no specific penalties for violations of its broad statements of principle, and constituted merely a broad base from which more specific rules might later be developed.

The sea areas of the North Pacific Ocean may be of practical concern for marine activities in the Alaskan area, hence we may examine certain agreements specifically pertaining to that area, even though the major areas of concern are not "Arctic." One of these is the May 9, 1952 Convention on High Seas Fisheries of the North Pacific, to which the United States, Canada, and Japan are parties. The convention applied to "all waters, other than territorial waters, of the North Pacific Ocean . . ." and included the "adjacent seas" (TIAS 2786). The convention established a North Pacific Fisheries Commission which shall study and "recommend necessary joint conservation measures," and report to the parties on the effectiveness of such measures. An annex listed the types of fish for which abstention (from catch) is agreed. These included halibut, herring, and salmon. Japan agreed to "abstain" off the U.S. (Alaskan) and Canadian coasts; for salmon both Canada and Japan agreed to abstain off Alaskan coasts within a specified area.

An amendment to the annex, effective May 24, 1960 (TIAS 4493), removed herring from the abstention list off Alaska; and another amendment, effective May 8, 1963, further removed herring from the abstention list off an area near Canadian waters and also halibut from an area of the Bering Sea near Alaska (TIAS 5385). Discussions in June 1963 between the three signatories led to a joint release on June 21, 1963 which indicated that Japan had advanced a revised draft convention; that the Japanese were critical of the "abstention" method of regulation; and that the United States, supported by Canada, preferred to continue that treaty method. As a result, there was no agreed general revision of the 1952 convention (ILM 2:682-84).

Another convention concerning fishing in the North Pacific was one signed on March 2, 1953 at Ottawa by Canada and the United States. Ratifications were exchanged on October 28, 1953 (TIAS 2900). The convention prohibited halibut fishing in certain areas along the west coast of Canada and the south and west coasts of Alaska, except as provided by the International Halibut Commission in its regulations designed to develop stocks of halibut. Article II authorized the seizure of violators by either party, and for the delivery of the offender to the country to which the violator, person, or vessel "belongs."

Agreements concerning pollution and ocean dumping. International efforts to limit and control the pollution of the oceans by oil and oily wastes were responsible for the first major agreement on the subject, negotiated in London in April and May of 1954. The agreement, known as the International Convention for the Prevention of Pollution of the Sea by Oil, was opened for signature on May 12, 1954. Ratification of the convention by the United States was delayed by Senate consideration of certain reservations to the terms of the original treaty. The Senate finally advised ratification on May 16, 1961, with reservations, an understanding, and a recommendation. Negotiation of these reservations was finally accomplished, and the convention entered into force for the United States on December 8, 1961 (TIAS 4900).

Article II defined the sea-going ships to which the convention would apply. This was done by the negative method of exclusion of certain categories. Among these were ships being used as naval auxiliaries, ships under 500 gross tonnage, ships for the time being engaged in the whaling industry, and ships navigating on the Great Lakes or their tributaries.

Article III applies to the discharge of oil from all tankers. Specifically, it prohibits ships from discharging oil or oily mixtures which foul the surface of the sea. A similar prohibition against nontankers was limited to ships navigating in certain waters, described in an annex. It does not apply to ships proceeding to a port not provided with certain reception facilities (essentially, facilities for receiving oily ballast and tank washings, as described in Article VIII).

Articles IV and V listed a number of exceptions to the general prohibition of oil discharges. These included such instances as those involving the safety of the ship, the saving of life, the escaping of oil resulting from damage to the ship, and the discharge of sediments.

Article VII required that ships registered in a contracting state, after a 12-month interval, must be "so fitted as to prevent the escape of fuel oil or heavy diesel oil into bilges" which are discharged into the sea without being separated.

Article VIII required the provision of reception facilities at principal ports, as mentioned above, and Article IX required that ships to which the convention applies shall carry oil record books (in a form specified) into which entries shall be made and certified by the master of the ship. Such record books must be open to inspection and be made admissible in any judicial proceeding. Article X prescribed procedures for cases of alleged violation, and other articles dealt with the filing of information of national laws and decrees with the United Nations and with the settlement of disputes regarding interpretation of the convention.

Annex A to the convention prescribed certain prohibited zones and exceptions for tankers. The general prohibition for tankers was stated to be "all sea areas within 50 miles from land" except for other specified distances in zones thereafter described. The zones which would be subject to different offshore distances included the North Sea (100 miles), the Atlantic zone (outlined by

lines of latitude and longitude), the Australian zone (150 miles), the Adriatic (20 miles), and certain areas of the North Sea-Atlantic (100 miles).

The United States entered reservations on freedom of action in territorial waters, with the understanding that offenses in its territorial waters will continue to be punishable by the United States. A specific reservation to Article VIII considerably reduced the obligation assumed by the United States to construct or provide the facilities mentioned, and another reservation to Article XVI reserved to the United States the right to specific acceptance of amendments authorized in that article. Additionally, the United States recommended that considerations be given to bringing about international uniformity in fines, penalties, and enforcement; a more realistic definition of oil pollution; and a greater right of access to official reports of other contracting governments.

