

# The legal status of the waters met by the Manhattan during her voyage through the Arctic

Maud Gagné

Volume 11, numéro 1, 1970

URI : <https://id.erudit.org/iderudit/1004782ar>

DOI : <https://doi.org/10.7202/1004782ar>

[Aller au sommaire du numéro](#)

Éditeur(s)

Faculté de droit de l'Université Laval

ISSN

0007-974X (imprimé)

1918-8218 (numérique)

[Découvrir la revue](#)

Citer cette note

Gagné, M. (1970). The legal status of the waters met by the Manhattan during her voyage through the Arctic. *Les Cahiers de droit*, 11(1), 66–73.  
<https://doi.org/10.7202/1004782ar>

## The legal status of the waters met by the Manhattan during her voyage through the Arctic \*

In this study, we shall attempt to determine the legal status of the waters which the Manhattan meets during her voyage through the Arctic. The legal status of the waters can be labeled as being inland, territorial or as forming part of the high seas. The waters which the Manhattan meets during her voyage can be either inland or partly territorial and partly high seas. The waters may not be considered as either territorial or high seas because Canada has formally acknowledged that her territorial waters do not exceed three marine miles, and, if the legal status of part of the waters is considered territorial, then the waters which the Manhattan crosses will be mostly high seas because the distance between the Canadian territorial waters surrounding the islands in most areas is considerable and therefore the area between the territorial waters must be considered as being part of the high seas. This can be easily understood if one looks at a map of the Canadian Arctic — for example, between Melville Island and Stefansson Island there is a distance of over seventy-five (75) miles, some area between these islands will therefore be considered part of the high seas.

The S.S. Manhattan is a commercial ship, it flies an American flag and was chartered by the Humble Oil Company which is the Standard Oil of New Jersey subsidiary.<sup>1</sup> The ship's voyage takes her through Lancaster Sound, Barrow Strait, Viscount Melville Sound and either the Prince of Wales Strait or the McClure Strait.

As Alvin Hamilton so adequately expressed it in 1957, the legal status of the waters which the Manhattan meets during her voyage is difficult to determine :

"Leads of water do open up as a result of the pack ice being in continuous motion, but for practical purposes it might be said for the most part to be a permanently frozen sea. It will be seen then, that the Arctic Ocean north of the Archipelago is not open water nor has it the stable qualities of land. Consequently, the rules of international law may or may not have application."<sup>2</sup>

It is therefore necessary to be conscious of the particular problem presented by the ice. However, the difficulty offered by the presence of ice is not the only one, the Convention of 1958 on the Territorial Sea has not been ratified by Canada. This is why we shall have to refer mostly to conventional and customary law. Many Canadians have given their opinion on the subject, but these opinions are often incomplete and contradictory.<sup>3</sup> Very few laws have been made touching the legal status of the waters in the Arctic ; of course, these laws, in the eyes of international law do not take on much value inasmuch as they are not recognized by the other nations concerned.

\* *N.D.L.R.*: Essai rédigé sous la direction du professeur A. Dufour et de monsieur P. M. Langlumé dans le cadre du cours de Droit international public.

<sup>1</sup> See Paul KIDD, "The S.S. Manhattan: commercial adventure in undertermined waters" (Nov. 17, 1969), *The Montreal Gazette*, at 7.

<sup>2</sup> *House of Commons Debates* (Can.), 1958, vol. II, at 1979.

<sup>3</sup> See L. B. PEARSON, "Canada Looks' Down North", (July 1946), 24 *Foreign Affairs*, at 638-639; P. M. ST. LAURENT when he introduced the bill to create the Dept. of Northern Affairs in (1954) 6 *External Affairs*, at 16; Jean LESAGE, Minister of Northern Affairs in *House of Commons Debates* (Can.) 1956, vol. VII at 6955; Charles STEWART, Minister of the Interior in *House of Commons Debates* (Can.) 1925, vol. 1, at 3758; Mitchell SHARP, "A Ship and Sovereignty in the North" (Sept. 18, 1969), *The Toronto Globe and Mail*; Maxwell COHEN, "International Law and Canadian Practice" in Ed. McWHINNEY, *Canadian Jurisprudence, the Civil Law and Common Law in Canada*, Toronto, 1958, at 316; Alvin HAMILTON in *House of Commons Debates* (Can.), *loc. cit. supra*, note 2, at 1639; see also senator POIRIER in *Journal du Sénat* (Can.) 1906-1907, vol. XLII at 122.

