

Michigan Journal of International Law

Volume 10 | Issue 2

1989

Canada's Sovereignty Over the Northwest Passage

Donat Pharand
University of Ottawa

Follow this and additional works at: <https://repository.law.umich.edu/mjil>



Part of the [International Law Commons](#), and the [Law of the Sea Commons](#)

Recommended Citation

Donat Pharand, *Canada's Sovereignty Over the Northwest Passage*, 10 MICH. J. INT'L L. 653 (1989).
Available at: <https://repository.law.umich.edu/mjil/vol10/iss2/10>

This Article is brought to you for free and open access by the Michigan Journal of International Law at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Journal of International Law by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mjil.repository@umich.edu.

CANADA'S SOVEREIGNTY OVER THE NORTHWEST PASSAGE

*Donat Pharand**

In 1968, when this writer published "Innocent Passage in the Arctic,"¹ Canada had yet to assert its sovereignty over the Northwest Passage. It has since done so by establishing, in 1985, straight baselines around the whole of its Arctic Archipelago. In August of that year, the U. S. Coast Guard vessel *Polar Sea* made a transit of the Northwest Passage on its voyage from Thule, Greenland, to the Chukchi Sea (see Route 1 on *Figure 1*). Having been notified of the impending transit, Canada informed the United States that it considered all the waters of the Canadian Arctic Archipelago as historic internal waters and that a request for authorization to transit the Northwest Passage would be necessary. The United States refused to make such a request, taking the position that the Northwest Passage was an international strait. As a result, the two governments agreed that the crossing of the *Polar Sea* would take place without prejudice to their respective legal positions.

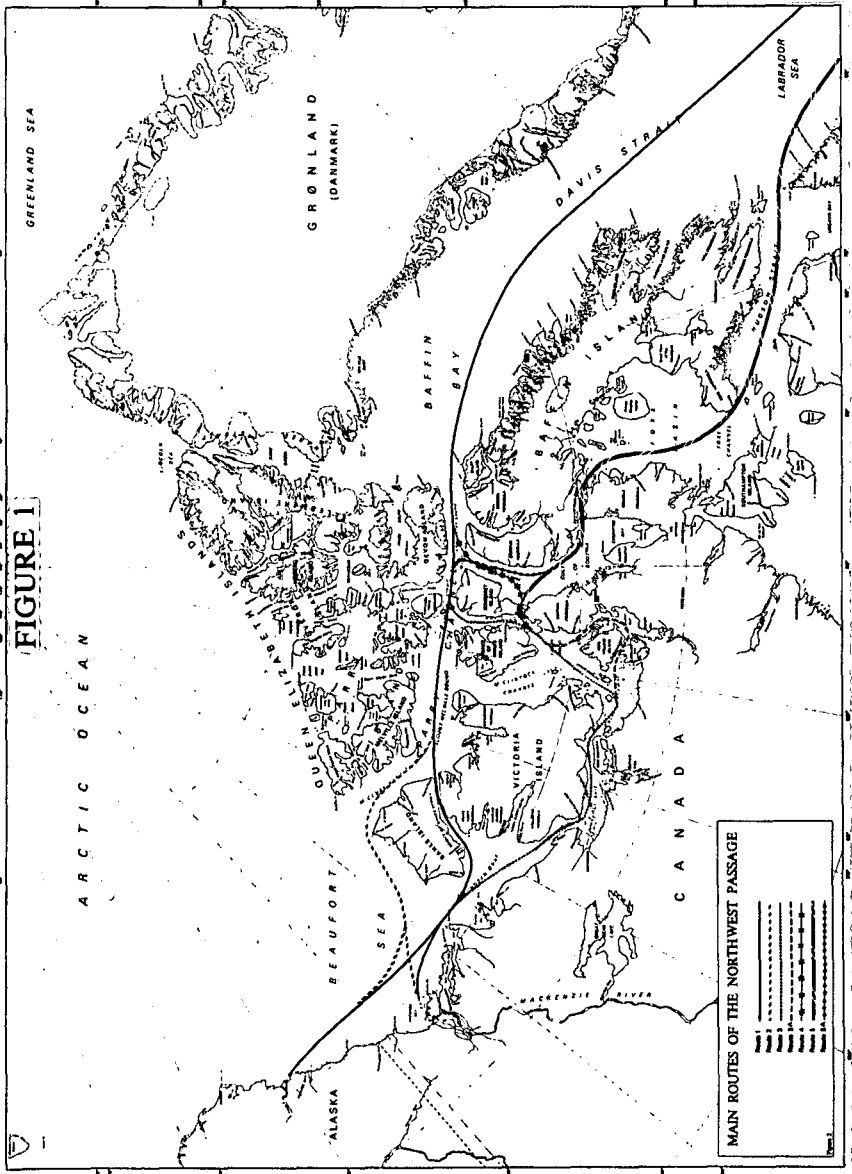
The incident aroused deep emotion in Canada and, the very next month, the Secretary of State for External Affairs announced a number of measures to enable Canada to exercise effective control over the Arctic waters generally and those of the Northwest Passage in particular. Two of the measures are of special importance: the construction of a class 8 icebreaker and the establishment of straight baselines around the Arctic Archipelago. The latter is of particular legal significance and will be discussed here.

In his announcement, the Minister specified that the baselines defined "the outer limits of Canada's historic internal waters."² In order to make it clear that Canada stood ready to have the International Court adjudicate on the validity of its sovereignty claim over the waters of the Archipelago, the Minister announced at the same time that the Government was withdrawing the 1970 reservation to its accept-

* Q.C., S.J.D., F.R.S.C. Emeritus Professor, Faculty of Law, University of Ottawa. Consultant, International Law, Law of the Sea and Arctic Affairs. LL.M. 1968, S.J.D. 1972, University of Michigan.

1. See 6 CAN. Y.B. INT'L L. 3 (1968). The article was originally written as a paper in a seminar on the Law of the Sea taught by Professor Bishop, and was published at his suggestion.

2. Statement in House of Commons, Sept. 10, 1985, reproduced in Department of External Affairs, *Communiqué* No. 85/49, at page 3.



ance of the Court's jurisdiction. That reservation, made at the time of the adoption of the Arctic Waters Pollution Prevention Act, covered disputes relating to the prevention and control of marine pollution in Arctic waters.

In this writer's opinion, there can be only two legal bases for Canada's claim: an historic title and the straight baselines themselves. The sector theory, occasionally invoked in the past by Canada, cannot serve as a legal basis for a claim to sovereignty in general nor one to maritime sovereignty in particular.³ Consequently, this paper will confine itself to examining the two legal bases mentioned above. It will then address the question of the status of the Northwest Passage, both before and after the establishment of straight baselines. This latter examination is all the more necessary now that the United States persists in the view that a right to transit passage (or the equivalent) exists in the Northwest Passage. It should be understood at the outset that, for the purposes of this paper, the Northwest Passage refers to the constricted waters within the Canadian Arctic Archipelago between Baffin Bay and the Beaufort Sea.

