Revue générale de droit

The Case for an Arctic Region Council and a Treaty Proposal

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Volume 23, Number 2, June 1992

URI: https://id.erudit.org/iderudit/1057469ar
DOI: https://doi.org/10.7202/1057469ar

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Publisher(s)

Éditions Wilson & Lafleur, inc.

ISSN

0035-3086 (print)
2292-2512 (digital)

Explore this journal

Cite this article

Pharand, D. (1992). The Case for an Arctic Region Council and a Treaty Proposal. *Revue générale de droit*, *23*(2), 163–195. https://doi.org/10.7202/1057469ar

Article abstract

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The second part outlines the main reasons for the establishment of a Council by the conclusion of a treaty and presents the basic draft provisions of such treaty. These would cover: the geographical area of the Council's activities, the purposes of the Council, the conditions of membership, the main organs of the Council and their respective powers and mode of operation, the holding of meetings, the sharing of expenses, the settlement of disputes, the manner of entry into force, and the procedure of amendments and review. The founding Members of the Council would be the eight States whose territory projects north of the Arctic Circle: Canada, Denmark, Finland, Iceland, Norway, Russia, Sweden and the United States. Membership would be open to non-Arctic States having demonstrated a sufficient interest in Arctic issues, as well as to certain non-State entities such as the Northwest Territories and Greenland, and non-governmental organizations such as the Arctic Aboriginal Conference.

DOCTRINE

The Case for an Arctic Region Council and a Treaty Proposal*

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RÉSUMÉ

Dans la première partie de cette étude, l'auteur fait ressortir le besoin d'un Conseil des régions arctiques, en faisant l'examen des principaux buts qui seraient les siens. Ces buts seraient de faciliter, de façon générale, la coopération entre ses membres et, en particulier, par rapport aux activités suivantes : la protection de l'environnement, la coordination de la recherche scientifique, la conservation des ressources biologiques, le développement économique, la santé et le bien-être des habitants de l'Arctique et les usages pacifiques de l'Arctique.
La deuxième partie indique les principales raisons pour l'établissement d'un Conseil par voie de traité et en présente les dispositions majeures. Celles-ci porteraient sur l'aire géographique des activités du Conseil, les buts du Conseil, les conditions d'admission comme membre, les principaux organes du Conseil et leurs pouvoirs et modes d'opération respectifs, la

* The writer is most grateful to Dr. E.F. Roots, Science Advisor Emeritus, Environment Canada, who kindly read the manuscript and made very useful suggestions.

entry into force, and the procedure of amendments and review. The founding Members of the Council would be the eight States whose territory projects north of the Arctic Circle : Canada, Denmark, Finland, Iceland, Norway, Russia, Sweden and the United States. Membership would be open to non-Arctic States having demonstrated a sufficient interest in Arctic issues, as well as to certain non-State entities such as the Northwest Territories and Greenland, and non-governmental organizations such as the Arctic Aboriginal Conference.

tenue des assemblées, le partage des dépenses, le règlement des différends, le mode d'entrée en vigueur, et la procédure d'amendements et de révision. Les membres fondateurs du Conseil seraient les huit États dont le territoire traverse le Cercle arctique : Canada, Danemark, Finlande, Islande, Norvège, Russie, Suède et les États-Unis. Pourraient aussi devenir membres les États non arctiques ayant démontré un intérêt suffisant pour les problèmes arctiques, de même que certaines entités non étatiques telles que les Territoires du Nord-Ouest et le Groënland, et des organisations non gouvernementales telles que la Conférence arctique des aborigènes.

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INTRODUCTION

Cooperation through an Arctic basin system was first suggested by Professor Maxwell Cohen in 1971. The idea has now been developed to the point where it is time to make concrete treaty proposals for the creation of such a system. This article will endeavour to show that an Arctic Council is needed and should be established by way of a treaty. The first part will examine the main areas of cooperation which an Arctic Region Council would engage in and the second will present a Draft Treaty proposal for the creation of a Council.

I. THE AREAS OF COOPERATION THROUGH AN ARCTIC REGION COUNCIL

This part will begin by addressing the question of Arctic cooperation in general and Canada's role in promoting such cooperation. It will then examine six specific areas of needed cooperation : the environment, scientific research, living resources, economic development, the health and well-being of the Arctic inhabitants, and peaceful uses of the Arctic.

A. ARCTIC COOPERATION IN GENERAL AND THE ROLE OF CANADA

Cooperation to save our planet Earth is particularly vital at the regional level where the same ecosystems must be shared. This is especially true of the Arctic, a region of low biological productivity and high vulnerability to pollution and human disturbance. With the second largest Arctic territory and situated between Russia and the United States, Canada is well placed to play a leading role in the promotion of cooperation among all Arctic States. Such a role was recently envisaged by two American commentators who observed that

> not only would this role fit nicely with the image that many Canadians hold regarding the place of Canada in international society and that has energized Canadian efforts in the fields of arms control and peacekeeping, it would also help to assuage Canadian fears about being sandwiched between the great powers in the Far North and about succumbing to American pressures regarding issues of sovereignty and security in the Arctic.[1]

Their observation is well based. The Canadian fear of American pressure is of long-standing and was probably the main reason for Prime Minister Louis S. St-Laurent and Secretary of State Lester B. Pearson to state, as far back as 1946, that Canada wished to work "not only with the U.S.A., but with the other Arctic countries, Denmark, Norway and the Soviet Union", in fostering cooperative measures for the economic and communications development of the Arctic.[2]

In 1971, Professor Cohen not only suggested that Canada cooperate with all other Arctic States but he envisaged that this cooperation be formalized in a treaty. He wrote that "the most urgent objective of Canadian policy [...] is the development of a body of Arctic basin consensus, perhaps an *Arctic basin treaty*.[3] He was convinced that "Canadian Arctic policy [...] offers a superb opportunity for Canadian leadership in the development of an *Arctic basin systems approach* having relevance to the polar area as a whole and to the Canadian archipelago and its waters in particular".[4] Professor Cohen's suggestion was made in the context of the emerging new law of the sea, shortly after Canada's adoption of the *Arctic Waters Pollution Prevention Act* in 1970, but his suggestion is fully applicable today to all other areas of Arctic concern.

The concept of an Arctic system or Council, and the role of Canada in promoting it, seemed to have remained dormant from 1971 to 1987, when a Working Group of the National Capital Branch of the Canadian Institute of International Affairs, of which Professor Cohen was a member, discussed the suggestion further. Encouraged by the positive reaction to the idea by the participants at a Seminar on the Arctic sponsored by Canada and Norway at Tromso in December

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1. Gail OSHERENDO and Oran R. YOUNG, *The Age of the Arctic*, 1989, p. 242.
2. See John HOLMES, *The Shaping of Peace : Canada and the Search for World Order, 1943-1957*, Vol. 1, 1979, p. 288, quoted by John KIRTON, "Beyond Bilateralism : United States — Canadian Cooperation in the Arctic" in Wm E. WESTERMEYER and Kurt M. SHUSTERICH, *United States Arctic Interests*, 1984, p. 313.
3. Maxwell COHEN, "The Arctic and the National Interest", (1970) 21 *International Journal* 52-81, p. 79; emphasis added.
4. *Id.*, p. 81; emphasis added.

of that year,[5] the Working Group recommended the establishment of an Arctic Council in its Report the following year.

The recommendation of the Canadian Institute was well received by the Government, and, in November 1989, at the time of his visit to the Soviet Union to conclude a number of bilateral agreements on the Arctic, Prime Minister Brian Mulroney asked toward the end of his address at the Arctic and Antarctic Institute in Leningrad, "And why not a council of Arctic countries eventually coming into existence to coordinate and promote cooperation among them?".[6] A few months after the Prime Minister's question, an independent panel, co-chaired by Professor Franklyn Griffiths and Ms Rosemay Kuptana, was established.[7]

The panel produced a preliminary report "To Establish an Arctic Basin Council" in March 1990 and, by November of that year, the idea had been accepted in principle by the Canadian Government. Speaking in Ottawa on November 28, 1990, the Secretary of State for External Affairs Joe Clark stated : "The Government believes that now is the time to move forward to establish that Arctic Council. Canada intends to propose an Arctic Council to the seven other Arctic Countries [...]. We will raise the proposal at a ministerial meeting in Finland next spring on environmental co-operation". As an indication of the seriousness of the proposal, he went on to say that "Canada is willing to host a small secretariat for this Council and contribute to sustaining it from the outset".[8] Heartened by Mr. Clark's statement, the Arctic Council Panel produced a second, more comprehensive, Framework Report in January 1991, which was discussed at a Roundtable in Ottawa. The Report, which was generally well received by the participants, proposed a comprehensive structure in which there would be direct participation by aboriginal peoples and other non-State entities, as well as a broad agenda permitting a discussion of both civil and military matters.[9]

In March 1991, another Working Group of the National Capital Branch of the Canadian Institute of International Affairs published a Report on the Arctic environment in which it urged the Government to demonstrate Canada's commitment to the establishment of an Arctic Region Council, outlining its main purposes and composition.[10] As an appendix to the Report was a "Draft Arctic Treaty : An Arctic Regional Council" prepared by this writer.[11]

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5. See *The North and Canada's International Relations*, published by the Canadian Arctic Resources Committee, March 1988, pp. 58-59. This writer had proposed such a Council at the 1987 Tromso Seminar. He made the same proposal in 1988 as member of a panel on the "Legal Regimes of the Arctic" in Washington; see *Proceedings of the American Society of International Law*, 1988, pp. 332-3. He reiterated the proposal, in October 1989, in his address to the Canadian Council on International Law at the award of the John E. Read Medal, as well as in an article "Les problèmes de droit international de l'Arctique", (1989) 20 *Études internationales* 131, pp. 161-3.

6. *Notes For an Address by the Right Honourable Brian Mulroney*, 24 November 1989, PMO Press, Nov. 27, 1989, 14:12, p. 6.

7. The study made by this panel was sponsored by the Canadian Arctic Resources Committee, the Inuit Circumpolar Conference and the Arms Control Center, and was funded by the Walter and Duncan Gordon Charitable Foundation.

8. Address by the Rt. Hon. Joe CLARK, *The Changing Soviet Union : Implications for Canada and the World*, Ottawa, 28 Nov. 1990.

9. See *To Establish an International Arctic Council, a Framework Report* published by CARC, Ottawa, Jan. 1991.

10. *The Arctic Environment and Canada's International Relations*, published by CARC, Ottawa, March 1991, pp. 68-71.

