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Soci t  belge de droit international

International Conference of the Belgian Society of International Law
“Arctic and Antarctic Regions:
New Challenges for Ocean Governance”

3 September 2018

Egmont Palace, Kleine Zavel/Petit Sablon 8b, 1000 Brussels, Belgium

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KINGDOM OF BELGIUM
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PROGRAMME

Introduction:

9h00-9h15 *Paul Rietjens, Legal Counsel, Federal Public Service Foreign Affairs of Belgium*

Session 1 – Navigation: Chair: Eduard Somers, Prof. em., Universiteit Gent (UG)

9h15-9h35 *Masamichi Hasebe, Senior Legal Counsel, The Japan Association of Marine Safety:*

New Developments in Navigation and the IMO Polar Code

9h35-9h55 *Keyuan Zou, Prof., University of Central Lancashire:*

Implementation of the Polar Code in Antarctic Waters

9h55-10h15 *Aldo Chircop, Prof., Dalhousie University:*

Polar Code, a Canadian Perspective

10h15-10h35 *Anatoly Kapustin, Prof., President of the Russian Society of International Law:*

Polar Code, a Russian Perspective

10h35-11h00 Discussion

11h00-11h20 Coffee break

Section 2 – Fisheries: Chair: Friedrich Wieland, Retired Head of Unit, Directorate-General for Maritime Affairs and Fisheries, EU Commission

11h20-11h40 *Philippe Gautier, Prof., Université Catholique de Louvain (UCL):*

New Developments with Respect to Fisheries in the Antarctic

11h40-12h00 *Erik Franckx, Prof., Vrije Universiteit Brussel (VUB):*

New Developments with Respect to Fisheries in the Arctic

12h00-12h20 *Fernando Villamizar Lamus, Prof., Universidad Bernardo O'Higgins:*

Antarctic and Arctic Litigation in Fishery matters

12h20-12h40 Discussion

12h40-14h00 Free time/lunch

Session 3 - Tourism and Scientific Research:¹ Chair: Louis le Hardy de Beaulieu, Prof.,
Université Catholique de Louvain (UCL)

14h00-14h20 *Holger Martinsen, Amb., Permanent Representative of Argentina to IMO:*

Tourism in the Antarctic

14h20-14h40 *Fiammetta Borgia, Lecturer, University of Rome tor Vergata:*

Tourism in the Arctic

14h40-15h00 *Eric David, Prof. em., Université libre de Bruxelles (ULB):*

Legal Status of Polar Stations: The Princess Elisabeth Antarctica Research
Station

15h00-15h20 Discussion

Conclusions:

15h20-15h30 *Yves Van der Mensbrughe, Prof. em., Katholiek Universiteit Leuven (KUL)*

Reception: 16h00-17h00

¹ Written Communication by Alexia de Vaucleroy, Lecturer, Catholic University of Louvain: Tourism in the Antarctic

PRESENTERS

Paul Rietjens

Director-General of Legal Affairs, Federal Public Service for Foreign Affairs, Foreign Trade and Development Co-operation of the Kingdom of Belgium

Eduard Somers

Eduard Somers studied Diplomatic Sciences and Law at the Ghent University. He has also a degree in Sea and Shipping Law. In 1980 he obtained a Ph.D. in Diplomatic Sciences on the subject of “De internationale zeestraten. Het recht van doorvaart in vreedetijd” (International Straits: The Right of Passage in Times of Peace). In 1985, he became Visiting Professor at the *Vrije Universiteit Brussel* at the Interuniversity Program: Fundamental and Applied Marine Ecology (ECOMAMA), where he taught the course “Legislation and Oceans”. At Ghent University, he was Director of the Maritime Institute until 2014. From 2000 until 2008 he was moreover Dean of the Faculty of Law of that same university.

Since October 2015 he is emeritus professor at Ghent University.

Masamichi Hasebe

Masamichi Hasebe is at present Senior Legal Counsel, Japan Association of Maritime Safety.

He graduated as a Bachelor of Arts (Law) at the University of Tokyo in 1981 and in September 2000 he acquired a Masters in Law (LL.M.) degree from the University College of London. He is an active member in various professional societies in Japan and overseas, especially those related to international law, transport economics, logistics and shipping economics and maritime law, whilst acting as a visiting professor at the Universities of Kobe.

Between 2007 and 2014, he served as Director and Deputy in various fields related to international affairs, infrastructure, as well as transport and tourism. In 2014, he was appointed as Deputy Director General of the Minister’s Bureau in the Ministry of Agriculture, Forestry and Fisheries, until November 2015, when he was appointed as Senior Legal Counsel at the Japan Association of Maritime Safety.

He participated in various academic conferences, mostly relating to international law and transportation. He is also the author of various publications on the legal aspects of maritime transport as well as logistics and shipping.

Keyuan Zou

Keyuan Zou is Harris Professor of International Law at the Lancashire Law School of the University of Central Lancashire (UCLan), United Kingdom. He specializes in international law, in particular law of the sea and international environmental law. Before joining UCLan, he worked at Dalhousie University (Canada), Peking University (China), University of Hannover (Germany) and National University of Singapore.

He has published over 160 refereed English papers in over 30 international journals and various edited books. His single-authored books include *Law of the Sea in East Asia: Issues and Prospects*, *China's Marine Legal System and the Law of the Sea*, *China's Legal Reform: Towards the Rule of Law*, and *China-ASEAN Relations and International Law*. His recent edited volumes include *Sustainable Development and the Law of the Sea* (2016), and *Global Commons and the Law of the Sea* (2018).

