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Are Ocean Polluters Subject to Universal Jurisdiction – Canada Breaks the Ice

A. The Death of the Ocean – Mother of Life

Until now, human development has proceeded on the assumption that the earth and its resources were created for the use and exploitation by mankind, and were so plentiful that little thought need be given to their ultimate exhaustion.[1] In terms of ecology, man's economic theories have advanced little beyond those of the Stone Age: "slash and burn" agricultural communities who roam the world's tropical forests, slashing and burning trees to create small plots for cultivation, and when the soil is soon exhausted, moving on to another part of the forest to slash and burn again.

Similarly, modern man has exploited the resources of the earth with such reckless abandon, that the human race is now faced with an ecological crisis of unbelievable complexity. We now know that the earth's resources are limited, with the points of exhaustion of many of the most basic resources near at hand, and that exploitation and industrialization are exacting such a fearful toll that life, as we now know it, may be doomed to extinction.[2]

Perhaps the most obvious of the world's endangered ecological systems is the ocean.[3] Ocean waters cover four-fifths of the earth's surface. Its interaction with the atmosphere determines weather and climate and each influences in many ways the composition of the other.[4] Over 70 percent of the atmosphere's oxygen was created by ocean organisms.[5] The ocean is

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[1]THE BIBLE, *Genesis*, 1:28.

[2]Falk, *Toward Equilibrium in the World Order System*, 64 AM. SOC. INT'L L. PROC. 217-18 (1970).

[3]Schacter and Serner, *Marine Pollution and Remedies*, 65 AM. J. INT'L L. 84 (1971).

[4]Stewart, *The Atmosphere and the Ocean*, SCIENTIFIC AM., p. 76, (Sept., 1960).

[5]Schacter and Serwer, *supra* note 3, at 87.

an integral part of the world's food supply and an important communications link between the continents. Thus, the destruction or alteration of the ocean's ecosystems would threaten the earth's supply of oxygen, lead to the possibility of seriously altered climates and threaten destruction of an important source of the world's present and future food supply.[6]

Yet, the evidence seems conclusive that serious, destructive pollution of the ocean has occurred, is continuing virtually unabated and will become worse in the future. It may very well be that the future of the ocean will be a replay of the destruction and death of many smaller bodies of fresh water, such as Lake Erie.[7] Indeed, some of the ocean's constituent parts such as the Baltic and the Mediterranean are well along the road to becoming dead seas.[8] Even the huge expanse of the Atlantic was found by members of Thor Heyerdahl's Ra expedition, to be "one big garbage dump."[9]

One of the most persistent pollutants now entering the ocean in large quantities is oil. Estimates as to the quantity of oil added to the marine environment vary from about 4.5 million tons to no less than 10 million tons.[10] Although the effects of oil pollution have not been completely determined, it is apparent that continuing, unabated pollution of the oceans by oil threatens the functioning of many of the oceans' important life-supporting ecosystems. At the least, oil pollution has succeeded in destroying much of the enjoyment and recreation that man has traditionally found in the ocean, and has reduced the ocean's capacity to produce fish fit for human consumption.

Not all the oil found in the ocean is of human origin. In addition to the millions of tons added by man, a nearly equal amount of hydro-carbons may be added by natural processes.[11] However, nature has evolved, over millions of years, methods of coping with the dangers caused by natural pollutants. The sudden addition by man of vast quantities of unnatural pollutants overwhelms the natural processes, and takes away from nature its most important asset—time. In the modern world, the expanding activi-

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[6]The inter-related components of a natural system are sometimes called an *ecosystem*. The sum total of all ecosystems is the *ecosphere*. Caldwell, *The Ecosystem as Criteria for Public Land Policy*, 10 NATURAL RESOURCES JOURNAL 203 (1970). One example of an ecosystem in action is the inter-relationship of the ocean and the atmosphere in determining the composition and actions of each other. *See* Stewart, *The Atmosphere and the Ocean*, SCIENTIFIC AM., p. 76, (Sept. 1969).

