2012-12-20

Staking a Claim: The Evolution of Canada's Arctic Maritime Sovereignty, 1880-1990

Lajeunesse, Adam

UNIVERSITY OF CALGARY

Staking a Claim

The Evolution of Canada's Arctic Maritime Sovereignty, 1880-1990

by

Adam Lajeunesse

A THESIS

SUBMITTED TO THE FACULTY OF GRADUATE STUDIES

IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE OF

DOCTOR OF PHILOSOPHY

DEPARTMENT OF HISTORY

CALGARY, ALBERTA

DECEMBER, 2012

Abstract

In April 1988, Canada and the United States of America were locked in a series of high level negotiations surrounding the question of Arctic maritime sovereignty. During one of the meetings between Brian Mulroney and Ronald Reagan in which the question was discussed, the Prime Minister produced a globe, pointed to the Arctic and said simply, "Ron that's ours. We own it lock, stock, and icebergs."

The legal and political status of the Arctic waters has always been a complex and uncertain question; yet, at the same time, it has always enjoyed a remarkable simplicity for most Canadians and their government. While no Canadian government of the past century would question the country's absolute right to sovereignty in the High North, few have looked beyond that political certainty to examine the basis of that right. What exactly is Canadian sovereignty, what does it consist of, how is it justified and what has the country done to secure it?

This dissertation is primarily an examination of those crucial questions. It covers the legal, political, military and economic factors which affected (or prevented) the formation of policy and the international framework in which these took place. It charts the evolution of that policy, from the late nineteenth century through to the final declaration of straight baselines in 1985, and studies the factors which guided and influenced Canadian decision makers. It is a history of Canada's quest to win international – and particularly American – recognition for its Arctic sovereignty while demonstrating how both countries still managed to work together in the region towards their mutual goals.

Acknowledgements

The writing of this dissertation would never have been possible without the generous financial support provided by the Social Science and Humanities Research Council and the Government of Alberta and I would like to gratefully acknowledge the role this assistance played in the completion of this work.

I would like to thank my supervisor, Dr. David Bercuson for his proofreading and insights. To all of my close friends who have been with me on this long journey: Abe, Christine and the Matts; grad school would have been a far less enjoyable experience without all of you.

To the censors working at the Access to Information Department in Ottawa, your tireless quest to obscure Canadian history has done more than anything to refine my research skills and teach me the virtue of patience.

Finally I have to thank my wife Crystal for the love and support which has made the process of getting a PhD so much easier and, most importantly, for her refraining from gloating too excessively when she beat me to it.

To my girls,
Sofi and Emmy

Table of Contents

Abstract	ii
Acknowledgements	iii
Abbreviations	vi
Introduction	1
Chapter 1: The Origins of Canada's Arctic Maritime Sovereignty, 1880-1950	18
Chapter 2: The Sector, Ice-Islands and Straight Baselines, 1950-1958	61
Chapter 3: Regulating American Activity in the Arctic	102
Chapter 4: The Law of the Sea, Fisheries and Canada's First Arctic Claim	141
Chapter 5: The *Manhattan* Crisis and the Arctic Waters Pollution Prevention Act	171
Chapter 6: The Solidification of Canadian Policy, 1970-1979	223
Chapter 7: The Practical Requirements of Arctic Defence	271
Chapter 8: The Voyage of the *Polar Sea* and the Establishment of Straight Baselines	303
Conclusion	358
Bibliography	376
Appendix 1: Northwest Passage Transits: 1900 – 1985	394
Appendix 2: American Submarines in Canadian Arctic Waters, 1960-1986	399

Abbreviations

AAF: United States Army Air Force
ACND: Advisory Committee on Northern Development
ARCCSSS: Arctic Subsurface Surveillance System
ASW: Anti-Submarine Warfare
AWPPA: Arctic Waters Pollution Prevention Act
CCG: Canadian Coast Guard
CDRS: Canadian Defence Research Staff
CF: Canadian Forces
DEW Line: Distant Early Warning Line
DHH: Department of History and Heritage Archives
DND: Department of National Defence
DREA: Defence Research Establishment's Atlantic Naval Laboratory
DREP: Defence Research Establishment's Pacific Naval Laboratory
DWT: Deadweight tons
ECAREG: Eastern Canada Vessel Traffic Services Zone
GIUK: Greenland-Iceland-United Kingdom
HBC: Hudson's Bay Company
ICAO: International Civil Aviation Organization
ICBM: Intercontinental Ballistic Missile
ICJ: International Court of Justice
ILC: United Nations International Law Commission
IMCO: Inter-Governmental Maritime Consultative Organization (IMO after 1982)
IMO: International Maritime Organization
JAWS: Joint Arctic Weather Station
LAC: Library and Archives Canada
LNG: Liquid Natural Gas
MP: Member of Parliament
NARA: National Archives and Records Administration
NHH: Naval History and Heritage Archives
NORDREG: Canadian Arctic Vessel Traffic Reporting System
RCAF: Royal Canadian Air Force
RCMP: Royal Canadian Mounted Police
RCN: Royal Canadian Navy
SOSUS: Sound Surveillance System
SLBM: Submarine Launched Ballistic Missile
SLCM: Submarine Launched Cruise Missile
SSN: Attack Submarine, Nuclear
SSBN: Ballistic Missile Submarine, Nuclear
SUBICEX: Submarine Ice Exercise
UNCLOS: United Nations Conference on the Law of the Sea
USAF: United States Air Force
USN: United States Navy
USCG: United States Coast Guard

Introduction

In December 1954, while announcing the creation of the Department of Northern Affairs and Natural Resources, Canadian Prime Minister Louis St. Laurent took the opportunity to emphasise the need for a renewed focus and emphasis on Canada's northern territories – a region that, the Prime Minister lamented, had historically been governed in "a fit of absence of mind."[1] This phrase had been borrowed from the Victorian historian J.R. Seeley, who had first used it to describe the process by which Great Britain had acquired its empire. According to Seeley, the British had come to secure and govern a quarter of the globe almost by accident, without really intending it and without ever truly understanding what they were doing, while they were doing it.[2]

At the time, St. Laurent's use of the phrase seemed apt. Canada had certainly acquired its northern territories in the same fashion. At the time of Confederation, what was to become the Canadian Arctic remained a British possession. Divided between Rupert's Land and the North-Western Territory, the Arctic was nominally owned and controlled by the Hudson's Bay Company and, through it, Great Britain. To the young federal government, led by Sir John A. Macdonald, the interior, with its vast potential for mining, logging, agriculture and settlement, represented the future of the country. The Dominion government hoped and expected to inherit those vast British territories, yet little thought was given to the seemingly barren and unproductive regions farther north. In fact, the eventual transfer of the British Arctic to the new Dominion of Canada was more a matter of convenience than a purposeful attempt to strengthen the fledgling nation. And, after the American purchase of Alaska in 1867, preventing the region from

[1] Canada, House of Commons, *Debates*, 8 December, 1954, 22nd Parliament, 1st Session, pp. 698.
[2] J.R. Seeley, *The Expansion of England* (London: Macmillan and Co., 1891), pp. 8.

falling into the hands of the United States was no small consideration. As such, on June, 23, 1870 the territories of the Hudson's Bay Company were formally transferred to Canada by an Imperial order-in-council.