He is member of Editorial Boards of *International Journal of Marine and Coastal Law*, *Ocean Development and International Law*, *Journal of International Wildlife Law and Policy*, *Marine Policy*, *Copenhagen Journal of Asian Studies*, *Journal of Territorial and Maritime Studies*, and *Chinese Journal of International Law*, and of the Advisory Boards of *Global Journal of Comparative Law*, *Asia-Pacific Journal of Ocean Law and Policy*, and *Korean Journal of International & Comparative Law*.

Aldo Chircop

Aldo Chircop, JSD, is Professor of Law and Canada Research Chair in Maritime Law and Policy, Schulich School of Law, Dalhousie University, Halifax, Nova Scotia, Canada.

His research interests are in the fields of Canadian and international maritime law and international law of the sea. He is currently working on the regulation of Arctic shipping, greenhouse gas emissions from ships, autonomous shipping, particularly sensitive sea areas, jurisdiction over ships, and maritime regulation theory.

He is Chair of the International Working Group on Polar Shipping of the *Comité Maritime International*, Research Fellow at the Ocean Frontier Institute, Senior Fellow at the Centre for International Governance Innovation (CIGI), and member of the Nova Scotia bar. He has received several academic and professional awards

His numerous publications include: *Canadian Maritime Law 2d* (Irwin Law, 2016; with Moreira, Kindred and Gold eds); *Places of Refuge for Ships: Emerging Environmental Concerns of a Maritime Custom* (Martinus Nijhoff Publishers, 2006; with Linden eds); *The Future of Ocean Regime-Building* (Martinus Nijhoff Publishers, 2009; with McDorman & Rolston eds); *The International Regulation of Shipping: International and Comparative Perspectives* (Martinus Nijhoff Publishers, 2012; with McDorman, Letalik & Rolston eds). Professor Chircop is co-editor of the *Ocean Yearbook* since volume 13 (currently at 32).

Anatoly Kapustin

Anatoly Kapustin is the First Deputy Director of the Institute of the Legislation and Comparative Law under the Government of the Russian Federation (<http://www.izak.ru>).

Born in the USSR in 1954, he graduated from the Faculty of Economics and Law of the Peoples Friendship University (Moscow, USSR) as a Master of Law (international law) in 1980. He subsequently became a post-graduate student at the Department of International Law of the Peoples Friendship University between 1980 and 1983 and the next year defended his PhD thesis in public international Public law there under the academic supervision of Prof. Blischenko I.P.

He defended his doctoral thesis on public international law and European Union law before the Academic Council of the Moscow State Juridical Academy (Russia) to become Doctor of Juridical Sciences in 2000 and became an Honoured Scientist of the Russian Federation in 2015. He became assistant professor, docent, and later professor at the Department of International Law of the Peoples Friendship University (Moscow, Russia) during the period 1993 until 2010. During that time he also acted as Dean of the Law Faculty between 1995 and 2010 and as Head of the Department of International Law between 2000 and 2010.

Thereafter he became Head of the Center for Comparative Legal Studies as well as Head of the Centre of Educational Programs of the Institute of Legislation and Comparative Law under the Government of the Russian Federation from 2010 to 2013. He then became Deputy Director (2013-2014) and First Deputy Director (2014-2018) and Deputy Director (2018 -) of that Institute.

He serves as President of the Russian Association of International Law since 2008. He is a Member of the Executive Council of the International Law Association (London) since 2008 as well as President of the International Law Commission of the Association of Russian Lawyers since 2012.

He is the author of more than 290 academic works including 13 monographies (8 in co-author), 13 textbooks, 10 teaching aids and articles on different topics of International and European Law.

Friedrich Wieland

Friedrich Wieland studied law at the University Erlangen-Nürnberg, passing the 1st State examination in law 1980, Referendariat (judicial traineeship) at the Oberlandesgericht Nürnberg, and the 2nd State examination in law 1984.

His professional experience includes practice as lawyer in law firms 1984-1988; appointment as EU official at the Directorate-General for Maritime Affairs and Fisheries of the European Commission in 1988 with passages through the Legal Unit (1988-1995), the Unit dealing with international fisheries in the Baltic, North Atlantic and North Pacific (1995-2001), Deputy Head of Unit – tuna regional fisheries organisations (2001-2002), Head of Unit – markets and trade (2002-2007), and Head of Unit - legal affairs (2007-30.06.2017).

A number of special assignments he received are highly relevant for present purposes: handling of the “Quota hopping” infringement cases in the 1990s; providing legal assistance in international negotiations at the FAO and the UN – 1993 FAO Compliance Agreement, 1995 UN Agreement on Straddling Fish Stocks and Highly Migratory Species, 1995 FAO Code of Conduct for Responsible Fisheries; the Head of the EU Delegation to NEAFC (1996-2001); serving as Chair of the “Working Group on the Future of NEAFC” (1997-2001); serving as Chair of the Compliance Committee of ICCAT (2001-2007); providing legal assistance in the UNCLOS and WTO disputes about Atlanto-Scandian herring, Denmark in respect of the Faroe Islands v. EU (2013-2014); providing legal assistance in the EU’s representation in ITLOS Case 21 – Advisory Opinion on inter alia the due diligence obligation of the flag State for fishing activities conducted by its vessels in the waters of third coastal States (2013-2015); providing legal assistance in the process leading up to the Agreement to Prevent Unregulated High Seas Fishing in the Central Arctic Ocean (2016-2017); providing legal assistance in the so-called “Snow Crab Row” in the Barents Sea, including the peculiarities of the waters around Svalbard (2013-2017).

Since his retirement on July 1, 2017, (surprisingly rare) spare time is still being devoted to manifold questions of international law, with a special interest focus on the law of the sea, environmental law, trade law and investment law.