Only one treaty, the Treaty of Paris in 1763, has been made concerning the Arctic territory.

In this study, we shall consider the following points. Firstly, the concept of sovereignty will be examined. In order that waters be considered inland waters of a state, these waters must be surrounded by territory over which the state is sovereign. It is implicit in the notion of territorial waters that these waters in order to be considered the territorial waters of a state must surround territory over which his state is sovereign. Secondly, we shall entertain the possibility that the waters which the Manhattan crosses could be considered as inland waters of Canada, in this section the reasons why this theory is upheld and by whom will be discussed as well as the consideration that if these waters should be in effect inland waters of Canada what rights and obligations would Canada have. Finally a brief appreciation of this theory will be given. Thirdly, the possibility that the waters which the Manhattan crosses could be considered partly as territorial waters and partly as high seas will come to our attention. We shall then proceed with this theory in much the same fashion as we did for the first. Fourthly, the reasons why the legal status of the waters in the Arctic could never be resolved in the same way as the legal status of the land covered with ice was resolved for the Antarctic in 1961 will be considered.<sup>4</sup>

## 1. Sovereignty

It is imperative for us to determine on which grounds Canada has claimed sovereignty to some of the land in the Arctic, precisely to the land which surrounds the waters through which the Manhattan navigates. At the Institute of International Law at Lausanne in 1888, the following conditions were deemed necessary to justify the occupation of a territory as a sovereign: firstly, that the territory to be taken into possession be enclosed within certain limits and be made in the name of the government; secondly, that the taking into possession of a territory be made by publication or by diplomatic channels. The notification of possession must contain an approximate description of the limits of the territory involved.<sup>5</sup>

In 1907, Senator Poirier stated that Canada could base her claims in the Arctic on three events and one theory, the three events being firstly, the Arctic discoveries of Cabot, Frobisher, Davis, Parry, Baffin and Fox; secondly, the cession to the English Crown of all French claims in what is now Canada (Treaty of Paris 1763); thirdly, the administration and occupation by the Hudson Bay Company of its territory; the one theory: the Polar Sector theory.<sup>6</sup> Might we add to these events and to the above mentioned theory, effective occupation, the nature of Canadian maps since 1904,<sup>7</sup> as well as two laws, a law in 1925 concerning the North West Territories<sup>8</sup> and a law in 1926 made by the Privy Council concerning hunting in the Arctic regions.<sup>9</sup> Let us consider each of these separately.

It is a fact that all the Canadian territory in the Arctic was discovered by British explorers except for the Ringnes Islands and Axel Heiberg Island. Secondly, it may be affirmed that what Canada did not personally discover, she acquired by purchase

<sup>4</sup> *Antarctic Treaty*, Dec. 1959, effective June 23, 1961; see also T.I.A.S. 4780.

<sup>5</sup> (1888), X, *Annuaire de l'Institut de dr. Int'l*, at 201, see art. 1 of the project of an int'l declaration relative to the occupation of territories.

<sup>6</sup> *Journal du Sénat* (Can.) *loc. cit. supra*, note 3, at 266.

<sup>7</sup> See the 1<sup>st</sup> official map of Can. published by the Dept. of the Interior, *House of Commons Debates* (Can.), *supra*, note 3, vol. VII, at 6958; see also *Loi modifiant la loi des douanes*, R.C.S. 1952, c. 58, art. 2.

<sup>8</sup> *Loi modifiant la loi des Territoires du Nord-Ouest*, S.C. 1925, c. 48; R.C.S. 1952, c. 331, art. 13.