11. See *id.*, Appendix, pp. A1-A10.

Taking into account the comments made at the Roundtable, the Arctic Council Panel published a second Framework Report in May 1991.[12] The Report provides for different types of structure and expresses a preference for a "Compact Structure" composed of 10 members : 8 for the Arctic States, 1 for the Arctic Aboriginal Conference just instituted, and 1 for the Northern Forum created in 1990.[13]

On the mandate of the Council, the Report noted that "currently, the Arctic States are unanimous in tacit opposition to negotiations among Arctic States on confidence-building and arms control measures affecting the region, and would see all such issues treated in non-arctic negotiating forums only".[14] Considering, however, the strong feeling on the part of aboriginal peoples, territorial governments and others that no major Arctic issue or problem should be excluded from consideration, the Panel urged that "the mandate of an Arctic Council be an open one that allows for growth in the Council's agenda with the growth of consensus".[15] More specifically, it stated that "no international arctic matter should in principle be barred from discussion or negotiation on Council", adding that "this applies to questions of international peace and security".[16]

It will become clear later that this writer agrees with this position, as with the general thrust of the Report. It is believed, however, that more must be done now by way of preparatory work in order to take advantage of the momentum for the creation of such a council. The fourteen draft founding articles included in the Report[17] are excellent as general guidelines for the preparation of a founding instrument or document, and that document should be drafted without delay. Otherwise, Canada risks finding itself insufficiently prepared to pursue its own initiative with other Arctic States.

The question of an Arctic Council was not a subject for direct discussion at the Ministerial Conference in Finland, in June 1991, on the protection of the Arctic environment. The ministers agreed on an Arctic Environmental Protection Strategy[18] and a Declaration on the Protection of the Arctic Environment. The Canadian initiative, however, has received further support recently by the president of the Russian Federation. At the time of his visit to Ottawa on February 1, 1992, President Boris Yeltsin and Prime Minister Brian Mulroney signed a Declaration of Friendship and Cooperation in which they affirm their support for an Arctic Council. The Declaration states that "Canada and the Russian Federation, as major Arctic states, affirm their support for the creation of an international Arctic Council to protect the Arctic, its peoples and its resources, while fostering prosperity in the region through enhanced cooperation among circumpolar States".[19]

The adoption and signing of Declarations, strategies and Action plans have real merits and is evidence of serious intentions, but there is a need for an Arctic treaty which would give legally binding effect to the political will of Arctic

12. *To Establish An International Arctic Council, a Framework Report*, published by CARC, Ottawa, 14 May 1991.
13. See *id.*, pp. 19-22.
14. *Id.*, p. 23.
15. *Id.*, p. 26.
16. *Ibid.*
17. *Id.*, pp. 28-9.
18. Reproduced in 30 *International Legal Materials*, Nov. 1991, pp. 1624-1669.
19. Para. 6 of the Declaration.

States. A treaty system has worked well for the Antarctic and is being proposed by the European Parliament to replace the Ministerial Conference system for the Protection of the North Sea which has been in place since 1984.[20] Such a treaty, establishing a Council with its own structure and implementation mechanism, would permit a much needed cooperative and holistic approach for the fulfillment of the various purposes of the Council which will now be examined.

B. ARCTIC COOPERATION FOR THE PROTECTION OF THE ENVIRONMENT

The distribution of pollutants in the Arctic has been increasing at an alarming rate. Those pollutants originate mainly from industrialized areas in lower latitudes, which are carried by the atmosphere, rivers and ocean currents.[21] The resulting damage to the environment manifests itself in a multiplicity of ways, some of which are the "Arctic haze", depletion of the ozone layer, contamination of the food chain, global warming and pollution of the marine environment and of the environment generally.

1. Arctic haze

The phenomenon known as the "Arctic haze" in the atmosphere is caused by pollutants (mainly soot, hydrocarbons and sulphates) which originate mostly from the air masses of Europe and Asia. These pollutants travel across the Arctic Ocean "to reach the northern Canadian arctic and Alaska, where they form a persistant low level hazy blanket, from which pollutants are deposited".[22] This hazy blanket could eventually affect weather patterns in the northern hemisphere.

2. Ozone layer

The depletion of the ozone layer, which protects the Earth's surface from solar radiation, was discovered over the Antarctic some ten years ago but was detected in the Arctic only in 1986. Scientists believe that the depletion is due to certain chemicals, mainly chlorofluorocarbons (CFCs) and other related substances widely used in industrialized countries all over the world. The result is that "the increase solar radiation reaching the surface through depleted ozone layer can cause skin cancer and eye cataracts in humans and animals, suppress immune systems, damage shallow-dwelling marine organisms, and inhibit the germination of seeds".[23] In 1985, a Convention for the Protection of the Ozone Layer was signed in Vienna and was followed by a Protocol adopted in Montreal in 1987 on "Substances that Deplete the Ozone Layer".[24] Although those instruments commit the Parties to reduce the use of chlorofluorocarbons by 50 % by the

20. See D. FREESTONE and Ton IJLSTRA, eds, "The North Sea : Perspectives on Regional Co-operation", Special Issue of the (1990) *International Journal of Estuarine and Coastal Law*", p. 331.

21. *Supra*, note 10, p. 13.

22. E.F. ROOTS, *Environmental Concerns and Co-operation in the Arctic*, a paper presented at a conference on Canadian-Soviet Cooperation in the Arctic, Ottawa, 23-26 October 1989, p. 8.

23. *Supra*, note 10, p. 21.

24. For the texts of the Convention and the Protocol, see (1987) 26 *International Legal Materials*, pp. 1516 and 1541.

year 2000, they have not yet received the necessary number of ratifications to enter into force. Fortunately, this has not prevented the taking of steps to strengthen the Montreal Protocol, and an amendment to that Protocol, adopted in 1990, raised the goal to 100 % elimination by the year 2000. These are instruments of general application, but there is also a need for a regional convention for the protection of the atmosphere in the Arctic.

3. Food chain

Toxic substances, particularly organochlorides (mainly PCBs), which originate from industrial and agricultural practices, have been found in high concentrations in the fatty tissue of animals at the top of the food chain such as Arctic seals, polar bears and whales. These poisonous substances eventually find their way to the indigenous populations who depend on those local animals for their survival. Dr. Roots, Science Advisor Emeritus at Environment Canada and well-known authority on Arctic science, reports that, in a native village in the eastern Canadian Arctic, "a significant proportion of the inhabitants have body concentrations of toxic organochlorides significantly higher than the average for Canadians as a whole".[26] Such damaging effect is corroborated by Mary Simon, currently President of the Inuit Circumpolar Conference, who states that "polychlorinated biphenyls (PCBs) and other persistent chemicals are seriously jeopardizing the health of Inuit, our northern environment and our wildlife".[27]

4. Global warming

The climate change, which is presently taking place in the form of global warming because of the accumulation of the so-called "greenhouse gases" in the upper atmosphere, will be particularly felt in the Arctic. In the words of Dr. Roots, "the best current estimates suggest that the entire planetary surface will likely warm an average of 1.5 to 4 degrees Celsius in the next fifty years, and that the warming of the arctic regions around 70° N latitude would be 2 to 2.4 times as great as the world average".[28] Some of the environment changes which could result from global warming during the next half-century include: increased cloudiness, storm and snow along arctic coastlines; increased variation of regional climate in the Arctic; increased snow cover on sea ice, resulting in thinning and greater clearing; increased snowfall on glaciers and ice-caps, adding to their size; and changed biogeographic zones and hydrological systems in northern

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25. Neither the Protocol nor the Amendment have received the necessary number of ratifications. However, most of the major industrial producers of chlorofluorocarbons have taken steps to reduce their production in accordance with the amendment.

26. J. JENSEN, "Report on Organochlorines" in *The State of the Arctic Environment: Reports*, no. 2 Rovaniemi, Finland, Arctic Centre Publications, 1991, pp. 335-384. For the latest report, see D. KINLOCH, H. KUHNLEIN & D.C.G. MUIR, "Inuit Foods and Diet: an Assessment of Benefits and Risks", in *Science of the Total Environment* (in press).

27. Mary SIMON, "Security, Peace and the Native Peoples of the Arctic" in Thomas R. BERGER ET AL., *The Arctic, Choices for Peace and Security*, Edmonton, published by the True North Strong and Free Inquiry Society, 1989, p. 34. To the same effect, see Karen TWITCHELL, "The Not-So-Pristine Arctic", *Canadian Geographic*, Vol. 111, Feb/Mar. 1991, pp. 53-60.

28. E.F. ROOTS, *Environmental Concerns...*, *op. cit.*, note 22, p. 7.

North America and Siberia, causing a northward extension of the tree line and affecting the supply of north-flowing rivers.[29] The possible changes just enumerated are, of course, far from certain. What is certain, however, is that some changes will occur, the risk of damage is high and cooperation is necessary at the regional as well as at the global level. This necessity should be reflected in the World Climate Convention which should be ready for adoption in June 1992, at the U.N. Conference on the Environment and Development being held in Brazil.

5. Marine environment

As for the marine environment in the Arctic region it is now generally recognized that special protection is necessary. That general recognition, with respect to vessel-source pollution, is contained in a special provision of the 1982 Convention on the law of the Sea. Because of the presence of ice and the possibility of major harm and irreversible disturbance of the ecological balance, coastal States are empowered to not only adopt but to *enforce* special protective measures to prevent, reduce and control marine pollution from vessels.[30] That provision was gratifying to Arctic States, particularly to Canada which had adopted its *Arctic Waters Pollution Prevention Act* in 1970, containing such powers. Although the Law of the Sea Convention has not yet come into force, the special Arctic clause may be considered as already forming part of customary international law, because of the large degree of acceptance it has already received, particularly on the part of Arctic States. In 1971, the Soviet Union adopted similar protective measures for its Arctic waters and in 1988 the United States, which had opposed the Arctic clause during the Law of the Sea Conference, recognized that its commercial vessels would conform with the provisions of Canada's Arctic legislation and, consequently, has impliedly accepted the substance of the Arctic clause.

In addition, all of the Arctic States agreed in 1991 to "apply the principles concerning the protection and preservation of the Marine Environment as reflected in the 1982 United Nations Convention on the Law of the Sea".[31] The provisions of the Convention cover marine pollution from all sources : land-based, sea-bed activities, dumping, vessels and the atmosphere. However, States must still take specific measures individually and collectively to implement those provisions which remain, in most part, of a general character. For this implementation to take place close cooperation is necessary both at the bilateral and regional levels.

