

CANADIAN ARCTIC SOVEREIGNTY

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CANADA

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CANADIAN ARCTIC SOVEREIGNTY

INTRODUCTION

The Arctic region has featured prominently in debates about Canadian sovereignty. There has been a renewed focus on the Arctic due to the effects of climate change in the region, notably the melting of the polar ice caps. At the same time, there are continuing strategic issues relating to potential incursions into Canadian Arctic territory at various levels – airspace, surface (terrestrial and maritime), and sub-surface (by nuclear submarines). Canada’s ability to detect and monitor such territorial incursions and to enforce sovereign claims over its Arctic territory in such cases has been questioned.

Other countries, including the United States, Russia, Denmark, Japan, and Norway, as well as the European Union, have expressed increasing interest in the region and differing claims in relation to international law. In particular, many observers believe that the Northwest Passage, the shipping route through Canada’s Arctic waters, will be open to increased shipping activity in the coming decades as the ice melts. Canada’s assertion that the Northwest Passage represents internal (territorial) waters has been challenged by other countries, including the United States, which argue that these waters constitute an international strait (international waters). Interest in the region’s economic potential has resulted in discussions of increased resource exploration and disputed sub-surface resources, as well as concerns over environmental degradation, control and regulation of shipping activities, and protection of northern inhabitants. It is important to note that the Arctic is a vast and remote territory that presents many difficulties in terms of surveillance, regulation, and infrastructure development.

DEFINING AND ASSERTING SOVEREIGNTY

The definition of sovereignty is somewhat elusive, with varying emphasis given to the elements of control, authority, and perception. The concept of state sovereignty is embedded in international law and is one of its central pillars. Traditionally, this definition reflects a state's right to jurisdictional control, territorial integrity, and non-interference by outside states. "Sovereignty is supreme legitimate authority within a territory. ... Supreme authority within a territory implies both undisputed supremacy over the land's inhabitants and independence from unwanted intervention by an outside authority."⁽¹⁾

However, sovereignty has also been increasingly defined in terms of state responsibility. This includes a state's exercise of control and authority over its territory, and the perception of this control and authority by other states. Sovereignty is thus linked to the maintenance of international security. There is an increasing expectation of state responsibility in ensuring territorial control and in providing the presence of state authority. Former National Defence Minister Bill Graham has stated that "Sovereignty is a question of exercising, actively, your responsibilities in an area."⁽²⁾

Another important dimension of the assertion of Canadian sovereignty includes stewardship, an issue that has been raised by Canada's northern Inuit and Aboriginal peoples. Specifically, "use and occupancy" by Canada's northern inhabitants is significant in terms of the validity of Canada's sovereign claims.⁽³⁾

CHALLENGES TO CANADA'S ARCTIC SOVEREIGNTY

A. The Northwest Passage and Climate Change

The Northwest Passage is usually defined as the body of Arctic water existing between the Davis Strait and Baffin Bay in the east and the Bering Strait in the west. There are considered to be five basic routes through this passage, consisting of essentially two accessible

(1) Daniel Philpott, "Sovereignty: an Introduction and Brief History," *Journal of International Affairs*, Vol. 48, No. 2, Winter 1995, p. 357.

(2) Graeme Smith, "Graham focuses on Arctic during visit to Russia," *The Globe and Mail* [Toronto], 2 September 2005, p. A5.

(3) Jose A. Kusugak, "Stewards of the Northwest Passage," *National Post* [Toronto], 3 February 2006, p. A14.

routes.⁽⁴⁾ The Northwest Passage represents a potentially attractive and valuable commercial shipping route if it were to become more accessible to navigation and for longer portions of the year.