<sup>9</sup> *An Ordinance respecting the Preservation of Game in the Northwest Territories*, R.O.N.W.T. 1956, c. 42, art. 38, 66 and Annex A.

or by treaty. In a chronological order, let us consider what Canada acquired by purchase or by treaty. In 1763, by the Treaty of Paris, Britain acquired all the French territory in North America except for the St. Pierre and Miquelon islands.<sup>10</sup> In 1880, by an order in council, Britain transferred all her possessions in North America, which had not previously been attached to any colony.<sup>11</sup> However, the boundaries in this order in council were not defined. In 1895, Canada's northern boundary was fixed for the first and only time by a proclamation.<sup>12</sup> In 1869, Canada purchases Rupert's Land from the Hudson Bay Company.<sup>13</sup> In 1930, Canada's sovereignty over the Sverdrup islands was recognized by Norway.<sup>14</sup> Thirdly, one may examine the occupying exploits of the Hudson Bay Company. This company, according to the Company's charter of 1670, has jurisdiction over :

"All the seas, straits, bays, rivers, lakes, creeks, sounds, in whatsoever latitude they shall be, that lie within the entrance of the straits commonly called Hudson's straits together with all the lands and territories upon the countries, coast and confines of the seas, bays, lakes, rivers, creeks and sounds aforesaid, that are not already possessed by or granted to any of our subjects or any other Christian prince or State [...] and that the said land be from henceforth reckoned [...]"<sup>15</sup>

The Hudson Bay Company had the sole trade and commerce over these lands.

Now, as for the Polar Sector theory : Senator Poirier, in 1907, was the first advocate of the Polar Sector theory. According to Senator Poirier, states which have land bordering the Arctic Circle have a rightful claim to all the territory that lies north of its land, that is, all the land included between the meridians of longitude which are touched by the most easterly and westerly points of this nation's territory on the Arctic Circle. This land follows the meridians of longitude right up to the north pole. This view was thought to include all territory, land, water or ice. The Soviet Union, in 1926, officially recognized this conception inasmuch as lands and islands were considered, and used the sector theory as the foundation for their claim in 1926.<sup>16</sup> Poirier also referred only to lands and islands. Although the sector theory has been enunciated by a Canadian, Canada has not relied on the sector principle to stake her claim in the Canadian Arctic. This theory is not alluring from a legal point of view, as it places a nation in legal possession of land whether it be discovered or not. Moreover, the basis of Senator Poirier's opinion as well as that of his supporters, is the principle of contiguity, a principle which is more geographical than anything else.

What may serve as a support to the sector principle is effective occupation. Effective occupation is an important element in the establishment of the sovereignty of a nation. Alvin Hamilton states : "Sovereignty is the effective occupation of an area by a country which has command or control over it."<sup>17</sup> Canada recognizes the doctrine of effective occupation, in 1958, Pearson said : "The sector theory itself is not enough, it must be followed by rights based on discovery and effective occupation."<sup>18</sup> But, what can be used as proof of effective occupation ? It is obvious that an area such as the Arctic Circle cannot be populated in an extensive fashion on account of the climate.

<sup>10</sup> See Thomas CHAPUIS, *Cours d'Histoire du Canada*, Québec, Garneau, 1919, vol. I at 83.

<sup>11</sup> See Maurice OLIVIER, *Acte de l'Amérique du Nord Britannique et Statuts Connexes*, (1867-1962) at 191-192.

<sup>12</sup> *Orders in Council*, ect. Dept. of the Interior, S.C. 1896 at XLVIII.

<sup>13</sup> See Maurice OLIVIER, *op. cit. supra*, note 11, at 109-110.

<sup>14</sup> *Canadian Treaty Series*, 1930, vol. I, n° 17.

<sup>15</sup> *Charters Statutes Orders in Council, relating to the Hudson Bay Company*, 1931, at 3-21.

<sup>16</sup> "A decree of the Presidium of the Central Executive Committee of the Union of Soviet Socialist Republics", 1926, II *State Papers*, at 1064-1065.

<sup>17</sup> *House of Commons Debates*, *loc. cit. supra*, note 2.

<sup>18</sup> *Ibidem*, vol. IV, at 3540.