I. CANADA'S CLAIM OF HISTORIC TITLE TO THE WATERS OF ITS ARCTIC ARCHIPELAGO

A. *Legal Requirements of Historic Waters*

The doctrine of historic waters emerged during the 19th century as an enlargement of the doctrine of historic bays and has been preserved in the Convention on the Territorial Sea and Contiguous Zone of 1958, as well as in the 1982 Convention on the Law of the Sea. Although the role of historic waters in international law has been considerably reduced both since the approval of the straight baseline system for coastal archipelagos by the International Court of Justice in the *Anglo-Norwegian Fisheries Case* of 1951, and since the incorporation of a 24-mile closing line rule for bays in the Territorial Sea Convention of 1958, historic waters continue to be accepted in general international law. The Conventions do recognize that the 24-mile closing line for bays (the maximum length), does not apply to historic bays and that the equidistance rule for the delimitation of territorial waters between neighboring States does not apply when an historic title exists. The Conventions, however, are completely silent as to the legal requirements for the existence of historic waters. Fortunately, a number of authoritative studies have been made and it is generally

3. For a study of the sector theory as a possible basis for Canada's claim, see D. PHARAND, *CANADA'S ARCTIC WATERS IN INTERNATIONAL LAW* (1988).

agreed that three requirements must be met before a claim to historic waters is established. These are: the exclusive exercise of State authority, long usage or the passage of time, and the acquiescence of foreign States. In addition, there is the matter of burden of proof.

(1) *Exclusive Exercise of State Authority*

Because a claim to historic waters is one over a maritime area which the coastal State considers an integral part of its national territory, the type of jurisdiction exercised over that area should be essentially the same as that being exercised over the rest of the territory. More precisely, the coastal State must exercise an effective control over the maritime area being claimed to the exclusion of all other States. Naturally, the extent of control will vary, depending on the size of the maritime area, its remoteness and the degree of its usability. In remote areas such as the Arctic, for example, the actual control might be limited, but nonetheless sufficient. Nevertheless, the claimant State must be able to show that it took whatever action necessary to assert and maintain its exclusive authority over the area in question. The best evidence, of course, would be the exclusion of foreign vessels or their subjection to special permission.

(2) *Long Usage*

How much passage of time must take place before a sufficiently long usage is attained cannot be determined in the abstract. As for the formation of a custom, it is impossible to determine in advance how long the effective control must last before it materializes into an historic title. A variety of terms are employed to describe the length of time required for a usage to have legal effect. The more common expressions used to qualify the required usage are: "well established usage," "continuous usage of long standing," "continued and well established usage," "immemorial usage," and usage "from time immemorial."

(3) *Acquiescence by Foreign States*

Everybody agrees that the attitude of foreign States — particularly those primarily affected by the usage in question — is important, and that some form of acquiescence is necessary before an historic title can arise. Whether mere silence or the absence of protest could constitute acquiescence is questionable. However, it is clear that an effective protest on the part of interested States would rebut the presumption of acquiescence, which would normally arise out of a long period of total toleration. To have this legal effect, the protest must be a real one and

must usually be followed by some more forceful steps by the protesting State. If such a State is really concerned about the possibility of an historic title arising, it ought to take all permissible means at its disposal to prevent the practice or exercise of authority from developing into an historic title. Naturally, the effectiveness of a protest will depend on a number of factors, such as the importance of the interest of the protesting State, its geographical situation, its political strength, and whether it is the sole protestor.

(4) *Burden of Proof*

There appears to be a general consensus that the onus of establishing the existence of an historic title to maritime areas rests with the coastal State making such a claim. In the *Fisheries Case*, both the United Kingdom and Norway agreed that the burden of proof rested with the Party claiming an exceptional right, but they disagreed as to the scope of the burden of proof. Since the Norwegian claim of sovereignty over the waters landward of the baselines was established, not on the basis of an historic title, but rather on an historic consolidation of the straight baseline system, the Court held that a general toleration on the part of foreign States was sufficient.⁴ Consequently, there was no special burden of proof on Norway as there would have been if its case had rested solely on historical title.

B. *Appraisal of Canada's Claim of Historic Waters*

There are both strengths and weaknesses to Canada's claim.

(1) *Strengths*

Prior to the transfer of the islands to Canada in 1880, virtually all of the waters of the Canadian Arctic Archipelago had been discovered by British explorers and frequented practically only by them and British whalers. After the transfer, Canada patrolled most of those waters. Beginning with the more southern ones such as Hudson Bay and Strait, Frobisher Bay and Cumberland Sound, Canada extended its patrols to Lancaster Sound, Barrow Strait and the connecting inlets and sounds to the south. Canada adopted legislation in 1906 requiring whalers to obtain a license when hunting whales in Hudson Bay and the territorial waters north of the Fiftieth parallel. This legislation was enforced until the end of whaling in the Arctic waters around 1915. Indeed, whaling licenses appear to have been issued for whaling beyond the limits of territorial waters.

4. *Fisheries Case* (U.K. v. Nor.), 1951 I.C.J. 116, at 138 (Judgment of Dec. 18, 1951).

In 1922, the Eastern Arctic Patrol was instituted and annual patrols were made until at least 1958. These patrols extended occasionally to the western Arctic waters and were carried out mostly by the Royal Canadian Mounted Police. In 1926, the Arctic Islands Preserve was adopted to protect the natives and wildlife, and to indicate that Canada controlled the area within the sector formed by the 60th and 141st degrees of longitude. This was followed in 1929 by the Game Regulations applicable in the Preserve.

After World War II, the Canadian Coast Guard was established. Its main functions consisted of icebreaking services and the resupply of Arctic communities. It has provided icebreaking services in particular for the few foreign transits of the Northwest Passage which have taken place so far, including that of the *Manhattan* in 1969. The Coast Guard also implements the regulations relating to pollution prevention and shipping safety control adopted under the Arctic Waters Pollution Prevention Act of 1970.

Since 1970, Canadian survey ships have been active in charting the waters of the Archipelago, particularly the straits which are expected to be used eventually for the transportation of hydrocarbons from the Beaufort Sea and the Arctic islands. In 1977, Canada instituted the NORDREG reporting system which provides for all ships to report to the Coast Guard before entering the waters of the Archipelago.⁵

(2) Weaknesses

On the negative side of Canada's claim of historic waters, it must be realized that both British and Canadian explorers confined their takings of possession to lands and islands. Even the formal taking of possession by Captain J. E. Bernier on July 1, 1909, of the whole Arctic Archipelago lying to the north of America from longitude 60 W. to 141 W. up to latitude 90 N., has to be interpreted as being limited to the land areas. Bernier himself stated in his report on that expedition that he had received "specific instructions as to the waters to be patrolled and explored, and *lands to be annexed*."⁶ In addition, the sector theory which was implicit in the formulation of this taking of possession is of no legal value as a basis for a claim of sovereignty in international law, even if such claim is restricted to lands and islands.⁷

Also on the negative side are the official explanations given in 1970

5. For a more complete review of British and Canadian activities in Arctic waters, see D. PHARAND, *THE NORTHWEST PASSAGE: ARCTIC STRAITS* 22-58 (1984).

6. J. BERNIER, *CRUISE OF THE ARCTIC 1908-1909 I* (1910). See also, Bernier's letter of April 5, 1910, to the Deputy Minister of Marine and Fisheries that accompanied his report, *Id.*, at xix.