At the bilateral level a good beginning has been made with respect to pollution from vessels and sea-bed activities. In 1983, an Agreement was concluded between Denmark and Canada relating to the waters between Greenland and the Canadian Arctic Archipelago. The parties agree to consult each other prior to the initiation of works or undertakings which could cause marine pollution damage and pay compensation for damage caused from installations engaged in exploration or exploitation. Annexes to the Agreement establish two joint contingency plans,

29. *Supra*, note 10, pp. 27-29.

30. See Article 234, Law of the Sea Convention, 1982.

31. *Arctic Environmental Strategy*, June 14, 1991, Art. 7. It is expected that the Government of the Russian Federation will assume the obligation of the former USSR with respect to the Arctic.

one for pollution incidents resulting from offshore exploration or exploitation and the other, resulting from shipping activities.[32]

On November 20, 1989, a Memorandum of Understanding on Cooperation relating to the Prevention and Control of Arctic Marine Pollution was concluded between Canada and the Soviet Union. The Understanding came into force upon signature and is for a period of 4 years. Both countries having already adopted national legislation to combat marine pollution in their respective Arctic waters, this Understanding enhances bilateral cooperation to prevent, reduce and control ship-source pollution in ice-covered areas. It provides for the exchange of information on such topics as environmental legislation, pollution prevention policy, pollution monitoring, pollution incident response capabilities and research results. Transport Canada and the Merchant Marine of the Soviet Union are responsible for the implementation of the Understanding.

At the regional level, the Arctic Environmental Protection Strategy, adopted by the eight Arctic States in June 1991, represents an important step in the right direction. This is particularly so with respect to their agreement to "take measures as soon as possible to adhere to the strictest relevant international standards within the conventions, to which the countries are parties, regarding discharges irrespective of origin".[33] This represents a considerable commitment, when one considers that there are no less than eight general international conventions dealing with the protection of the marine environment.

6. Environment generally

The whole question of protection of the environment, at both the global and regional levels, was given special impetus at the United Nations in December 1989, when it was decided to hold a special Conference on the Environment and Development in Brazil in 1992. The General Assembly resolution reaffirmed the responsibility of States "to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction and to play their due role in preserving and protecting the global and *regional environment* in accordance with their capacities and specific responsibilities".[34] The Assembly resolution specified that one of the objectives of the Conference is "to examine ways and means further to *improve co-operation* in the field of protection and enhancement of the environment *between neighboring countries*, with a view to eliminating adverse environmental effects".[35]

If States, in any region of the world, should cooperate to ensure that their activities (particularly their resource development activities, both on-shore and off-shore) do not cause transboundary damage to the environment, surely that obligation applies with much greater force in the Arctic. In addition, protection of the delicate Arctic environment cannot be assured unless there is an adequate coordination of scientific research.

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32. Agreement for Cooperation relating to the Marine Environment, Canada/Denmark, 26 Aug. 1983, *Canadian Treaty Series*, No. 19.
33. *Supra*, note 31, Art. 7, ii.
34. U.N. Document A/Res/44/22, 22 Dec. 1989; emphasis added.
35. *Ibid.*, emphasis added.

C. ARCTIC COOPERATION FOR THE COORDINATION OF SCIENTIFIC RESEARCH

Cooperation among Arctic States must result in both an effective coordination of research among all countries concerned and a high degree of interaction between science and policy-making. Beginnings of cooperation have been made but more needs to be done and Canada has the potential to make a significant contribution to Arctic science.

1. Effectiveness of coordination

Effective coordination of research presupposes that a number of conditions are met, including : equal access to scientific information and data: sharing of current information on environmental effects; comprehensive monitoring and data collection systems; and fuller participation of aboriginal peoples in scientific research.[36] It is also important that scientists from the various countries use internationally comparable methodologies to collect information and data, otherwise adequate coordination of research is very difficult. This was found to be the case in the study of the North Sea environment and a Task Force was established to prepare a new Quality State Report, using data based on internationally comparable methodologies. "At present" writes Dr. Philip Reid (the North Sea Scientific Co-ordinator at the Department of the Environment of the United Kingdom), "each country has its own North Sea programmes with different emphases and/or scientific methodologies. The Task Force provides a means to ensure the eventual harmonization and co-ordination of these different approaches".[37]

2. Science and policy-making

A high degree of inter-action between science and policy-making is also of the utmost importance. Two political scientists, at the Fridtjof Nansen Institute in Oslo, have made a study of the role of science in North Sea policy-making and found a number of deficiencies. They identified the following institutional deficiencies : "co-ordination of research and monitoring is flawed; the awareness of the importance of a clear distinction between science and politics is too low; policy-makers and scientists speak different languages and translation is sparse; the media lack the necessary expertise to involve the public in a rational way".[38]

3. Beginnings of coordination

With respect to the coordination of scientific research in the Arctic, a good beginning has been made on a bilateral basis (particularly between Canada

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36. On these and other prerequisites, see *supra*, note 10, pp. 62-3.

37. Philip C. REID, "The Work of the North Sea Task Force", in *The North Sea : Perspectives on Regional Environment Co-operation*, a special issue of (1990) *International Journal of Estuarine and Coastal Law*, p. 88; see also a review of this special issue by the present writer in (1991) 36 *McGill Law Journal*, pp. 1110-1124.

38. Jorgen WETTESTAD and Steinar ANDRESSEN, "Science and North-Sea Policy-Making : Organization and communication", *id.*, pp. 121-2.

and the Soviet Union),[39] but, at the multilateral level, the first important step was only taken in 1990. This was the establishment of an International Arctic Science Committee (IASC) in which participate all eight Arctic countries and the six non-Arctic countries that carry out significant research in the Arctic. These are France, Germany, Japan, the Netherlands, Poland and the United Kingdom. In the words of the Report of the Canadian Institute of International Affairs "the real challenge for IASC will be to engage the participation of the scientific communities of all countries that can contribute to arctic science, sustain co-operation on an ongoing basis, and, at the same time, facilitate the science which is seen to be in the national interest of member countries".[40]

4. Canada's potential contribution

As for Canada's future contribution to Arctic science, the Report emphasizes the necessity of improving its Arctic research capability in the following terms: "[...] if Canada is to do its share in contributing to international arctic science, or even obtain the information it needs about the arctic environment to develop its own domestic policies, it will have to *strengthen its indigenous capabilities, and provide means for better co-ordination on ongoing scientific research activities* within the Canadian Scientific community".[41] The creation of the Canadian Polar Commission in 1991, with provision for at least one regional office north of 60° N latitude, is a step in the right direction in eventually making an adequate contribution to international polar science. Canada being a member of the Antarctic Treaty since 1988, although only as a non-consultative member, the Polar Commission should be able to obtain research information in respect of both polar regions. Along with the other four Arctic Basin States, which were already members of the Antarctic Treaty, Canada can now contribute to and benefit from the vast amount of scientific research being pursued in the Antarctic in various fields of relevance to the Arctic such as sea ice structure and behaviour, climate dynamics and the protection of the marine environment. Of course, to attain its objectives, the Polar Commission must receive the necessary funding and it "must not be allowed to become an instrument of government or the tool of a particular department or agency".[42] Unfortunately, it would seem that these dangers are nearly always present.

5. Antarctic model

Close cooperation in scientific research within the Antarctic treaty system augurs well for similar cooperation in an Arctic Region Council. This is particularly so when one considers that five (U.S.A., Russia, Norway, Sweden

39. Agreements providing for scientific cooperation were concluded in 1971, 1972, 1984 and 1989. The 1989 Agreement on Arctic Cooperation includes a program in science and technology which covers geology, meteorology, climatology, environmental protection, construction and Arctic marine, land and air technology. It provides for joint research, joint conferences and joint publications.

40. *Supra*, note 10, p. 64.

41. *Id.*, p. 65, emphasis added.

42. *Id.*, p. 66.

and Finland) are members of the Scientific Committee for Scientific Research (SCAR) for the Antarctic. Canada has accepted invitations to participate at SCAR conferences and has become involved in some SCAR activities, but has not yet made formal moves to become a member, although it adheres to the parent organization of SCAR, the International Council of Scientific Unions (ICSU).

D. ARCTIC COOPERATION FOR THE CONSERVATION OF LIVING RESOURCES

The conservation of living resources in the Arctic must involve the participation of aboriginal peoples and take into account their understanding of wildlife and their sustenance practices.

1. Understanding of wildlife

As stated by the Inuit Circumpolar Conference in its Comprehensive Arctic Policy, "wildlife is the basis of Inuit life, culture and economy".[43] But, since wildlife does not respect political boundaries, it "cannot be properly managed nor can its habitat be adequately protected in independent jurisdictions without regional, national and international cooperation".[44] Indigenous populations have developed a unique understanding of wildlife and their habitat. They recognize more than anyone that wildlife is a shared resource which must be protected and managed in a manner that maintains the delicate ecological balance of the region, whilst responding to the needs of the people.

2. Sustenance practices

Aboriginal sustenance practices must be taken into account, not only because it is a matter of duty to respect the needs and culture of native communities, but also because such practices, if carried out on the scale to which aboriginals have traditionally developed their economy, are in conformity with the concept of sustainability. Native societies are accustomed to taking from nature only what is necessary for their survival today, so that nature will still be there for them tomorrow. To quote from an Inuit hunter: "I just get enough for my own use the coming year. Next year the animals are going to be there anyway, that's my bank".[45]

The issue of subsistence harvesting was the subject of a statement of principles in June 1991, at the meeting held in Greenland, of the Inuit Circumpolar Conference, an established association of Inuit from Alaska, Canada and Greenland, with observers from the Saami of the Nordic countries and the native peoples of the Russian north. The basic principle is expressed as follows: "Subsistence harvesting continues to be essential to the cultural, social and physical well being of the Arctic indigenous peoples. Subsistence is the traditional and direct depend-

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43. I.C.C., *Principles and Elements for a Comprehensive Arctic Policy*, 1989, p. 53.
44. *Ibid.*
45. H. BRODY, *Living Arctic: Hunters of the Canadian North*, 1987, p. 78, quoted in Randy KAPASKESIT and Murray KLIPPENSTEIN, "Aboriginal Group Rights and Environmental Protection", (1991) 36 *McGill Law Journal* 925-961, p. 930.

ence on renewable resources".[46] The statement goes on to underline that their subsistence is increasingly threatened by the anti-harvesting lobby movement and concludes by calling upon governments to recognize fully their rights to the harvesting of renewable resources and to the direct participation in the development and implementation of any measures for the protection and conservation of Arctic species and habitats.