Climate change is a result of the rising global temperatures associated with global warming, the effects of which have a direct impact on fragile ecosystems. It is contributing to the melting of the polar ice caps, which, many speculate, will open the Northwest Passage to increased shipping activity. There are varying estimates of the rate at which the Arctic ice is melting, but a 2004 study by the Arctic Council and the International Arctic Science Committee assessed that sea-ice in summer months has declined by 15-20% over the past thirty years.⁽⁵⁾ A report prepared for the U.S. Navy in 2001 predicted that as a consequence, “within five to ten years, the Northwest Passage will be open to non-ice-strengthened vessels for at least one month each summer.”⁽⁶⁾ Another report issued by the Institute of the North, the U.S. Arctic Research Commission, and the International Arctic Science Committee estimated that the Canadian Arctic will experience entire summer seasons of nearly ice-free conditions as early as 2050, but probably not before 2100.⁽⁷⁾

The impacts of climate change heighten the existing dispute over the status of the Northwest Passage. Canada claims that the Arctic waters of the Northwest Passage constitute “historic internal waters,” and thus fall under Canadian jurisdiction and control. However, this claim has been disputed, especially by the United States and the European Union. The United States has consistently argued that the Northwest Passage represents an international strait (international waters), which allows the right of transit passage (beyond “innocent passage”).

(4) Donat Pharand, *Canada's Arctic Water in International Law*, Cambridge University Press, Cambridge, 1988, pp. 187-189.

(5) Arctic Council and the International Arctic Science Committee, *Impacts of a Warming Arctic: Arctic Climate Impact Assessment*, Cambridge University Press, Cambridge, 2004, <http://amap.no/acia/>.

(6) Office of Naval Research, Naval Ice Center, Oceanographer of the Navy, and the Arctic Research Commission, “Naval Operations in an Ice-Free Arctic,” Symposium, April 2001, <http://www.natice.noaa.gov/icefree/FinalArcticReport.pdf>.

(7) Institute of the North, U.S. Arctic Research Commission, and International Arctic Science Committee, *Arctic Marine Transport Workshop*, 2004, p. 5, http://www.institutenorth.org/PDF/AMTW_book.pdf.

The requirements of an international strait are both “geographic” and “functional.”⁽⁸⁾ An international strait must connect two bodies of the high seas, in this case the Atlantic and Pacific oceans. However, an international strait must also satisfy the criterion of being a useful (not just potentially useful) route for navigation, and must have experienced a sufficient number of transits. Considering the International Court of Justice’s ruling in the Corfu Channel Case, “it becomes readily available that [this criterion] fails to be met” in the case of the Northwest Passage, as there has not yet been a sufficient number of transits to qualify it as a “useful route for international maritime traffic.”⁽⁹⁾ However, if a sufficient number of vessels transit the passage without seeking Canadian permission, Canada’s claims to the legal status of the passage could be challenged, as there would be an increasing claim and perception that the passage constitutes an international strait.⁽¹⁰⁾ This international status would limit Canada’s ability to control these waters, especially in terms of rules governing environmental issues and shipping practices, which would potentially be governed by the International Maritime Organization. Most agree that ensuring control requires a Government of Canada presence in the region, to monitor the passage and ensure compliance with Canadian sovereign claims.

B. Relations With the United States

Canada’s relations with the United States in this area have fluctuated between uneventful periods and controversial events. The United States asserts that the Northwest Passage is an international strait. Two voyages by the U.S. tanker *S.S. Manhattan* in 1969-1970 and the U.S. icebreaker *CGS Polar Sea* in 1985 highlighted the issue of Canada’s sovereign control over its Arctic territory and stirred public debate. In 1970, the Canadian government enacted the *Arctic Waters Pollution Prevention Act*, which asserts Canadian regulatory control over pollution within a 100-mile zone. In response, a U.S. foreign relations document from 1970 stated, “We cannot accept the assertion of a Canadian claim that the Arctic waters are internal waters of Canada. ... Such acceptance would jeopardize the freedom of navigation essential for United States naval activities worldwide.”⁽¹¹⁾

(8) Pharand (1988), pp. 221-225.

(9) *Ibid.*, pp. 224-225.

(10) Andrea Charron, “The Northwest Passage: Is Canada’s Sovereignty Floating Away?” *International Journal*, Vol. 60, No. 3, Summer 2005, p. 832.

(11) U.S. Department of State, *Foreign Relations, 1969-1976*, Vol. E-1, *Documents on Global Issues, 1969-1972*, <http://www.state.gov/r/pa/ho/frus/nixon/e1/53180.htm>.