7. See D. PHARAND, *supra* note 3.

on the legal effect of Canada's adoption of a 12-mile territorial sea on the waters of the Northwest Passage after the passage of the *Manhattan*. The intended effect of extending the territorial sea from 3 to 12 miles must have been to create an overlap of territorial sea in the western portion of the Barrow Strait, where a string of five islands lies in a zigzag fashion across the strait. The widest passage being only 15.5 miles, between Lowther and Young Islands, there would now be an overlap of territorial waters in Barrow Strait, as there was already in Prince of Wales Strait, where the Princess Royal Islands, lying in mid-strait, reduce the width of the passage to less than six miles. This intended effect was made abundantly clear by the legal advisor of the Department of External Affairs, when testifying before the Standing Committee on External Affairs and National Defense. He stated, in particular, that the new 12-mile territorial sea had the effect of giving Canada sovereignty from shore to shore, thus insuring undisputed control over two of the gateways to the Northwest Passage.⁸ In other words, even if a foreign ship succeeded in avoiding Prince of Wales Strait, as the *Manhattan* had attempted to do in 1969 by entering M'Clure Strait instead, it could no longer remain on a strip of high seas but would have to cross Canada's territorial waters. Such an explanation may well constitute an admission that the rest of the waters of Parry Channel was considered as high seas. Of related significance is that it was not until three years later, in 1973, that Canadian officials said the waters of the Archipelago were historically internal waters of Canada.⁹

In addition the United States made a formal protest in 1970, not only against Canada's extension of its territorial sea to 12 miles, but also against the Arctic Waters Pollution Prevention legislation adopted at the same time. This second piece of legislation enabled Canada to enforce certain pollution prevention standards of construction, manning, and equipment against all ships navigating in the waters of the Archipelago north of the sixtieth parallel and up to a distance of one hundred miles outside the Archipelago. The United States Protest Note stated that international law provided no basis for the proposed unilateral extension of jurisdiction and that it could neither accept nor acquiesce in the assertion of such jurisdiction.¹⁰

8. See Canadian Parliament House of Commons Standing Committee on External Affairs and National Defense, MINUTES OF PROC. & EVID, No. 25, 28th Parl., 2d sess. 18 (1970) (Statement of J. Beesley).

9. Letter from the Bureau of Legal Affairs for the Department of External Affairs (Dec. 17, 1973), reprinted in 12 CAN. Y.B. INT'L L. 277, at 279 (1974).

10. See Protest Note, reproduced in U.S. Press Releases Appendix A, in *Canadian House of Commons Debates*, at 5923 (April 15, 1970).

The Note ended by suggesting to Canada that the matter be submitted to the International Court of Justice for adjudication. Canada ignored the Protest Note as it related to the extension of the territorial sea, but not so with respect to pollution prevention. Indeed, on the same day on which the Government introduced the Bill on Arctic Waters Pollution Prevention, the Canadian Ambassador to the United Nations transmitted a letter to the Secretary General modifying Canada's acceptance of the International Court's jurisdiction and excepting from such jurisdiction disputes arising out of Canada's claim relating to the prevention or control of pollution in marine areas adjacent to the coast of Canada.

The damaging part of this reservation in relation to Canada's claim of historic waters is that the marine areas adjacent to the coast of Canada, as described in the new legislation, covered not only a strip of 100 miles outside of the Archipelago but also all of the waters within the Archipelago north of the seventieth parallel. If the waters of the Archipelago had really been considered as internal waters of Canada, over which it claimed as complete a sovereignty as it did over the lands and islands, there would have been no doubt as to Canada's jurisdiction to adopt such legislation for the waters within the Archipelago. Thus, the reservation could have been limited to the strip of 100 miles outside the Archipelago and along the northern coast of the Yukon and the Mackenzie Delta. As it was, the reservation indicated an uncertainty on the part of Canada as to the legal basis of this legislation, not only as it applied to the waters outside but apparently also as to the waters inside the Archipelago. Consequently, Canada cannot be said to have ignored the protest of the United States, but on the contrary, seems to have acted upon it.

For the reasons just outlined, the conclusion is that Canada would not succeed in establishing that the waters of the Canadian Arctic Archipelago are historic internal waters.¹¹

II. CANADA'S STRAIGHT BASELINES AROUND ITS ARCTIC ARCHIPELAGO

The method of delimiting territorial waters from straight baselines, instead of from the sinuosities of the coast, was developed by Norway beginning in 1812. The straight baseline system was approved by the International Court in 1951. It was incorporated with a few changes in the Convention on the Territorial Sea of 1958 and retained in the

11. For a contrary conclusion, however, see Rigaldies, *Le statut des eaux de l'Archipel arctique canadien*, 2 ESPACES ET RESSOURCES MARITIMES 46, 102 (1987).

Law of the Sea Convention of 1982. Under this system, where a coast is deeply indented or is bordered by an archipelago, it is permissible to draw straight baselines across the indentations and between the outermost points of the islands, and measure the territorial sea from those baselines. This latter type of geographical situation is commonly referred to as coastal archipelago. This section will review the law applicable for the use of straight baselines and will enquire whether the Canadian Arctic Archipelago meets the requirements for the application of such baselines.

A. *Legal Requirements for Straight Baselines*

Although the establishment of straight baselines is completely within the control of the coastal State, the validity of lines depends on whether they fulfill the requirements of international law. Those requirements pertain to the geographical configuration on the coast and the way in which the straight baselines are established.

(1) *Geographical Requirements*

The geography required for the application of the straight baseline system was laid down by the International Court of Justice in the *Fisheries Case* of 1951.¹² The Court held that it is applicable where a coast is deeply indented and cut into, or where it is bordered by an archipelago such as the Norwegian skjaergaard. The skjaergaard is 120,000 insular formations carved out of a mainland coast, broken by large and deeply indented fjords, and obliterating any clear dividing line between the mainland and the sea. Some of the islands are located at some 60 miles from the nearest peninsula on the mainland. This is the geography required in customary law.

On the other hand, the Conventions of 1958 and 1982 would seem to be somewhat more stringent as to the position of islands, in that they should constitute a fringe in the immediate vicinity of the coast.¹³ However, the numerous coastal archipelagos to which the straight baseline system has been applied would indicate that States have interpreted the Convention provisions as a mere codification of existing customary law as applied by the International Court.¹⁴

12. See 1951 I.C.J. at 128-31.

13. See Geneva Convention on the Territorial Sea and the Contiguous Zone, Apr. 29, 1958, Art. 4, 15 U.S.T. 1606, T.I.A.S. No. 5639, 512 U.N.T.S. 205; and U.N. Convention on the Law of the Sea, Oct. 7, 1982, Art. 7, U.N. Doc A/CONF. 62/122, reprinted in United Nations Convention on the Law of the Sea 1982, at B28 (K. Simmonds ed., 1983).

14. See a list of some 18 coastal archipelagos, cited by O'Connell, to which the straight baseline system was applied and which would hardly be described as "fringes," in D. O'CONNELL, *THE INTERNATIONAL LAW OF THE SEA* 212 (1982).

(2) *Mode of Application*

In order to insure the international validity of straight baselines, the mode of application or actual construction must follow certain criteria. These are intended as guidelines only and may be adapted to diverse situations. They relate to the direction of the coast, the link between the land and the sea, and certain economic interests evidenced by long usage. The first two criteria are compulsory and the third one is optional. All three were incorporated in the 1958 and 1982 Conventions. No criterion exists as to the length of baselines but, since the question is often raised in practice, it will be commented upon here.