Philippe Gautier

Philippe Gautier has been the Registrar of International Tribunal for the Law of the Sea (ITLOS) since 2001. He was Deputy Registrar from 1997 to 2001. He is Professor at the Catholic University of Louvain (UCL - *Louvain-la-Neuve*) where he has been teaching since 1993. From 1984 to 1997, he worked for the Belgian Ministry of Foreign Affairs (1984-1997), where he was Head of the Treaties Division (1995-1997) and Head of the Law of the Sea/Antarctica Office (1991-1995). He is Doctor of Law (1992) and holds a master in Philosophy (1983). He is lecturing at IMLI (International Maritime Law Institute, Malta (2011- present)), *Vrije Universiteit Brussel* (2006- present) and Wuhan University, China (2016- present).

He is listed as an arbitrator under Annex VII to the United Nations Convention on the Law of the Sea and is the author of numerous publications on law of treaties, environmental law, law of international organizations, settlement of disputes, law of the sea and Antarctica.

Erik Franckx

Erik Franckx is full-time research professor, President of Center for International Law, Faculty of Law and Criminology, *Vrije Universiteit Brussel* (V.U.B.). He serves at present as the President of the Belgian Society of International Law (2017 -). He holds moreover teaching assignments at Vesalius College (V.U.B.); *Université Libre de Bruxelles*; Brussels School of International Studies (University of Kent); Institute of European Studies (V.U.B.); *Université Paris-Sorbonne Abu Dhabi*, United Arab Emirates, and the University of Akureyri, Iceland.

He is appointed by Belgium as: Expert in marine scientific research for use in special arbitration under the 1982 United Nations Convention on the Law of the Sea (2004 -); expert in maritime boundary delimitation to the International Hydrographic Organization (2005 -); member of the Permanent Court of Arbitration (2006 -); arbitrator under the United Nations Convention on the Law of the Sea (2014 -); and member of the national Commission for the Reform of Private and Public Maritime Law (2012 -).

He served as a consultant to governments (foreign as well as the three levels of the Belgian state structure, i.e. the federal, regional and community level), international, supra national and non-governmental organizations. He was recently legal counsel on behalf of the Netherlands in the Arctic Sunrise Arbitration against the Russian Federation (2013 - 2017).

He has published widely in the area of the law of the sea. After the publication of his PhD on the legal regime of navigation in the Arctic in 1993 (*Maritime Claims in the Arctic: Canadian and Russian Perspectives* (Martinus Nijhoff)), he has returned to that topic when the international attention started to focus on that area once again, mainly as a result of climate change.

Fernando Villamizar Lamus

Fernando Villamizar Lamus obtained his law degree from the Del Rosario University (Bogotá, Colombia), a Máster in Business Law from the Pontifical Catholic University of Chile (Chile), and his Ph.D. in Political Science and Sociology from the Pontifical University of Salamanca (Spain).

He is the author of numerous articles on topics relating to Antarctica and the law of the sea. In 2017, for instance, he published the *Beyond the Borders: The Geopolitical Horizons of Antarctica*, Cooperative University of Colombia.

He is a law professor at different universities in Colombia, Chile, France, Guatemala and Argentina. He is currently professor of political law at the Law School of the Bernardo O'Higgins University and was recently appointed Director of that Law School.

Louis le Hardÿ de Beaulieu

Louis le Hardÿ is Professor at the *Université catholique de Louvain* (UCL) and visiting professor at the University of Namur (Belgium); President of the Royal Belgian Marine Society; Member of the Institute of Political Science Louvain-Europe (ISPOLE) and of the Centre for International Crisis and Conflict Studies (CECRI) of the UCL; Member of the scientific council of the Royal Higher Institute for Defence (Belgium); Member scientific council of the Center for the Study of Military Law and the Law of War; Member of the Belgian group of the International Society for Military Law and the Law of War; Member of the French-Belgian Research Institute Borders and Discontinuities; Visiting Professor at the Royal Defence College (Brussels, Belgium); Honorary Secretary general of the Interuniversity Center for European Studies.

His main courses and research orientations are related to the law of international relations; international law of the sea; maritime and strategic studies; international organizations; institutional law of the European Union; Belgian federalism and international relations and the principles of the Belgian public law. He is the author of numerous publications and contributions in the field of public international law, Belgian public law and international relations.

Holger Martinsen

Holger Martinsen is a lawyer who obtained his degree at the Faculty of Law and Social Sciences of the University of Buenos Aires in 1985.

He is a career diplomat, currently Ambassador by rank, who graduated from the Institute for the Argentine Foreign Service in January 1989. As of January 2016 he is posted in London as Permanent Representative of the Argentine Republic to the International Maritime Organization. Before that, he served as Deputy Director General of the Office of the Legal Advisor of the Ministry of Foreign Affairs and Worship between 2009 and 2015. From 2003 until 2015 he was also appointed as Representative of the Ministry Affairs and Worship to the Federal Fisheries Council of Argentina.

He was a member of the Argentine Delegation before several international tribunals in contentious cases: International Court of Justice in the case concerning the Pulp Mills on the River Uruguay (2007-2010); Counsel before the International Tribunal for the Law of the Sea in Case 20 "ARA Libertad" (2012) and before the Arbitral Tribunal under Annex VII of the United Nations Convention on the Law of the Sea in the "ARA Libertad" Case" (2013); he also

participated in the case between Argentina and Chile in the boundary case known as "Laguna del Desierto".

In the academic field, he was appointed as Assistant Professor of public international law at the Faculty of Law and Social Sciences of the University of Buenos Aires between 1990 and 1995 and from 2002 to 2010. At the postgraduate level he also taught at the Argentine Institute for the Foreign Service (2007-2009 and 2014-2015), the University of Buenos Aires (2001-2004) and University Torcuato Di Tella (2006-2010 and 2015).