After the transfer, there remained little enthusiasm on the part of the Canadian government to occupy or govern this vast and inaccessible northern space. During those years in the late nineteenth century, there was more than enough work to be done settling the prairies, dealing with their occasionally restive inhabitants and building the infrastructure needed to connect the region to the eastern provinces. In 1882, while establishing the provisional districts of Athabaska, Saskatchewan, Alberta and Assiniboia, the Dominion government noted that steps to expand governance to the remaining lands in the North must wait until "some influx of population or other circumstances shall occur to make such provision more imperative than it would at present seem to be."[3] Developing and governing the Arctic was simply not a priority at the time.

Despite this general lack of interest, foreign activity in the region still managed to spark a reaction from the government – a state of affairs that would remain a pattern over the next hundred years. In 1874, a request from an American businessman for mineral rights on Baffin Island raised the specter of the stars and stripes flying over an area where effective British control was thin on the ground. In an effort to preempt American interest in the region the remaining British claims, then consisting of the islands of the Arctic Archipelago, were transferred to Canada. Remote and inhospitable (by European standards at least), the Arctic islands were no more desired by Ottawa than northern Rupert's Land had been four years earlier; yet the prospect of the United States securing

[3] Shelagh Grant, *Sovereignty or Security?* (Vancouver: University of British Columbia, 1988), pp. 5.

a claim to the region was as unappealing in Ottawa as it was in London. As a member of the British Colonial office put it, the transfer was therefore made "to prevent the United States from claiming them [the islands], not from the likelihood of their being of any value to Canada."[4] As such, on July 31, 1880 an Imperial order-in-council officially transferred to Canada "all British Territories and Possessions in North America, not already included in the Dominion of Canada, and all islands adjacent to any such territories or possessions."[5] In ten years, Canada had thereby acquired roughly 7,800,000 km^2 of new land. Of this vast inheritance, some 3,900,000 km^2 constituted 'Arctic territory' – defined for our purposes as the land, ice and water above the 60^{th} parallel. It had been acquired not through any purposeful design but rather as a convenience and, in the decades to follow, the region was managed in much the same way.

In 1954, St. Laurent recognized the fact that, since the transfer, the Arctic had remained a distant and remote part of the country, easily ignored and often forgotten. That is not to say that it was not an important part of the nation, but rather that its importance lay in its value as an abstract concept rather than as a region whose governance and development demanded much attention. As a concept, the Arctic has been and remains an essential element in the Canadian national identity and an important part of the nation's psyche. Since Canada first became a nation, the North has been its great frontier, a vast land of untamed opportunity that captured the imagination and inspired generations of explorers, artists, authors and businessmen. The idea of Canada as a 'northern country' has helped to shape the nation's culture and has implanted itself into

[4] Ibid.
[5] Donald Rothwell, *The Polar Regions and the Development of International Law* (New York: Cambridge University Press, 1996), pp. 164; This was a vaguely worded agreement and, curiously enough, could have been interpreted as giving Canada sovereignty over British Bermuda; Great Britain, Imperial Order-in-Council, July 31, 1880.

everyday life. The national anthem calls Canada the 'True North Strong and Free,' the polar bear graces the two dollar coin while an inuksuk was chosen as the symbol for the Vancouver 2010 Olympics.[6]

Despite its symbolic importance, the fact that so few Canadians have actually lived in or even travelled to the Arctic means that northern affairs have never rated very highly as a government priority. Canada north of 60˚ is an area roughly the size of Western Europe and makes up fully 40% of the country by land mass. Yet, in 1954 when St. Laurent called for a greater emphasis on the region, the population of the two northern territories combined sat at just over 31,000 – or roughly 4% that of Toronto.[7] Most of these inhabitants were also Inuit, a group not officially recognized as citizens until 1945 and without the right to vote in a federal election until 1950. Even with the vote, the sparse population of the Arctic meant that only two of the 265 Members of Parliament (MPs), the then compliment sitting in the House of Commons, represented northern constituencies.

In fact, the North typically came to the fore in government policy only when foreign activity, of one sort or another, disturbed the quiet state of affairs typifying the region. While successive Canadian governments may have had little day-to-day interest in the Arctic, any threat to Canadian sovereignty was still taken very seriously, it was after all still Canadian territory. In the first half of the twentieth century, guarding that sovereignty usually meant deploying the Royal Canadian Mounted Police (RCMP) or the militia to establish effective control over a given area. This had been the case during the

[6] For more on this subject see: Sherrill E. Grace, *Canada and the Idea of North* (Montreal: McGill-Queens, 2001).
[7] Canada, Statistics Canada, "2005 Census" [online] www.statscan.gc.ca; Toronto City Archives, [online] www.Toronto.ca/archives.

Yukon Gold Rush and when American whalers seemed out of control on Hershel Island and around Hudson Bay, and it had worked well enough. In more remote regions, where the intention was to solidify its claims rather than to regulate activity, the government often chose to establish a post office or a police station. During the early to mid-1920s, for instance, a series of such posts were set up across the Arctic Islands in response to a perceived Danish interest in the region.

During the Second World War questions of sovereignty were again raised as American servicemen and contractors moved into the North to build airfields, roads, pipelines and bases in support the broader war effort. Fighting the Nazis, however, proved to be an all-consuming task and the politics of sovereignty were largely set aside. These issues remained after the war and, throughout the 1950s, American contractors and service personnel were still being sent into the region to build and maintain the continental defence projects required by the developing Cold War. At the time, this American presence seemed to represent the greatest threat Canada had ever faced to its northern sovereignty. Yet, as would be the case throughout the Cold War, Canadian governments recognized the need to balance those sovereignty concerns with the very real and practical requirements of continental defence. As such, these projects – from the weather stations built in the late 1940s to the vast and expensive Distant Early Warning Line (DEW) – were handled through quiet and effective diplomacy that largely succeeded in winning American recognition of Canadian ownership of the Arctic Islands. Indeed, by the late 1950s, Canada's terrestrial sovereignty had, for all intents and purposes, been secured across the North.

The term 'sovereignty' has a number of nuanced meanings, yet at its core it implies the supremacy of authority possessed by a government within a defined area. In the *Palmas Island Case* (1928),[8] the Permanent Court of Arbitration defined it as "independence in regard to a portion of the globe" and "the right to exercise therein, to the exclusion of any other state, the functions of a state."[9] This means the application and enforcement of a state's laws and regulations, the collection of taxes and fees, the regulation of activity and, most importantly, a monopoly of force within its borders.

Yet a holder of sovereignty must possess more than mere coercive or administrative power; there must be legitimacy – what philosopher R.P. Wolff called "the right to command."[10] Fundamental to legitimating sovereignty is the fact that a state's control over territory is recognized and accepted by the international community. To this end sovereignty must be derived from some external and mutually acknowledged source of legitimacy. When a state's right to control territory is recognized by the larger community it has essentially been given a guarantee against external intervention within that territory and *ipso facto* is left with sovereignty, if not always in practice then at least in theory. Sovereignty thus possesses a dual nature. On the one hand, force and control lie at its heart; it is from them that sovereignty is enforced and largely because of them that it is recognized. But the actual exercise of this force cannot be considered sovereignty *per se*, but only its manifestation. It is only through the recognition by others of one's right to use force, or at the very least the absence of any challenges to that right, that sovereignty can be deemed to exist.