[7]Harwood, *We Are Killing the Sea Around Us*, N.Y. Times (Magazine), p. 35 (Oct. 24, 1971).

[8]N. Y. Post, July 27, 1970, p. 4; N. Y. Times, (Oct. 23, 1971) p. 9.

[9]N. Y. Post, (July 15, 1970) p. 9.

[10]Schacter and Serwer, *supra* note 3, p. 89.

[11]*Id.*

ty of man, the polluter, has destroyed time and there is precious little left.[12]

Despite the well-documented prophesies of disaster and the catastrophes already endured, it is not likely that mankind will voluntarily curtail its pollution-causing activities. The immediate prospect is for increased oil pollution as the worldwide search for oil causes further exploitation of off-shore wells, and increased reliance on ocean shipping of oil.[13] Thus, the battle lines are being drawn between "economists" who feel the need for further exploitation and regard the environment as a subsidiary concern, and the "ecologists" who feel that the survival of the race is dependent on placing primary concern on environmental problems.[14]

B. The International Community and Oil Pollution

Although the efforts of the international community to cope with oil pollution date back to at least 1926, the extent of the present crisis is a measure of its failure. In 1926, a convention relating to international oil pollution was drafted but not ratified. However, in 1954, an *International Convention for the Prevention of Pollution of the Sea by Oil* was adopted.[15] Although it was subsequently amended, its inherent weakness was such that in 1969, the Intergovernmental Maritime Consultative Organization (IMCO) promulgated at its Brussels Conference two new conventions: the *"International Convention on Civil Liability for Oil Pollution Damage"*[16] and the *"International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties."*[17]

Despite the fact that the IMCO convention followed by forty years the initial pollution control efforts of 1926, and despite the fact that by 1969, maritime oil pollution was clearly a major world problem, the net result of

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[12]The process was described by RACHEL CARSON in her classic work, SILENT SPRING, at p. 6:

> It took hundreds of millions of years to produce life that now inhabits the earth—eons of time in which developing and evolving and diversifying life reached a state of adjustment and balance with its surroundings. The environment, rigorously shaping and directing the life it supported, contained elements that were hostile as well as supporting. Certain rocks gave out dangerous radiation; even within the light of the sun from which all life draws its energy, were short wave radiations with power to injure. Given time—time not in years but in millenia—life adjusts, and a balance has been reached. For time is the essential ingredient; but in the modern world there is not time.

[13]*Risk Conceded in Offshore Rigs,* N. Y. Times, Sept. 4, 1971) p. __: *Oil-Spill Danger Said to Increase,* N. Y. Times (Dec. 16, 1969) p. 9.

[14]Henderson, Economists v. Ecologists, N. Y. Times, (Oct. 24, 1971) F, p. 14.

[15]For an excellent review of the effort of the international community to control oil pollution of the oceans *see* Sweeny, *Oil Pollution of the Oceans,* 37 FORDHAM L. REV. 115 (1968).

[16]9 INT. LEGAL MATERIALS 45 (Jan. 1970).

[17]9 INT. LEGAL MATERIALS 25 (Jan. 1970).

the conventions was to impose limited *civil* liability on the owners and operators of oil tankers, require insurance to cover such damages, and authorize limited intervention on the high seas *after* maritime casualties. The shallowness and limited utility of this approach was argued forcefully by the Canadian government at Brussels. In light of the structural domination of IMCO by maritime states with a vested interest in ocean commerce, it is not surprising that the Canadian arguments did not carry the day.[18]

C. The Canadian Action

1. The Frustrations of the Multi-Lateral Approach

> . . . The Canadian experience was rather unfortunate when they explored possibilities of action within the U.N. apparatus. At the same time there was a rather diffuse interest in the various organs and agencies, there was also, clearly, almost a pre-emption of the possibility of early and direct action by IMCO, which was clearly not an agency, in view of its interest in facilitating maritime commerce, that could take the sort of broad approach that was necessary for this type of problem. Canada was not only rebuffed at the Brussels Conference held last year, but actually received clear indications of reluctance on the part of some governments to assume any responsibility or become involved in this issue. Consequently, Canada felt obliged to take unilateral action that would meet the need of protection in the Arctic environment. It was partly conceived as a goad to the international community to take constructive action.[19]

The problems of ocean pollution are intensified by the extreme climate of the Arctic region. While 50 percent of spilled oil in a temperate zone might be oxidized within a week, oil spilled in the Arctic may persist as long as fifty years.[20] Thus, events in the Arctic led to Canada's desperate attempts at Brussels to put teeth into the international community's attempts to combat oil pollution.