In 1988, however, Canada and the United States forged an agreement on “Arctic Cooperation,” which pledges that voyages of U.S. icebreakers “will be undertaken with the consent of the Government of Canada.” The agreement did not alter either country’s legal position vis-à-vis the Arctic waters. With regard to the United States’ legal position, however, there have been some suggestions that U.S. concerns with continental security since the terrorist attacks of 11 September 2001 could dampen its assertions that Canada’s Arctic waters constitute an international strait. Accordingly, Canada might perhaps manage relations with the United States over the Northwest Passage by controlling the passage “as a way of securing the North American perimeter.”⁽¹²⁾

C. Hans Island

Hans Island is the subject of a well-reported dispute over Canada’s land territory in the Arctic. Hans Island is situated between Canada’s Ellesmere Island and Greenland, a territory of Denmark. Both Canada and Denmark claim Hans Island as sovereign territory. These competing claims have never been finally settled in international law. A 1973 agreement between Canada and Denmark on the “delimitation of the continental shelf” between Greenland and Canada did not resolve the issue.

This island is uninhabited and is only 1.3 square kilometres. However, certain observers have suggested that Canada’s ability to project control over Hans Island represents a significant indicator of Canada’s ability to exercise sovereignty over its Arctic territory, and sends an important message to other nations. Former National Defence Minister Bill Graham visited the island in July 2005, as did Canadian military personnel, who placed a Canadian flag on the territory. The Danish navy made similar visits in 2002 and 2003. In September 2005, the two countries issued a joint statement declaring that “we will continue our efforts to reach a long-term solution to the Hans Island dispute.”⁽¹³⁾

(12) Charron (2005), p. 847.

(13) Foreign Affairs Canada, “Canada and Denmark Issue Statement on Hans Island,” 19 September 2005, http://w01.international.gc.ca/minpub/Publication.asp?publication_id=383048&Language=E.

D. Resource Potential

Canada's Arctic territory and waters have garnered increasing attention as areas for the exploration and shipping of resources, including oil, gas, minerals, and fish. According to the U.S. Geological Survey, the Arctic contains an estimated one-quarter of the world's undiscovered energy resources.⁽¹⁴⁾ Indeed, some have suggested that "up to 50 per cent of the earth's remaining undiscovered reserves of hydrocarbons are located north of 60°n latitude."⁽¹⁵⁾ However, these commentators also note that there are difficulties and expenses posed by the extraction and transportation of Arctic resources.

Canada and the United States have disputed the maritime boundary in the Beaufort Sea, an area that potentially has strong oil and gas resources. Exploration licences and competing claims to jurisdiction could be an ongoing issue.⁽¹⁶⁾ Canada has committed \$51 million to map and identify the boundary of its continental shelf in the Arctic, pursuant to the United Nations Convention on the Law of the Sea (UNCLOS).⁽¹⁷⁾ Canada ratified the UNCLOS in 2003 and has 10 years from that date to determine the extent of its continental shelf.⁽¹⁸⁾ This "mapping" will help to determine Canada's exact sovereign rights in terms of economic control (beyond the UNCLOS-defined 200-nautical-mile "exclusive economic zone") and resource exploration. The United States has not ratified the UNCLOS, despite a vote in 2004 by the U.S. Senate Foreign Relations Committee recommending ratification.

(14) Paul Reynolds, "The Arctic's New Gold Rush," *BBC News*, 25 October 2005, <http://news.bbc.co.uk/2/hi/business/4354036.stm>.

(15) Oran R. Young, "Arctic Shipping: An American Perspective," in Franklyn Griffiths, ed., *Politics of the Northwest Passage*, McGill-Queen's University Press, Kingston, 1987, p. 116.

(16) Michael Byers, "We can settle this: Let's trade oil for fish. Two northern boundary disputes offer a rare win-win opportunity for Canada-U.S. relations," *The Globe and Mail* [Toronto], 11 March 2005, p. A17.

(17) Pierre Pettigrew, Speech, "Canada's Leadership in the Circumpolar World," 22 March 2005, http://www.dfait-maeci.gc.ca/circumpolar/sec06_speeches_003-en.asp.

(18) Territorial waters may also be delimited through the use of "straight baselines." For historical background on this method and its implications for Canada, see Gerard Kenney, "Message to America: Get out of our Arctic way," *The Globe and Mail* [Toronto], 9 February 2006, <http://www.theglobeandmail.com/servlet/story/RTGAM.20060209.wcomment0209/BNSStory/National/home>.