---

[8] This was a case involving disputed sovereignty over a small island in the south Pacific,
[9] Permanent Court of Arbitration (Netherlands v. USA), *Island of Palmas Case, Award of the Tribunal* (1928), pp. 8.
[10] Dan Philpott, "Sovereignty," *Stanford Encyclopedia of Philosophy*, [online] http://plato.stanford.edu/entries/sovereignty/#1.

While securing Canadian sovereignty to the widespread and often uninhabited regions of the Arctic was a lengthy and sometimes expensive process, it was also a relatively straightforward one. That sovereignty stemmed originally from internationally recognized rights based on nearly three hundred years of exploration by government backed-expeditions, rights transferred from Great Britain to Canada in 1870 and 1880. From the early twentieth century onwards Canadian police stations and post offices served as internationally recognized symbols of effective occupation. This authority was reinforced by RCMP patrols which covered much of the inhabited Arctic and by the activities of Canada's northern circuit courts, which brought the authority of federal law to the region. This sort of effective occupation had been a fundamental requirement for the establishment and maintenance of sovereignty since the late nineteenth century and, while the Canadian presence remained sparse, it was still the only such presence in the region. As such, while Canada's claim to these lands may never have been as strong as the government in Ottawa would have liked, it was generally recognized as being strong enough to meet the criteria laid out in international law and to win the recognition of the broader international community.

Establishing sovereignty to the waters and ice of the Arctic region was far more complicated. From the early twentieth century it was clear that the Canadian government considered its sovereignty in the North to extend not only to the land but to the Arctic maritime region as well. In part this was because the Arctic waters were unique. Frozen for much of the year, the straits and sounds separating the Arctic Islands were used by the local Inuit, the RCMP and the occasional adventurer or explorer as hunting grounds and highways. Since these waters possessed many of the qualities of land for much of the

year it was only natural that they be treated as such. The police enforced criminal law and game regulations on the ice and courts exercised jurisdiction over it as though it were land. Yet, even in northern waters which were not frozen, Canadian governments tended to exercise more jurisdiction than was permitted under international law. The most obvious such example was the dispatch of a series of expeditions, which ran from 1903 to 1911, to sell licenses to American whalers operating in Hudson Bay, Hudson Strait and Lancaster Sound. These areas were outside of Canada's three mile territorial sea and were therefore international waters, yet few in Ottawa saw them that way.[11] Rather than dividing the Arctic Archipelago, the channels and passages which flowed through it were seen by Ottawa as binding the Archipelago together.

Exercising and legitimizing this sovereignty was problematic. In contrast to Canada's territorial claims, asserting ownership to the waters was more difficult physically and less likely to win foreign acceptance. While a post office or an RCMP station offered an internationally recognized symbol of effective occupation, Canada could not secure control over the waters simply by sailing a vessel through the Northwest Passage. While this region may have been unique, there were few accepted vehicles in international law for a state to claim waters outside of its three mile territorial sea. Throughout most of the twentieth century, Canadian statesmen therefore found themselves in an uncomfortable and difficult position. Tradition and nationalistic sentiment demanded that the government publicly claim the Arctic waters as fully Canadian. Yet on what basis the country might go about making and enforcing that claim remained a mystery.

[11] Canada did officially claim sovereignty to Hudson Bay (though not Hudson Strait) in 1907.

In the early decades of the century both legal theorists and government officials sometimes suggested that semi-permanent ice might be classed as a type of land and claimed as such. Yet, the fact that that this frozen 'land' could, and normally did, melt or float away, made that a difficult position to maintain. A theory known as the sector principle was more popular. This theory maintained that polar states had the right to claim ownership to all territories lying between their mainland and the North Pole. What constituted 'territory' seemed to vary. Commonly, sector claims were limited to land, though occasionally the principle was expanded to include water and ice as well. This theory never gained official sanction in Canada, yet it enjoyed a remarkable longevity. From 1907 until at least the early 1970s it continued to enjoy a quasi-official status and was unofficially cited frequently by politicians of all stripes as a basis of Canadian sovereignty.[12] Yet, outside of Canada and Russia – the two states able to benefit most from its application – the sector theory was never accepted as a legitimate means of claiming ownership by the wider international community and was therefore never able to provide an acceptable basis for a Canadian claim.

More legitimate might have been a claim to the waters in question as 'historic.' The idea of state sovereignty over historic waters enjoyed a long history of acceptance in international law. Yet, until the 1950s, such claims were normally confined to narrow bays. The heavy burden of proof needed to establish such a claim would also have been difficult, if not impossible, for Canada to meet in those early years. By 1951, changes in international law, brought about by an International Court of Justice (ICJ) ruling in the Anglo-Norwegian *Fisheries Case*, offered a new and potentially viable avenue for establishing a firmer claim. The *Fisheries Case* legitimized the use of a demarcation

[12] Even into the twenty first century, Canadian century maps still maintain these lines.

system called ‘straight baselines’ for enclosing the waters within an archipelago or a fringe of islands as ‘internal’ – meaning under the complete sovereignty of the state. Yet, the applicability of this legal precedent remained uncertain given the stark geographic differences between the Canadian Arctic and the fjords of northern Norway

Making the question of how sovereignty could be pursued more difficult was the fact that the Canadian government demonstrated a persistent inability to decide on what precisely it was seeking to claim. Some government pronouncements implied a Canadian claim to the entire sector, including a vast section of the Arctic Ocean lying off the west coast of the Arctic Archipelago. Other statements seemed to claim only the waters lying within the Archipelago itself. This confusion, both over the extent and the basis of Canada's sovereignty, proved of long duration; so much so that this ambiguity can be said to have defined Canada's approach to the issue for most of the century. In fact, it was not until the early 1970s that any Canadian government managed to agree upon a firm and realistic policy and then to annunciate that policy line clearly and consistently to the Canadian public and the international community. In this sense Canada's claim to its northern waters was indeed pursued in a fit of absence of mind.

Conversely however, it has also been argued that this lack of a firm position and the avoidance of clear policy was, in itself, the only possible policy.[13] Lacking a firm basis in international law, it is true that it would have been perilous for Canada to have openly declared sovereignty to the waters of either the Archipelago or a section of the Arctic Ocean. Doing so might very well have invited a challenge from the United States

[13] See for instance: Whitney Lackenbauer and Pete Kikkert “Sovereignty and Security: The Department of External Affairs, the United States, and Arctic Sovereignty, 1945-68,” *Serving the National Interest: Canada’s Department of Foreign Affairs and International Trade, 1909-2009*, ed. Greg Donaghy and Michael Carroll (Calgary: University of Calgary Press, 2011).

or another maritime power to Canada's ownership of what most of the world considered international waters. Apart from being politically embarrassing, a challenge from the United States – which was both the most interested foreign party and also the world's most powerful defender of international maritime freedoms – would have endangered the very sovereignty which any declaration would have been meant to secure. Canada's inability or unwillingness to define its claims has thus been seen by some as a level-headed and practical approach, which allowed the state to work quietly behind the scenes to strengthen its case, and by others as a form of national schizophrenia.[14] The truth of the matter lies somewhere in between these two competing schools of thought. This is not to say that each is partially correct but rather paradoxically that both are simultaneously correct.