The U.S. recommendations were acted upon by the contracting governments during a meeting in London on April 4-11, 1962. The amendments to the 1954 convention agreed upon in London contained more specific requirements and more restrictive rules in some instances (TIAS 6109). For example, the exception for tankers was raised to 150 tons, but greater prohibitions were placed on new ships that operate near land; violations were made punishable under penalties; rules regarding oil record books were made more specific; and the spelling out of prohibited zones in the annex was made more generally applicable within the 50-mile coastal belt, and new areas were indicated in the Pacific, Atlantic, and Indian oceans.

As was noted above, IMCO convened in November 1969, in Brussels, a conference known as the International Legal Conference on Marine Pollution (ILM 9:45). Agreement was reached on an International Convention on Civil Liability for Oil Pollution Damage (November 29, 1969). As its title indicates, the convention contains precise rules regarding the liabilities of owners of vessels which violate the oil pollution prohibitions, and narrows the range of acceptable excuses. The convention, in Article V, limits the liability of any shipowner to 2,000 francs for each ton of the ship's tonnage, and to an aggregate amount of 210 million francs (gold). Other articles of the convention contain detailed rules regarding claims, insurance, payment of compensations, documentation, procedural rules, and other details.

The 1969 convention was followed by another IMCO conference, again in Brussels, to draft a supplementary convention, which was signed on December 18, 1971 (ILM 11:284). The convention, known as the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, carried on from the 1969 convention by providing for an "international fund." The purpose of the fund is described as being "to provide compensations for pollution damage to the extent that the protection provided by the Liability Convention is inadequate . . . to give relief to shipowners in respect of the additional financial burdens imposed on them by the Liability Convention . . . and to give effect to . . . related purposes. . . ."

Article 10 of the convention outlined the sources of contributions to the fund. In nontechnical language the provisions require the collection of both initial and annual contributions from receivers of oil that has been carried by sea to a coastal port. The amounts required to be contributed are assessed on the basis of the tonnage thus received (Article 11). In addition to a large number of detailed rules regarding the collection of moneys, interest earned, etc., the convention also set up a considerable organization to administer the fund. Principally, the organs are an Assembly, a Secretariat, and an Executive Committee to be elected by the Assembly (Articles 16 to 30). The convention is to

take effect after at least eight states have deposited ratifications. (By January 25, 1972, thirteen states had signed, including the United States.)

A further attack on the pollution of the seas was actively pursued in 1972, also under the Intergovernmental Working Group on Marine Pollution (IMCO). A meeting in London on June 14-18, 1971 had considered the matter of an antidumping agreement to be applicable to the oceans. The United States, at those sessions, submitted a draft convention which provided, in general, for a licensing permit requirement before anyone could dump materials in the sea. It provided that such licenses could not be granted for materials which would "unreasonably degrade or endanger human health, welfare or amenities, or the marine environment, ecological systems, or existing or future economic use of the oceans" (ILM 10:1021-28). As may be readily observed, the U.S. draft would require sweeping regulations and would cover the dumping of a vast number of materials.

The conference, which convened in London from October 30 to November 13, 1972 after the June 1972 Stockholm Conference on the Human Environment, considered the proposals made and finally emerged with a convention on ocean dumping called the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters (*Department of State Bulletin*, Vol. 67, No. 1747, p. 711). As noted, the United States had proposed a stringent draft convention in 1971, and had itself adopted legislation imposing strict regulatory controls of dumping off its shores.

The 1972 London convention, which received U.S. support, proceeded on a relatively simple basis. The convention requires governments to regulate dumping and to monitor its regulations. As described by J. Alan Beesley, Legal Advisor, Department of External Affairs of Canada, at a discussion conference at The Rutgers University School of Law on December 1, 1972, the convention set forth a black list and a gray list. The former specified some materials to be under absolute prohibition, including such substances as certain pesticides, radioactive wastes, persistent plastics, cadmium, mercury, and others. The gray list allows dumping under certain conditions but requires special permits. Included in the list are cyanide and fluoride wastes and other materials containing heavy metals, such as arsenic, lead, and chromium. All other substances require general permits. According to Mr. Beesley, the definition of dumping left certain loopholes, since it confined the definition to "deliberate disposal." He pointed out, however, that the convention accepted the principle of state responsibility and the general duty of states not to pollute the oceans.

On the jurisdictional side, Mr. Beesley pointed out that each state can enforce the convention against another state within its jurisdiction, but shared enforcement is encouraged. The convention neither approved nor negated arctic antipollution zones decreed by Canada. According to Mr. Beesley, Canada did not press for the recognition of such zones in view of the upcoming Law of the Sea Conference, since ocean pollution is on the conference's agenda. Several speakers at the same Rutgers University conference stressed the point that most of the pollution of the oceans originates on land. One speaker placed the proportion at 90 percent, and he also pointed out that the regulation of marine pollution is greatly affected by the territorial sovereignty of states, while most of the sea is international. For that reason international control over the seas is a good starting point, he thought.

A discussion of international measures that have been taken to limit or control pollution would be incomplete without some mention of the special problem of ships of convenience—Panlibhonco, so-called because the principal

flags used by these ships since World War II have been those of Panama, Liberia, Honduras, and Costa Rica. The legal status of such ships has been described as follows: "It has been proved that under international law each state is free to determine conditions under which it will register and thereby grant nationality to merchant vessels, and that this nationality as evidenced by registry and documents should be recognized by other states." It follows that flag-of-convenience countries have the right to allow the "registration of ships owned by nationals of other countries" (Boczek 1962).