However, the fact that family allowances are distributed to the few who live there, the existence of the Alert base on Ellesmere island, and the fact that the MacMillan Expedition in 1925 finally had to apply for a license in order to travel and explore the Northwest territories certainly suggest control.

According to the doctrine of effective occupation, Canada has a superior claim in the Arctic; this country has initiated criminal proceedings, the construction of public works, census, tax assessments, fishing license, the public registry of deeds, etc. In 1953, Mr. St. Laurent said :

“Nous ne devons laisser planer aucun doute quant à notre occupation active de ces territoires [...] jusqu'au pôle et quant à l'exercice de notre souveraineté à l'égard de ces régions [...]”<sup>19</sup>

In 1904, the minister of the Interior published a map which delimited our territory in this way : the eastern boundary : 60<sup>th</sup> meridian of west longitude extending just east of Ellesmere island northerly to the pole, and the western boundary : 141<sup>st</sup> meridian of west longitude extending to the North Pole.<sup>20</sup> All the maps since 1904 have shown those same meridians as international boundaries.<sup>21</sup> However, the legal value of maps is limited, the simple delimitation of boundaries on a map cannot serve as the basis for a sovereign claim especially in the case of water areas.

Concerning the two laws, a law in 1925 prohibited anyone from penetrating into the Northwest Territories except if given authorization by the government.<sup>22</sup> In 1926, the Privy Council made a law, in virtue of which, the Arctic regions became a hunting territory for the exclusive use of the natives.<sup>23</sup>

It is my opinion that we may conclude here that Canada definitely has a rightful territorial claim to the islands that lie within her sector of the Arctic Circle, not only in virtue of the sector theory but for many other good reasons. As a matter of fact, her claim to territorial sovereignty in the Arctic has never been questioned.

## 2. Inland waters

Canada regards the waters between the archipelago lying to the north of the Canadian inland as territorial waters. Canada has never claimed these waters as being inland waters. However, one could feasibly conceive that Canada could claim these waters as inland waters. The archipelago, when one looks at a map, is a natural extension of the continent. The claim of these waters as inland waters would not be contrary to the provisions of the *Convention on the Territorial Sea and the Contiguous Zone*,<sup>24</sup> nor to the principles established by the International Court of Justice in the *Norwegian Fisheries case*.<sup>25</sup> The real question which comes to light in the choice of baselines is whether certain sea areas lying within these lines are sufficiently closely linked to the land territory so as to become inland waters — usually, economic interests peculiar to a region, such as fishing, which have been exploited since a long time. These were the criterions used by the court in the *Anglo-Norwegian Fisheries case* in 1951<sup>26</sup> to determine whether or not they should apply the concept of straight baselines.

<sup>19</sup> *House of Commons Debates*, 1959, vol. II at 743-746.

<sup>20</sup> *House of Commons Debates*, *loc. cit. supra*, note 7.

<sup>21</sup> DEPT. OF THE INTERIOR, *loc. cit. supra*, note 7.

<sup>22</sup> *Loi modifiant la loi des Territoires du Nord-Ouest*, *loc. cit. supra*, note 8.

<sup>23</sup> *An Ordinance Respecting the Preservation of Game in the Northwest Territories*, *loc. cit. supra*, note 9.

<sup>24</sup> *Convention on the Territorial Sea and the Contiguous Zone*, adopted by the U.N. Conf. at Geneva, April 29, 1958, art. 4.

<sup>25</sup> Re: *Anglo Norwegian Fisheries Case*, I.C.J. Reports, 1951 at 116.

<sup>26</sup> *Ibidem*.

In reality, the only common element between the Canadian Arctic and the Norwegian Skjaergaard is the geographic similarity. However, as we have seen, this is not enough to support a claim to having interior waters. It is obvious that in the future, the waters, which the Manhattan crosses today, will be of great economic interest to Canada. But, we must add that the economic link of the waters to Canada's mainland has been rather feeble in the sense that one cannot assert previous usage of these waters to any great extent.