By the mid-1950s the first serious studies of the issue were finally being made within the Department of External Affairs and National Defence as well as by an influential interdepartmental body called the Advisory Committee on Northern Development (ACND). These studies, which continued into the 1960s, were largely successful in taking Canada's nebulous position and distilling a carefully balanced and rational approach, which advocated limiting Canadian sovereignty to the waters of the Archipelago with straight baselines as the basis of that claim. All told, it was a relatively sound and defensible position. Initially accepted by Cabinet in 1956, this policy was to develop further in the years to follow; however, by the mid-1950s most of the fundamentals of the Canadian claim had already been established.

[14] Lackenbauer and Kikkert believe that this approach strengthened Canadian sovereignty while historians like John Honderich considered it a failing; John Honderich, *Arctic Imperative: Is Canada Losing the North?* (Toronto: University of Toronto Press, 1987), 15.

This clarity failed however to materialize at the political level, where the nature of Canadian sovereignty remained up for continual reinterpretation. Until the early 1970s, politicians continued to interpret Canada's Arctic claims as they saw fit, without regard to any central policy line while normally displaying an incomplete understanding of both the international politics and law surrounding the issue. The basis of enunciated policy varied between administrations and even shifted during the tenure of some governments. For instance, the sector theory may have been embraced by one government only to be renounced by the next.

This confusion was partly the result of the unwillingness of many politicians to surrender some of the country's more exaggerated claims in order to secure more achievable goals. A serious claim to the waters of the Arctic Archipelago, as had been advocated by many in the bureaucracy, would, in practice, have necessitated the abandonment of the broader sector claim. This would have meant losing little of real value – by the late 1950s every interested government department had agreed that there was next to nothing to be gained from sovereignty over the Arctic Ocean; yet to have abandoned that claim would have been politically difficult.[15]

For most of the century the issue had also failed to garner much public attention. While American military activity in the Northwest Passage had occasionally raised some concerns, these incidents were handled quietly and without much political controversy. The question of Arctic sovereignty was also rarely considered in isolation from the country's other maritime issues, issues which were controversial and which could and did hold the public's attention. Throughout the 1950s and 1960s, the Arctic waters were only

[15] As a modern comparison, there is little to be gained from maintaining sovereignty over tiny Hans Island, yet both Liberal and Conservative governments have made Canadian possession of that small rock an expression of their nationalism.

a small part of a much larger review of Canadian policy regarding territorial waters, fishing rights and sovereignty. Within this context the Arctic was unable to compete for the government's limited attention, time and political capital. This attention went to the more pressing issues of international fishing rights in the Atlantic and Pacific and to the status of what were then called the 'special bodies of water,' namely the Gulf of St. Lawrence, the Bay of Fundy and certain other politically and economically vital maritime regions on the East and West coasts.

For these reasons Canadian policy existed in something like two separate worlds. Behind the scenes, the bureaucracy had developed a relatively clear and defensible position that was maintained and refined over the decades. While this policy was never made public, the intention of the Department of External Affairs, and the other bodies involved in policy development, seems to have been to quietly strengthen Canada's claim while avoiding potentially dangerous international political or legal complications. In public, however, this approach rarely shone through and Canadian sovereignty was characterized by confusion, contradiction, ambiguity and apathy. Political statements were uncoordinated, ill-informed and more commonly made to convey nationalistic credentials than to outline any responsible position. Ultimately, this scattered public approach served to undo much of what External Affairs had endeavored to accomplish. While maintaining an ambiguous policy prevented an outright challenge of Canada's position, it also retarded the establishment of the desired precedent of Canadian ownership. As such, while Canadian policy may not have been developed in a fit of absence of mind, it was certainly expressed in one.

A similar divide characterized the manner in which successive Canadian governments handled the issue on the international scene. In public, Canadian politicians maintained an unyielding position, brooking no compromise on the subject in order to be seen standing up for and preserving Canadian sovereignty. In private however, relations with the United States and other foreign governments in the Arctic were actually characterized by practical accommodation and cooperation. When the more aggressive politics of Canadian nationalism threatened to impede what were considered important joint defence or scientific ventures, the inconvenient issue of sovereignty was, more often than not, quietly pushed aside.

This defence cooperation reached its height in the 1950s and continued without interruption well into the 1980s and likely beyond. During the 1950s the US Navy ran regular resupply expeditions through Canadian waters. Since these transits were vital to maintaining a string of continental defence projects the difficult question of whether or not to push the United States for recognition of Canadian sovereignty was conveniently ignored. The United States, for its part, proved equally content to set the issue aside and was even willing to provide Canadian sovereignty with some limited, implicit recognition. By the early 1960s the US Navy had also begun submarine operations in Canada's northern waters. Despite the fact that these transits were being made without an explicit request for permission, the Department of National Defence worked closely with the US Navy, and a series of other American defence agencies, throughout the Cold War to assist the Americans in augmenting allied defensive capabilities in the region.

While Canadian-American relations remained largely pragmatic throughout the 1970s and 1980s a fundamental shift had still taken place after the voyage of the SS

Manhattan in 1969. The *Manhattan*, a massive ice-breaking supertanker, had caused a considerable political stir by transiting the Northwest Passage without seeking permission from the Canadian government and, therefore implying a lack of recognition of Canadian sovereignty. While American icebreakers, submarines and supply ships had made similar transits on a number of previous occasions without that permission, the *Manhattan* was different. Not only did its crossing garner more attention because of its size but this transit was also seen as ushering in a new era of economic development and activity in the North. After the giant Prudhoe Bay discoveries in Northern Alaska, oil companies lost little time in beginning the search for comparable reserves on the Canadian side of the boarder. This activity, while welcomed by the Canadian government, brought the unresolved question of sovereignty into stark relief.

In the context of a developing Arctic, replete with foreign shipping, the ambiguity surrounding Canadian sovereignty was finally judged to be a luxury which the country could no longer afford. By 1973 therefore the government of Pierre Trudeau had made a decisive, if low profile, break with the country's past approach to the Arctic. The confusion and contradictions which had characterized Canadian policy were replaced with a clear and resolved approach which adopted most of the recommendations worked out by External Affairs and other interested departments over the previous decades. Statements by politicians were coordinated and tight control was placed on pronouncements flowing out of all levels of government. This new approach to Arctic sovereignty did not, in itself, represent a decisive claim. Yet, by clarifying and focusing Canadian policy, the Trudeau Liberals laid the groundwork which allowed that

declaration to be made by the Conservative government of Brian Mulroney some 12 years later.