In the summer of 1969, the oil tanker U.S. Manhattan successfully navigated the Northwest Passage through the Canadian Arctic to the new oil fields on the Alaskan north slope. The conflict between the economists and the ecologists was brought into sharp focus. Alaskan oil was regarded as vital by oil interests in the United States and ocean shipping would result in a cost saving of nearly $600,000 a day.[21]

Meanwhile, the ecologists foresaw the devastating results a major oil

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[18]Gold, *Pollution of the Sea and International Law: A Canadian Perspective*, 3 J. MAR. L. & COMM. 13, 27, 28 (1971).

[19]Prof. Gerald L. Morris, as reported in 64 AM. SOC. INT'L. LAW, PROCEEDINGS 52 (1970).

[20]Schacter and Serwer, *supra* note 3, at 89.

[21]Keating, *North For Oil. Manhattan Makes the Historic Northwest Passage*, 137 Nat. Geographic 374–76 (1970).

spill might have on the Arctic environment. Shortly after the Brussels conference, an oil spill occurred in northern waters off Nova Scotia when the tanker *Arrow* grounded. Although only a small spill, the potential for a larger disaster was clear, and Canada's apprehensions were not eased when the owner of the *Arrow* was found to be a corporation that was little more than a Bahamian filing cabinet.[22]

In the spring of 1970, Canada felt compelled to enact far-reaching pollution control legislation entitled "*Act to prevent Pollution of Areas of Arctic Waters adjacent to the mainland islands of the Canadian Arctic.*"[23] The Act authorized detailed regulation of activity in Arctic areas previously regarded as high seas. The Act was promptly attacked as an unjustified unilateral extension of jurisdiction in violation of international law.[24] To those sympathetic to Canada's action, the question was aptly framed by Justice Douglas of the United States Supreme Court:

> . . . Is Canada's new act suggestive of the law the world needs to safeguard the estuaries and oceans of the world from the almost certain degradation they face under present pressures?[25]

2. The Canadian Legislation

On June 26, 1970, the *Arctic Waters Pollution Prevention Act,* received Royal Assent and became law.[26] By that Act, Canada asserted jurisdiction to regulate activities in its Arctic Waters through a national régime which governs everything, from penalties for polluters to the actual construction of ships of any nation traversing the international waters of the Canadian Arctic.

Under the Act, "Arctic Waters" were defined as all those waters above latitude 60 north within 100 nautical miles of shore plus continental shelves or other substrata that Canada had the right to exploit.[27] The objective of the Act was not just oil pollution but included any substance (including detrimentally altered water) detrimental to the use of the Arctic Waters by men, or fish and plants men use.[28]

Any individual who deposits such waste is subject to severe civil and criminal penalties and is liable to any person damaged.[29] However, in

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[22]Gold, *supra* note 18, p. 32.

[23]Hereinafter cited as ARCTIC WATERS POLLUTION PREVENTION ACT, 9 INT. LEGAL MATERIALS 543 (1970).

[24]Henkin, *Arctic Anti-Pollution: Does Canada Make or Break International Law?,* 65 AM. J. INT'L. L., 131 (1971).

[25]7 TEXAS INT'L L. J. 3 (1971).

[26]For a thorough study of the law *see* Wilkes, *International Due Process and Control of Pollution—The Canadian Arctic Waters Example,* 2 J. MAR. L. & COMM. 499 (1971).

[27]ARCTIC WATERS POLLUTION PREVENTION ACT, *Supra* note 23, § § 3(1) and (2).