CANADIAN GOVERNMENT POLICY POSITIONS AND STATEMENTS

The Government of Canada has historically proclaimed sovereignty over its Arctic territory and waters, and has periodically emphasized these claims. The government's 1987 White Paper on Defence, *Challenge and Commitment*, discussed the need for capabilities in Canada's "Three Oceans." In 2000, the Government of Canada released *The Northern Dimension of Canada's Foreign Policy* (NDFP).⁽¹⁹⁾ The NDFP lists four objectives:

- to enhance the security and prosperity of Canadians, especially northerners and Aboriginal peoples;
- to assert and ensure the preservation of Canada's sovereignty in the North;
- to establish the Circumpolar region as a vibrant geopolitical entity integrated into a rules-based international system; and
- to promote the human security of northerners and the sustainable development of the Arctic.

Recently, the issue of protecting and promoting sovereignty has been re-emphasized. In the October 2004 Speech from the Throne, the Prime Minister announced a "northern strategy" that would, among other things, "protect the northern environment and Canada's sovereignty and security."⁽²⁰⁾ In April 2005, the Government of Canada released its *International Policy Statement – A Role of Pride and Influence in the World* (IPS). This foreign policy document places much greater emphasis on the Arctic region and sovereignty concerns than the 1995 *Canada in the World: Canadian Foreign Policy Review*. Arctic sovereignty is discussed in the "Overview," "Diplomacy," and "Defence" sections of the IPS.

STRATEGIC ISSUES

Policy initiatives directed towards the assertion of Canada's sovereignty over its Arctic territory have tended to ebb and flow. The 1987 White Paper on Defence announced plans to purchase 10-12 nuclear-powered submarines and "polar class 8" icebreakers that would

(19) Foreign Affairs Canada, *The Northern Dimension of Canada's Foreign Policy*, 2000, http://www.dfait-maeci.gc.ca/circumpolar/sec06_ndfp_rpt-en.asp.

(20) Government of Canada, *Speech from the Throne*, 5 October 2004, http://www.pco-bcp.gc.ca/default.asp?Language=E&Page=sftddt&doc=sftddt2004_2_e.htm.

be capable of operating in Arctic waters year-round.⁽²¹⁾ These costly programs were subsequently cut with the end of the Cold War. Underwater surveillance capability has been the subject of continuing debate, considering potential incursions into Canadian territory by French, British, Russian, and especially American nuclear submarines. In December 2005, there were reports in the Canadian media that an American nuclear submarine may have passed through Canadian Arctic waters during its trip through the Arctic Ocean, possibly without permission from the Canadian government.⁽²²⁾

A. Strategic Capabilities

Canada's Arctic presence is currently composed of a number of assets:

- The Canadian Coast Guard operates a fleet of five icebreakers that guide foreign vessels through Canada's Arctic waters and assist in harbour breakouts, routing, and northern resupply. These icebreakers are often "the only federal resource positioned in a particular area of the Arctic," and they must also serve in the Gulf of St. Lawrence and the Atlantic.⁽²³⁾ Some commentators have suggested that Canada requires more "heavy" or "all-season" icebreaker capabilities in order to properly monitor and patrol the area. The Canadian Navy does not currently have the capacity to operate within the Arctic ice.
- The Canadian Forces Northern Area (CFNA) is headquartered in Yellowknife. CFNA headquarters comprises 65 Regular Force, Reserve, and civilian personnel. CFNA military activities per year include two "Sovereignty Operations (Army)," two "Northern Patrols" (flights of Aurora patrol aircraft), 10-30 "Sovereignty Patrols" (CFNA), and one "Enhanced Sovereignty Patrol."⁽²⁴⁾ As part of the Canadian Forces Transformation, CFNA will assume a greater command and control function. CFNA will become the "Northern" regional headquarters of the new Canada Command in 2006.
- Within the CFNA, the Canadian Ranger Patrol Group provides a military presence in northern and remote areas by conducting patrols, monitoring Canada's northern territory, and collecting information. These part-time reservists comprise a significant element of Canada's northern presence.

(21) Department of National Defence, *Challenge and Commitment: A Defence Policy for Canada*, 1987.

(22) Chris Wattie, "U.S. Sub May Have Toured Canadian Arctic Zone," *National Post* [Toronto], 19 December 2005, p. A1.