(a) *General Direction of the Coast*

The judgment of the Court concludes that while a State must be allowed the latitude necessary to adapt its delimitation to practical needs and local requirements, "the drawing of baselines must not depart to any appreciable extent from the general direction of the coast." The Court readily admitted that the criterion is devoid of any mathematical precision and the coastal State must be allowed a reasonable degree of flexibility in determining if its straight baselines follow the general direction of the coast. In the Norwegian situation it held that the line across the LoppHAVET Basin, situated some 19 miles from the nearest point of land, did not constitute a distortion of the general direction of the coast. The Court added that the general direction of the coast is determined by examining a small scale map and, except in a case of manifest abuse, looking at the coast as a whole.¹⁵

(b) *Close Link Between Land and Sea*

There must be a sufficiently close relationship between the land and the sea areas which are enclosed to subject the latter to the regime of internal waters.

The Court specified that this close link was a "fundamental consideration"¹⁶ and the reason is obvious, since the enclosed waters will acquire the status of internal waters over which the coastal State will have as complete a sovereignty as it does over its land areas. In other words, even the right to innocent passage will not apply to the enclosed waters. The Conventions of 1958 and 1982 reproduced literally this second criterion, but they made an important change as to the resulting legal regime of the newly enclosed waters. Although these waters are internal in principle, they will be assimilated to territorial

15. 1951 I.C.J. at 133.

16. *Id.*

waters and subject to the right of innocent passage if they had previously been considered as part of the territorial sea or of the high seas.

(c) *Regional Economic Interests Evidenced by Long Usage*

When straight baselines meet the two compulsory criteria just discussed, they are validly established. However, in order to add to the probative value of such criteria, it is permissible to take into account certain economic interests peculiar to a region, the reality and importance of which are clearly evidenced by a long usage.

In the *Fisheries Case*, the Court invoked this third consideration to reinforce its conclusion, with respect to the line across the LoppHAVET Basin, that the divergence between the baseline and the land formations did not constitute a distortion of the general direction of coast.¹⁷ It stated that, even if there had been a distortion, Norway was justified in relying on the historic fishing and hunting rights of the local population to add probative value to the line.

(d) *Length of Straight Baselines*

It is important to recall that the International Court did not impose any limits as to the length of straight baselines. It was satisfied that, if a straight baseline can be justified under the two geographical criteria and possibly also under the economic criterion, the line would be valid regardless of its length. In the case of the Norwegian Archipelago, the 47 baselines varied from a few hundred yards to what is, in effect, 62 miles across the LoppHAVET, the 62-mile line running 44 and 18 miles on either side of a submerging rock. Both the 1958 and 1982 Conventions are silent as to the length of straight baselines for coastal archipelagos. It is only in the case of oceanic archipelagos, constituting the national territory of a State, that the 1982 Convention imposes a limit on the length of baselines. In such a case, the lines must not normally exceed 100 nautical miles, but up to three percent of the total number for any archipelago may reach a maximum of 125 nautical miles.¹⁸

B. *Appraisal of Canada's Arctic Straight Baselines*

(1) *Geography of the Canadian Arctic Archipelago*

In the *Fisheries Case* of 1951, the International Court concluded that the method of straight baselines, devised by Norway, was imposed

17. *Id.* at 142.

18. See United Nations Convention on the Law of the Sea, *supra* note 13, at Art. 47, para. 2.

by the peculiar geography of the Norwegian coast.¹⁹ The question arises here whether the geography of the northern coast of Canada is of a similarly peculiar nature, so as to warrant the method of straight baselines for the delimitation of its territorial waters.

All of the Canadian Arctic Archipelago lies north of the Arctic Circle, except for the southern tip of Baffin Island, and constitutes the northern coastal zone of Canada (see *Figure 2*). The Archipelago is one of the largest in the world and consists of a labyrinth of islands and headlands of various sizes and shapes. There are 73 major islands, of more than 50 square miles in area, and some 18,114 smaller ones. Virtually all of the land formations are mountainous in character.

The western part of the mainland coast is broken by large indentations in the form of bays and gulfs, and the eastern section is deeply penetrated by a huge inland sea (Hudson Bay) and smaller bays and basins. Nearly all of these bodies of water are seeded with countless islands, rocks and reefs. Consequently, the coast of the mainland does not constitute at all a clear dividing line between land and sea, as it does in most other countries. In fact, the coast reaches northward as far as an east-west waterway (Parry Channel) crossing the middle of the Archipelago; it does so by way of a long northern projection (Boothia Peninsula), barely broken by an extremely narrow strait (Bellot Strait) to form Somerset Island to the north.

On the north side of Parry Channel, the Queen Elizabeth Islands are of various sizes and shapes and nearly all of them are deeply indented. The islands are interspaced with bodies of water equally varied in size and shape. This northern section of the Archipelago is linked with the southern one by a string of five islands lying in a zigzag fashion across the western portion of Barrow Strait in Parry Channel, thus forming inter-island passages varying from eight to 15.5 miles.

The islands and peninsulas of the whole Archipelago are fused together by ice formations most of the year, to the point where ice and land areas often become indistinguishable. The archipelago then transforms itself into an immense rampart, protecting the continental part of Canada from the polar ice of the Arctic Ocean and constituting, in effect, the outer coast of the country. The inhabitants of this barren coastal zone derive their livelihood from hunting and fishing, crossing the ice and land indifferently by foot, dog sled or snowmobile, and even using the ice for habitation during their hunting trips.

It is obvious that the northern coast of Canada is bordered by an archipelago similar in nature to the Norwegian skjaergaard. Not only

19. 1951 I.C.J. at 139.