3. Involvement of aboriginal peoples

The Inuit themselves realize that it is in their long term interest that wildlife be conserved and its habitat protected, so they have developed a Regional Conservation Strategy which they are trying to implement.[47] But for the implementation of that strategy or of any international agreement, such as the Agreement on the Conservation of Polar Bears of 1973,[48] the direct involvement of all major user groups is necessary. This necessity was demonstrated with respect to the polar bear population in the Beaufort Sea crossing the political boundary between the United States and Canada. With different national regulations on each side of that boundary, the coastal population of polar bears was being threatened until 1988 when an agreement was concluded between the North Slope Borough and the Inuvialuit Game Council. The Beaufort Sea Polar Bear Management Agreement of 1988 protects bears in dens and females with cubs. It also provides for annual quotas to be allocated to both groups, based on the best scientific evidence.[49]

4. Beginnings of cooperation

Aside from the Polar Bear treaty of 1973, Arctic States have yet to conclude regional agreements for the protection of transboundary living resources such as migratory birds, porcupine, caribou and various species of whales and seals. These have been the subject of bilateral agreements, but more needs to be done on a regional basis.[50]

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46. *Statement on Subsistence, the Traditional and Direct Dependence on Renewable Resources*, 20 June 1991, signed by the leaders of the Inuit Circumpolar Conference, the Nordic Saami Council and the USSR Association of Northern Small Peoples.

47. In that way, the Inuit have given effect to the *World Conservation Strategy — Living Resource Conservation for Sustainable Development*, prepared by the International Union for Conservation of Nature and Natural Resources (IUCN), with the advice, cooperation and financial assistance of the United Nations Environmental Program (UNEP) and the World Wildlife Fund (WWF), in collaboration with FAO and UNESCO, Gland, Switzerland, 1980. See also *Caring for the Earth — A Strategy for Sustainable Living*, Gland, Switzerland, published by IUCN, UNEP and WWF, 1991.

48. The treaty came into force in 1976, after the ratification by the 5 Arctic Basin States; see *Canadian Treaty Series*, 1976, No. 24.

49. See Leslie TRESEDAR and Andy CARPENTER, "Polar Bear Management in the Southern Beaufort Sea", *Information North*, Newsletter of the Arctic Institute of North America, Vol. 15, No. 4, April 1989.

50. See in particular the following: the Convention for the Protection of Migratory Birds of 1916 between Canada and the United States; the Agreement on the Conservation of the Porcupine Caribou Herd of 1987 between Canada and the United States (which is proving very difficult to implement) and the Memorandum of Understanding on the Conservation and Management of Narwhal and Beluga of 1989 between the Fisheries Departments of Canada and Greenland; and the Agreement on Sealing and Conservation of Seal Stocks in the Northwest Atlantic of 1971 between Canada and Norway.

At the national level, Canada is to be commended for having adopted an Arctic Marine Conservation Strategy in 1987. Its stated purpose is "to ensure the future health and well-being of Arctic marine ecosystems thereby enabling Canada to fulfill its national responsibilities in the Arctic and to provide for the sustained utilization of Arctic marine resources, in particular, use by Arctic peoples".[51] One of the guiding principles of the Strategy is the cooperation with other Arctic States. It provides that the "implementation of the strategy should recognize regional seas as broad management units as well as the need for international co-operation".[52]

Realizing the need for cooperation, Arctic States might well consider the advantages of concluding a regional agreement for the conservation of vital living resources.[53] Whatever cooperative measures they take, their implementation would be greatly facilitated by the proposed Arctic Regional Council in which the indigenous populations would have a meaningful participation.

E. ARCTIC COOPERATION FOR SUSTAINABLE ECONOMIC DEVELOPMENT

The achievement of sustainable economic development in the Arctic presupposes a common understanding of sustainability. It also requires cooperation in the development of non-renewable resources and in their transportation to markets.

1. Meaning of sustainability

The best definition of sustainable development is probably still the one given by the World Commission on Environment and Development (known as the Brundtland Commission) in 1987, which reads as follows: "Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs".[54] The concept of the development of resources implies a most important limitation: that such development be limited to meeting *essential* needs so as to leave enough for future generations to meet their own *essential* needs. In the words of the Commission "a society may in many ways compromise its ability to meet the essential needs of its people in the future — by overexploiting resources, for example. The direction of technological developments may solve some immediate problems but lead to even greater ones. *Large sections of the population may be marginalized by ill-considered development*".[55] This danger of marginalization is particularly present for the indigenous peoples of the Arctic who live off the land and whose

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51. FISHERIES AND OCEAN CANADA, *Canadian Arctic Marine Conservation Strategy*, Ottawa, 1987, p. 81.

52. *Ibid.*

53. For a similar recommendation, see D.L. VANDERZWAAG and C. LAMSON, "Ocean Development and Management in the Arctic: Issues in American and Canadian Relations", (1986) 39 *Arctic* 327-337, p. 328.

54. THE WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, *Our Common Future*, p. 42. On the meaning of sustainability, see also the following: P.S. ELDER, "Sustainability", (1991) 36 *McGill Law Journal* 831-852, pp. 833-836 and Franklyn GRIFFITHS AND R. Y. ORAN, *Managing the Arctic's Resources*, Impressions of the Co-Chairs of a Working Group on Arctic International Relations, 1991, p. 32.

55. *Id.*, p. 44; emphasis added.

subsistence depends on the continuing quality of their environment. To quote again from the Commission's Report, because of its special pertinence to the Arctic : "Sustainable development requires that the adverse impacts on the quality of air, water, and other natural elements are minimized so as to *sustain the ecosystem's overall integrity*".[56] Considering the special vulnerability of the Arctic and the large increase in population of native people, plus the damage to the habitat of many northern animals used by natives for food, the achievement of sustainability will be very difficult.

2. Non-renewable resources

With respect to the development of non-renewable resources, especially petroleum hydrocarbons, Professor Harriet Critchley concludes that the Arctic Basin States, being very dependent on those resources, should seize the opportunity afforded by the present modest level of activity "to explore and develop *cooperative institutions and mechanisms* for further economic development in the face of pressures that might otherwise promote conflict".[57]

Professor Critchley's suggestion is in line with the ouvertures made by the Soviet Union in recent years. In his speech at Murmansk in 1987, President Gorbachev stated that "the Soviet Union attaches much importance to peaceful cooperation in developing the resources of the North, the Arctic. Here an exchange of experience and knowledge is extremely important. Through joint efforts it could be possible to work out an overall concept of rational development of northern areas".[58] He added : "We have an interest in inviting, for instance, Canada and Norway to form mixed firms and enterprises for developing oil and gas deposits of the shelf of our northern seas. We are prepared for relevant talks with other States as well".[59] This overture was repeated by Ambassador Rodionov at a conference in Edmonton, in 1989, where he stated : "The Soviet Union pays a great deal of attention to cooperation in the development of Arctic resources. It is necessary, in our view, to establish jointly a mechanism for such cooperation in the interests of national development of northern regions".[60] He specified later : "We are interested, for instance, in the participation of Canadian companies in joint ventures for developing oil and gas deposits in the shelf of our northern seas".[61] It is obvious from the above that the political will to cooperate in Arctic resource development is very present on the part of Russia and it envisages cooperation with all of the Arctic States.

3. Transportation of resources

Commercial resource development means transportation to southern markets. Except for oil and gas, which may be brought to market by pipeline or

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56. *Id.*, p. 46; emphasis added.

57. W. Harriet CRITCHLEY, "L'importance internationale du développement économique des régions arctiques", 20 *Études internationales* 7-26, p. 7, for summary in English (emphasis added); see also conclusion to the same effect, p. 26, in French.

58. Mikhail GORBACHEV, *The Speech in Murmansk*, 1 October, 1987, Novosti Press Agency Publishing House, Moscow, 1987, p. 30.

59. *Ibid.*

60. *Supra*, note 27, p. 211.

61. *Id.*, pp. 212-3.

tankers, Arctic resources must be transported by ships and barges accompanied by icebreakers. In *Russia*, all of the oil and gas production has been on land, mostly from the West Siberian basin in the sub-Arctic, and the production is carried by pipeline.[62] As for the other Arctic resources of Russia, such as timber and mining products, they are shipped on its north flowing rivers to the Northern Sea Route which is usually open from July to October and links Murmansk to Vladivostok. The Soviet Union has developed an ice-breaker fleet of more than 75 ships, 16 of them being large polar icebreakers capable of continuously breaking level ice of 1.4 to 2.4 meters in thickness at 3 knots.[63] By comparison, the United States has only two icebreakers in this size range, the *Polar Star* and the *Polar Sea*, and Canada has only one, the *Louis St. Laurent*, which has been in process of refitting for the last several years.

The *United States* has been shipping its oil from the Beaufort Sea by pipeline, down through Alaska to Valdez and then by tanker along the Canadian coast, to the American market on the west coast. It was on the Alaskan coast that the *Exxon Valdez* grounded in March 1989 releasing some 44,000 tonnes of oil. The United States considered using the Northwest Passage in the early 1970's to ship some of its oil from the Beaufort Sea to the American east board but, to date, this has not yet taken place.

In *Canada*, a lot of drilling has been done in the Beaufort Sea but it has not yet begun the commercial extraction of oil from its wells. The only oil being shipped from the Arctic is in very small quantities from the Bent Horn oilfield, in the middle of the Queen Elizabeth Islands north of the Northwest Passage. Since 1985, the *M.V. Arctic*, a double-hulled Class 4 Oil Bulk Ore carrier of 28,000 tonnes, has transported a few shipments of light crude oil each year for transshipment to smaller tankers. These are then escorted by Coast Guard icebreakers through the ice-covered areas and the oil is shipped either to Montreal or Europe. In addition, a small quantity of light crude is delivered locally from Bent Horn to Resolute Bay and to Polaris Mine on Little Cornwallis Island.[64] The producers (Esso, Shell and Gulf) of the Mackenzie Delta gas have received a license from the National Energy Board to export 9.2 trillion cubic feet over the next twenty years, but environmental approval must still be obtained. The transportation to market would take place by pipeline.

As for the eventual oil shipping from the Beaufort Sea wells, it must still be decided if this will take place by pipeline or tanker. In its Final Report of 1984, the Beaufort Sea Environmental Assessement Panel expressed a preference for the pipeline method, but concluded that crude oil could be shipped by super tankers if a program of accelerated research established that it could be done without undue negative effect on wildlife and the Inuit traditional way of life.[65] The Beaufort Sea Panel also recommended that one agency only be responsible

62. See John HANNIGAN, "Oil and Gas Activity in the Soviet North", (July-August 1988) 16 *Northern Perspectives* 14-17, published by the Canadian Arctic Resources Committee.