Fiammetta Borgia

Fiammetta Borgia, Ph.D., qualified Associate Professor since July 2018, is currently Assistant Professor of international law at the University of Rome "Tor Vergata" and at the European University of Rome. She teaches international law, law of the sea and European Union law.

Her main research interests are public international law, law of the sea, human rights and international economic law, with a particular focus on multinational corporations and business ethics. She wrote three monographs: A first book related to corporate social responsibility of multinational corporations in 2007, another on the legal regime of the Arctic region in 2012 and the last one about the military use of drones abroad. She is also author of various articles on public international law, human rights, international economic law, international private law and law of the sea.

In addition, she is a lawyer, practicing in Rome corporate and international law, and a legal expert for many European and international cooperation projects since 2002.

Eric David

Eric David taught public international law and various international law subjects from 1973 to 2009 at the *Université libre de Bruxelles* (ULB) and in foreign universities as visiting professor. He is President of the International Law Centre since 2003 and Professor Emeritus since October 2009. He is still lecturing the law of armed conflicts at the ULB, together with his successor, Prof. V. Koutroulis. All his courses have been published. His *Principes de droit des conflits armés* (1st ed., 1994; 5th ed., 2012; 6th ed. in print) have been translated into Russian (2001 and 2011). His course syllabus on international public law (originally written by Prof. J. Salmon) is updated and published each year at the Presses universitaires de Bruxelles (27th ed. in print).

He practiced international law as counsel for various States before the ICJ and is member of the International Humanitarian Fact-Finding Commission (IHFFC, 2007-2017). He conducted investigations into the respect of human rights and international humanitarian law in the Occupied Palestinian Territories (1982, for the International Association of Democratic Lawyers), in Rwanda (1996, for Amnesty International) and in the Philippines (2009, for the Geneva Call).

Yves Van der Mensbrugge

Yves Van der Mensbrugge obtained his PhD from the *Katholieke Universiteit Leuven*, with a study on the freedom of navigation in the Suez Canal (*Les garanties de la liberté de navigation dans le Canal de Suez*, Paris, Librairie générale de droit et de jurisprudence, 1964, with a foreword by Paul De Visscher). He was a professor at the Katholieke Universiteit Leuven as well as the *Universitaire Instelling Antwerpen*.

He is a specialist in international law, with special interest in the law of the sea, as well as in European law, with an emphasis on external relations and environmental law, all areas in which he has published widely. He also serves as a consultant.

At present he is emeritus professor at the *Katholieke Universiteit Leuven*.

Alexia de Vaucleroy

Alexia de Vaucleroy is an F.R.S.-FNRS Research Fellow in public international law at the *Université Catholique de Louvain*, under the supervision of Professor Pierre d'Argent. Her doctoral thesis concerns temporal and spatial inter-state differentiation of obligations of conduct. She also gives tutorials in public international law and has worked as a member of the course team of Professor Pierre d'Argent for the MOOC, "International Law", on Edx. She graduated from the Université Catholique de Louvain and holds an LL.M. from the London School of Economics. Her Master theses concerned respectively the obligation to negotiate in good faith in international law and the notion of humanity in the international law discourse.

ABSTRACTS

New Developments in Navigation and the IMO Polar Code – Masamichi Hasebe

Year-on-year record-breaking high temperatures and unprecedented low levels of sea ice in the modern era may soon make trans-Arctic shipping between Europe, Russia and Asia economically feasible. According to the U.S. National Snow and Ice Data Center (NSIDC), the extent of floating ice reached an annual maximum of 14.5 million square kilometers on March 17, the second smallest record to date. The winter retreat means ever bigger areas are ice-free year round, especially in the Barents Sea north of Russia and Norway, which is becoming increasingly similar to the Atlantic Ocean.

Various projects to extract natural resources have resulted in a jump in activity on Russia's Northern Sea Route (NSR), with a doubling of traffic in the past two years alone. The Yamal Liquefied Natural Gas (LNG) project alone will deliver about 17 million tons per year. Arctic LNG 2 project will also produce a similar volume. Huge coal mining developments on the Taymyr Peninsula are expected to add about 10 million tons by 2025. The Russian Ministry of Natural Resources estimates that shipping volumes on the NSR could reach up to 67 million tons by 2025.

With regard to transit traffic over the NSR as alternative to the Suez Canal, fewer than 250 transit voyages were recorded between 2010 and 2017 due to restrictions, such as short shipping seasons (a few months in summer), the cold and dark Arctic winters, unpredicted presence of floating ice, costly and slow navigation with icebreakers, and the limited size of vessels due to insufficient water depth. However, due to the very ambitious Chinese Polar Silk Road strategy, China's Ocean Shipping Company (COSCO) utilized the NSR for five transit voyages in 2017.

The International Maritime Organization (IMO) has been working on efforts to improve maritime safety in the Polar Regions for several decades. In 2002, IMO first published guidelines for ships operating in ice-covered waters. The guidelines were originally focused solely on the Arctic. In 2009, the guidelines were expanded to cover both the Arctic and the Antarctic. At that point, it was also agreed to pursue mandatory requirements for ships operating in polar regions.

The Polar Code is a new mandatory code with specific requirements to enhance maritime safety, training and environmental protection in the polar regions. The code consists of two parts, each of which includes both mandatory and recommendatory sections. Part I addresses safe design, construction and operation (it was adopted in November 2014 and came into effect in January 2017). Part II addresses environmental protection (it was adopted in May 2015 and came into effect in January 2017). Detailed training requirements are provided in amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW).