That declaration came in 1985 when the US Coast Guard icebreaker *Polar Sea* reignited the political firestorm, first raised by the *Manhattan*, by again transiting the Northwest Passage without first seeking Canadian permission. In response, the Canadian government drew a series of straight baselines around the Arctic Archipelago, officially defining those waters as internal. These baselines, virtually identical to those first agreed upon by Cabinet in 1956, were technically drawn not to claim sovereignty but to delineate the historic internal waters which Canada had, theoretically, always claimed. Regardless, this was still the first time the country had ever extended any sort of an official claim to the Arctic waters. This act represented the culmination of thirty years of policy evolution and over a century of informal Canadian claims to the polar seas, making official what had been for so long informal, ambiguous and uncertain.

The response to this finale was anticlimactic. As had long been feared within the Department of External Affairs, the United States, and much of the international community, failed to recognize the validity of this action. Yet there was no aggressive response, no overt challenge and no American vessels were sent into the disputed waters to hammer home that rejection. Some four decades of close cooperation in the Arctic, a strong bilateral relationship and the changing strategic circumstances of the time meant that Canada was able to stake its claim largely without incident.

That sovereignty remains contentious however. To Canadians, the waters of the Arctic Archipelago are historic, internal waters – essentially as Canadian as Lake Winnipeg. In Washington, and amongst the global maritime powers, however, the

Northwest Passage remains an international strait. This means that it is open to transit by foreign vessels with Canadian powers limited to certain jurisdictional rights provided for under commonly accepted international maritime law.

The history of Canada's Arctic sovereignty is therefore unfinished and will remain so until such a time as the international community can be brought to accept the Canadian position or Canada itself is forced to relinquish its claims. Crucial to understanding the complex nature of that sovereignty, and even the future history of the region, is an understanding of its past. *Staking a Claim* is a history of the development of that sovereignty, from the earliest police patrols in Hudson Bay to the deployment of nuclear submarines nearly a century later. It charts the evolution of Canadian policy as it changed and adapted with economic, military, legal and geopolitical circumstances. It is a study which, at its heart, seeks to answer the three crucial questions which have defined Canada's northern maritime claims for over a hundred years: What is it exactly that Canada has tried to claim, on what basis could it make that claim and, most importantly, what was it prepared to do about it?

Chapter 1

'What We Have We Hold'
The Origins of Canada's Arctic Maritime Sovereignty: 1880-1950

In 1922, the Rt. Honourable W.S. Fielding, Minister of Finance, boldly announced to the Canadian House of Commons "what we have we hold." At that moment the minister was referring specifically to the Canadian claim to Wrangle Island, a small and uninhabited piece of land 140 km north of the Russian mainland. Yet, in making such a statement he might as well have been annunciating Canada's Arctic policy in general. Fiercely protective of its northern territories, Canada would spend most of the twentieth century working to maintain and strengthen its claims to ownership. While the political will to 'hold' the Arctic was certainly there, what was often lacking was a precise understanding of what exactly Canada was seeking to hold on to.

With regards to the Arctic lands the answer was simple, namely all of it. Any islands which fell within the Canadian sector of the Arctic, be they discovered or not, were considered Canadian. This was the case from the end of the nineteenth century and would never change. The justification for Canadian ownership over such islands varied throughout the period but the essential fact remained, the government was intent on staking and maintaining its claim. With regards to the waters of the region, however, the issue was far less certain.

Canada's claims to the lands of the Arctic, while not perfectly secure in the early years of the twentieth century, at least rested upon an internationally recognized basis. Most of the region had been discovered and charted by British explorers. Beginning with Martin Frobisher in 1576, private English citizens and those working for, or funded by,

the British Admiralty spent the next 250 years sailing the waters of what was to become the Canadian Arctic Archipelago seeking fortune, glory and access to Asia through the Northwest Passage. In so doing, and by taking possession of these various lands, the British gained a claim based upon discovery. At the very least establishing what lawyers would call an *inchoate* title, namely a kind of reservation of sovereignty, granting a state a period of time (of undetermined length) wherein it could make good its control through the establishment of some sort of effective occupation.[16] That Canada was slow to establish this effective occupation was mitigated by the simple fact that no other power was seeking to challenge it.

With regards to the waters, however, the issue was very different. In his seminal legal work on the subject, Donat Pharand has written that it was clear that British claims to sovereignty in the area were unquestionably confined to the land. What instructions these explorers had, which did pertain to the maritime realm, simply related to the exploration of the region's water passages as a means to finding a navigable sea route to the Pacific Ocean.[17] Regardless of what their orders may have been, there also existed at that time no recognized principle within international law whereby a state could claim ownership over a body of water by right of discovery. Gaining sovereignty over maritime areas was, in the early twentieth century and still today, far more difficult to justify than the possession of land.

The modern world inherited its concept of maritime law and the freedom of the seas from eighteenth and nineteenth century European practices, at which time there was a gradual evolution in international practice resulting in the broadly accepted theory that

[16] See for instance the Island of Palmas Arbitration (1928).
[17] Donat Pharand, "A Final Revisit," pp. 9-10.

the world's seas were common property and open to free use.[18] The notion that any one state could enclose large bodies of water as national territory was largely a medieval one, based more upon naval power than international consensus. The contentions of Spain, for instance, to a division of the world's oceans declined in lockstep with its naval power in the sixteenth century. Likewise, attempts by James I in 1604 to enclose much of the waters around the British Isles as the 'King's Chambers' was short lived and not pursued, since these claims were quickly seen as both indefensible and inconsistent with England's broader maritime interests.[19]

Instead, what emerged at the beginning of the eighteenth century was the theory that a state's maritime domain consisted of only a narrow belt of seas along the coastline. The work of Cornelis van Bijnkershoek furthered this notion with a series of works published posthumously in 1761 and 1766 suggesting that a state's control must extend only so far as it can exercise direct control and that that control could be best measured by the range of a state's guns: "terrae potestas finitur ubi finitur armorum vis" (jurisdiction ends at the same place as the force of arms).[20] Later in the century the calculation of that artillery range was made by Ferdinand Galiami at three nautical miles, or one marine league, giving some precision to Bijkershoek's doctrine. By 1793, American President Thomas Jefferson had unofficially adopted this doctrine during the Revolutionary War, warning European belligerents that naval action within that range would be counted as a hostile act. Adoption of this form of territorial sea was not

[18] Paper by Dean Curtis to External Affairs, April 16, 1963, Library and Archives Canada (hereafter LAC), RG 25, vol., 5310, file 9456-RW-9-40, pt. 4.
[19] Ibid.
[20] Lassa Oppenheim, *International Law: A Treatise*, vol. 1 (London: Longmans, Green, 1920).

necessarily universal but, by the early nineteenth century, the three mile limit had been, for all intents and purposes, accepted as international law.[21]

By the twentieth century, the idea of a three mile territorial sea was firmly entrenched and claims beyond that limit could be made in only the most restricted circumstances. Generally, such claims were limited to areas that could be considered 'historic' waters, a doctrine which had also developed gradually during the nineteenth century. As the freedom of the seas was entrenched, this concept became a protective measure for certain states with large bays closely linked to the land and, traditionally, considered as part of the national territory – often expressed from an economic or security standpoint. Normally, historic waters were bays which deeply indented a country's coastline and whose width at the mouth was not more than twice the breadth of territorial waters – Chesapeake Bay in the United States for example.[22] Historic waters were, however, an exception to the recognized law of the sea and the burden of proof required to delineate waters as such was extremely high.