63. See LAWSON and W. BRIGHAM, "Soviet Arctic Marine Transportation", 26 *Northern Perspective* 20-23.

64. See PUBLIC REVIEW PANEL ON TANKER SAFETY AND MARINE SPILLS RESPONSE CAPABILITY, *Protecting Our Waters*, Final Report, Sept. 1990, p. 166.

65. FEDERAL ENVIRONMENTAL ASSESSMENT REVIEW OFFICE, *Beaufort Sea Hydrocarbon Production and Transportation*, Final Report of the Environmental Assessment Panel, July 1984, especially p. 70.

for oil spill contingency planning, the Canadian Coast Guard. Consequently, the Coast Guard pressed for and the Government eventually approved the construction of a Polar 8 icebreaker which was "central to the research and spill response recommendations of the Beaufort Sea Panel".[66] Indeed, the *Polar 8*, would have been capable of operating year-round in 15 of the 16 safety zones of the Canadian Arctic (all zones except M'Clure Strait basically) and "the vessel would have also provided the first significant national capability to enforce Canada's Arctic pollution regulations year-round".[67] It was to have space on board for up to 150 specially trained personnel. Unfortunately, in 1990, the Government decided to rescind its approval for the construction of the *Polar 8*, because of the high cost, and the country is left with very inadequate oil spill response capability.

In September 1990, the first major finding of a Public Review Panel on Tanker Safety and Marine Spills Response Capability was that "the capability to respond effectively to a spill of any significant magnitude does not presently exist anywhere in Canada".[68] Consequently, the Panel made a number of stringent recommendations, some of which apply specifically to the Arctic. It recommended, in particular that: "it be mandatory for tankers involved in Arctic fuel resupply to be doubled-hulled";[69] "the federal government provide a dedicated oil spill monitoring and clean-up vessel for operation during each Arctic shipping season";[70] "all Canadian Coast Guard icebreakers operating in the Arctic should have containerized spill clean-up equipment on board, as well as a crew trained in its use".[71] This last recommendation was also made for all tankers and barges.[72]

4. Signs of cooperation

This brief review of the experience in resource transportation gained by three of the eight Arctic States shows that much would be gained by close cooperation among all of them in this important area. Such a recommendation was strongly urged at the International Conference on Arctic Cooperation in Toronto in October 1988, by Dr. A. Arikaynen of the All-Union Institute for Systems Studies in Moscow. He went so far as to suggest that Arctic States "begin the preparation of a collective monograph on the state-of-the-art and problems of Arctic navigation".[73] Later, at the McGill Conference on Arctic Policy, his compatriot Dr. R.V. Varatanov, Head of the World Ocean and Environment Section of the Academy of the USSR went even further in suggesting that the shipping of foreign cargos on Soviet vessels in the Northern Sea Route could lead "to consider the advisability of establishing joint companies engaged in Arctic shipping".[74] This

66. *Supra*, note 64, p. 171.
67. *Id.*, p. 178.
68. *Supra*, note 64, p. i.
69. Recommendation 6-35, *id.*, p. 176.
70. Recommendation 6-39, *id.*, p. 179.
71. Recommendation 6-39, *ibid.*
72. Recommendation 6-41, *ibid.*
73. A. ARIKAYNEN, *Exchange of Experience in Arctic Marine Transportation*, paper presented at an International Conference on Arctic Cooperation, 27 Oct. 1988, p. 17.
74. R.V. VARATANOV, *Some Economic, Political and Legal Problems in the Development of Cooperation Between States in the Exploitation of Marine Areas of the Arctic*, paper presented at an International Conference on Arctic Policy, Montreal, Dec. 1988, p. 11.

kind of close cooperation in marine transportation between Canada and Russia appears to be materializing. In September 1991, it was reported that Canarctic Shipping Co. Ltd. has been negotiating with two Russian ship compagnies and that it hopes to add Russian vessels to its fleet of cargo ships operating in the Canadian Arctic. In turn, Canarctic, which has developed an excellent navigation system, hopes to sell navigation and communications equipment to Russia.[75]

Economic cooperation among Arctic States seems to be developing at the bilateral level, at least between Canada and Russia, but there is nothing comparable on the multilateral side. The Cold War between the former Soviet Union and the United States having been replaced by manifestations of good will, the development of economic cooperation between all Arctic States ought to be promoted through an Arctic Region Council.

E. ARCTIC COOPERATION FOR THE PROTECTION OF THE HEALTH AND SOCIAL WELL-BEING OF ARCTIC INHABITANTS

The Preamble to the Declaration of the Arctic Indigenous Leaders Summit, signed in June 1991 by the representatives of the three participating organizations (the Inuit Circumpolar Conference, the Nordic Saami Council and the Russian Association of Northern Small Peoples), states that they are "deeply concerned for the *health, well-being and ultimate survival* of our peoples, including recognition of our nutritional needs and the rights of renewable resource harvesters, and for the protection of our Arctic environment, both now and in the future".[76] This affirmation sums up, in essence, what needs to be protected to insure the health and well-being of Arctic indigenous peoples. However, to provide that protection adequately, it is necessary for governments of Arctic States to understand how those populations perceive their own health and well-being. It is obvious that they wish to continue living in close relationship with their natural environment, of which they properly consider themselves the primary custodians. That special relationship with nature is reflected in their perception of health and well-being. This is evident in the Arctic Policy adopted by the General Assembly of the I.C.C. in 1989, which specifies the meaning attached to those terms and what they expect from their government by way of services.

1. Health policy

The "Principles and Elements on Health and Social Well-Being" forming part of the Arctic Policy, cover some 6 pages of single spaced type-written text.[77] What follows is a summary of some of those principles and elements, followed by the relevant paragraph number.

- Health refers to the state of the whole person and has a direct bearing on the development and quality of life of the individual (1);
- "Spiritual, emotional, psychological and physical well-being are all elements to be considered in striving for good health" (2);

75. See the *Ottawa Citizen*, Sunday, Sept. 1, 1991, p. E5.

76. Signed at Horsholm, Greenland, on behalf of the ICC, the Nordic Saami Council, and the U.S.S.R. Association of Northern Small Peoples, 20 June 1991, emphasis added.

77. See *Principles and Elements For A Comprehensive Arctic Policy*, 1989, pp. 75-80.

- Arctic governments have a duty to guarantee health and social services to northern peoples (4);
- Inuit must participate in the health care and social services systems (5);
- "As a general rule, the socio-cultural impact of health programs in the North should be assessed" (7);
- "If the right to health as a fundamental human right is to have real meaning in the Arctic, a comprehensive strategy must be devised and carried out" (8);
- Increasing health risks are being found in the Arctic environment (9) and "environmental causes of health problems in the Arctic should be carefully studied" (10);
- Because of the over-consumption of alcohol and drugs (12), "State governments [...] should provide adequate financing for such programs as alcohol and drug abuse" (13);
- "A comprehensive program to deal with violence in the home should be devised" (14). Then follows specific elements of the suggested program, such as counselling for victims; community education; therapy for those perpetrating the assaults; legal advice; training of police officers to better deal with family disputes; and legal reforms (14);
- Community-based health care systems should be developed, as well as adequate transportation links to deal with emergency cases (15);
- "Higher education and specialized training are necessary to substantially increase the number of Inuit professionals in health and social services". The acute shortage of medical personnel should be remedied and non-Arctic personnel should undergo cross-cultural orientation and training (18);
- A comprehensive health strategy should take into account the benefits of Inuit traditional medicine, as well as the Inuit cultural and religious customs which form an integral part of their healing practices (22);
- International cooperation in health and social research programs in the North should be encouraged and research priorities should be determined in consultation with the local communities (23);
- Arctic States should maintain systems to collect and analyze health and social data pertaining to the North (24);
- Arctic States are encouraged to legally recognize traditional Inuit adoption (26);
- Arctic States should give due recognition to Inuit traditions with respect to family planning and treatment of children (27);
- Inuit women should have the choice of delivering babies in their own community, in the absence of anticipated complications, and be assisted by traditional midwives if they so wish (28).

2. Basic elements

Four basic propositions may be extracted from the above principles and elements on health and social well-being. First, health and well-being encompass the whole of the person : the physical, the psychological, the emotional and the spiritual. Second, the Inuit are greatly concerned about the increasing health risks

in their environment. Third, they wish to acquire a higher level of education to enable them to participate in the planning and delivery of more adequate health care and social services for their people. Fourth, they expect Arctic governments to cooperate in health and social research programs so as to help them devise and implement a comprehensive strategy. Two of those four propositions should be commented upon : education and international cooperation.

With respect to the level of education, statistics show that only about 13 % of Inuit in Canada graduate from grade twelve and, of those who do graduate, very few are in the academic program. In the period from 1980 to 1985, for instance, only 17 Inuit graduated in the academic program.[78] This means that even fewer will develop the technical and professional qualifications necessary for a meaningful participation in the health care and social services.

On the question of international cooperation, the indigenous peoples fully realize that some institutional machinery is necessary to foster that cooperation. In their Declaration of June 1991, they agreed to include as one of three issues to be discussed at their Second Arctic Indigenous Leaders Summit "the mandate and role of existing and future organizations relevant to the Arctic".[79] It is the understanding of this writer that one future organization they had specifically in mind was an Arctic Region Council.

F. ARCTIC COOPERATION FOR PEACEFUL USES ONLY

"The Arctic is a place for sharing and cooperation, sustenance and *peace*".[80] This is how the aboriginal peoples of the Arctic view their homeland. They "are convinced that the time is now to take unequivocal and committed actions to ensure lasting peace and security in the Arctic — actions that will clearly benefit all peoples and all nations".[81] It is suggested that the time is also now to bring a wider perspective to the meaning of security and consider seriously the creation of a zone of peace or a nuclear-free-zone and, eventually, the demilitarization of the Arctic.

1. Security interests

Although the main purpose of the Arctic Region Council would be to cooperate in civil matters (environment, scientific research, economic development and human welfare), cooperation cannot be complete and fully meaningful if all security questions are excluded. Now that the Cold War is finally over, to the point where the United States is leading the way to provide food and other humanitarian aid to the former Soviet Republics, there is no more valid reason to exclude eventual discussion of the peaceful uses of the Arctic. Surely it is in the security

78. See Tom F. SCHNEIDER, "Inuit Education: Between Past and Future", Chapter 5 in *Inuit Self-Government in the N.W.T. : the Nunavut Proposal*, a Master of Arts thesis, Department of Political Science, Queen's University, Kingston, Dec. 1988, p. 103.