Flag-of-convenience ships have been used extensively by American and Greek shipowners to reduce operating costs, to avoid heavy taxation, and, not least, to avoid coming under inconvenient government regulations. The legal status of these ships, particularly tankers, has complicated the imposition and enforcement of national and international pollution standards concerning ships. Disputes over the rights of these ships and of their flag states have reached the International Court of Justice which, in 1960, held that on this score the IMCO convention-decreed election procedures for choice of membership on the Maritime Safety Committee had been violated (cited from *ICJ Reports*, p. 158, by Boczek 1972). The entire subject of flag-of-convenience ships is complex but important, and the practical result is to complicate the problem of securing more rigid standards concerning ship safety and antipollution measures.

In summary, it is clear that the movement toward international action to regulate, control, or prohibit pollution of the marine parts of the earth, including particularly the oceans, has made a beginning which will certainly not stop at the present levels of control.

Certain Bilateral and Unilateral Actions Affecting Arctic Marine Commerce

Bilateral agreements specifically concerned with arctic marine commerce as such have not been found. However, note should be taken of a United States-Soviet Union agreement signed in Moscow on May 29, 1972 (*Department of State Bulletin*, Vol. 67, No. 1745, p. 664), with the announced aim of improving maritime relations between the two countries. The agreement, Regarding Certain Maritime Matters, provides principally for the assurance of entry of vessels of one of the parties to certain ports of the other, subject to a 4-day advanced notice (Article 4). Other provisions deal with assurances that fresh water, bunkers, repair facilities, and other conveniences will be available in such ports and that tonnage duties will be no more than for other states. Recognition is also given to the desirability of "equal participation" in bilateral commerce as a general aim. Among the forty listed ports, Skagway, Alaska is the only U.S. port north of Seattle. Among the Soviet ports open to call on prior notice are Murmansk and Archangel. The agreement in Article 2 specifically excludes from its provisions, as not affected thereby, the rights of fishing vessels, fish research vessels, and fishing support vessels.

Among unilateral actions taken by the Soviet Union of significance to arctic marine commerce was the early promulgation of a 12-mile territorial sea and also of a 12-mile exclusive fishing zone. If and when arctic marine commerce becomes extensive in the Arctic Ocean itself, that commerce will most probably be affected in some way by Soviet laws and regulations regarding the Northern Sea Route, which has been a subject of special governmental attention in Moscow from the earliest days of the Soviet regime.

A detailed outline of the regulations along the Northern Sea Route will not be attempted here. Note again that the Soviet claim to an arctic "sector" does

not, presumably, include water and/or ice areas beyond the territorial sea belt. The northern route, however, involves transit of many passages between the northern coast and offshore islands, or between the several islands on the route. Some attention to the regulations affecting that route is in order.

By law of September 16, 1971 the Soviet Union adopted a new Statute of the Administration of the Northern Sea Route Attached to the Ministry of the Maritime Fleet (ILM 11:645-46). According to its terms, the Administration of the Northern Sea Route is "established for the purpose of ensuring the safety of arctic navigation, as well as of taking measures to prevent and eliminate the consequences of pollution of the marine environment and the Northern Coast of the U.S.S.R." The Administration is assigned the basic task of "implementation of State supervision over the rational use of the Northern Sea Route as the major transport route of the U.S.S.R. in the Arctic." Among the tasks to be accomplished are such as to ensure safety of vessels, to render aid to vessels and aircraft in distress, and to "take measures to prevent and eliminate pollution . . . and effectuating supervision of vessels for this purpose." The Administration also sets navigation rules, arranges pilotage, carries on hydrographic research, and conducts rescue operations. The powers granted by the statute are vested in the Chief of the Northern Sea Route and his deputies.

While it is noteworthy that the above Soviet statute mentions, among its purposes, the prevention and elimination of pollution, by all odds the most ambitious and potentially far-reaching of the regulatory pollution control actions by any of the circumpolar countries in the Arctic is that taken by Canada. The Canadian Arctic Waters Pollution Prevention Act was endorsed without dissent by the House of Commons in Ottawa and was given royal assent on June 26, 1970 (Bill C-202, 18-19 Eliz. II 1969-1970). It was not officially proclaimed, however, until August 2, 1972. On the same date, detailed regulations implementing certain provisions of the act were proclaimed in a joint announcement by the Minister of Transport and the Minister of Indian Affairs and Northern Development (text issued by the latter). The promulgation of the act and its implementing regulations had reportedly been delayed by the government's desire to accommodate the wishes of the shipowners and cargo owners to obtain insurance to cover pollution liability, and the earlier absence of such insurance coverage owing to the fact that before the adoption of the act and regulations there had been no need for such coverage (CWB, Aug. 30, 1972).

