CHAPTER 4

Pharand's Arctic Treaty
Would an Antarctic Treaty-Style Model Work in the Arctic?

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Introduction and Background

In a 1992 article, Donat Pharand proposed a treaty for the Arctic as tangible evidence of good faith by the Arctic States in their obligations towards each other.1 Pharand was concerned about the legal status of the ministerial declaration that had just been made2 that commenced the process of Arctic regional cooperation and expressed a preference for a treaty as a more appropriate—and legally binding—instrument. The model he proposed was inspired by the 1959 Antarctic Treaty.3

Pharand perceived a need for pan-Arctic cooperation in the areas of the environment, scientific research, living resources, economic development, the health and well-being of the Arctic inhabitants, and the peaceful uses of the Arctic,4 but more than 20 years on there still is no Arctic treaty. Occasionally there is renewed enthusiasm for a multilateral legal approach,5 but on the whole, most Arctic commentators support Oran Young’s notion that there was no need then and there is no need now for a formal instrument.6

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4 Pharand, supra note 1, at 165.
Nevertheless, the 55-year-old Antarctic Treaty might provide some valuable lessons or assistance in shaping thinking about Arctic governance. The main activities receiving attention in the changing Arctic are related to commercial shipping, oil and gas exploration and exploitation, fishing and ship-based tourism—(in other words) marine matters. The Antarctic Treaty Consultative Parties have significant experience with these matters. Fishing is regulated under an Antarctic-specific legal instrument as is tourism, though to a lesser degree as the day-to-day management of Antarctic tourism comes under the ambit of the International Association of Antarctica Tour Operators and the flag States of ships and aircraft. The Antarctic Treaty Consultative Parties negotiated a convention on minerals activity that lapsed. There is now a prohibition on mining. Finally, the Antarctic Treaty Consultative Parties are keen participants in the initiative within the International Maritime Organization regarding safe shipping in polar waters. Reviewing the value of an Antarctic Treaty-style regime for the Arctic is not an outrageous thought, especially as many Arctic States are also participants in the Antarctic Treaty System.

This contribution is a retrospective on the success of the Antarctic Treaty that Pharand so clearly admired. It examines the features within the Treaty that have contributed to its success—evidenced by its longevity and the regime of laws, policies and ethics that govern all human activity in Antarctica today (collectively known as the Antarctic Treaty System). The challenge is to consider how these same features might be helpful in the Arctic, specifically in the marine context, since the discourse is situated within what Young calls a shift in “the center of gravity for the Arctic policy agenda.” This contribution builds on an almost identical endeavor by Rothwell in 1994 writing at an important time in the development of a pan-Arctic regime by States that were divesting themselves of the cloak of the Cold War and becoming more regionally focused. This contribution differs in that it has the benefit and perspective of two further decades of

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10 Madrid Protocol, supra note 8, article 7 read in conjunction with article 25.