79. *Supra*, note 76.

80. Mary SIMON, *Militarization and the Aboriginal Peoples*, paper presented by the President of the ICC, at an International Conference on Arctic Cooperation, Toronto, 26-28 Oct., 1988, p. 19.

81. *Ibid.*

interests of Arctic States and their populations to insure that the gradual delimitarization of Europe, which is now so well engaged, does not result in the gradual militarization of the Arctic.

2. Zone of peace or nuclear-free-zone

The time has come when more serious consideration should be given to the concept of a Zone of Peace in the Arctic put forth by the President Gorbachev in his speech at Murmansk on 1 October 1987.[82] If it is premature to discuss a zone of peace in the sense of complete delimitarization, it might well be the time to broach the subject of a nuclear-weapons-free zone or a geographically limited demilitarization, accompanied by an agreement on conventional arms control. An Arctic nuclear-weapons-free zone (hereafter referred to simply as nuclear-free zone), total or partial, has been suggested by numerous people and organizations for nearly 30 years.[83] A demilitarization (total or partial) of the Arctic has also been suggested by a number of people and organizations.[84]

For an Arctic nuclear-free zone to be successful, it is suggested that at least four main points would have to be agreed upon : a complete ban of nuclear weapons; the delimitation of the denuclearized area (which should include the Kola Peninsula); a system of verification and control; and the inclusion of all circumpolar States. Since all of the Arctic States have renounced the deployment of nuclear weapons on their territory, except the former Soviet Union and the United States, the problem would be to convince the two super powers. As for the Soviet Union, the 1989 Edmonton Conference on Peace and Security in the Arctic brought a re-assuring view from two Soviet participants. In answer to questions by Gwynne Dyer on the inclusion of the Kola Peninsula and the acceptability of a nuclear-free zone, the Soviet ambassador to Canada (Alexei A. Rodionov) assured the audience that "the Soviet Union does not intend to exclude our Kola Peninsula and other points of our Arctic and the North from our efforts

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82. See *supra*, note 58, pp. 28-31.

83. See, in particular, the following: Alexander P. VINOGRADOV, "Arctic Disarmament", 20 *Bulletin of the Atomic Scientists*, pp. 22-3; George IGNATIEFF, "In Self-Defence", *Maclean's*, 21 April 1980, p. 6; Hanna NEWCOMBE, "A Proposal for a Nuclear-Free Zone in the Arctic", (1980) 12 *Peace Research*; Robert REFORD, "Our Seat at the Table : a Canadian Menu for Arms Control", (1981) 36 *International Journal*, pp. 663-4; INUIT CIRCUMPOLAR CONFERENCE, "Arctic as a Nuclear-Free Zone", resolution 83-01, 1984, p. 30; LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES, "Declaration of a Nuclear-Weapons-Free Zone", *Hansard*, June 1986, pp. 1253-4, as amended, p. 1259; CONSULTATIVE GROUP ON DISARMAMENT AND ARMS CONTROL AFFAIRS, Report on the Meeting entitled *Peace and Security in the Arctic : Decisions For Canada*, 12 Nov. 1987, pp. 18-21; Captain James T. BUSH, "Maritime Strategy and Nuclear-Free Zone" in Thomas R. BERGER et al., *The Arctic*, Choices for Peace and Security, Proceedings of a Public Inquiry by the True North Strong and Free Inquiry Society, 1989, pp. 227-236 and Discussion, pp. 237-243.

84. See, for example, the following : Franklyn GRIFFITHS, *A Northern Foreign Policy*, pp. 60-2; Ron PURVER, *Arms Control in the North*, 1981, pp. 130-7; and *Security and Arms Control at the Poles*', (1984) 39 *International Journal* 888-910, pp. 903-905; SPECIAL COMMITTEE OF THE SENATE AND HOUSE OF COMMONS ON CANADA'S INTERNATIONAL RELATIONS, *Independence and Internationalism*, p. 135; David COX and Tariq RAUF, *Security Co-operation in the Arctic : A Canadian Response to Gorbachev's Murmansk Initiative*, presented at the Canada-USSR Conference on Canadian-Soviet Arctic Cooperation, Ottawa, 24 October 1989, pp. 6-11.

in the field of arms control. We are prepared now to discuss the Kola Peninsula as well as other parts of our North as part of a general disarmament dialogue".[85] On the acceptability of a nuclear-free zone in the Arctic, the reply came from a counsellor in the Department of Arms Limitation and Disarmament, Ministry of Foreign Affairs, as follows : "If an agreement for a nuclear-free zone in the Arctic is based on the preservation of both mutual security and the existing balance of forces on a minimum level, it is quite acceptable".[86] Since the Soviet Republics have become independent, there is nothing to indicate so far that the answers would now be different.

As for the United States, its traditional position on nuclear-free zones has been negative, perhaps because it perceived the Soviet Union as a threat. This is no longer the case and since the United States has no nuclear weapons in the Arctic now, there is no need to place any. On this point, it is interesting that, even before the dismantling of the Soviet Union, the Associate Director of the Center for Defense Information in Washington (James T. Bush, retired captain in the US Navy), who was on nuclear-powered missile-firing submarines for 10 years, spoke strongly in favour of an Arctic nuclear-free zone. "Why wouldn't we (the United States) sign a treaty making the Arctic a nuclear-free zone?" he asked. Answering his own question : "Signing an agreement for nuclear-free zone in the Arctic, I believe, would reduce the threat of nuclear war — as would a South Pacific nuclear-free zone. It is hard for me to understand why the United States opposes this".[87] Allowing himself a somewhat facetious comment as to why the United States was against nuclear-free zones, he thought it was related to what is referred in his country as NIH. "This does not stand for the National Institute for Health", he explained "but for Not Invented Here. If it isn't an idea that we personally hold, we don't like somebody trying to tell us that this is the way we should go".[88] Be that as it may, the perceived threat of the Soviet Union having disappeared, there would appear to be no longer any reason for the United States to have the same hesitation.

3. Demilitarization

On the question of the demilitarization, serious consideration should be given to suggestions such as those presented by David Cox and Tariq Rauf, at the Canada-USSR Conference Canadian-Soviet Arctic Cooperation in October 1989.[89] Their suggestion is to establish a Central Arctic Demilitarized Zone beyond the 200 nautical mile exclusive economic zone of Arctic Basin States, covering the sea-bed and subsoil, the water column and the air space, with a verification system for both the waters (surface and sub-surface) and the air space.[90] This demilitarized zone would be accompanied by an "open skies" agreement which would permit Parties to fly reconnaissance aircraft within the zone.[91] In addition,

85. *Supra*, note 27, p. 238.
86. *Ibid.*
87. *Id.*, p. 233.
88. *Id.*, p. 234.
89. See *Security Co-operation in the Arctic : A Canadian Response to Gorbachev's Murmansk Initiative*, 24 October 1989.
90. *Id.*, pp. 6-11.
91. *Id.*, pp. 12-18.

there would be certain aerial confidence-building measures such as the prohibition of simulated bombing missions within the demilitarized zone and of foreign military aircraft into Air Defence Identification Zones.[92] Finally, the report recommends a ban on the deployment of long-range, nuclear-armed sea-launched missiles (SLCMs) and, failing total ban, a ceiling on the number of SLCMs at the lowest possible level.[93] The plan is a very ambitious one and it met with a number of objections at the Conference, but the idea of a central demilitarized zone beyond the 200-mile limit remains worthy of serious consideration.

II. A Treaty Proposal for an Arctic Region Council

This second part will address briefly the following points : the reasons for proposing a treaty; the meaning of "semi-enclosed sea" in relation to the Arctic Ocean; and the obligation, if any, to cooperate in certain marine-related activities. It will then present a Draft Treaty, with a commentary after each treaty provision.

A. REASONS FOR A TREATY

The value of Ministerial Conferences and the adoption of Declarations and Strategies, to begin the process of cooperation among States, is unquestionable. It is believed, however, that the conclusion of a treaty, with its own implementation mechanism and which gives legally binding effect to the political will of the Parties, is eventually necessary to insure the effectiveness of such cooperation. More specifically, there are two reasons to have a treaty : first, the legal status of Ministerial Declarations is uncertain, and second, such Declarations cannot serve as the founding instrument of an Arctic Council.

The legal status of Ministerial Declarations and other similar instruments is uncertain and controversial in international law. Exceptionally, it is possible for such declarations to contain legally binding commitments; indeed, even unilateral declarations have been held on two occasions to create legal obligations : once by a Minister of Foreign Affairs[94] and the other, by a Head of State.[95] In the first case, the declaration was not the main basis of the Court's decision and, in the second case, the declaration by the Head of State was followed by similar declarations by three of his ministers from which the International Court — albeit a divided one — was able to find an intention to be legally bound. The great difficulty in such declarations, whether they are unilateral, joint or common, is to find the necessary intent to be legally bound, in the sense that a breach of the undertaking contained in those declarations could entail State responsibility. In a recent excellent study on the "Legal Status of International North Sea Conference Declarations", Professor van der Mensbrugghe concludes that "clearly, they are not legally binding instruments : no international responsibility, no resort

92. *Id.*, pp. 19-21.
93. *Id.*, pp. 22-24.
94. See *Eastern Greenland Case* (Denmark v. Norway), 1933, P.C.I.J., Ser. A/B, No. 53.
95. See *Nuclear Tests Case* (Australia, New Zealand v. France), 1973 I.C.J. Rep., 253 and 457.

to the rule of court".[96] True, such declarations have some legal significance, in that they represent an official intention to take certain measures. It could even be argued that, in a concrete case, the doctrine of estoppel could be invoked to render such commitments legally binding. But that doctrine, although often invoked, has seldom, if ever, succeeded in front of an international tribunal as the sole basis for a decision. In my opinion, the conclusion that such declarations do not constitute legally binding undertakings in international law is a valid one.