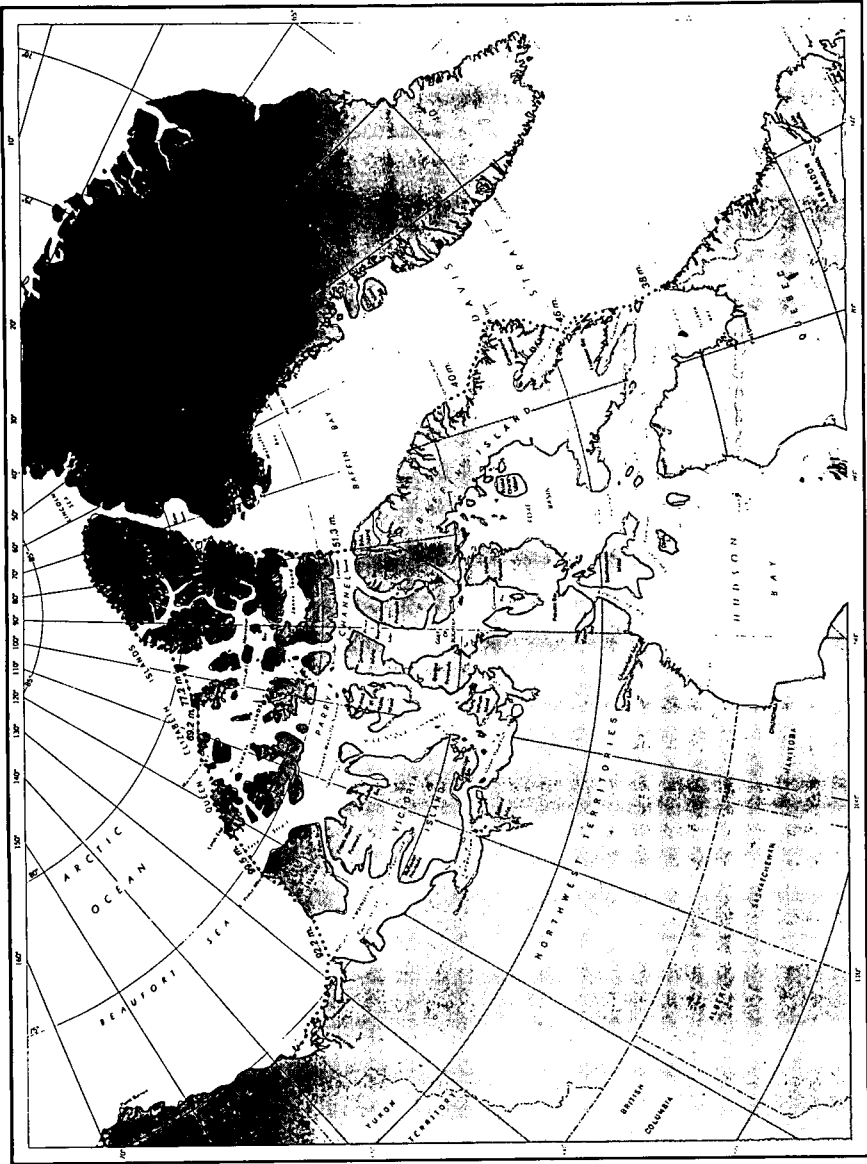


FIGURE 2
STRAIGHT BASELINES OF CANADIAN ARCTIC ARCHIPELAGO
Source: Prepared for the author by John E. Cooper

is the Archipelago located close to the coast, but there exists a general interpenetration of land formations and sea areas which is reinforced by the quasi-permanent presence of ice. The Archipelago might not constitute a fringe of islands along the coast, as required by the Conventions if interpreted literally (which would be contrary to the practice of States), but it does constitute a most peculiar geography, making it absolutely impossible to follow the sinuosities of the coast, or of the islands, in the measurement of territorial waters. It thus renders the use of the straight baseline system absolutely necessary.

(2) *Appraisal of Canada's Arctic Straight Baselines*

As shown in *Figure 2*, baselines begin at the 141st meridian of longitude, proceed in a general easterly direction along the continental coast of Canada in the Beaufort Sea as far as Baillie Islands off Cape Bathurst at the entrance of Amundsen Gulf, and continue in a northeasterly direction across the Gulf and along the west side of Banks Island. They move across M'Clure Strait and along the perimeter of the Queen Elizabeth Islands as far as the most easterly point of Ellesmere Island in the Lincoln Sea. The baselines then proceed in a general southerly direction along the perimeter of the Islands to Lancaster Sound, across the Sound and along Bylot and Baffin Islands as far as Resolution Island at the entrance of Hudson Strait, where they join the straight line across that Strait established in 1937.

(a) *General Direction of the Coast*

Considering the triangular shape of the Archipelago, the only possible general direction which straight baselines can follow (after reaching the entrance of Amundsen Gulf) is that of the outer line of the Archipelago itself. The geographic realities are such that it is absolutely impossible to follow the general easterly direction of the mainland. What really constitutes the Canadian coastline is the outer line of the Archipelago, in the same way that the International Court considered that what really constituted the Norwegian coastline was the outer line of the *skjaergaard*. Consequently, it is unavoidable that the baselines should follow the outer line or general direction of the Archipelago.

(b) *Close Link Between Land and Sea*

The International Court judged it of fundamental importance that, as a rule, the sea areas should be sufficiently closely linked to the land domain to be subject to the regime of internal waters. Here again, however, the Court applied this guideline liberally to at least two areas

of the Norwegian archipelago, the LoppHAVet and Vestfjorden. In a similar way, the flexibility of this guideline should permit the enclosure of the waters of Amundsen Gulf and Parry Channel.

At least three reasons militate in favor of such a flexibility. First, the sea to land ratio in the Canadian Arctic Archipelago is 0.822 to 1, considerably better than the 3.5 to 1 ratio for the Norwegian archipelago. Second, the quasi-permanent presence of ice over the enclosed waters bolsters the physical unity between the land and the sea. Third, the innocent passage of foreign ships should, and presumably would, be permitted by Canada. The exclusion of foreign ships being the main reason for the close link requirement, the latter loses some of its importance when innocent passage is permitted, and the application of the requirement should be correspondingly liberalized.

(3) *Regional Economic Interests Evidenced by Long Usage*

Although the straight baselines are justified under the two compulsory guidelines just reviewed, Canada is also in a position to invoke certain economic interests peculiar to some regions, the reality and importance of which are clearly evidenced by long usage. These interests may be relied upon to reinforce the validity of certain baselines, particularly the 51-mile line across Lancaster Sound at the eastern end of Parry Channel and the 92-mile line across Amundsen Gulf on the west side of the Archipelago. Considering that these two bodies of water are located at either end of the most likely route for the future shipping envisaged for the Northwest Passage, it becomes particularly important that the baselines across these water areas be fully justified.

It has now been well established that the Inuit of the Canadian Arctic have been fishing, hunting and trapping in the waters and on the sea ice of most of the Archipelago for a very long time. A government-sponsored study on Inuit land use and occupancy completed in 1976 reveals that their traditional sea ice use has covered all of the waters of the central and eastern Arctic, as well as those of the western Arctic as far west as Canada's boundary in the Beaufort Sea, and in a northerly direction up to M'Clure Strait and Viscount Melville Sound.²⁰ This traditional hunting and trapping on the sea ice is still vital to the Inuit economy.

These vital interests have been exercised and enjoyed by the Inuit for thousands of years. Indeed, archaeologists and anthropologists believe that the Inuit arrived in Canada's western Arctic between 4,000

20. See M. FREEMAN, REPORT: INUIT LAND USE AND OCCUPANCY PROJECT, 3 vols., Can. Gov't Catalogue. No. R2-46/1976.

and 4,500 years ago from Alaska, where their ancestors are presumed to have migrated from Siberia long before that.²¹ There can be no doubt that the exclusive rights and interests acquired and exercised by the Inuit, and protected by Canada's laws and regulations are such that they may be taken into account in support of the validity of the baselines across Lancaster Sound and Amundsen Gulf.

(4) *Length of Straight Baselines*

Although there is no maximum length for the straight baselines of coastal archipelagos, the matter is perhaps of special interest here because of the straits which are involved. It will be noted that the 145 baselines vary from a few hundred yards to 99.5 nautical miles across M'Clure Strait. An effort was obviously made to restrict the length of baselines as much as possible and the average is only 16.7 nautical miles.

III. STATUS OF THE NORTHWEST PASSAGE BEFORE AND AFTER THE STRAIGHT BASELINES

A. *Status of the Northwest Passage Before the Straight Baselines*

Because of the difference in the legal regime applicable, it is important to determine whether the Northwest Passage could be characterized as an international strait before its enclosure. If it is, the applicable freedom of passage is virtually the same as that on the high seas. The 1982 Law of the Sea Convention describes the type of passage applicable to "straits used for international navigation," but does not say when a strait may be so considered. Fortunately, however, the International Court did address this question in the *Corfu Channel Case* of 1949 and this is still the only international decision on point.