[28]Sec. 2(h).

[29]CIVIL LIABILITY § § 6(1) (2), PENAL PROVISIONS: § § 18, 19, 23, and 24.

order to prevent pollution before it occurs, the act gives the Canadian government the power to regulate in great detail the construction of ships using Arctic Waters and requires that such ships use Canadian qualified pilots and lookouts.[30] The Candian government disclaimed any intention of claiming sovereignty over the Arctic Waters, and insisted that it was simply regulating pollution-prone activities on behalf of all mankind.[31]

Yet, if the powers which Canada has appropriated for itself are not sovereignty over the Arctic Waters, what are they? Has Canada defined a new kind of contiguous zone in the high seas? Under the provisions of the *Convention on the Territorial Sea and the Contiguous Zone,* in the zone of high seas contiguous to its territorial seas, a coastal state had the right to exercise control in order to enforce, and punish infringement of customs, fiscal, immigration or sanitary regulations within its territorial sea or territory.[32] However, the *Convention* specifically limited that zone to no more than twelve miles from the baseline for measuring the territorial sea. In both the scope of regulation, and the breadth of zone, the Canadian Act goes far beyond the contiguous zone envisioned by the Convention.

Canada, however, found no lack of precedent for its assertion of jurisdiction to regulate activities on the high seas to protect its vital interest in the Arctic, and also took the position that the usual high seas régime had little meaning in its Arctic Waters, where much of the high seas were permanently covered by ice and inhabited by Eskimos who live their entire lives on the ice without ever touching land.[33] Prudently, Canada withdrew from its acceptance of the mandatory jurisdiction of the International Court of Justice, the question of the validity of its Arctic Waters Act.[34]

D. The Canadian Arctic Waters Act and International Law

Even before formal enactment, the mere proposal of the Arctic Waters Act by the government of Prime Minister Trudeau caused a barrage of criticism, much of it from the United States.[35] It was assailed by some as an act of unilateral law-making, and a grievous impingement of the freedom of the seas. Canada, on its part, admitted lack of precedent, and in reply to

[30]Sec. 12.

[31]". . . it is not an assertion of sovereignty, it is an exercise of our desire to keep the Arctic free of pollution. . ." Press conference of April 8, 1970, of Prime Minister Trudeau, 9 INT. LEGAL MATERIALS 600 (1970).

[32]*Convention on the Territorial Sea and The Contiguous Zone,* ART. 24, U.N. DOC. A/CONF. 13/L. 52, April 28, 1958.

[33]Beesley, *Rights and Responsibilities of Arctic Coastal States: The Canadian View,* 3 J. OF MAR. L. & COMM. 1 (1971); Pharand, *Oil Pollution Control in the Canadian Arctic,* 7 TEXAS INT'L J. 45 (1971).

[34]9 INT. LEGAL MATERIALS 598 (1970).

[35]Department of State Release, April 15, 1970, 64 AM. J. INT'L. L. 928 (1970).

a protest from the government of the United States made pointed reference to the Truman Declaration of the Continental Shelf as ample precedent for its actions and a prime example of a "unilateral jurisdiction assertion."[36]

By Canada's own definition, it was not claiming sovereignty over the Arctic Waters, but merely asserting a special kind of jurisdiction to prevent pollution. To evaluate the lawfulness of the Canadian action, we must therefore examine the customary jurisdiction of national states, and whether Canada's action is fundamentally at odds with the customary basis.

There are five customary bases of national jurisdiction.[37] They are:

(a) The Territorial Principle

A State has jurisdiction to prescribe rules and regulation with respect to conduct, things, status, or other interest within its territory. Some scholars would list as a separate basis the *floating territory principle,* which includes jurisdiction over vessels or aircraft subject to national jurisdiction.[38] Under the territorial principle, a State has jurisdiction over its territorial seas, subject to the right of foreign vessels to transverse the territorial sea in "Innocent Passage." Likewise, the concept of the contiguous zone is an application of the territorial principle.