Briefly, the act asserts Canada's right to guard against pollution for a distance of 100 miles offshore along the 56,000 miles of its arctic coastlines, including the islands in the arctic archipelago. (The only stated modification is that the 100-mile zone does not apply beyond the line of equidistance between the islands of the Canadian Arctic and Greenland.) The Arctic Shipping Pollution Prevention Regulations cover such matters as classification, construction, and certification of ships; navigating equipment, charts, and publications; reporting procedures; pollution prevention certificates; enforcement of pollution prevention measures; numbers and qualifications of navigation and radio personnel; and fuel and water requirements (CWB, Nov. 8, 1972). The regulations relating to the deposit of wastes came into force immediately, and the regulations requiring changes of ship construction and equipment became effective on January 1, 1973. The Regulations are to be used in conjunction with the Shipping Safety Control Zones Order, proclaimed on the same day, under which the waters of the Canadian Arctic were divided into 16 safety control zones, each classified according to the degree of ice hazards present. Shipping will be controlled by limiting the zones in which a vessel may operate, whether by prohi-

bition of entry or by entry during prescribed periods—such actions presumably to be based on prevailing ice conditions and the capabilities of the ship. The zones include all arctic waters north of latitude 60°N, and east of longitude 141°W, within 100 miles of Canadian land, except for the special provision near Greenland.

As an interesting detail in the August 2, 1972 regulations, we may note that the “limits of liability” stated in Section 14 for shipowners, and owners of cargo in cases of violation of the rules regarding deposit of waste, are copied from, or at least are the same as, the 2,000- and 210,000-franc figures provided in Article V of the 1969 Brussels Convention on Civil Liability for Oil Pollution Damage. (In August 1972, the gold rate was about three francs to the U.S. dollar.)

Because U.S. arctic marine commerce generated by the development of North American mineral resources, including oil, is likely to be directly affected by Canadian laws, rules, regulations, and policies, more than by those of any other country, some broader as well as more specific aspects of Canadian views are in order. We have considered the “sector principle” as applied to Canada and concluded that it has not thus far meant that Canada has claimed as “territorial” the water and/or ice of the Arctic Ocean within its “sector.” However, other important facts, as well as ambiguities, exist beyond any “sector questions.” Of principal concern for marine commerce in arctic Canada is the status of the many straits and channels between the mainland and the islands, and between the adjacent islands of the arctic archipelago (the so-called Arctic Islands). As long as Canada adhered to a 3-mile territorial sea, there were few straits and channels as narrow as 6 miles that were therefore clearly “territorial.” With the extension of Canada’s territorial sea to 12 miles, however, the situation is greatly changed (unless one challenges the extension to 12 miles). Most of the significant channels at some point narrow to 24 miles or less, including, for example, Barrow Strait in the Northwest Passage. Does Canada claim therefore that the Northwest Passage cannot be navigated without traversing Canadian territory? What of the wider passages among the Arctic Islands?

The Canadian position on the status of waters in the arctic straits and passages must, however, be found in the government’s claims or assumptions rather than by simple linear geography. At the moment, one is left with some degree of uncertainty. For example, on May 15, 1969 the Prime Minister before the House of Commons quoted the 1958 statement of the Minister of Northern Affairs regarding Canada’s position as follows: “The area to the north of Canada, *including the islands and waters between the islands and areas beyond*, are looked upon as our own. . . .” (Italics added.) The Prime Minister admitted that there was disagreement on whether Canada’s sovereignty extended to the waters between the islands or only to the territorial sea around the islands. In his statement, however, the Prime Minister did not clearly state his own views on the matter (CWB, June 11, 1969).

The Canadian viewpoint was explored and stated more fully in May 1971 by J. A. Beesley, Legal Adviser, Department of External Affairs, in a presentation at Ditchley, England. In his address Mr. Beesley asserted that, “So far as Canada is concerned, the special characteristics of the Arctic waters and ice combine to give them a special status—however defined—which implies special rights and responsibilities for the Arctic coastal states. Accordingly, for many years Canada has exercised effective control over the uses of the waters of the Canadian Arctic Archipelago and over a wide range of activities carried out on their ice-cover. Indeed, as was most recently reaffirmed by the Secretary of State

for External Affairs in April 1970, *Canada has always regarded the waters of the Arctic Archipelago as being Canadian waters* and the present Government maintains that position." (Italics added.)

Mr. Beesley went on to contend that Canada's view of the special status of arctic waters "is very similar to the attitude of the U.S.S.R." and cited Soviet jurists as having described the Kara, Laptev, Chukchi, and East Siberian seas as "internal waters." The question, of course, is not what Soviet jurists have described, but what the Soviet Government has claimed, unless, of course, the description is prophetic of future extensions of official claims.

Although Soviet territorial claims over arctic waters off its northern coasts have not been publicly clarified, note should be taken of an edict adopted on June 10, 1971 by the Presidium of the Supreme Soviet amending Article 3 of the 1960 Statute on the Protection of the State Boundary of the U.S.S.R. The edict authorized "the utilization of straight base lines to compute the breadth of territorial waters in those localities where the coastline is deeply indented and cut into, or where there is a fringe of islands along the coast in its immediate vicinity."

According to Butler (1972), information is not yet available as to precisely which sections of the Soviet coastline will be affected by the change. Previously, Soviet law had stipulated that the territorial sea was to be computed solely from the line of lowest ebb tide or from the seaward line of internal waters. With a 12-mile territorial sea, that meant, of course, a 24-mile closing line for bays.