(23) Canadian Coast Guard, *Icebreaking Program Report on Performance: Arctic Operations Summer 2003*, January 2005, <http://www.ccg-gcc.gc.ca/ice-gla/ARCTIC%20REPORT%202003%20ENGLISH.pdf>.

(24) Department of National Defence, "CFNA Fact Sheet," http://www.cfna.forces.gc.ca/aboutus/fact_sheet_e.asp.

- As part of the North American Aerospace Defense Command (NORAD), Canada maintains a chain of unmanned radar sites, the North Warning System (NWS). The NWS provides limited aerospace surveillance of Canadian and United States Arctic territory. In addition, Canada's Department of National Defence recently announced the creation of Project Polar Epsilon, which "will provide all-weather, day/night [surface] observation of Canada's Arctic region," using information from Canada's RADARSAT 2 satellite, by May 2009.⁽²⁵⁾

CONCLUSION

Some have argued that, given the challenges posed by monitoring such a vast territory, Canada's resources are insufficient in terms of ensuring the capability to enforce its sovereignty in the region. Others have responded that these concerns are exaggerated, current efforts are sufficient, and that any policy proposals must be weighed in consideration with other spending priorities and threats.⁽²⁶⁾ For example, Canada's capacity for surveillance and enforcement could be enhanced through policy options ranging from the acquisition of nuclear submarines and increased icebreaker capabilities, to the development of underwater listening posts, or through a mandatory requirement for advance notification from all vessels seeking to travel through Canada's Arctic waters, as is required for Canada's other coasts.⁽²⁷⁾ Therefore, future policy discussions will need to consider the most effective and efficient means of protecting Canadian sovereignty in the Arctic, including assessments of what could be potentially costly programs.

(25) Department of National Defence, News Release, "Project Polar Epsilon Will Enhance Canada's Surveillance and Security Capability," 2 June 2005, http://www.forces.gc.ca/site/newsroom/view_news_e.asp?id=1674.

(26) See Rob Huebert, "Climate Change and Canadian Sovereignty in the Northwest Passage," *ISUMA*, Winter 2001, pp. 86-94; and Franklyn Griffiths, "The Shipping News: Canada's Arctic Sovereignty Not on Thinning Ice," *International Journal*, Vol. 58, No. 2, Spring 2003, pp. 257-282.

(27) Rob Huebert, "Who Best Defends Our Arctic?" *The Globe and Mail* [Toronto], 4 January 2006, p. A15; and Michael Byers and Suzanne Lalonde, "Our Arctic Sovereignty Is on Thin Ice," *The Globe and Mail* [Toronto], 1 August 2005, p. A11.

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<http://news.bbc.co.uk/2/hi/business/4354036.stm>.
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APPENDIX – CHRONOLOGY OF EVENTS

- 1880** – Arctic Islands order in council proclaims Canadian sovereignty over all British territories in North America.
- 1969** – Voyage of U.S. tanker *S.S. Manhattan* through the Northwest Passage.
- 1970** – Canada passes the *Arctic Waters Pollution Prevention Act*, declaring Canadian regulatory control over pollution within a 100-mile zone.
- 1973** – Canada and Denmark agree on “delimitation of the continental shelf” between Greenland and Canada.
- 1985** – Voyage of U.S. icebreaker *CGS Polar Sea* through the Northwest Passage.
- 1985** – Government of Canada announces plans to acquire “Polar 8 icebreaker.”
- 1987** – Canada’s 1987 White Paper on Defence announces plans to acquire 10-12 nuclear submarines.
- 1988** – Canada and United States reach an agreement on “Arctic Cooperation,” which pledges that voyages of U.S. icebreakers should seek consent from Canada.
- 2000** – Government of Canada releases *The Northern Dimension of Canada’s Foreign Policy*, including policy of asserting Canadian sovereignty in the North.
- 2003** – Canada ratifies United Nations Convention on the Law of the Sea (UNCLOS).
- 2004** – *Arctic Climate Impact Assessment* (Arctic Council) is released.
- 2004** – Speech from the Throne, announcing a “northern strategy.”
- 2005** – Canada’s Minister of National Defence visits Hans Island in July.
- 2005** – A U.S. nuclear submarine voyages to the North Pole in December, possibly travelling through Canadian Arctic waters.