(b) Protected Interest Principle

A State has jurisdiction to prescribe rules of law to conduct outside its territory that threatens its security as a State. Thus treason and counterfeiting committed abroad may be punished by the State wronged, and a State may take other measures reasonably necessary for its defense.

(c) Nationality of Offender

A State may regulate the conduct of its own citizens, no matter where they may be.

(d) Nationality of Victim

A State may also assert jurisdiction, because the victim of criminal conduct outside of its boundaries, is a citizen.

(e) The Universality Principle

A State may also have jurisdiction to take enforcement action to protect

[36]CANADIAN NOTE of April 16, 1970, 9 INT. LEGAL MATERIALS 607 (1970).

[37]RESTATEMENT (SECOND) FOREIGN RELATIONS LAW OF THE UNITED STATES, Ch. 2, § 10 *et seq.*; George, *Extraterritorial Application of Penal Legislation,* 64 MICHIGAN L. R. 609 (1966); Cowles, *University of Jurisdiction Over War Crimes,* 33 CALIF. L. REV. 177 (1945); Carnegie, *Jurisdiction Over Violation of the Laws and Customs of War,* 39 BRIT. Y. B. INT'L. L. 402 (1963).

[38]George, *supra* note 37, at 614.

certain universal interests and punish offenses against the law of nations. Thus piracy, slavery and war crimes may be prosecuted by any state which obtains custody of the perpetrator regardless of any other connection the state may, or may not, have with offense.[39]

As noted above, the territorial principle by itself is an insufficient basis for the Canadian legislation, since the previous definitions of the contiguous zone were usually more limited in scope than claimed by Canada. However, a state has considerably more latitude when taking measures of self-defense.

These broad powers were recognized by the Supreme Court of the United States in the leading case of *Church v. Hubbart,* which involved the seizure of a ship off the coast of Brazil by Portuguese authorities. The Court, in determining the validity of the seizure noted:

> . . . The authority of a nation within its own territory is absolute and exclusive. The seizure of a vessel within the range of its cannon by a foreign force is an invasion of that territory and a hostile act which it is its duty to repel. But its power to secure itself from injury may certainly be exercised beyond the limits of its own territory. Upon this principle the right of a belligerent to search a neutral vessel on the high seas for contraband of war is universally admitted, because the belligerent has the right to prevent the injury done to himself by the assistance intended for his enemy: so too a nation has a right to prohibit any commerce with its colonies. Any attempt to violate the laws made to protect this right, is an injury to itself which it may prevent, and it has a right to use the means necessary for its prevention. These means do not appear to be limited within any certain marked boundaries, which remain the same at all times and in all situations. If they are such as unnecessarily to vex and harass foreign lawful commerce, foreign nations will resist their exercise. If they are such as are reasonable and necessary to secure their laws from violation, they will be submitted to."[40]

Moreover, in support of its action, Canada has pointed to actions by the United States, including the creation of Air Defense Identification Zones 300 miles in depth, and the banning of shipping from large areas of the high seas in connection with hydrogen bomb tests.[41]

In reviewing the legality of such actions, a test of reasonableness which echoes the language of the Supreme Court in *Church v. Hubbart* has been applied. Is the object of the regulation reasonable and are the means used reasonable? If so, then the action is lawful even though it does temporarily interfere with the freedom of the seas.[42]

Whatever the objection raised to Canada's action, it must be judged in

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[39]Cowles, *supra* note 37.

[40]*Church v. Hubbart,* 2 CRANCH 187, 234 (1804).

[41]CANADIAN NOTE, *supra* note 36.

[42]Mac Dougal, *The Hydrogen Bomb Tests and the International Law of the Sea,* 49 AM. J. INT'L. L. 356 (1955).

light of the *Lotus* case, decided by the International Court of Justice in 1927.[43] The Court, in considering the validity of Turkish legislation with supposed extra-territorial effect, laid down the rule that an exercise of jurisdiction by a state will always be valid in the absence of a clear prohibatory rule of international law. Since the only prohibatory rule applicable is the so-called "freedom of the high seas," and we have already seen that this rule is clearly subject to reasonable restrictions in the protection of legitimate State interests, the burden on those attacking Canada's action is heavy indeed.