In a recent survey of Soviet territorial claims, Olenicoff (1972) concluded that "The present policy of the Soviet Union appears to be a realistic one which recognizes the 'high seas' status of the Arctic Ocean and its airspace." Olenicoff went on to suggest, however, that "Quasi-official Soviet writings . . . continue to reiterate the concept of a 'Soviet sector' in the Arctic Basin, the reason being that the Soviet Government probably wants to keep its future options open."

In an October 1971 session of the Canadian House of Commons, the acting Prime Minister, Mitchell Sharp, was asked by a member to advise the House "as to the reason for the refusal of the Soviet Union to sign a mutual agreement with Canada on arctic sovereignty." Mr. Sharp replied that "The Soviet Government has some misgivings or objections in regard to the signing of a treaty." He did not think that "it is right to say that the Soviet and Canadian governments are not agreed on the objectives" (*House of Commons Debates* 1971). Those objectives were not described by Mr. Sharp.

In light of such statements by Canadian officials, it seems reasonably certain that Canada now looks upon its arctic channels and straits as territorial rather than as international waters, even outside of a 12-mile territorial sea. Added to any such rights, of course, is the bundle of rights which pertain to the continental shelf, and the fact that the Northwest Passage is not viewed as an international strait (Summary of Canadian Note, April 16, 1970 to the Government of the United States*). Based on the several statements made by high Canadian officials, the admission is perhaps warranted that it is somewhat unclear what Canada claims, as well as the precise rationale for some of its claims. One should remember, however, that unilateral claims of the type Canada asserts are not unique, and the burden of proof that such claims are unjustified must fall on the challengers.

*A copy of the summary was supplied to the author by the Canadian Embassy, Washington, D.C.

Perhaps of little direct practical effect on arctic marine commerce, as such, is the action taken by Iceland in 1972 (ILM 11:112) in extending its exclusive fishing limit to 50 miles, the new extension having jumped from the previous 12-mile zone. The action may be taken as a national attempt to preserve to Iceland a monopoly over its principal and vital industry. Presumably, also, the action taken, although it was certain to arouse serious controversy, was considered to be a less drastic extension than that of many other (principally Latin American) states, many of whom have gone to 200 miles. The Icelanders were certainly aware of the pressure of fishing interests in other countries, including neighboring Canada, to assert exclusive fishing rights over previously open areas. Thus far Iceland has defied its critics, and has rather clearly gained sympathy in many quarters for its position. The Icelandic action will be one more unilateral assertion which will face the Law of the Sea Conference. The foot-in-the-door technique has been used before, even though it may or may not be a factor in Iceland's case. [Compare the Canadian Fishing Zones promulgation of December 26, 1970 for the Gulf of St. Lawrence and the Bay of Fundy areas (ILM 10:437). The United States expressed regret at the unilateral act, which it alleged was "totally without foundation in international law."]

In a public statement released on April 15, 1970 commenting on Canada's bills extending the limits of its territorial sea, fishing, and pollution zones, the U.S. Department of State registered its objections. The main burden of the objections related to the proposed antipollution bill which, it argued, would be contrary to international law (Department of State, Press Release No. 121, reprinted in *Department of State Bulletin*, May 11, 1970). In its statement the Department of State emphasized strongly its preference for "international solutions rather than national approaches to problems involving the high seas." The UN framework looking toward a new international treaty dealing with such subjects was referred to.

In its reply to the U.S. objections, the Canadian Government pointed sharply to occasions when the United States has itself taken unilateral action. The note referred to the 1790 claim of a 12-mile customs zone, extended in 1935 to 62 miles; to the 1966 establishment of a 12-mile fishing zone; and to the recently legislated 12-mile pollution control zone (Summary of Canadian Note, April 16, 1970 to the Government of the United States). The note contended further that "It is a well-established principle . . . that customary international law is developed by state practice." As an example, the note referred to President Truman's Proclamation of 1945 claiming jurisdiction over the continental shelf.

Without attempting to judge the international sanction for either the U.S. or the Canadian unilateral actions cited in the above exchange, one can hardly avoid two conclusions: (1) accumulations of unilateral actions do in many instances become the basis for customary international law, and (2) on matters as politically and economically sensitive as the laws of the sea (especially off the coasts) the negotiation of international agreement by treaty or convention is a less chaotic procedure, and hence has frequently been the preferred route in the establishment of international law. Usually, international agreement will be preceded by unilateral actions which spur international consideration.

The fact is, of course, that the United States also has specific interests, aims, and even problems in charting its course on major aspects of the law of the sea. With reference to the width of the territorial sea, for example, the U.S. preference for a narrow (3-mile) limit obviously has been related to the fact that it has long been both a commercial shipping and a naval power. Freedom of naviga-

tion and transit has therefore been a central consideration. It is noteworthy and logical that U.S. willingness to go to a 12-mile territorial sea has been made contingent on the retention, or even extension, of the right of free passage through straits. The U.S. position on exclusive fishing zones is affected by interests also, but those interests do not all lead in the same direction. The United States has important coastal fisheries which seek to extend fishing zones; also, it has important distant fishing interests which seek to reduce the exclusive fishing areas of other countries.