Even if Canada could succeed in claiming the Arctic waters in her sector as inland waters in the eyes of international law, according to the 1958 Convention,<sup>27</sup> her rights would be limited for two reasons, because Canada's waters would be newly acquired inland waters surrounded by a fringe of islands and an indented coast-line, and therefore obliged to assert the right of innocent passage, and because, the right of innocent passage is implicit when straits connect two parts of the high seas.

Maxwell Cohen, in 1958, is the only important supporter of the inland water theory :

"With respect to the various straits and bodies of water between the many islands of the Archipelago where American naval vessels traverse today, these must be treated as Canadian waters in the same sense that the International Court of Justice viewed the waters of the great Norwegian "inland waters" [...]"<sup>28</sup>

### 3. Territorial waters and high seas

It is most probable that the legal status of the Canadian waters in the Arctic be partly territorial and partly high seas, because Canada considers these waters as territorial and no one has contested her claim yet.<sup>29</sup> As a matter of fact, the United States have recognized Canada's claim, by submitting itself, in 1957, to apply for waivers for her vessels servicing D.E.W. line stations in virtue of the provisions of the *Canadian Shipping Act*.<sup>30</sup> Three facts must be borne in mind before we undertake the study of the second section, firstly, that the three mile (nautical) limit is part of our internal law,<sup>31</sup> secondly, that Canada considers herself bound by the *Territorial Sea Convention* of 1958 insofar as its basic principles are concerned<sup>32</sup> and thirdly, that Canada's attitude towards islands and archipelagoes as exposed at La Haye, in 1929, is that the islands have their own territorial waters which must not exceed three nautical miles, when the distance between the islands and the coast or between the islands is superior to six nautical miles, the water beyond this limit is part of the high seas unless it is circumscribed by the territorial waters of the one and the same state.<sup>33</sup>

All this is very clear, however in the Arctic, one problem, comes to our attention.<sup>34</sup> This problem is of a physical nature, it is the problem of the ice. Either we can consider that the ice forms part of the land and that Canada may exercise over it a sovereignty analogous to the one she exercises over land, and that as a result, the territorial waters must be measured from the point where the ice takes on its liquid state. Or, we can consider that ice is like water and that therefore the territorial waters can be measured

<sup>27</sup> *Convention on the Territorial Sea and the Contiguous Zone*, loc. cit. supra, note 24.

<sup>28</sup> Maxwell COHEN, "Polar Ice and Arctic Sovereignty" (Aug. 1958) *Saturday Night*, n° 18.

<sup>29</sup> See, *Territorial and Fishing Zones Act*, S.C. 1964; P.C. 1967-2025, Oct. 26, 1967.

<sup>30</sup> *Canadian Shipping Act*, R.C.S. 1952, c. 29.

<sup>31</sup> *C. Crim.*, art. 4202-4203.

<sup>32</sup> *Territorial and Fishing Zones Act*, loc. cit. supra, note 29.

<sup>33</sup> *Réponse du Canada dans la Conférence pour la codification du dr. int'l*, S.D.N. Publications, 1929, Book II, vol. 9.

<sup>34</sup> T. W. BALCH, "Les régions arctiques et antarctiques et le droit international", (1910) *Revue de Droit International et de Législation Comparée* at 434.

from the points where the land ceases to be land. The problem becomes even more complex when we consider that ice in the Arctic may be divided into three categories : fast or coastal ice, Arctic pack, and ice which links the two. The waters which the Manhattan crossed during her voyage through the Northwest passage could hardly be considered as Arctic pack ice, because if it had been, she would have not succeeded in navigating through it. It is obvious that hard pack invites a comparison to land. For example consider the fact that during the Russo-Japanese war, a railroad was constructed over frozen Lake Baikal. Also there is no doubt that some scientific research bases have been installed on floating ice islands, on some, airstrips have been built. On two points however we can contest this comparison to land. Firstly, contrary to land, one can navigate under ice, one cannot navigate under land. This has been amply shown by the ventures of the Sea Dragon and in 1959, the nuclear submarines Nautilus and Skate.<sup>35</sup> Secondly, that according to reliable meteorological data, there is an upward movement in temperatures and that there is a possibility that the physical qualities of the ice may vary greatly.<sup>36</sup> One could point out that land, earth, also is subject to corrosion ; however, it is highly improbable that the earth becomes liquid mud and assimilates itself to the ocean before the ice melts and assimilates itself to the ocean. There is also the fact that ice conditions vary greatly, more appreciably and more rapidly than earth conditions and that it therefore would be absurd to stake any claim on ice.