While cleaning up after large oil spills proves a complex undertaking anywhere in the world, it is especially challenging in the Arctic. Not only does the remoteness and the harsh environmental conditions in the Arctic make clean-up efforts difficult or even impossible, scientists are also concerned that the natural "self-cleaning" capacity of the Arctic ecosystem of oil-eating bacteria that live in the seawater, is much weaker than in other seas. Accordingly,

IMO directed a sub-committee to develop a ban on heavy fuel oil use and carriage by ships in the Arctic “on the basis of an assessment of the impacts” and “on an appropriate timescale”.

While the Arctic Council’s Arctic Shipping Best Practice Information Forum launched a public Web Portal in May to assist in the effective implementation of the Polar Code, there has been a problem of domestic implementation in Russia. The serious violation of Arctic shipping safety rules by Yamal LNG carrier *Boris Vilkitsky* in April has escalated a growing conflict about the regulation of and control over the NSR between Rosatomflot, operator of Russia’s icebreaker fleet on one side, and the Ministry of Transportation via its Northern Sea Route Administration (NSRA) on the other side. While the former aims to prioritize commercial considerations, the latter wishes to uphold existing safety standards along the route.

Although the Polar Code requirements will make ships safer and reduce their impact on the marine environment, ships only make up one part of the maritime safety transport system. Additional measures are required to improve shipping safety. These additional measures include improvements to port infrastructure, charting, ice and weather forecasting, communications and maritime domain awareness. The Russian accounts chamber’s annual report, released in May, pointed out that the Rosatom-authored bill does not present a realistic budget for developing port infrastructure along the icy 6,000 kilometer route, and remarks that state funds for doing so will not be available from the federal budget until 2020.

As the International Chamber of Shipping points out, it is critical for the sound and safe development of Arctic navigation that certain principles of governance are complied with, such as maintaining the IMO regulatory framework within the framework of the United Nations Convention for the Law of the Sea (UNCLOS), securing full participation by all shipping nations (not just Arctic Coastal States), providing full market access and freedom of navigation, safeguarding transparency of national regulations, including those related to the calculation of appropriate fees for services, and preventing Arctic States shall to impose on shipping companies unilateral measures relating to ship construction, design and equipment standards or navigational requirements.

Implementation of the Polar Code in Antarctic Waters – Keyuan Zou

The International Maritime Organization (IMO) has adopted the International Code for Ships Operating in Polar Waters (Polar Code). This marks an historic milestone in the Organization’s work to protect ships and people aboard them, both seafarers and passengers, in the harsh environment of the waters surrounding the two Poles. When it comes to Antarctica, the Polar Code has triggered various questions deserving an answer, such as, what is the relationship between the Polar Code and the Antarctic Treaty System (ATS) regarding ship management in the Antarctic waters, how to implement the Polar Code by ATS members, what are the implications for the Southern Ocean fisheries, etc. Against this background, this paper will analyse the relevant issues concerning the related legal implications of this Code and identify the prospects for its implementation in the Antarctic waters.

Polar Code, a Canadian Perspective – Aldo Chircop

In 1970 Canada was the first state to legislate standards and rules for Arctic shipping on a unilateral basis using a combination of the Arctic Waters Pollution Prevention Act and eventually also the Canada Shipping Act. The adoption of the Polar Code at the International

Maritime Organization (IMO) in 2014 (safety measures) and 2015 (pollution prevention measures), which Canada supported and worked hard for, produced interesting challenges for its eventual implementation in the context of the existing regulatory scheme. Canada embraced the amendments to the International Convention on the Safety of Life at Sea, 1974 and the International Convention for the Prevention of Pollution from Ships, 1973/78 at the basis of the Polar Code and the subsequent amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978.

Canada's implementation efforts resulted in a comprehensive review and new set of regulations under the AWPPA. On 19th December 2017 the brand new Arctic Shipping Safety and Pollution Prevention Regulations (enacted under the AWPPA), came into effect and constitute the principal regulatory vehicle for the implementation of the Polar Code in Canada. These regulations repeal the Arctic Shipping Pollution Prevention Regulations, formerly the principal regulations under the AWPPA.

The presentation discusses Canada's interests and role in the development of the Polar Code at the IMO and its position on the final product, which met most, but not all of its expectations. Unlike other jurisdictions that referentially incorporated the Polar Code, Canada had to consider what aspects required modification given its existing legislation, policy interests, Article 234 of the United Nations Convention on the Law of the Sea, 1982, and its position on the legal status of the waters of the Arctic archipelago. Canada accepted much of the code, but also had to effect modifications and transitional arrangements. Polar Code implementation was only a first step in the gradual reorganization of the governance of shipping in Canadian Arctic waters. Canada has launched new policies and initiatives and is working with Arctic Council member states (in the Council and IMO) to address gaps in the governance of Arctic shipping and prepare for Polar Code II. The presentation concludes with reflections on future directions.

New Developments with Respect to Fisheries in the Antarctic – Philippe Gautier

In its report on the work of CCAMLR, issued in 2008, the performance review panel stated, inter alia:

"CCAMLR is a world leader in developing and implementing the Ecosystem Approach to Fisheries and the Precautionary Approach. CCAMLR is particularly advanced in its development and use of methods to manage prey species so as to protect dependent predators, in assessing and limiting fishery impacts on by-catch species, and in providing a structured and precautionary process for the orderly development of new or exploratory fisheries. The quality of the scientific input is very high and scientific advice is almost always followed". It noted, however, that challenges remained, for example, "in the effective control of fishing and fishing capacity, ... anticipating the effects of increased fishing pressure and climate change and developing monitoring and/or precautionary management responses before undesirable effects occur" (see https://www.ccamlr.org/en/system/files/e-Prfrm%20Review%20Report%20Jun09_0.pdf).