(1) *Criteria for an International Strait*

The Court held in the *Corfu Channel Case* that an international strait had to meet two criteria, one pertaining to geography and the other to the use or function of the strait.²²

The *geographic criterion* is met whenever there is an overlap of territorial waters in the natural passage between adjacent land masses, joining two parts of the high seas (or exclusive economic zones, since 1982) or a part of the high seas with a territorial sea of a foreign State. If there is no overlap of territorial waters, and a strip of high seas (or

21. See Schleder mann, *Inuit Prehistory and Archaeology*, in A CENTURY OF CANADA'S ARCTIC ISLANDS 245, at 253 (M. Zaslow ed. 1981).

22. *Corfu Channel Case* (U.K. v. Alb.), 1949 I.C.J. 4 at 28. (Merits).

economic zone) remains throughout the strait, the principle of the freedom of the high seas continues to apply. Since a 12-mile territorial sea is now permitted in international law, a legal strait means one which is 24 miles or less in width.

The *functional criterion* relating to the use for international navigation is much more difficult to apply, because the conventions are silent as to how the required degree of use for international navigation is to be determined. In holding that the North Corfu Channel was an international strait, the Court found that it had been a very useful route for international maritime traffic.²³ The evidence showed that the Corfu Channel had been used by the flags of seven states: Greece, Italy, Rumania, Yugoslavia, France, Albania and the United Kingdom. The 2,884 crossings counted during a 21-month period covered only the ships which had put in port and had been visited by customs. It did not include the large number of vessels which went through the strait without calling at the Port of Corfu. In other words, the actual use of the North Corfu Channel by foreign ships had been quite extensive. Such an extensive use does not constitute a threshold, but it is clear that there has to be some appreciable degree of actual use over a period of time for a waterway to qualify as an international strait.

(2) *Appraisal of the Status of the Passage
Before the Straight Baselines*

The *geographic criterion* is met without difficulty insofar as the Northwest Passage links two parts of the high seas. Indeed, the eastern end of the Passage leads to Baffin Bay, Davis Strait, the Labrador Sea and the Atlantic Ocean, whereas the western end leads to the Beaufort Sea, the Chukchi Sea, the Bering Strait and the Pacific Ocean. As for the necessity of there being an overlap of territorial waters, this part of the criterion was also met in 1970 when Canada extended its territorial sea from 3 to 12 miles which resulted in an overlap in Barrow Strait.

The *fundamental criterion* requires that a strait must have been a useful route for international maritime traffic, as evidenced mainly by the number of ships using the strait and the number of flags represented, before it can be classified as an international strait. This criterion fails when applied to the Northwest Passage. In its 80-year history, the Passage has seen only 56 complete transits²⁴ and of these, 36 were by Canadian ships. The 20 foreign crossings comprised 13

23. *Id.*

24. See *List of Full Transits*, Appendix I.

American ships, 1 Norwegian, 1 Dutch, 1 Japanese, 2 Bahamian, 1 Liberian and 1 British. The historic Norwegian crossing by Amundsen was one of discovery, the Dutch and Japanese were adventure crossings and the Bahamian and Liberian were pleasure cruises. Aside from the first discovery crossing, these non-American transits were preceded by a request and grant of authorization.

As for the 13 American transits, 3 of them were accomplished by a squadron of icebreakers in 1957, performing hydrographic surveys during the joint Canadian-American establishment of the Distant Early Warning System, and all three ships were led through the narrow Bellot Strait by the *HMCS Labrador*. Two American submarine crossings took place to test the feasibility of submerged transits of the Northwest Passage. The *USS Seadragon* in 1960 had a Canadian representative aboard in the person of Commodore O. C. S. Robertson, and the *USS Skate* in 1962 made its crossing within the context of US-Canada defense arrangements. Five of the other eight American transits were made in 1969, when the *S/T Manhattan* tanker loaded with water made its feasibility voyage in Route 1 and was accompanied for part of the voyage by the US icebreakers *Staten Island* and *Northwind*. The *Manhattan* had a Canadian representative aboard in the person of Captain T. C. Pullen, and was escorted by the Canadian icebreaker *John A. Macdonald*. The 1985 crossing by the *Polar Sea* was not preceded by a request for authorization, but the two 1988 American crossings were. One was by a 64 foot yacht and the other was by the *Polar Star*.

It is clear from the above review that by no stretch of the imagination could the Northwest Passage be classified as an international strait. Those who maintain that the Passage may be so classified obviously confuse *actual use* with *potential use*. The latter test is the one used by American courts to determine whether a waterway is navigable or not. This is not the criterion of actual use required in international law and applied by the International Court.²⁵ In addition, it must be pointed out that, with the possible exception of the cruise ships *Lindblad Explorer* and *World Explorer* (both of which asked permission), not one of the few foreign transits could be characterized as constituting commercial navigation.

The conclusion that the Passage is not an international strait, however, does not mean that no right of passage existed before the drawing of straight baselines. Being territorial seas or high seas (or exclusive economic zone), the traditional right of innocent passage had to apply.

25. On the importance of the actual use, see D. O'CONNELL, *supra* note 14, at 308.

It was applicable at least as much as in any territorial waters, since these were part of a strait. Of course, such strait not being used for international navigation, the right of innocent passage could be suspended for security reasons.

B. *Status of the Northwest Passage After the Straight Baselines*

Three questions must be addressed: (1) Is there a right of passage since the straight baselines? (2) Could the Northwest Passage become an international strait? and (3) What right of passage would apply if the Northwest Passage is internationalized?

(1) *Is There a Right of Passage Since the Straight Baselines?*

Under customary international law, as applied by the International Court in the *Fisheries Case*, there is no right of passage in waters enclosed by straight baselines. This is the result regardless of the previous status of the newly enclosed waters. However, the straight baseline system was modified in this respect when incorporated in the 1958 Territorial Sea Convention. The latter made the enclosed waters subject to the right of innocent passage if they were previously territorial waters or high seas. Since Canada is not a Party to the Convention, it would naturally rely on customary law for the validity of its straight baselines and the resulting legal status of internal waters, if that status cannot rest on an historic title. Such reliance might not be completely secure, however, when one considers the possibility of the 1958 Convention provision having become part of customary law.

The 1958 Convention came into force in 1964, with 22 ratifications. Since then, the number of ratifications, accessions and secessions has raised the membership to 45. These 45 States, however, include only 21 of the 60 States which have actually used the straight baseline system and only 2 of the additional 12 which have adopted enabling legislation. In other words, there are 49 States that have actually used straight baselines or have adopted enabling legislation but have not become parties to the Convention.