Louis St. Laurent, in 1953, was a partisan to the theory that ice was similar to land and should be considered legally as such. In 1946, Pearson, then Canadian ambassador to the United States, stated :

“A large part of the world’s total Arctic area is Canadian. One should know exactly what this part comprises. It includes not only Canada’s northern mainland, but the islands and the frozen seas north of the mainland between the meridians of its east and west boundaries extended to the North Pole.”<sup>37</sup>

In my opinion, the Sector Theory in the consideration of the status of the ice fogs up the question, because sector claims are not selective, the quality of the surface being immaterial. The U.S.S.R. claims the ice while it is in her sector thereby conciliating the sector theory with the ice problem<sup>38</sup> but this solution cannot be seriously considered and has not been recognized by any nation.

In 1956, Jean Lesage, minister of the Department of Northern Affairs, stated :

“We have never subscribed to the sector theory in application to the ice. We are content that our sovereignty exists over all Arctic islands [...] to our mind the sea be it frozen or in its natural liquid state, is the sea and our sovereignty exists over the lands and over our territorial waters.”<sup>39</sup>

However, one could object here that although this is the best official evidence on the Canadian position, it does not specifically mention the waters of the Arctic archipelago. The legal adviser of the Department of External Affairs, in 1967, remained silent, with respect to the legal status of the waters covered by ice all year round.

On the behalf of those who maintain the theory that ice is more similar to land than to water, I would like to entertain the following possibility. It is said in the Convention of 1958 that territorial waters are to be measured from the land which

<sup>35</sup> William ANDERSON and Clay BLAIR, *Nautilus 90 North*, World Publishing, 1959.

<sup>36</sup> See Wilson J. TUZO, “The Year of the New Moons”, (1961) *I.G.Y.*

<sup>37</sup> L. B. PEARSON, *loc. cit. supra*, note 3.

<sup>38</sup> W. LAKHTIN, “Rights over the Arctic”, (1930) 44 *A.J.I.L.* at 703-712; also E. A. KOROVIN, “SSSR i poljarnie zemli”, (1926) 3 *Soviet skoye pravo*.

<sup>39</sup> *House of Commons Debates, loc. cit. supra*, note 3, vol. VII at 6955.

remains uncovered at low tide by the water.<sup>40</sup> If we consider this condition and if we consider that ice is frozen water and is more like water than like land, then the majority of Greenland is covered by water and is never uncovered and one could even go so far as to maintain that the east, and west, and south coasts of Greenland constitute a continent which has a U shape, the central area of Greenland therefore being part of the high seas. We can conclude that this proposition is absurd on the sole basis that, if it is part of the high seas, why can't a submarine navigate under Greenland? Why not conclude furthermore that ice is more like water *insofar as it is navigable*.

We have concluded therefore, I believe, in an as logical manner as possible that ice is more like water and that, therefore, territorial waters must be measured from the land. If we examine the route taken by the S.S. Manhattan, we notice that there is only one area in which the ship would be going through territorial waters and this is when she goes through the Prince of Wales Strait. During the rest of the route, the ship is on the high seas.

On the high seas, one has the right of free and innocent passage, one has the liberty to fish, one has the liberty to install cables and pipelines, and one has the right to fly over the high seas.

Canada, as a state bordering the high seas, has no more authority over the high seas than any other state.

What authority does Canada have in the Prince of Wales Strait which is considered as territorial water? One should bear in mind here that the reason why a nation has territorial waters is in order to protect its security, in order to protect its commercial, fiscal, and political interests, and in order to enjoy the products of the sea necessary for the welfare of the people living on the coast. The right of innocent passage is enjoyed by the commercial ships of all nations and the Coastal State has no right to prevent this passage or to levy any tolls or other fees unless this has been especially provided for in a treaty. There has never been any treaty specifically concerning the Prince of Wales Strait.