Moreover, the power to regulate pollution activity asserted by Canada has already found echoes in the United Kingdom. Following a particularly offensive oil spill in April, 1971, Parliament enacted extensive new legislation governing oil spills in English territorial waters.[44] The government was given broader powers to regulate shipping and the penalties for oil spills were considerably increased. In addition, the government was authorized to extend the effect of the act to ships outside territorial waters by special decree.[45] This additional authority has not yet been exercised, but by enabling the government to do so, Parliament has taken a long step down the new trail in pollution control, blazed by Canada.

E. The Canadian Legislation as Protecting Universal Interests.

Canada has not seen fit to rest the case for its Arctic Waters legislation on the narrow ground of self-protection but has consistently maintained it was acting to protect the interests of all mankind, in the absence of sufficient rules of international law. Thus Prime Minister Trudeau has said:

> . . . where no law exists, or where law is clearly insufficient, there is no international common law applying to the Arctic Seas, we're saying somebody has to preserve this area for mankind until international law develops.[46]

In light of our previous discussion of the danger of ecological catastrophe, this appeal certainly strikes a responsive chord, but does it add any further legitimacy to Canada's case? If there is an interest to protect, does Canada have the right to protect it, or ought protection of international interests be left to the international community? We have previously noted the right of states to punish offenses against the law of nations, in order to protect universal interests. Is pollution a violation of the law of nations?

Early in the development of international law, it was recognised that states had the right to punish individuals who violated the Law of Nations

[43]P.C.I.J., Series A., No. 10 (1927).
[44]THE OIL IN NAVIGABLE WATERS ACT of April 17, 1971.
[45]*Id.*, § 8 (10).
[46]*Supra* note 31, at 601.

even though the crime had no direct effect on the State seeking to exercise jurisdiction.[47] One of the first examples of the exercise of this jurisdiction were laws against piracy. Any state which apprehended a pirate could, under the rules of international law, exercise jurisdiction and punish him for his crimes, whether or not directly affected by his conduct.[48]

Gradually, by treaty and custom, the classifications of international criminals expanded to include slave traders, brigands (pirates of the land), and offenders against the laws of war.[49] The principle seems well established that "any person who commits an act which constitutes a crime under international law is responsible therefore and liable for punishment."[50] This first principle of Nuremburg, has undergone rapid expansion in recent years so that the perpetrators of Genocide and Apartheid have now been branded as international criminals by proposed conventions.

One general definition has been offered as an offense against the law of nations, which brings the status of the polluter into sharp focus:

> . . . any violation of an elemental individual, group, nation, or international value so basic and permanent in its importance, that the necessity of its protection is recognized by most of the recognized actors on the international scene.[51]

An international crime has also been defined as:

> . . . such an act, universally recognized as criminal, which is considered a grave matter of international concern and for some valid reason cannot be left within the exclusive jurisdiction of the state that would have control over it under ordinary circumstances.[52]

Certainly, under these definitions, the characterization of the environmental polluter as an "international criminal" begins to assume credibility, provided it can be determined that the pollution of the environment violates a right whose importance is universally recognized.

We began by noting the evidence of extreme peril to the environment, and the concern of many for the survival of mankind. Is this regard for the quality of the environment universal and a matter of "grave concern"? One result of the United Nations Stockholm Conference on the environment will be a "Declaration on the Human Environment." According to recent conferees at preparations for the conference, this declaration should be a document of universally recognized fundamental principles recommended for action by individuals, states and the international community. The

[47]Cowles, *supra* note 37.

[48]*Id.*

[49]*Id.*

[50]*Report of the International Law Commission*, 2nd Session, 1950.

[51]Bloom, *Steps to Define Offenses Against the Law of Nations*, 18 W. RESERVE L. REV. 1572 (1967).