More specifically relating to the Arctic, the United States has only one state (Alaska) in that area, but Alaska has a geography and an economy which determine the interests of its people in a special way. For instance, Alaska has about 65 percent of the U.S. continental shelf area (550,000 of 850,000 square miles). At some time this fact may assume greater economic and political importance than it has now. Of more immediate interest, however, is the Alaskan situation in relation to ocean fishing. A relatively rich and prized fishing area extends off the Alaskan coast, in many areas beyond the 12-mile zone. The sinuosities of the Alaskan coastline are such that the straight-line headland-to-headland method of drawing base lines for territorial seas and fishing zones is certain to have attractions. The alternative, approved for Norway in the Anglo-Norwegian Fisheries Case, is to claim bays as "historic," and therefore "internal." The interests of Alaskans are further propelled by the provisions of U.S. law in the Submerged Lands Act of May 22, 1953 (U.S. Code 43, Section 1311).

According to that act, the rights of the states to the lands beneath navigable waters within their boundaries are confirmed (Subchapter II, Section 1311). The act then confirms that those state boundaries extend seaward three geographic miles from the coastline. An obvious consequence is that waters off the coast that are declared "internal" are state rather than federal areas. The importance of that fact applies to such resources as minerals and fish which may be located within the state's domain. In a recent decision, for example, the U.S. District Court in Anchorage has held that lower Cook Inlet is an historic bay rather than an arm of the ocean, and consequently that it and the perhaps \$2 billion in potential oil reserves below it belong to the State of Alaska rather than to the United States. (The case is being appealed, so the final outcome is still uncertain.)

In this connection, note that in the case of *Arctic Maid Fisheries Inc., et al. v. State of Alaska*, settled out of court in 1963, the U.S. Secretary of State joined the plaintiffs in arguing that the state had no jurisdictional right to tax the *Arctic Maid* and other catcher boats on the basis that the rule on bays was now 24 miles, but that the boats had been in an area outside any 24-mile closing. The state had claimed jurisdiction behind a 160-mile line across Bristol Bay from Cape Newenham to Cape Menshikof (ILM 2:524ff).

On May 15, 1972 the U.S. Senate Committee on Commerce held a hearing concerning certain provisional U.S. charts delineating Alaskan territorial boundaries. The Department of State representative at the hearing explained that the charts which showed the 12-mile contiguous zone were provisional and subject to revision. He pointed to the Convention of the Territorial Sea and the Contiguous Zone as containing principles for enclosing certain waters, such as bays, as internal waters. He also emphasized that the United States had never used straight base lines for any part of the coastline of the United States, and he added, "Moreover we have protested the use of straight base lines by a number of other governments because such lines, if permitted to stand, would signifi-

cantly impair our naval mobility and the access of our nationals to fisheries and other resources" (U.S. Senate 1972). The competing interests of the U.S. and Alaskan governments in the Cook Inlet case then in litigation had an obvious effect on the State Department's public position regarding its views on general rules concerning straight base lines and historic bays.

As to the specific issue of exclusive fishing rights, the United States has suggested that the desirable compromise solution is one which it has proposed to the preparatory committees working toward the Law of the Sea Conference. In general terms, the position taken is to advocate the species approach and acceptance of the Canadian-proposed coastal state control for anadromous and coastal species, subject to certain international standards (ILM 11:662). A statement by Donald L. McKernan, Department of State, pointed out that three-fourths of the world's marine fish catch are of these categories. He argued that a species approach, rather than "artificial boundaries," would be the most effective management aid to secure maximum yield. Since the species of the Alaskan area are largely anadromous (salmon) or coastal (flounder and halibut), the U.S. proposal would be in Alaska's interest. The question of historic bays, however, remains an unresolved issue, as does the related question of U.S. willingness to go to the straight-line or headland method of drawing base lines for territorial seas.

One aspect of the headland-to-headland or straight-line method, whether applied to bays, fiords, or other coastal indentations, or to groups of islands or archipelagos, is that the waters behind such base lines become internal waters. In the absence of limitations or agreements to the contrary, this then has the legal effect of permitting the coastal state to control or prohibit most foreign activity in those waters. The objections made to such methods of drawing base lines, therefore, are not that the extent of territorial coastal seas is increased (it is usually diminished), but that some areas which would otherwise be a part of the high seas or of territorial waters outside the base line may now be closed or restricted as to some types of foreign traffic and to the exercise of previously recognized foreign rights in some of the waters behind the base line.

International navigational interests have been partially met by provisions of Article 5(2) of the Convention on the Territorial Sea and the Contiguous Zone which states that, "Where the establishment of a straight line in accordance with Article 4 has the effect of enclosing internal water areas which previously had been considered as part of the territorial sea or of the high seas, a right of innocent passage . . . shall exist in these waters." The specific limitation on coastal state control contained in this provision is a partially, but obviously not a completely satisfying concession to those who decry the general use of the straight-line method, whether applied to coastal indentations or to archipelagos.