Canada could always invoke the *Corfu Channel Case*<sup>41</sup> in order to bar the passage of certain ships (warships) and that only in certain circumstances, however, Canada could not refuse the right of innocent passage, to all other ships navigating through the Prince of Wales Strait. The baselines could be drawn in such a fashion as to include the Prince of Wales Strait as well as the whole Northwest Passage in Canada's internal waters, however, as newly enclosed waters as we have said before, Canada could not refuse the right of innocent passage. Under the *Territorial Sea Convention*,<sup>42</sup> Canada could suspend the right of innocent passage only if essential to her security. Passage is innocent in so long as it shall not interfere with the good order and peace of the coastal state or states.

It seems to me that the Northwest Passage will not become an international strait in the near future because, although it certainly could be an advantageous route to many nations, at the moment, and in the near future, Canada and the United States are and will be the most interested since they shall be developing their *own* mineral and oil resources. There is no reason why this could not be done in a spirit of cooperation since it can be assumed that both will profit from this venture. However, I believe that it should be up to Canada to take the initiative, as soon as possible, in preventing pollution and in preparing with the United States some sort of agreement which would be very strict regarding pollution of the waters in the Arctic. Humans have a tendency

<sup>40</sup> *Convention on the Territorial Waters and the Contiguous Zone*, *loc. cit. supra*, n° 24, sect. II, art. 3.

<sup>41</sup> Re: *Corfu Channel Case*, C.I.J. Reports, 1949 at 4.

<sup>42</sup> *Convention on the Territorial Waters and the Contiguous Zone*, *loc. cit. supra*, n° 24, sect. III, art. 14-23.



to sacrifice perfection for rapidity, and in this venture, I believe that it would be worthwhile to wait may be a few years until the United States will have put a fool-proof ship on the market. Beathard, the public relations manager of the Manhattan, said that "The portion of the hull where the tanks were located was not designed to withstand the impact of ice,"<sup>43</sup> and that he "fully appreciated the concern of Canadians, that had the tanks been filled with oil, such damage could have resulted in pollution."

#### **4. Why an analogous solution to that found for the Antarctic cannot be applied to the Arctic**

The legal status of the waters in the Arctic could never be resolved in the same way as the legal status of the land covered with ice was resolved in the Antarctic, in 1961,<sup>44</sup> because of the different potentialities which the two areas have. The Antarctic has no foreseeable economic future ; for the moment, the Antarctic is a base for scientific exploration to which all countries are welcome. This is not the case for the Arctic and will never be firstly, from a military point of view, the Arctic is a key defence point because the two greatest powers in the world border the Arctic, and already, all sorts of radar tracking and military bases have been installed. The future of the Arctic is surely an economically rich one, which will profit especially to Canada, the United States and the Soviet Union. Even from a point of view of transportation, there is no reason to use the Antarctic as an international airway or naval route contrary to the Arctic which represents a great potential for the world of transportation alone. There is only one interesting possibility in the Antarctic, it is to establish spaceship launching sites there, because of the near absence of radiation. However, this lies also in the distant future.

#### **CONCLUSION**

Most of the earth's land lies in the north and from that premise, we understand why man has become more and more interested in the North. With such stimulants as the population crash and the discovery of oil, it will not take man very long before he will conquer the barriers of cold and darkness, in order to occupy, to discover, to inhabit and to use this area of the world to its fullest capacity. Canada will have a major role in the development of the Arctic, it is up to her to make good the start and to try and foresee in a conscientious way the effects that today's actions will have on the future. One must never pursue a short term goal to the detriment of a long term goal.

Maud GAGNÉ \*

---

<sup>43</sup> Paul KIDD, *loc. cit. supra*, note 1, at 7.

<sup>44</sup> Re: *Antarctic Treaty*, *loc. cit. supra*, note 4, at 4780.

\* Etudiante à la faculté de Droit de l'Université Laval.