While there has never been an explicit and universally accepted interpretation of historic waters L. J. Bouchez offers one of the best definitions: "Historic waters are waters over which the coastal state, contrary to the generally applicable rules of international law, clearly, effectively, continuously, and over a substantial period of time, exercises sovereign rights with the acquiescence of the community of States."[23] This definition reflects three generally agreed upon and very basic requirements: (i) the

[21] Paper by Dean Curtis to External Affairs on April 16, 1963, LAC, RG 25, vol., 5310, file 9456-RW-9-40, pt. 4.
[22] Donat Pharand, *The Law of the Sea of the Arctic with Special Reference to Canada* (Ottawa: University of Ottawa Press, 1973), pp. 100.
[23] L. J. Bouchez, *The Regime of Bays in International Law* (Leyden: Sijthoff, 1964). As quoted in Pharand "Final Revisit," pp. 7.

exclusive exercise of state jurisdiction, (ii) a long lapse of time and (iii) general acquiescence by foreign states. In order to claim sovereignty over a body of water as historic a state must have a well-documented history of exercising jurisdiction over the area in question and that jurisdiction must therefore have been both exclusive and effective. The intent of the state to act as sovereign must also be expressed by the exercise of state power in the same manner as that power would be exercised over any other part of the national domain.[24]

In the early twentieth century Canada lacked this history of effective occupation. The maritime expeditions that the government did organize and send into the Arctic were few and far between and would likely have been insufficient to meet this high standard. With respect to the qualification of long usage, there has never been any precise amount of time settled upon for the purpose of making a claim historic. It is a relative question and highly dependent on the situation but, as a general rule, the length of time must be very substantial if not necessarily, immemorial.[25] In the case of Canada's Arctic, this qualification would have been difficult to meet. As mentioned earlier, British explorers had not been instructed to seek possession of any maritime bodies in the region, nor could any Canadian actions be interpreted as having done so. Canada had only taken possession of the High Arctic in 1880 and had not rushed to administer the territories. Indeed, it was not until 1885 that the state bothered to draw boundaries on the map and subdivide the Canadian North into administrative districts. Later in the century it was realised that the presence of the Inuit in these areas since time immemorial could greatly bolster a Canadian claim to historic occupation, however, in the early decades of the twentieth

[24] Pharand, "Final Revisit," pp.7.
[25] Ibid.

century the presence of the local 'Eskimo,' who were then not Canadian citizens, was simply not seriously considered.[26]

The requirement for acquiescence by foreign states relates to the need for a state's historic waters claims to have been accepted, even if only implicitly, by the broader international community and particularly by those states with a vested interest in the waters being closed off. In Canada's case, such acquiescence would have been difficult to prove. In order to make a case for foreign acceptance, a state would first have had to close off the area of water in question either publicly or in practice. Such action was never taken by Canada with regards to any of the Arctic waters, save Hudson Bay and, later on, Hudson Strait, and thus it remains a speculative question. However such a claim would have been unlikely to enjoy much support from the United States or even Great Britain, both of which have historically been highly defensive of the freedom of the seas. Indeed, the area in the North where Canada's claim was strongest was Hudson Bay and, even in that area, the British government felt that an official claim might not be defensible in international arbitration.[27]

Yet, despite the realities of international law mitigating heavily against Canadian ownership of any waters outside the three mile limit, a belief persisted that Canada should or could still exercise some authority over the region's waterways. These waters were unique after all. In addition to seeing very little foreign activity, they were different on a molecular level. Frozen for most of the year, many of the straits were only ever used by the local Inuit and the occasional RCMP patrol for fishing, hunting and transit.

[26] The Inuit were officially recognized as Canadian citizens only in 1945.
[27] Memorandum to A.G. Doughty from Hensley Holmden, May 20, 1921, LAC, MG 30-B-57.

In 1904, in response to an American inquiry regarding the status of Hudson Strait, the British Colonial Office requested Canadian input. Looking to study that question further, the Canadian Ministry of the Interior produced a report authored by W.F. King. The *Report on the Title of Canada to the Islands North of the Mainland of Canada*, more commonly referred to as the King Report, stated that the waters of Hudson Bay and Strait should be considered as belonging to Canada but also, that Canada must enjoy privileges in the waters of the rest of the Archipelago as well.[28] The relevant passage from that report reads:

> The case of the Northern Straits is different. They are not used for the purpose of navigation merely. Although some of them, like Lancaster Sound and Barrow Strait may be said in a certain sense to lead through to the open sea beyond, yet they are blocked by ice during a great part of the year. A navigator, therefore, using them, if such could be the case, with the intention of passing through from sea to sea must be presumed to have at least a half-formed intention, or expectation, of wintering there. A ship frozen in the ice is as effectually attached to the land as if she were in a harbour.
>
> All nations maintain the right to prevent vessels from landing except at specified ports. This right in the present case cannot be effectually exercised unless by prohibiting vessels altogether, without special permission, from frequenting these straits, that is, by considering the waters territorial. Therefore Canada may reasonably claim that the maintenance of her national rights, as such rights are universally understood, demands that their northern waters be considered territorial. The reasoning which is here applied to the waters of the northern Archipelago generally, equally applies to Hudson Bay and Strait… As to the question of jurisdiction which Canada possesses over the inland seas ... enclosed between the islands, it is reasonable to argue that the jurisdiction is territorial.[29]

This study marked the first official suggestion that the waters within the Arctic Archipelago should be treated as entirely Canadian. Yet for reasons of both legal and physical practicality little was done to implement such a suggestion. With respect to Hudson Bay however – for reasons shortly to be discussed – the situation was more

[28] W.F. King, "Report on the Title of Canada to the Islands North of the Mainland of Canada" (Ottawa, 1905).
[29] Ibid.

urgent. The government chose to make this claim in 1906 based largely upon the inherited British rights won in the Treaty of Utrecht (wherein the French surrendered their rights and possessions in Hudson Bay) as well as upon the Charter of Charles II where, in 1670, the Hudson's Bay Company (HBC) was given a charter in the region which assumed complete British sovereignty over the bay and the strait. Canada claimed sovereignty over Hudson Bay by amending the *Fisheries Act*, with the relevant passage reading "inasmuch as Hudson's Bay is wholly territorial waters of Canada, the requirement is of this section as to licensing and as to the fee payable thereof, shall apply to every vessel or boat engaged in the whale fishery, etc."[30] On April 15, 1907 an order-in-council was approved, Canada's claim to Hudson Bay was defined, and this was forwarded to Lord Elgin of the Colonial Office for approval.