Looking Ahead: Prospects, Needs, and Suggestions

UN Law of the Sea Conference. It should be clear from the foregoing that, with respect to the law of the sea which will be important for arctic marine commerce, the world situation is extremely fluid at the moment. States are busily engaged in planning their positions and strategies at the Law of the Sea Conference. As part of their national strategies some states are also engaged in taking unilateral action which they assume will be of benefit to them, if their action is approved by the conference; or will give them bargaining power; or will be permitted to stand if no general international agreement is reached. There are many conflicting viewpoints between the different states, and also between interest

groups within states. Because the conference is to consider such a broad range of subjects, relating to the seabed under the high seas as well as to the coastal zones and continental shelf, the sorting-out of interests, in general, and the setting-up of priority interests, in particular, are adding to the fluidity of the total situation.

The significance of the above comment may be seen from the following listing of the UN Seabed Committee, adopted on August 16, 1972, as subjects and issues to be discussed at the Law of the Sea Conference (ILM 11:1174, 1177). There were 25 headings, most with several subheadings (not all included here):

(1) International regime for the seabed and ocean floor beyond territorial jurisdiction.

(2) Territorial sea: nature, characteristics, historic waters, limits, breadth (global or regional), open seas, innocent passage, freedom of navigation and overflight resulting from plurality of regimes in the territorial sea.

(3) Contiguous zone: nature, characteristics, limits, rights of coastal states re national security, customs, fiscal control, sanitation, immigration regulations.

(4) Straits used for international navigation, innocent passage, other related matters including right of transit.

(5) Continental shelf: nature and scope of sovereign rights of coastal states, duties of states, outer limit of shelf, applicable criteria, question of delimitation between states, natural resources of the shelf, regime for super-jacent waters, scientific research.

(6) Exclusive economic zone beyond the territorial sea, its nature and characteristics, resources of the zone, freedom of navigation and overflight, regional arrangements, limits, fisheries, exclusive preferential conservation management in enclosed seas, seabed within national jurisdiction, nature and characteristics, delineation, sovereign rights over resources, limits criteria, prevention and control of pollution, rights and responsibilities for scientific research.

(7) Coastal state preferential rights or other nonexclusive jurisdiction over resources beyond the territorial sea.

(8) High seas: nature and characteristics, rights, and duties of states, freedoms, managements and conservation, slavery, piracy, drugs, hot pursuit.

(9) Land-locked countries.

(10) Shelf-locked and narrow shelf states.

(11) States with broad shelves.

(12) Preservation of marine environment.

(13) Scientific research.

(14) Development and transfer of technology.

(15) Regional arrangements.

(16) Archipelagos.

(17) Enclosed and semienclosed seas.

(18) Artificial islands and installations.

(19) Regime of islands under colonial dependence.

(20) Responsibility and liability for damage to marine environment.

(21) Disputes.

(22) Peaceful uses.

(23) Archaeology.

(24) Transmission from high seas.

(25) Enhancing universal participation of states in conventions.

Needs and suggestions of particular consequence for the Arctic. The above listing, which reads like the table of contents of a volume of Moore's, Hackworth's, or Whiteman's Digest of International Law, has been included here because a look through it suggests certain subjects that are now, and others that may be, of special significance for arctic areas.

We have noted already the significance of item 4 on straits, of which there are many in all shapes and sizes in the Arctic. One might add as a subhead here the question of temporarily or permanently ice-blocked straits.

Item 5 on the continental shelf has great importance in the Arctic for two reasons: (1) there is so much of it, and (2) there is the prospect that it contains great amounts of valuable resources. Both Canada and the United States will guard jealously their national rights in those areas, unless they can be traded for other, more valuable rights.

Item 6 has many arctic aspects, such as navigation under arctic ice conditions, conservation management of polar bears, control of pollution, and scientific research.

Item 8 on the high seas may need some adjustments for the special conditions of the Arctic Ocean, but probably fewer than one might suspect from the extravagant national claims asserted by some commentators.

Item 12 on preserving the marine environment will have arctic significance, but mainly as to certain species. Such anticipated operations as bottom crawling vehicles being developed for use under the ice, construction of artificial ice islands (already attempted), and possibly trenching for pipelines may be expected to have environmental consequences separate from oil pollution problems.

Item 13 on scientific research has been important in the Arctic, but has presented few problems of a legal or regulatory nature. One exception has been noted in the Escamilla case (involving the death of the station manager on Ice Island T-3) which suggested that future jurisdictional issues might be far more complex and might therefore best be anticipated by international agreement on some aspects of occurrences on ice islands or ice floes.

Item 14 concerning the development and transfer of technology may well be of considerable and peculiar importance to the arctic region with such special features as remoteness, ice, and submarine permafrost. Offshore drilling techniques, navigational methods, and similar problems suggest themselves as other items. Possibly also, the likely desire to lay oil or gas pipelines in arctic areas may raise legal-technological problems, as may the need for construction of port facilities and offshore loading facilities.

Item 15 suggests that regional arrangements may be desirable in some instances. The arctic region comes immediately to mind as one that has sufficiently distinct marine problems that a regional regime of some sort would seem to be desirable. In fact, such regional negotiations have already been proposed by the United States, at least as to rules governing the passage of ships and the protection of resources beyond national jurisdictions (*Department of State Bulletin*, Vol. 62, No. 1611, pp. 610-11).