It seems impossible to conclude that the acceptance of the 1958 provision for innocent passage in newly enclosed internal waters has been so general as to become legally binding on all States. The International Court made it clear in the *Gulf of Maine Case* of 1984, that much more was required before reaching an affirmative conclusion as to the existence of customary law. It held, in that case, that the equidistance method of continental shelf delimitation had not become a rule of customary law, nor had it been adopted into such law even as a

method to be given preference over others.²⁶ The Court so held in spite of the fact that the 1958 Continental Shelf Convention, which provided for such rule, had been in force since 1964 and some 54 States were parties to it. In addition, the great majority of at least 80 delimitation agreements, concluded since 1958, had been based on the equidistance method, either strict or modified. Consequently, it is highly unlikely that the Court would hold that Article 5 of the Territorial Sea Convention has become binding on all States on the basis of a newly created customary rule. It is all the more unlikely that the provision represented an important departure from existing customary law. Accordingly, the conclusion is that no right of innocent passage exists in the newly enclosed waters of the Northwest Passage. Should the 1982 Law of the Sea eventually enter into force and Canada ratify it, the conclusion would remain the same since those waters would have already been considered internal waters before such entry into force.

(2) *Could the Northwest Passage Become an International Strait?*

The possible internationalization of the Northwest Passage will depend on the degree of international navigation and the measures which Canada will take to exercise control over such navigation.

(a) *International Navigation*

International navigation has already begun in the eastern part of the Passage to transport minerals from Nanisivik Mine, south of Lancaster Sound, and Polaris Mine, north of Barrow Strait. Also, it seems to be only a question of time before regular shipping takes place from Melville Island, north of Viscount Melville Sound, and from the Beaufort Sea along the full length of the Northwest Passage. Oil will probably come from both the Canadian and the Alaskan sides of the Beaufort Sea.

Although the threshold use in the *Corfu Channel Case* of 1951 was fairly high, a considerably lower threshold would probably suffice for the Northwest Passage. Because of special factors such as the remoteness of the region, the difficulties of navigation and the absence of alternative routes, comparatively little use might be required. A pattern of international shipping across the Passage, developed over relatively few years, might be held sufficient to make it international. It has already been recognized by the Permanent Court of International Jus-

26. See *Delimitation of the Maritime Boundary in the Gulf of Maine Case*, (Can. v. U.S.), 1984 I.C.J. 245 at 297, para. 107., (Oct. 12, 1984).

tice in the *Eastern Greenland Case* of 1933, that the application of general principles of law to the Arctic regions must take into account the special local conditions.²⁷

(b) *Possible Control Measures*

An internationalization of the Passage presumes, of course, that Canada would allow the passage of foreign ships, without taking appropriate measures to insure effective control over such ships and the waters in question. It must be remembered that, although the enclosure of those waters has resulted in a sovereignty for Canada which is as complete as over the islands, such sovereignty must be maintained and this can only be done by the exercise of effective control. This means that certain control measures must be taken.

A first such measure should be the immediate construction of the class 8 icebreaker already decided upon. This will greatly assist Canada in providing the full range of sea and land based services that are required for safe navigation in those ice-covered waters. Such services should be ready when the Northwest Passage is used for commercial navigation and would play a key role in affirming Canada's presence and control.

A second measure should be the conclusion of bilateral agreements with foreign shippers setting out the conditions for the use of the Passage. Those agreements would recognize Canada's sovereignty over the Northwest Passage and provide for the conditions to be met by foreign shippers, such as the use of Canadian icebreaking and, possibly, pilotage services. A bilateral agreement of this nature was discussed with the United States but an agreement of a different nature was concluded. The Canada-United States Agreement on Arctic cooperation signed in Ottawa on January 11, 1988, does not recognize Canada's sovereignty over the waters of its Arctic Archipelago and covers navigation by icebreakers only. In addition, it specifies that "nothing in this agreement of cooperative endeavour between Arctic neighbours and friends nor any practice thereunder affects the respective positions of the Governments of the United States and of Canada . . ."²⁸

A third step should be the development of an effective submarinal detection and control capability. Whether this means necessarily the acquisition of *nuclear-powered* submarines remains in question. The

27. See generally *Legal Status of Eastern Greenland (Den. v. Nor.)*, 1933 P.C.I.J. (Ser. A/B) No. 53 (Apr. 5).

28. See text of the Agreement annexed to *News Release*, No. 010, January 11, 1988, published by the Department of External Affairs, Ottawa.

policy of the present Government, as announced in its recent White Paper on National Defense, supports such an acquisition.²⁹ Although such use of nuclear energy might be legally permissible, it is far from certain that nuclear-powered submarines are absolutely necessary to prevent the internationalization of the Passage. It could be that state-of-the-art continued diesel-electric submarines, combined with fixed sonar arrays in strategic positions, might be sufficient.³⁰

(3) *What Right of Passage Would Apply If the Northwest Passage is Internationalized?*

At the insistence of the major Maritime Powers and as part of an integral package, a consensus was reached at the Third Law of the Sea Conference as to the type of passage applicable in straits used for international navigation. This new right, incorporated in the 1982 Convention and called "transit passage," is one of freedom of navigation and overflight. It may be exercised by *all* ships,³¹ including warships in general and submarines in particular in their *normal mode of navigation*.³² More specifically, if the Northwest Passage were internationalized, submarines of all States (Soviet as well as American) would be completely within their navigational rights under the ice.

Of course, the sixty ratifications necessary to bring the 1982 Convention into force are far from having been attained and transit passage is not yet part of customary international law. However, State practice might well develop in that direction and eventually materialize into a rule of customary law. This would be particularly so if major maritime powers follow such a practice and the other States directly affected do not protest. In this regard, the United States has given certain indications that it intends to follow that course.

In his Proclamation of an exclusive economic zone in March, 1983, the President of the United States stated that "unimpeded commercial and military navigation and overflight are critical to the national interest of the United States" and added that it would "continue to act to insure the retention of the necessary rights and freedoms."³³ The President also warned at the same time that the United States will not "acquiesce in unilateral acts of other States designed to restrict the

29. See, Department of National Defense, Ottawa, *Challenge and Commitment, A Defense Policy for Canada*, at 52-53 (1987).

30. See the Executive Briefing entitled *The AMPS-Powered SSN, The Canadian Alternative to the Acquisition of Foreign Nuclear Submarine Technology*, by ECS Group of Companies, a Submission to the House of Commons Standing Committee on National Defense, Spring, 1988.

31. See Convention on the Law of the Sea, *supra* note 13, at art. 38.

32. *Id.*, art. 39.

33. Proclamation reproduced in 22 I.L.M. at 162 (1983).

rights and freedoms of the international community in navigation and overflight and other related high seas uses."³⁴ A refusal to acquiesce was certainly present in the position adopted by the United States at the time of the *Polar Sea* incident in August, 1985.

CONCLUSION

The conclusion which follows from the above analysis may be formulated in three propositions:

1. Canada's claim of an historic title to the waters of the Canadian Arctic Archipelago is of doubtful validity.
2. Canada's straight baselines, established around the perimeter of the Canadian Arctic Archipelago in September, 1985, are valid in international law.³⁵
3. The Northwest Passage is a Canadian national waterway since its enclosure by straight baselines, without any right of passage; however, if adequate control measures are not taken, it could become an international strait and the new right of transit passage would eventually apply.

34. See Leich, *Contemporary Practice of the United States Relating to International Law*, 77 AM. J. INT'L L. 616, 620 (1983).

35. For a similar conclusion, see Killas, *The Legality of Canada's Claims to the Waters of its Arctic Archipelago*, 19 OTTAWA L. REV. 95 (1987), and McKinnon, *Arctic Baselines: A Litore Usque Ad Litus*, 66 CAN. BAR REV. 790 (1987).