This claim was based on historic title but was supported in the years running up to the proclamation by a program of active sovereignty assertion on the part of the Canadian government. In the first decade of the twentieth century, the only presence in the Arctic waters of any real significance was the American whaling fleet. Whaling had been a lucrative industry in the late nineteenth century, with the most profitable haul on record being made by the American vessel *Hume* in 1891, which made its way back from the Beaufort Sea to San Francisco loaded down with $400,000 worth of whale products.[31] Understandably, this kind of opportunity had attracted a large assemblage of foreign whalers. Because of the distance of the voyage, these vessels also began to establish dwellings on Canadian soil, at Hershel Island in the Beaufort and along the coast of

[30] Canada, *Statutes*, 6 Edw. VII (1906), chapter 13, section 4.
[31] William R. Morrison, *Showing the Flag: The Mounted Police and Canadian Sovereignty in the North, 1894-1925* (Vancouver: University of British Columbia Press, 1985), pp. 73.

Hudson Bay. By the 1890s, the business had begun to expand dramatically and, by 1908, there had been some 1,345 whales killed, valued at $13,450,000.[32]

The presence of American whaling fleets in Canadian waters concerned the government, yet the most pressing issue was the establishment of whaling communities on Canadian soil, far outside the reach of Canadian law. Tales of mistreatment of the Inuit and disregard for Canadian regulations soon reached Ottawa. In the fall of 1895 Royal Northwest Mounted Police (RNWMP) Inspector Charles Constantine, then stationed in the Yukon, reported:

> …the carryings-on of the officers and crews of the whalers there was such that no one would believe … large quantities of whisky are taken up in the ships [and] as long as liquor lasts, the natives neither fish nor hunt, and die of starvation in consequence … The captains and mates of these vessels purchase for their own use girls from nine years and upwards."[33]

The decision was therefore made to establish Canadian law in these areas and, in 1903, a small police detachment was sent north to the whaling station at Hershel Island in the Yukon. Unlike the situation in the Beaufort, where these whalers' activities on land was the principle concern, in Hudson Bay, the issue was maritime sovereignty.[34] There, the unpoliced actions of American whalers threatened to upset not only the Inuit but Canada's claims to the bay as historic internal waters. As early as 1894, D. Mills, a Member of Parliament (MP), had warned the House of Commons that:

> … if the ships of foreign countries are allowed to go into these waters without question, and without taking out any licence, to engage in fishing operations there, it might well be, at no distant day, according to the rules of acquiescence, that the parties whose ships so engaged might claim to go there as a matter of right, regarding these waters as part of the high seas."[35]

---

[32] RNWMP, *Report*, 1908, K, pp. 140.
[33] Morrison, pp. 74.
[34] Ibid, pp. 87.
[35] Memorandum to A.G. Doughty from Hensley Holmden, May 20, 1921, LAC, MG 30-B-57.

During the last two decades of the nineteenth century, the Canadian government had sought to extend its authority over the region in as cost-efficient and formal a manner as possible. This involved posting notices abroad that these waters were Canadian while relying upon information from Hudson's Bay Company officials to keep abreast of events in the region. These measures were, however, little more than formalities.[36] In response to the growing concerns in the early 1900s, the government decided in 1903 that it was worth the expense to establish a more formal presence. As such, a six-man police detachment under the command of A.P. Low, and accompanied by observers from the Department of Marine and Fisheries and from the Geological Survey, was sent north in the HBC vessel *Neptune*. Included in their instructions was the following:

> The government of Canada having decided that the time has arrived when some system of supervision and control should be established over the coast and islands in the northern part of the Dominion, a vessel has been selected … for the purpose of patrolling, exploring and establishing the authority of the Government of Canada in the waters and islands of Hudson's Bay [sic] and north thereof."[37]

On this first voyage there was no direct action taken against the few Americans that were found in the area. The government was still in the process of working out what exactly was to be done and what measures it was within its rights to impose. Major J.D. Moodie, the customs officer and magistrate aboard the *Neptune*, wrote to Department of Marine and Fisheries and was told that that question was still under review and that Moodie should simply "use [his] own judgement."[38] As such, little action was taken against the one American ship found in the bay that year. However, before returning in 1904, notice

[36] Ibid.
[37] Ibid.
[38] Morrison, pp. 97.

was left that unlicensed vessels were in fact breaking the law and that the next year Canadian agents would be collecting the appropriate fees.[39]

A second expedition was launched in 1904-05 with the purpose of establishing police stations on the shore of the bay in order to maintain a more permanent presence. This collection of licence fees from foreign whalers, outside the traditional three mile limit, was a powerful symbol of Canadian sovereignty in the region and, up to 1911, there were five government expeditions tasked with exploring the region, establishing police stations and collecting these fees.[40] By that point however the whaling fleets had abandoned the region after over-hunting the whales. Foreign objections to these actions were generally mute and contemporary State Department publications indicated that no American protest was ever officially lodged.[41] The US government did not necessarily agree with the closure of the bay and issued notice to its whalers to disregard Canadian requests for licence fees. Yet, these fees were still collected from American citizens without difficulty.[42]

With respect to the rest of the Arctic waters, which King had suggested should be considered territorial, the issue was less certain. Canada's historic claim to the area was far weaker, if it existed at all. In the Canadian Beaufort, the area that had seen the most whaling activity, Canadian regulations were implemented very differently. Rather than sending a vessel to interdict foreign ships, a small RNWMP force was sent to Hershel Island in 1903. This detachment of four men was woefully undersupplied and was forced

[39] Morrison, pp. 92.
[40] These expeditions were led by A.P. Low (1903-04) and J.E. Bernier (1904-05; 1906-07; 1908-09)
[41] United States, Office of the Geographer, Bureau of Intelligence and Research, *Limits in the Seas: United States Responses to Excessive National Maritime Claims*, no. 112 (March, 1992).
[42] Shelagh Grant, *Polar Imperative* (Toronto: Douglas & McIntyre, 2010), pp. 207 & Gordon Smith, "Sovereignty in the North: The Canadian Aspect of an International Problem," *The Arctic Frontier*, ed. R. St. J Macdonald, (Toronto: University of Toronto Press, 1966), pp. 207.

to rely on the local Anglican mission and even the whalers themselves for coal and supplies. Whalers who stopped at Hershel were asked to pay duties if they were headed to Canadian waters but those who sought to avoid the police needed only to bypass the island.

In part, the weakness of this enforcement was owed to the high costs of outfitting and deploying a revenue cutter from the Pacific coast to the Beaufort, however the government's objectives in the Western Arctic were also different. In the Yukon, the concern was less the impact of Canada's maritime claims and more the government's control of the lands in the areas where the Americans were establishing their winter quarters. A Department of the Interior memorandum, drawn up in 1903 to justify the first expedition to Hershel Island, stated the government's principle rational for intervention: "It is feared that if American citizens are permitted to land and pursue the industries of whaling, fishing and trading with the Indians without complying with the revenue laws of Canada…unfounded and troublesome claims may hereafter be set up."[43]

While the police presence did succeed in bringing Canadian law to the northern Yukon, the application of that law to the maritime domain was executed very differently. By 1909 as the whaling industry was nearing its end, the Superintendent of Fisheries wrote to RNWMP Comptroller Fred White, then stationed at Hershel Island, to ask that the police assist the department in collecting the $50 whaling fee in the Beaufort. White agreed but requested information on the extent of Canada's maritime claims in the region, unsure of where precisely such a fee could legally be collected. Ultimately, it was

[43] Morrison, pp. 78.

admitted that Canada had no right to request payment unless the whales were being killed within three miles of shore. Since this was never done the matter was allowed to pass.[44]

Different waters were thus treated very differently, with complete sovereignty being sought over Hudson Bay and only jurisdiction within the country's three mile limit in the Beaufort Sea. Within the straits and channels in between the matter was somewhat more nebulous. Despite W.F. King's 1905 musings that those waters might be considered territorial no serious thought appears to ever have been given to enclosing them as inland seas – as had been done for Hudson Bay. Yet, neither was the government willing to treat them as though they were high seas, over which Canada had no authority outside her territorial limit – as was the case in the Beaufort.