The objective of the presentation is to assess, 10 years after this report, whether CCAMLR has taken measures to improve its efficiency and to identify the new challenges which are facing this international organization.

After a brief introduction to the Convention on the conservation of Antarctic Mineral Resources (CCAMLR), the paper will examine the other international legal instruments which are relevant in the context of the management of living resources in the Southern Ocean area (e.g., 1972 Seals Convention and 1948 Whaling Convention, 1995 UN Fish Stock Agreement, FAO compliance agreements, RFMO's, CITES). It will then focus on the following challenges facing CCAMLR, namely IUU and compliance, marine protected Areas, climate change, and consensus and settlement of disputes.

In addressing these issues, it is also important to keep in mind the conclusions contained in the report of the Second Performance Review of CCAMLR, which was circulated in 2017. In its final report, "the Panel noted that CCAMLR was rightly still widely recognised internationally as the pre-eminent regional conservation management organisation that also manages harvesting activities. However, because many of the pioneering conservation measures originally developed by CCAMLR had now been adopted by several regional fisheries management organisations (RFMOs), this distinction was becoming less clear. The Panel noted that there was a sense that CCAMLR had become less focused on proactive precautionary ecosystem-based management measures, and more focused on responding to fisheries and fisheries research proposals submitted by its Members. The Panel observed that for CCAMLR to maintain its international reputation as a leading conservation-focused organisation, it needed to regain its proactivity on all aspects of its work" (CCAMLR-XXXVI/01, 31 August 2017, Para. 21).

New Developments with Respect to Fisheries in the Arctic – Erik Franckx

The Central Arctic Ocean (CAO), i.e. that part of the water areas surrounding the North Pole beyond the exclusive economic zones of the five Arctic rim countries, is about to become the first ocean on the globe where commercial fisheries will be prohibited awaiting scientific evidence that such activities can be undertaken in a sustainable manner. The fact that prevailing ice conditions have in the past simply prevented any fishing activities to be conducted in the area, and probably will continue to do so in the short and medium term, helps to explain this differential treatment when compared to the other oceans where it was rather the depletion of stocks that finally urged states to start curbing their fishing efforts on the high seas in order to arrive at a sustainable level allowing the continuation of their activities as to the future. Starting from the early seal and whaling conventions concluded during the late 19th and early 20th century, the international community slowly came to realize that fish resources are not inexhaustible as it was generally believed to be the case for most, if not all commercially exploited species on the high seas until the end of the 19th century.

This presentation first takes a closer look at the peculiar manner in which this process to protect the CAO has taken shape in practice. It subsequently highlights some of the provisions of the final document as it exists at present in order to better understand the way in which this highly unusual international legally binding document intends to shape the future of capture fisheries in the CAO. The conclusion will be reached that the legal regime of the Arctic, like that of any other ocean, is firmly rooted in the 1982 United Nations Convention on the Law of the Sea and that fishery activities do not form an exception to that rule. In the near future it will therefore rather appertain to the five rim countries facing the Arctic Ocean to deal with the temperature driven northern movement of fish when these resources start to enter their respective exclusive economic zones in greater numbers.

Antarctic and Arctic Litigation in Fishery matters – Fernando Villamizar Lamus

Within the framework of the Conference “Arctic and Antarctic Regions: New Challenges for Ocean Governance”, this paper aims to compare some cases of fishing in the Arctic and in the Antarctic Oceans. The research problem is directed to answer the question: what kind of differences in the applicable law are to be noted between the Arctic and Antarctic settings? The hypothesis is directed to affirm that due to the geographical differences between the Arctic and Antarctica -- the Arctic is an ocean and Antarctica a continent -- the cases do not have coincidences regarding the applicable law to resolve the differences.

In order to confirm the above hypothesis, the most relevant cases that occurred in terms of fishing in the Arctic and Antarctic will be analyzed separately. In the Arctic, three cases will be studied. The first case to be analyzed will be the classic “Bering Sea Fur Seals Case (USA v UK), 1893”. Next, the “Kiel case” (Supreme Court of Norway, 2013) will be addressed. Finally, regarding the Arctic cases, the Snow Crab Fisheries (EFTA Surveillance Authority) will be studied. With respect to the Antarctic, cases, the “Whaling in the Antarctic Case” (ICJ Australia v Japan, New Zealand intervening) and the “Institute of Cetacean Research v. Sea Shepherd Conservation Society Case”, which are closely linked cases, will be analyzed.

Some tentative conclusions would be: (i) there is no thematic unity between what happened in the cases of the Arctic and the Antarctic, (ii) in spite of the geographical differences, the cases of the Arctic and the Antarctic are treated under the idea that they are oceans, (iii) paradoxically, some Arctic cases are governed by the special provisions of the Svalbard Treaty, while in the cases of Antarctica the Antarctic Treaty System is omitted.

Tourism in the Antarctic – Holger Martinsen

Unforeseen in the 50’ while the Antarctic Treaty was being negotiated, tourism in Antarctica has considerably grown in intensity and complexity in the last three decades. From the mid-nineties until 2015 the number of tourists visiting the continent increased more than eight times with around 46.000 estimated for the 2017-2018 season, a figure that had already been reached in the season 2007-2008. The increase in numbers was followed by an increase in complexity of these tourism activities. Visits that used to consist of landings for a few hours nowadays have turned quite more multifaceted including activities such as skiing, kayaking, overflights, and adventure tourism.

The ensuing need for regulation and supervision of this activity has been primarily addressed by the Antarctic Treaty System (ATS). Since the adoption in 1966 of Recommendation IV-27 by the ATCM (Antarctic Treaty Consultative Meeting) on the “Effects of tourism” followed by the “Statement of Accepted Practices in Tourism” by Recommendation VIII-9, many other actions have been taken under the ATS.