The second reason to have a treaty is that a Ministerial Declaration — assuming that it would be legally binding — could not serve as a founding instrument or constitution for an international organization, with its own structure, powers and mechanism of implementation. An Arctic Region Council, which would involve the participation of non-State entities and international organizations (both governmental and non-governmental), will necessitate its own constitution. This basic instrument will be meant to endure and, like any constitution, will represent the fundamental law binding the parties. It will have to be negotiated among the governments of Arctic States, and non-State entities and organizations should be involved in the process. The basic document will have to specify at least the following : the geographical area of the Councils's activities; the main purposes of the Council; the conditions of membership; the main organs of the Council and their respective powers and mode of operation; the holding of meetings; the sharing of expenses; the settlement of disputes; the manner of entry into force; and the procedure of amendments and review. Such provisions can only be found in an international agreement governed by international law, which is a treaty. The Draft Treaty contained in this part tries to spell out the various matters just mentioned.

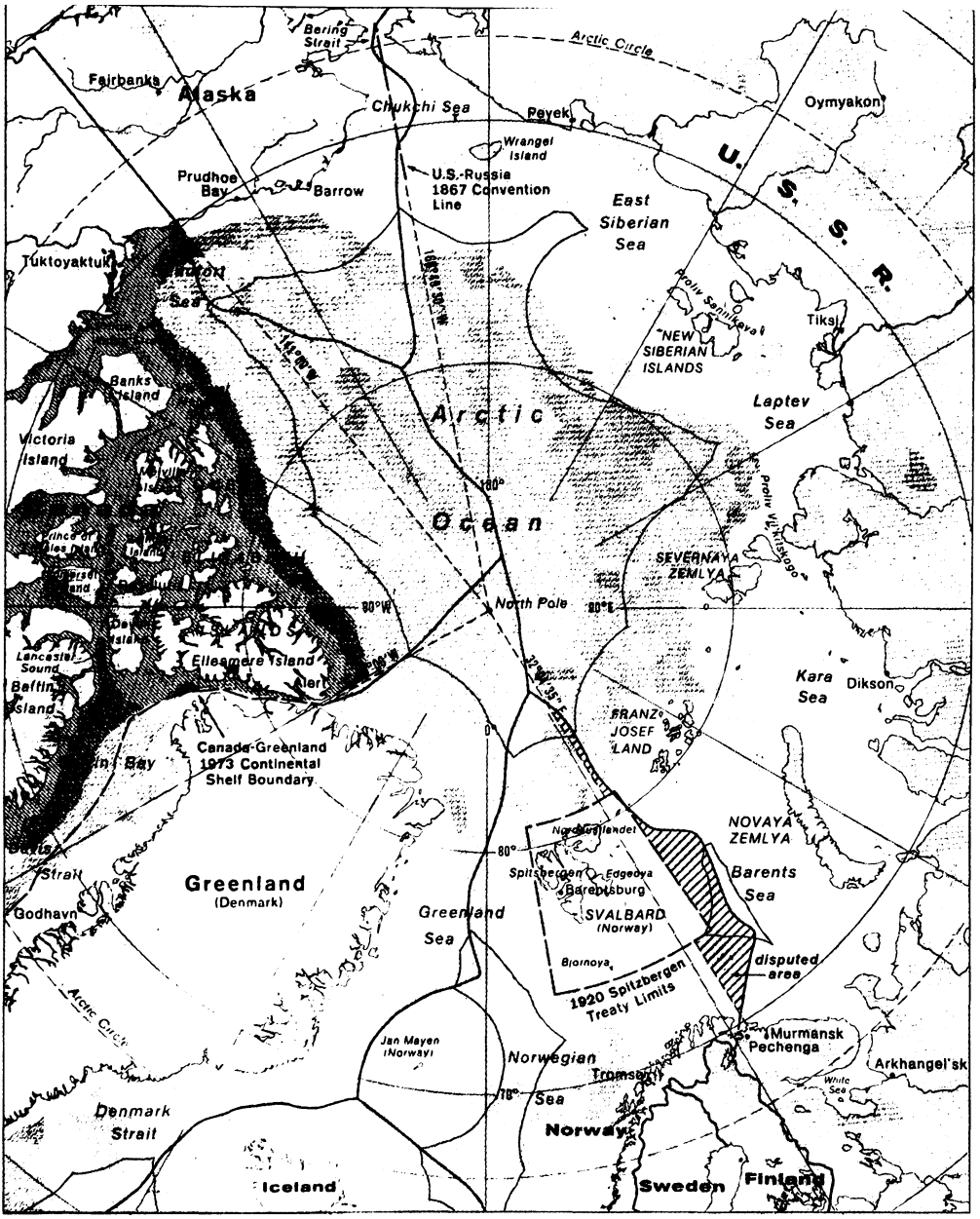
A further justification for a treaty may be found in the obligation contained in two provisions of the Law of the Sea Convention of 1982 pertaining to enclosed or semi-enclosed seas.[97] The two provisions of the Convention are Articles 122 and 123. Article 122 is one of definition and Article 123 provides for cooperation in matters relating to the living resources of the sea, the marine environment and scientific research. The implementation of those provisions raises the question of whether the Arctic Ocean falls within the definition of a semi-enclosed sea and, if it does, do they impose a legal obligation to cooperate.

3. Arctic ocean as semi-enclosed sea

For purposes of the Convention, Article 122 states that the meaning of a "enclosed or semi-enclosed sea" is as follows : "a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial sea and exclusive economic zones of two or more States". Obviously, the definition is very a general one and the two requirements are rather flexible. The first requirement, when applied to the Arctic Ocean, is that the "basin" be "surrounded by two or more

96. Yves VAN DER MENSBRUGGHE, "Legal Status of International North Sea Declaration", (1990) *International Journal of Estuarine and Coastal Law*, p. 21.

97. Although strictly speaking the Law of the Sea Convention has not yet received the necessary number of ratifications for its entry into force, the practice of States has been such that it may be assumed to have legal force and effect for the present purposes.



MAP REPRODUCED FROM THE POLAR REGIONS ATLAS, CC 78-10040, May 1978, at p. 32

States''. In fact the Arctic Basin is surrounded by the eight Arctic States and, in the words of The Times Atlas of the Oceans, ''is almost encircled by land areas''.[98] The second requirement, again as applied to the Arctic Ocean, is that it should consist ''entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States''. In the present instance, a 200 nautical mile limit north of the land masses and islands of the five States actually bordering on the Arctic Ocean englobes about 60 % of the Ocean (see *Figure*). On the former Soviet Union's side alone, the five marginal seas (Barents, Kara, Laptev, East Siberian and Chukchi) occupy 36 % of the Arctic Ocean.[99]

C. OBLIGATION TO COOPERATE

Having concluded that the Arctic Ocean falls within the ambit of the definition of a semi-enclosed sea, the remaining part of the question is whether there is a legal obligation on bordering States to cooperate. Article 123 provides that ''States bordering an enclosed or semi-enclosed sea should co-operate with each other in the exercise of their rights and in the performance of their duties under this Convention''. The use of the word ''should'', instead of the usual ''shall'', indicates something short of a strict legal obligation. However, it must be noted that the object of the cooperation envisaged is so encompassing that it would be virtually impossible to enforce if a legal obligation really existed. What is important is that the same Article does impose a legal obligation on States to attain certain objectives. Because of the importance of the content of this provision for our present purpose, most of the Article is reproduced. It provides that States bordering a semi-enclosed sea

> ''*shall* endeavour, directly or through an appropriate *regional organization* [emphasis added]:
>
> (a) to co-ordinate the management, conservation, exploration and exploitation of the *living resources of the sea*;
>
> (b) to co-ordinate the implementation of their rights and duties with respect to the protection and preservation of the *marine environment*;
>
> (c) to co-ordinate their scientific research policies and undertake where appropriate joint programmes of *scientific research* in the area;
>
> (d) to invite, as appropriate, *other interested States* or international organizations to co-operate with them in furtherance of the provisions of this article'' [emphasis added].

In creating an Arctic Region Council, States bordering the Arctic Ocean would be discharging their obligation to endeavour to co-ordinate their activities relating to the living resources of the sea, the marine environment and scientific research. As well, by inviting other interested States to become members of that regional organization, they would fully complete the fulfillment of their obligation under that same provision. Finally, the establishment of a Council might enable it to have the Arctic Ocean added to the United Nations Regional Seas Program,

98. Alastair COOPER, *The Times Atlas of the Oceans*, 1983, p. 62.
99. See John E. SATER, *The Arctic Basin*, 1969, p. 14.

the main purpose of which is to benefit the regional seas considered in need of special protection.[100]

D. DRAFT ARCTIC TREATY, WITH COMMENTARY

Preamble

The Governments of Canada, Denmark, Finland, Iceland, Norway, Sweden, the Russian Republic and the United States of America,

Recognizing the increasing concern of the indigenous peoples of the Arctic Region for the deterioration of their environment and their traditional way of life;

Realizing the vulnerability of the Arctic Region to climatic and environmental change that can affect the well-being of all Northern States;

Noting that, pursuant to the United Nations Convention on the Law of the Sea (Article 123), States bordering an enclosed or semi-enclosed sea have an obligation to endeavour directly or through an appropriate regional organization, to coordinate their activities related to scientific research, the protection of the marine environment and the conservation of the living resources of the sea;

Noting also that their obligation includes the invitation of other interested States or international organizations to cooperate with them in relation to those activities;

Believing that regional cooperation should lead to the use of the Arctic Region for peaceful purposes only;

Affirming that such peaceful uses are in the interest of all humanity and in furtherance of the first purpose of the United Nations, which is to maintain international peace and security;

Commentary :

The purpose of the Preamble is only to indicate, in general terms, the reasons for establishing the Council. It contains no legal obligation as such.

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100. For additional reading on the question of whether the Arctic Ocean is a semi-enclosed or regional sea, see the following : Nigel D. BANKES, "Canada and the Natural Resources of the Polar Regions", Proceedings of the Conference on International Law : Critical Choices for Canada 1985-2000, (1986) *Queen's Law Journal* 292-323, p. 213; D.M. MCRAE, "Management of Arctic Marine Transportation : A Canadian Perspective, (1986) 39 *Arctic* 350-359, p. 354; J.C. NELSON and R.D. NEEDHAM, "The Arctic as a Regional Sea", 12 *Governmental Conservation*, Spring 1985, pp. 7-15; Anatoli L. KOLODKIN, "Legal Regimes of the Arctic", *Proceedings of the American Society of International Law*, 1988, p. 319; Alan E. BOYLE, *id.*, p. 324; Donat PHARAND, *id.*, p. 332; D. VANDERZWAAG, J. DONIHEE and M. FAEGTEBORG, "Towards Regional Ocean Management in the Arctic : From Co-existence to Cooperation", (1988) 37 *U.N.B. Law Journal* 1-33, p. 22; R.V. VARATONOV, *Some Economic, Political and Legal Problems in the Development of Cooperation Between States in the Exploitation of Marine Areas in the Arctic*, paper presented at an Arctic Policy Conference, McGill University, Dec. 1989, p. 4; A.A. SAGIRYAN, *The Arctic : Coordination of Approaches*, paper presented at an Arctic Policy Conference, McGill University, Dec. 1989, p. 12; Donat PHARAND, "Les problèmes de droit international dans l'Arctique", (1989) 20 *Études internationales*, 131-164, pp. 162-3.