Appendix

LIST OF FULL TRANSITS OF THE NORTHWEST PASSAGE*
(1903 TO 1988)

NO.	YEAR	NAME OF SHIP	REGISTRY	ROUTE AND DIRECTION	TYPE OF SHIP	NATURE OF VOYAGE
1	1903-06	GJOA	Norway	3A west.	herring boat	exploration
2	1940-42	ST. ROCH	Canada	3A & 4, east.	schooner	patrol & exploration
3	1944	ST. ROCH	Canada	1, west.	schooner	patrol & exploration
4	1954	HMCS LABRADOR	Canada	1, west.	naval icebreaker	sovereignty & survey
5	1957	USCGS STORIS	USA	3A & 4, east.	icebreaker	hydrographic survey
6	1957	USCGS SPAR	USA	3A & 4, east.	icebreaker	led through Bellot Strait by HMCS
7	1957	USCGS BRAMBLE	USA	3A & 4, east.	icebreaker	<i>Labrador</i>
8	1960	USS SEADRAGON	USA	2, west.	nuclear submarine	exploration of submerged route, within Canada/US defence arrangements
9	1962	USS SKATE	USA	2, east.	nuclear submarine	exploration of submerged route, within Canada/US defence arrangements
10	1967	CCGS JOHN A. MACDONALD	Canada	3, west.	icebreaker	assist CCGS <i>Camsell</i> in MacKenzie Bay & USCGS <i>Northwind</i> n. of Pt. Barrow
11	1969	S/T MANHATTAN	USA	1, west.	tanker	test Passage for large tanker, with Can. Navy Capt. T.C. Pullen aboard
12	1969	CCGS JOHN A. MACDONALD	Canada	1, west.	icebreaker	escort and assist <i>Manhattan</i>
13	1969	S/T MANHATTAN	USA	1, east.	tanker	return voyage
14	1969	USCGS NORTHWIND	USA	3, east.	icebreaker	rendez-vous & support <i>Manhattan</i>
15	1969	CCGS JOHN A. MACDONALD	Canada	1, east.	icebreaker	support <i>Manhattan</i>
16	1969	USCGS STATEN ISLAND	USA	1, east.	icebreaker	support <i>Manhattan</i>
17	1969	USSGS NORTHWIND	USA	3, west.	icebreaker	return to Seattle
18	1970	CSS BAFFIN	Canada	1, east.	survey ship	survey
19	1970	CSS HUDSON	Canada	1, east.	survey ship	survey (first circum. of Americas)
20	1975	CCGS SKIDEGATE	Canada	3A & 4, east.	icebreaker	redeployed to east coast
21	1975	CCGS JOHN A. MACDONALD	Canada	3, west.	icebreaker	assist CCGS <i>Camsell</i> & <i>Beaver Mackenzie</i> in Beaufort Sea

22	1975	CCGS JOHN A. MACDONALD	Canada	3, east.	icebreaker	return to east coast
23	1975	MV PANDORA II	Canada	3 & 5, east.	survey ship	survey
24	1975	MV THETA	Canada	3 & 5, east.	survey ship	survey
25	1976	CANMAR EXPLORER II	Canada	3, west.	drill ship	drill for Dome in Beaufort Sea
26	1976	CCGS J.E. BERNIER	Canada	3, east.	icebreaker	redeployed to east coast
27	1977	WILLIWAW	Netherlands	3A, west.	yacht	adventure
28	1977-78	J.E. BERNIER II	Canada	3A, west.	yacht	adventure
29	1978	CCGS PIERRE RADISSON	Canada	1, east.	icebreaker	redeployed to east coast
30	1978	CCGS JOHN A. MACDONALD	Canada	1, west.	icebreaker	charter to Dome in Beaufort Sea
31	1979	CCGS JOHN A. MACDONALD	Canada	1, east.	icebreaker	return from charter
32	1979	MV KIGORIAK	Canada	1, west.	icebreaker	support for Dome in Beaufort Sea
33	1979	CCGS LOUIS ST-LAURENT	Canada	1, west.	icebreaker	assist CCGS <i>Franklin</i> in Visc. Melville Sd
34	1980	CCGS J.E. BERNIER	Canada	3A, east.	icebreaker	returning to Quebec from Beaufort Sea
35	1980	MV PANDORA II	Canada	3A, east.	survey	redeployed to east coast
36	1981	CSS HUDSON	Canada	3, east.	survey	return to east coast from survey off west coast
37	1981	MORGAN STANLEY	Canada**	3A, east.	Boston whaler	adventure
38	1979-82	MERMAID	Japan	3A & 4, west.	yacht	adventure
39	1983	ARCTIC SHIKO	Canada	3, east.	tug	supply
40	1983	POLAR CIRCLE	Canada	3A, east.	survey ship	survey
41	1984	M/S LINDBLAD EXPLORER	Bahamian (Swedish owned)	3A, west	cruise ship	pleasure trip St. John's to Yokohama; permission requested
42	1985	M/S WORLD DISCOVERER	Liberian	3, east.	cruise ship	pleasure trip Nome to Halifax; permission requested
43	1985	USCGS POLAR SEA	USA	1, west.	icebreaker	redeployed from Thule to Chukchi Sea for survey work; permission not requested
44	1985	CCGS JOHN A. MACDONALD	Canada	3, west.	icebreaker	assist CCGS <i>Camsell</i> in Beaufort Sea
45	1985	CCGS JOHN A. MACDONALD	Canada	3, east.	icebreaker	return to east coast
46	1988	BELVEDERE	USA	4, east.	yacht	adventure; permission requested

47	1988	VAGABOND II	British	4, east.	yacht	adventure (first British ship to cross Passage); permission requested
48	1988	HENRY LARSEN	Canada	3, east.	icebreaker	redeployment, to Halifax
49	1988	SOCIETY EXPLORER	Bahamas	4, east.	cruise ship	pleasure trip (formerly Lindblad Explorer); permission requested
50	1988	CANMAR EXPLORER III	Canada	3, west.	drill ship	to drill in Beaufort Sea (broken voyage)
51	1988	PIERRE RADISSON	Canada	3, west.	icebreaker	to assist Martha L. Black north of Alaska
52	1988	JOHN A. MACDONALD	Canada	3, west.	icebreaker	to provide logistical support for Polar Star
53	1988	USCG POLAR STAR	USA	3, east.	icebreaker	blocked by ice north of Alaska, exiting east; Can. Coast Guard Officer aboard and permission requested
54	1988	JOHN A. MACDONALD	Canada	3, east.	icebreaker	to escort Polar Star
55	1988	PIERRE RADISSON	Canada	3, east.	icebreaker	escorted Martha L. Black back eastward
56	1988	CCGS MARTHA L. BLACK	Canada	3, east.	icebreaker	blocked by ice north of Alaska, exiting east

* The Northwest Passage here is limited to the constricted waters of the Canadian Arctic Archipelago between Baffin Bay and Beaufort Sea.

** Ship bought in Vancouver just prior to crossing and presumably of Canadian registry, see R. FIENNES, *TO THE ENDS OF THE EARTH* 158 (1983).

Summary of transits per flag

36 Canadian

20 Foreign

- 13 American
- 1 Norwegian
- 1 Dutch
- 1 Japanese
- 2 Bahamian
- 1 Liberian
- 1 British