[52]Case No. 47, 8 LAW REPORTS OF TRIALS OF WAR CRIMINALS 34, 35.

declaration could in view of some delegations to the committee: ". . . make an important contribution by universally recognizing the fundamental need of the individual for a satisfactory environment which permits the enjoyment of his human rights."[53]

In addition, the declarations of the United Nations concerning the seabed, clearly indicate that the sea is *res communis*, the common heritage of all mankind.[54] Is it not logical to maintain that those who through their polluting activities befoul the "common heritage of mankind" are committing a crime against mankind?

Furthermore, many nations and municipalities have labeled the polluter a criminal in their local laws, indicating that concern for the environment is universal and a very grave matter indeed.[55] Add the fact, that protection of the environment cannot be left within the "exclusive jurisdiction" of national States, which may be unwilling to accept the economic results of enforcement, then the classification of pollution as an offense against the law of nations becomes a matter of necessity.[56]

F. The Application of Universal Jurisdiction to Polluters

Insofar as the Canadian Arctic Waters Act imposes severe civil and criminal penalties on those who pollute Arctic Waters, then it appears to be a valid exercise of jurisdiction to protect a recognized universal interest. The all-encompassing nature of the regulatory scheme, while founded in part on the same desire to protect the environment, may be difficult to justify on such a universal basis since Canada appropriates to itself the right to regulate activities not just on the high seas but in many different localities throughout the world.

Certainly, the manner in which ships are constructed in local shipyards in Japan, the United States and Europe, should not be subject to a single state's judgment of what constitutes proper construction. If the penalties for pollution are severe enough, then the attempt to regulate construction may not be necessary. A ship owner facing criminal penalties would hesitate before sending an improperly constructed ship through Arctic Waters.

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[53]*Report of the Preparatory Committee for the United Nations Conference on the Human Environment*, 2nd Session, p. 16, 26 February, 1971, A/CONF. 48/P.C. 9.

[54]*Report of the Ad Hoc Committee to Study the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction*, U.N. Doc, A/7230 (1968).

[55]Young Italian magistrates are making aggressive use of criminal proceedings, in an attempt to alleviate Italy's notorious pollution problems. N. Y. Times, (News of the Week in Review) May 23, 1971, p. 8.

[56]Commerce Sec. Maurice Stans of the United States has made it perfectly clear, that "in the national interest, economic considerations must be considered before setting environmental standards." N. Y. Times, July 16, 1971, p. 62.

If many States were to enact comprehensive regulatory schemes unilaterally, chaos would result. Suppose for example, the United States and Denmark followed Canada's lead, but came up with different standards? Would the interest of justice necessarily be served by giving the nation that enacted the toughest standards the last word? These considerations argue forcefully, that the only appropriate vehicle for preventive regulatory schemes is multilateral agreement rather than unilateral action.

One cannot expect, however, that effective international regulation of pollution activities will arrive full-born overnight. On the contrary, only when enough nations have expressed forcefully their impatience with the present situation will others act. Standards of conduct normally precede the development of the regimes to enforce them, since the developed standards are necessary for the achievement of a sufficient consensus for action. Thus, speaking in the context of a proposed world habeus corpus, Dean Roscoe Pound wrote:

> . . . It has been assumed that to have world law, we must have a world state; that universal political organization must come before universal law. May it not be rather that universal law must precede the universal state which will undertake to put any required force behind it.[57]

In this way, Canada has broken important new ground in the battle to preserve the earth's ecology. Those who would continue exploitation of the earth's resources with only slight reference to the environment, are on notice that their depredations will not go permanently unchallenged.

As more States come to the Canadian view of the environment, and the right of all nations to prosecute polluters as offenders against the law of nations is increasingly recognized, momentum may well develop that will lead to the effective international regulation so desperately needed.[58] In the interim there may be chaos, but it will be a chaos with hope—hope that mankind may at last be coming to grips with the crisis that threatens its very existence on this planet.

[57]As quoted in Bloom, *supra* note 51 at 1593.
[58]Falk, *supra* note 2.