1. Area of Application

For the purposes of the present Treaty, the "Arctic Region" means the area north of 60° North Latitude, including the Aleutian Islands, Labrador and the region of northern Quebec known as "Nunavik".

Commentary :

The expression "Arctic Region" was chosen instead of "Arctic Basin" to permit the inclusion of Iceland, Finland and Sweden, which do not border on the Basin but are within the region as defined. Of the numerous ways to define the "Arctic Region", the 60th parallel of latitude appears to be the most appropriate. That latitude includes all the land areas covered by the tundra or continuous permafrost, except for parts of northern Québec and of Labrador; hence, their express inclusion in the definition. The land areas north of 60 includes virtually all of the permafrost territory of the Arctic States. These are : Canada (the Yukon, the North West Territories, most of northern Québec and the tip of Labrador); Denmark (all of Greenland); Finland (all); Iceland (all); Norway (all of Svalbard and most of mainland Norway); Sweden (most of the territory); Russia (roughly the northern half — counting the archipelagos — of the territory, including the numerous rivers emptying in the Arctic Ocean); and United States (virtually all of Alaska). The Aleutian Islands are included in the area of application, considering that they are included by the United States in the definition of the Arctic, in its Arctic Research and Policy Act adopted in 1984. The Act also includes the entire Bering Sea.

The area of application includes all of the Arctic Ocean, the surrounding seas and the southern limit of sea ice. By contrast, an area delimited by the Arctic Circle would have left out significant bodies of water, large portions of the tundra and of sea ice.

2. Purposes

The main purposes of the Arctic Region Council (hereinafter after referred to as "Council") are :

(1) to facilitate regional cooperation generally among its Members;

(2) to insure the taking of measures for protection of the environment;

(3) to promote the coordination of scientific research;

(4) to encourage the conservation and appropriate management of living resources;

(5) to foster sustainable economic development;

(6) to further the health and social well-being of the indigenous and other inhabitants of the Arctic Region;

(7) to promote the use of the Arctic Region exclusively for peaceful purposes.

Commentary :

The above purposes put the emphasis on civil matters (environment, scientific research, economic development and human welfare) but it includes the military indirectly through the promotion of use for "peaceful purposes". Although this is a loaded expression which has caused considerable difficulty of interpretation, it does appear in certain key treaties (Antarctic, Non-Proliferation and Law of the Sea) and States have accepted it.

3. Membership

The founding Members of the Council shall be the eight States whose territory projects north of the Arctic Circle : Canada, Denmark, Finland, Iceland, Norway, Russia, Sweden and the United States of America.

Commentary :

Because of the geographic location of their territories (bordering the Arctic Ocean or the adjacent seas) and the fact that all indigenous peoples are located on most of those territories, the eight Arctic States are founding Members and have special interests and responsibilities.

The admitted Members may be States, Governmental and Non-Governmental Organizations, territorial and regional governments. Such States, organizations and governments are eligible for membership if they have demonstrated a substantial interest in the work of the Council and a capacity to further its purposes. Admission shall be decided by the Assembly upon the recommendation of the Commission.

Commentary :

To permit participation of all those with sufficient interest, the Council is open to membership of other States (such as France, Germany, Japan, the United Kingdom), organizations of States (such as the European Community), NGO's (such as the Inuit Circumpolar Conference/Arctic Aboriginal Conference) and territorial governments (such as Alaska, the Yukon, the North West Territories and Greenland) and regional governments (such as Chukotski, Nunavik and the Nordic Saami Council). Admission criteria must be developed to insure a sufficiently wide participation for the Council to attain its basic purposes and yet to insure that the Members are actively concerned and involved in Arctic issues. The admission of new Members will depend on a favourable recommendation of the Commission where the founding Members form a majority of two-thirds.

4. Organs of the Council

The Council shall be composed of an Assembly and a Commission, as the two main organs, and a Secretariat as a subsidiary organ.

(1) The Assembly

The Assembly shall consist of all Members of the Council.

The Assembly may discuss all questions relating to the purposes of the Council and shall establish general policies for the coordination of the activities of the Council and its Members. It may make recommendations to the Members or to the Commission on measures to be taken for the fulfillment of the purposes of the Council.

The Assembly shall elect the four non-permanent Members of the Commission and appoint the Secretary of the Council. It may establish such subsidiary organs as are required to exercise its functions.

A majority of Members of the Assembly shall constitute a quorum and its resolutions shall be adopted by consensus. In the absence of a consensus, resolutions shall be adopted by a two-thirds majority. The Assembly shall adopt its own rules of procedure and elect its President.

Commentary :

The Assembly, as for all similar plenary bodies, has nearly unlimited powers of discussion and rather limited powers of decision. It should be the forum where the basic purposes and general policies are discussed and agreed upon, but it is too large a body to see to the implementation of specific measures. The Assembly may exercise some indirect control over such implementation, however, through the election of the four non-permanent Members of the Commission.

Procedure by consensus having now gained a large degree of acceptance (particularly at the United Nations and the Third Law of the Sea Conference), it is suggested here. It seems wise, however, to provide for actual voting if a consensus fails to materialize.

(2) The Commission

The Commission shall consist of twelve Members, of which the founding Members shall be permanent. The four non-permanent Members shall be elected by the Assembly, on the basis of an equitable representation of the admitted Members. The non-permanent Members shall be elected for four years, except for the first election when two shall be elected for two years only.

The Commission shall decide on measures to fulfill the purposes of the Council and on the implementation of such measures. It may establish subsidiary organs required to exercise its functions.

The Commission shall adopt its resolutions by consensus or, in the absence of a consentus, by a vote of eight members. The Commission shall establish its own rules of procedure and elect its President.

Commentary :

The Commission is intended to be the governing body where the founding Members will have a controlling voice by their number (8 out of 12) and permanency. They will have no right of veto, however, and the other four Members (on a 4-year rotating basis) will enjoy equality of status during their term on the Commission.

The Commission will see to the actual taking and implementation of measures, since the Member States on the Commission are the ones with the principal means of enforcement and will bear the brunt of any consequent responsibility.

The consensus mode is provided for, but it is prudent to foresee the possibility of actual voting. In such cases, resolutions would be adopted by a two-thirds majority or eight members.

(3) The Secretariat

The Secretariat shall be located on the territory of one of the founding Members. It shall comprise a Secretary and such staff as may be required. The Secretary shall be the administrative officer of the Council and shall be appointed by the Assembly on the recommendation of the Commission. The Secretary shall act in that capacity at all meetings of the Assembly and of the Commission. The Secretary shall make reports to the Assembly on the work of the Council at its regular meetings.

Commentary :

The Secretariat is intended to be — certainly at the beginning — a very small organ consisting only of a Secretary and a very small staff. Of course, it might develop into an important office, depending on the activities of the Council.

5. Meetings

Regular meetings of the Assembly and of the Commission shall be held every other year.

Special meetings may be held at such other time and place as each organ may decide.

Regular meetings shall be held in the Arctic Region and under the auspices of one of the founding Members in rotation.

Commentary :

A meeting every two years should be enough in the early period of operation, with the possibility of special meetings for both the Assembly and the Commission.

The special interests of the founding Members is recognized in that they will host the meetings. Canada might volunteer to host the founding meeting.

6. Expenses

Each Member shall bear its own expenses, unless otherwise agreed. The expenses of the Secretariat shall be born by the Member on whose territory it is located.

Commentary :

The expenses of the Council should be kept at a minimum and each Member should defray its own expenses for attending meetings. The expenses of the Secretariat might pose a problem, particularly if it has to produce documents in more than one language. If so, some kind of sharing formula will have to be devised. As for the location of the Secretariat, Members might wish to accept the offer by Canada to provide such services to begin the work of the Council, particularly if Canada hosts the founding meeting.

7. Settlement of disputes

Any dispute as to the interpretation or application of this Treaty shall be resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means to which the parties to the dispute agree.

Commentary :

This being a very delicate subject, it is preferable to go no further than what is already provided for in Article 33 of the Charter of the United Nations.

8. Entry into force, amendments and review

(1) Entry into force

The present Treaty shall enter into force upon signature [or after ratification] by all of the eight founding Arctic States. It shall come into force

for each of the other Members at the time of their signature [or after their ratification/accession].

Commentary :

Depending on their constitutional requirements, ratification might be necessary for some of the States. If so, the Treaty would have to be subject to ratification by States. If not, consent to be bound could be expressed by signature, which would apply to both States and Organizations.

(2) Amendments

Amendments to the Treaty shall be adopted by the Assembly on the recommendation of the Commission. Such adoption shall be made by consensus or, failing that, by a vote of two-thirds.

Amendments shall enter into force upon signature [or, after ratification] by two-thirds of the Members].

Commentary :

Although amendments should not be frequent, they should be possible and should not be blocked by a lack of consensus in the Assembly; hence, their possible adoption by a vote of two-thirds. The entry into force of amendments would be affected in the same way as for the entry into force of the Treaty itself.

(3) Review Conference

After the Treaty has been in force for twenty-five years, any Member may request a Conference to review the operation of the Treaty.

Such Conference shall be held on the recommendation of the Commission and approved by the Assembly, either by consensus or a vote of two-thirds. Any amendment adopted by the Conference shall enter into force after signature [or ratification] by all Members.

Commentary :

Although the whole treaty system should be made to endure, a review might become desirable after a while. Twenty-five years would appear to be a reasonable trial period. It was 30 years for the Antarctic Treaty of 1959, which entered into force in 1961, and 50 years for the Antarctic protocol on Environmental Protection of 1991.

CONCLUDING OBSERVATIONS

It is hoped that the above might make a small contribution to advance the cause of an Arctic Region Council suggested in 1971 by Maxwell Cohen, distinguished scholar, renowned teacher, respected government adviser, judge *ad hoc* of the International Court of Justice, and personal friend.

The object of the paper was to show the need for the Council by examining what its main purposes would be and to formulate basic treaty provisions which could be of some assistance when an Arctic Treaty is negotiated. Hopefully, this limited objective has been attained.