Of particular importance has been the Madrid Protocol for the Protection of the Antarctic Environment adopted in 1991 and in force since 1998. The duty of performing Environmental Impact Assessments prior to authorising any activity south of 60 degrees South applies of course to tourism activities, as well as the annexes to that instrument dealing respectively with the protection of flora and fauna and the marine environment. Moreover, the Committee for Environmental Protection (CEP), created by the Madrid Protocol, has been the forum that paid particular attention to the regulation of Antarctic tourism. Some of the last decisions in this field originated in the CEP have been the adoption of successive lists of Sites subject to “Site

Guidelines”, the “Guidelines for Visitors to the Antarctic” of Resolution X-2011, and the eight Recommendations contained in the CEP Tourism Study in 2012.

Domestic legislation by the ATCPs related to the implementation of the Madrid Protocol is also a source of rules applicable to this activity.

Beyond the ATS, the IMO has also given an important normative input to the legal framework of seaborne Antarctic tourism. The 1991 amendments to MARPOL, as well as provisions from SOLAS, STCW and, in particular, the adoption of the Polar Code in 2014 are the more remarkable contributions of the IMO in this field that have been addressed earlier in this Seminar. In addition some recommendations by the World Tourism Organization may also be considered as applicable to this activity.

In addition to these sources, particular importance should be given to self-regulation by Antarctic Tour Operators through the International Association of Antarctic Tour Operators (IAATO) established in 1991. Some criticism has been expressed regarding the problems inherent to any sort of self-regulation and self-control. Nevertheless, some of the recommendations of IAATO ended up as decisions by the ATS and the degree of cooperation of the former with the later seems to have been remarkable.

The multiple rules and recommendations emerging from this variety of sources seem to be covering most of the concerns raised by tourist activities in the continent. Nevertheless as reflected in the update on the current state of the recommendations of the 2012 CEP Tourism Study there seems to be a considerable amount of work to be done in some regulatory aspects.

In the field of effective implementation of those rules particular attention needs to be given to the means available in the legal framework of the ATS to supervise tourist activities in Antarctica in order to address its risks and consequences. Since the exercise of jurisdiction in the area of the Antarctic Treaty is subject to particular conditions, the means for supervision at the States’ disposal is different compared to other contexts.

The compliance control of the Antarctic activity in general is nevertheless remarkably effective. It has been done by means of inspections and the deployment of observers. Regarding shipborne tourism, Port State control measures for passenger vessels bound to the Antarctic Treaty area have been adopted by the ATS. Flag State control in the area of the Antarctic Treaty is less effective due to the fact that around half of the passenger vessels operating there are flagged by States non-parties to the instruments of the ATS.

In conclusion, while the regulatory aspects of Antarctic tourism appear to be developing at the pace required by the increase in the activity, the supervision and control seems to be the field in which more work needs to be done to address the challenges inherent to the legal framework of the ATS. The Madrid Protocol provides very useful tools to that end. In particular, the entry into force of its Annex VI adopted in 2005 dealing with liability arising from environmental damage might bring about new means for an effective supervision and control of this activity.

Tourism in the Arctic – Fiammetta Borgia

Previously considered as a remote and inaccessible area, the Arctic has recently been re-evaluated due to emerging economic opportunities for Arctic and non-Arctic States and private actors. Among these prospects, an increasing interest towards the realization of a sustainable tourism in Arctic has exploded in recent years. However, environmental implications and risks of these activities raise some concerns about the search of a necessary regulatory framework

to guarantee a high level of protection of the circumpolar arctic area. Clearly, among the major risks, there are contamination and over-exploitation of touristic routes and the ensuing additional stress on the environment. Therefore, besides a well-balanced management of the touristic interests at stake, the challenge for International and European Law is to ensure an adequate protection of the Arctic environment as well as sustainable development and of the human rights of the local communities. In this regard, Arctic States are the first to have the duty of ensuring that tour operators use due diligence to assess business compliance with environmental protection and sustainable development.. However, also these private operators have the interest to preserve their main source of revenue. Moreover, the Arctic Council and the European Union can push for a stronger cooperation between States and tour companies in this regard.

The aim of this paper is therefore to evaluate the efforts made to date in this field, while at the same time trying to delineate future policies and strategies. This study will start with proposing a definition of “Arctic tourism” in order to evaluate opportunities and challenges for Arctic and non-Arctic States as well as for economic private entities. Secondly, the role and efforts of the Arctic Council to promote sustainable tourism across the circumpolar Arctic will be examined: A tourism that minimizes negative impacts and maximizes socio-cultural, environmental and economic benefits for residents of the Arctic. Then, it will consider the role of UNCLOS and the EU rules in fostering duties for States, and strengthening due diligence obligations for economic operators in order to promote environmental protection of the region. Finally, it will be stressed that, in spite of these efforts and recent developments, the regulatory framework for Arctic tourism appears inadequate and clearly lacking in effectiveness. Indeed, future strategies and policies need to be better conceived and strengthened: Tourism in Arctic is to date still a risky game.

Legal Status of Polar Stations: The Princess Elisabeth Antarctica Research Station – Eric David

The creation of the Princess Elisabeth Polar Station in Antarctica has been the subject of a dispute between Belgium and the company which built the Station, a Belgian private legal person, the International Polar Foundation. The dispute raises the question of a private ownership right to an immovable item in an internationalized area where States have no sovereignty. The legal solution to this problem should be similar to the ownership right to a ship on the high seas.

Tourism in the Antarctic – Alexia de Vaucleroy

With its unspoilt sceneries and extreme temperatures, Antarctica offers an experience, which has attracted increasing numbers of tourists over the years. Although their number remains relatively low when compared to the number of tourists visiting other countries, this rise carries high environmental risks. In this region, “every footprint matters”! For this reason, compliance with environmental standards by tourist expeditions is a primary concern.