Item 16 on archipelagos certainly has great importance for the legal regime in both arctic and subarctic areas. Note that Indonesia and other countries (the Philippines, for example) have promulgated their own rules for enclosing as internal waters vast areas of the sea by drawing base lines around a large cluster of islands. The United States has opposed this method. Canada has not explicitly espoused it nor, as far as is known, has the Soviet Union. It is obvious, however, that both Alaska and Canada have territorial configurations which would readily lend themselves to the headland-to-headland and archipelago

concept. In 1972, U.S. Senator Ted Stevens of Alaska took note of this fact in relation to the southeastern Alaskan archipelago. The Canadian Arctic Islands could also be treated as an archipelago with its own circumscribing territorial base line.

Item 17 on enclosed and semienclosed seas might also have application in several arctic areas, both north of the United States and Canada, and north of the Soviet Union.

Item 18 concerning artificial islands and installations most certainly touches on possible future developments in arctic marine areas. Several proposals and experiments have already surfaced.

Item 20 will have arctic applicability, and it may well be that the Canadian method of special environmental protection rules are needed, either on a concurrent national basis or by international agreement.

The above are samples of international concern which can be foreseen as having some special arctic aspects or problems. The range of subjects is great, and the required knowledge to make sensible proposals is so impressive that the planners and governments most concerned may not be able to give sufficient attention to the needs. The question arises whether it would be preferable to move toward a special regime for the Arctic before the general rules are fixed by international agreement, or whether the special regime might better wait until there is broader agreement on universal rules.

Because development in the arctic may well proceed fairly rapidly during the remaining part of the century (Reed 1973) and because the planned UN conference may have difficulty reaching a consensus on many of the issues raised, it is suggested that preparations for the negotiation of an arctic regime for the seas and seabed be undertaken with reasonable promptitude. The circumpolar states which will be most interested and affected should certainly lead the way, but other states with great maritime interests, such as the United Kingdom and Japan, should also take part. The preparatory work that would need to be done is extensive, and a variety of special talents and fields of knowledge could contribute to the facilitation of an eventual agreement. The assistance of existing organizations such as IMCO should be utilized, and the experience and knowledge of industrial, commercial, and private institutions should also be drawn upon, especially in the early phases. For the United States, Alaska would warrant special attention, with the views of its citizens being given proper weight.

One caution should be suggested at the outset of any movement toward setting up a special regime for arctic marine areas. The Antarctic is already under a special international regime which has now been operative for over 10 years. That treaty has frequently been noted as a possible model for the Arctic. A comparison of the geographic, economic, and political situation and elements of the Arctic and Antarctic, however, must lead to a strong reservation to that approach. In many respects, there are more differences than similarities.

A conference on the Arctic Ocean sponsored by the Ditchley Foundation and held at Ditchley, England in May 1971 considered the subject of a special regime for the Arctic. As stated by the rapporteur, "One of the chief points on which a general consensus emerged was that the Arctic Ocean constitutes a special case with unique features that can be defined. The main feature which distinguishes the Arctic Ocean from other oceans is the cover of floating ice. A special regime related specifically to this ice within a defined area need not set precedents which might be embarrassing in other parts of the world" (*The Arctic Ocean*, p. 21).

There are, of course, different meanings that may emerge as to what a "regime" should be. Some would emphasize the creation of an organization with considerable power to establish rules and regulations. Another possible approach is to minimize the international institutional aspect and strive rather for as much agreement as may be possible on specific principles, rules, and exhortations of the states affected. Both approaches have their advantages and disadvantages. In view of the political and military realities that exist now, there is probably much to be gained by placing major emphasis on rules which the circumpolar states are willing to agree to, and by creating a modest institutional arrangement which will gather and disseminate facts, suggest research, propose specific state actions, and offer suggestions for changes in the rules when the time is ripe. Any regulatory powers given to the organs set up would better be kept to the technical fields relating to navigation, safety, traffic regulations, etc. In time, additional powers might be delegated, but at the outset the needs are less for a supranational authority than for agreement among the states, especially the circumpolar states, on what the basic rules of the maritime areas in the Arctic should be.

The meaning and extent of application of the "sector principle" alone are sufficiently thorny and sensitive to suggest that more precise definitions must be settled by official negotiations or clarified by unilateral actions before agreement can be reached on an international administration for the area. The recent Escamilla case, involving the question of criminal jurisdiction over a slaying on an ice island floating in the Arctic Ocean, served to raise a question of broader scope, which in a sense was not resolved. Canada, in whose "sector" the ice island was located at the time of the slaying, did not assert jurisdiction. On the contrary jurisdiction was formally waived. However, the waiver was specific, for the case only, so the suggestion remains that under other circumstances Canadian reaction might be different. It has been suggested (Ronhovde 1972) that an international resolution of the jurisdictional question is needed, or is at least desirable.

Many broader questions also exist which have a particularly arctic reference. They involve floating or fast ice, base lines around archipelagos, or straight lines between headlands; they involve also the status of channels, of offshore installations, and of many other questions on which the law at present is sufficiently imprecise to warrant international attention. The rules or agreements that might emerge from a special arctic conference of concerned states would need, of course, to have some consistency with the general law of the sea, toward which the nations of the world are now groping. Nevertheless, the special features of the Arctic and the need to avoid acrimonious or even friendly bickering over rules suggest that the questions should not simply be submerged in the general search for international law of the sea and the seabed.

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