In 1991, several States Parties to the Antarctic Treaty adopted a Protocol aimed at protecting the Antarctic environment and dependent and associated ecosystems. Article 13 on the implementation of the Protocol provides that “each Party shall take appropriate measures within its competence, including the adoption of laws and regulations, administrative actions and enforcement measures, to ensure compliance with this Protocol”. However, it does not determine to which persons or activities the law should apply, nor towards which persons or activities enforcement measures can be taken. This contribution seeks to identify relevant rules on jurisdiction in Antarctica and to determine how States have implemented the Protocol in practice, by focusing on Belgium, the United Kingdom and France. In this regard, it distinguishes jurisdiction to prescribe from jurisdiction to enforce. While jurisdiction to prescribe seeks to answer the question of the scope of application of the law, the jurisdiction to enforce relates to the question of who is competent to ensure the application of that law.

Concerning jurisdiction to prescribe, in the absence of general jurisdictional criteria in the Antarctic Treaty system, it is up to Contracting Parties to determine the jurisdictional scope of their implementing measures in Antarctica. It is submitted however that the discretion left to Contracting Parties in this regard is not without limits. When implementing the Protocol, one should distinguish obligations for which the Protocol and the Annex have defined jurisdictional criteria from the others. Thus, article VIII of the Treaty, Annex IV and Annex VI provide quite precise jurisdictional principles. As for the implementation of all other articles, States can only assert their jurisdiction when they can justify an interest for doing so. In this respect, article VII(5) of the Treaty as well as other ATCM regulations and measures suggest different types of jurisdictional links. Finally, conflicts related the exercise of jurisdiction should be resolved through cooperation. As for jurisdiction to enforce, the Treaty and the Protocol establish an enforcement system based both on national measures and on an international inspection system. Pursuant to article VII of the Antarctic Treaty and article 14 of the Protocol, the Antarctic Treaty Consultative Parties can individually or collectively designate observers to carry out inspections to ensure compliance with the provisions of the Treaty and the Protocol. These observers can access all areas of Antarctica, including stations, installations, equipment, ships and aircrafts and should write reports following their inspections. However, tourist vessels, facilities and activities have received little attention under the existing inspection system so far.

Tourists in Antarctica are not only under the supervision of Contracting Parties. Non-Contracting States are also entitled to exercise their jurisdiction on this Continent on their nationals as well as on vessels flying the flag of their State. Situations that are likely to fall under their jurisdiction are potentially numerous. Almost 50 per cent of tourist vessels in Antarctica are registered in non-Contracting States. Besides, during last season, nearly 7% of tourists traveling with IAATO operators, i.e. 3881 travelers, were nationals of non-Contracting States. Yet, these States have generally not regulated activities taking place south of 60° South Latitude. Some authors have sought to develop arguments so as to ensure that these States also comply with the Protocol, by arguing that the Protocol provided an objective regime or by suggesting that it was reflecting customary law. However, these arguments are not founded. Instead, non-Contracting States are free to not regulate situations in Antarctica. Besides, they may contest departure State jurisdiction when it is used by Contracting Parties to regulate and enforce rules enshrined in the Protocol towards nationals from and vessels registered in their State. Indeed, departure state jurisdiction is not a principle universally recognized under international law. Instead, it flows from article VII(5) of the Antarctic Treaty to which they are not Parties.

This study has then focused on how three Contracting Parties, namely Belgium, the United Kingdom and France, have implemented the Protocol. Unsurprisingly, in the absence of common jurisdictional criteria, the approach used by these three States varies considerably. Yet, as major tourist providers, all of them have broadly defined the scope of application of their laws implementing the Protocol. Jurisdictional links used include: nationality, territory claimed in Antarctica, criteria used in article VII(5) (although States did not interpret these in the same manner) and in ATCM recommendations. However, none of them has affirmed its jurisdiction on situations with no connection to their State. It is also noteworthy that the States refer to these criteria without distinguishing activities that only involve Contracting Parties and activities that also involve non-Contracting States. As a result of the broad jurisdictional connections used, the laws of these three States cover many foreign tourists and activities. This, in turn, is likely to raise conflicts of jurisdiction. Yet, none of these three States has adopted provisions so as to resolve these conflicts generally. Nevertheless, they have all adopted provisions to ensure that activities that have already been authorized by another State can, or automatically or on demand, be exempted of requiring another permit. Moreover, despite their wideness, the jurisdictional criteria used by these three States leave potentially many situations involving non-Contracting States unregulated. Although it would considerably broaden the scope of protection to extend the application of the Protocol to all categories defined in article VII(5), none of the three examined States has done so.

As for jurisdiction to enforce, Belgium, the United Kingdom and France have adopted rules to make it possible for them to enforce their laws in Antarctica. Among others, States have designated individuals entitled to find and report infringements. These can include official agents in Antarctica but also foreign officials, expedition operators and even, under Belgian law, mere individuals who witness infringements. States have also established dissuasive sanctions. Thus, tourists under the jurisdiction of one of these three States that do not respect conditions for staying in Antarctica or who enter Antarctica without authorization can be very severely sanctioned. Penalties foreseen comprise not only expensive fines by also imprisonment. Whether these efforts are enough to ensure enforcement in Antarctica is doubtful though. To ensure more effective enforcement, it might be necessary for States to take measures so as to allow more generally agents to take police measures, to collect evidence and to recognize the competence of foreign agents in Antarctica. The absence of such measures is likely to raise difficulties in court as suggested by the Wordie house judgment.

Conclusions – Yves Van der Mensbrugge