While the five expeditions sent north from 1903 to 1911 were originally focused on Hudson Bay, by 1906 Captain J.E. Bernier had set out in a newly acquired vessel, purpose built for Arctic operations. This German-built ship, the *Gauss*, was ice strengthened for Antarctic navigation and constructed with a spoon shaped bow that allowed it to lift with the pressure of the ice. In 1906 it was renamed the *Arctic* and put into Canadian service.

That year the *Arctic* travelled north to inform American whalers in Lancaster Sound that they were in Canadian territory and subject to the same $50 hunting licence that was applicable in any other Canadian internal or territorial waters.[45] By 1920, as concerns grew over the Canadian claim to some of the northernmost islands, it was decided to establish RCMP posts on Bylot, Ellesmere and Devon Island to watch the

[44] Ibid, pp. 116.
[45] Hensley R. Holmden (Maps Division, Dominion Archives), memorandum regarding Arctic Islands, April 26, 1921, LAC, MG 30-B-57.

"front door" of the Archipelago.[46] Since the waters in these areas, particularly Lancaster Strait and Jones Sound, were frozen for much of the year and barely discernible from the surrounding territory, the local detachments were instructed to treat these bodies as territorial in the event that a foreign ship should attempt to pass through.[47] The police also felt no concern about asserting Canadian law when crimes were committed outside the three mile limit in these areas.

This jurisdiction was exercised both by the police and Canadian courts. The Territorial Court of the Northwest Territories exercised jurisdiction over a number of crimes which had occurred on the sea-ice outside of Canada's territorial limit. This court, set up in 1955, once even held proceedings in a ski-equipped de Havilland Otter sitting on the sea-ice off of Tuktoyaktuk.[48] In 1956, when an Inuit man was tried for a murder committed some 60 miles from shore in the Queen Maude Gulf, the judge ruled that the question of jurisdiction turned on the meaning of "territories" in the *Northwest Territories Act*. He asked if this definition included the waters and sea-ice in between the islands or only the land and, ultimately, the decision was that those waters did constitute a part of the Northwest Territories and the government, therefore, could exercise its authority over the sea-ice.[49]

A similar case arose in 1969 when an Inuit hunter was tried for illegally killing a polar bear with young some ten miles out into Larsen Sound, west of the Boothia Peninsula.[50] When the hunter questioned the government jurisdiction in this case the

[46] Memorandum regarding northern Islands prepared for Information Technical Advisory Board Meeting, November 10, 1920. LAC, MG 30-E-169, vol. 2, pp. 23.
[47] Ibid.
[48] Green, "Canada and Arctic Sovereignty," *The Canadian Bar Review*, vol. XLVIII, 1970, pp. 755.
[49] Ibid, pp. 756.
[50] Pharand, *Canada's Arctic Waters in International Law*, pp.169.

court again ruled that the definition of 'territories' in the 1906 *Fisheries Act*, which governed hunting on territorial waters in the Canadian North, applied to the waters and sea-ice of the region.[51]

The body of water over which Canada most commonly sought to enforce its jurisdiction was Hudson Strait. While not explicitly mentioned in the *Fisheries Act*, a great deal of the correspondence concerning Canadian sovereignty over the Bay included mention of the strait, almost as a matter of course.[52] By 1937, Canada had passed an order-in-council declaring Hudson Strait "territorial waters." Yet, since there was clearly no intention on the part of the government to expand its territorial waters beyond three miles generally and there was no acceptable legal means to selectively expand territorial waters, it stands to reason that this proclamation was intended to claim the waters as internal. That the term territorial was used in its place is a question of semantics. At the time the terms were often used interchangeably, with the word 'territorial' used to imply ownership rather than to define them as territorial in a legal sense, with all the strictly defined qualities, rights and requirements associated with that status in international law. This interchangeability would continue for decades, well into the 1950s, and even cause some confusion , as little effort was normally made to harmonize the language used in government communications.

The notion that the waters of the Archipelago were in some way 'territorial' or 'internal' was maintained throughout the 1920s and King's conclusions were still

[51] Ibid, pp.173.
[52] See for instance memorandum to A.G. Doughty from Hensley Holmden, May 20, 1921, LAC, MG 30-B-57.

occasionally cited and raised for discussion.[53] Yet there was little pressure to deal aggressively with the situation. Traffic in the region was extremely low and there appeared to be no prospect for any significant increase in the foreseeable future. Most importantly, there remained no realistic, recognized vehicle in international law for extending the nation's maritime domain past the three mile limit. And, any attempt to do so may have been met with resistance. In 1904, when the issue of Hudson Bay was being discussed in London, the British Ambassador in Washington had written to Lord Minto in the Colonial Office to inform him that "there might be trouble" if Canada's assertion of sovereignty were extended over the islands or the waters to the north of Hudson Strait.[54]

Given these difficulties, and the still uncertain status of the Arctic lands themselves, it is not surprising that little effort was made to define Canada's maritime claim. Instead, the concern throughout the first half of the twentieth century was over the status of the Arctic lands, and particularly the islands north of the Parry Channel which were unoccupied and over which Canada exercised very little jurisdiction. The story of Canada's decades long struggle to ensure international recognition of these areas is beyond the scope of this work and is well examined in other books on the subject.[55] In fact, the vast majority of the acts taken by the government during this period, even those with a strong maritime element, were aimed towards protecting and developing Canada's terrestrial, rather than maritime, sovereignty. An annual northern patrol was initiated in 1922, for instance, yet these expeditions were sent out for the purpose of establishing

[53] See for instance: notes on King's memorandum, 1925?, LAC, RG 25, vol. 1, file 9057-4; Letter from J.D. Craig to O.D. Skelton, May 18, 1925, RG 25, vol. 1, file 9057-40 or unsigned letter to Dr. R.M. Anderson, Chief, Division of Biology, Victoria Memorial Museum, June 20, 1925, LAC, RG 25, vol. 1, file 9057-40.
[54] Telegram from Mr. Lyttleton to Lord Minto, March 18, 1904, quoted in memorandum to A.G. Doughty from Hensley Holmden, May 20, 1921, LAC, MG 30-B-57.
[55] For the period of the 1920s and 1930s the best work on this subject is Janice Cavell and Jeff Noakes, *Acts of Occupation* (Vancouver: UBC Press, 2010) while Shelagh Grant's *Polar Imperative* is also a very good review.

police posts, customs houses and post offices on Ellesmere and the other northern islands. And, once the perceived Danish threat to Ellesmere Island, which had emerged in 1920, had been resolved these voyages became largely logistical.[56] In a 1936 study for the Department of the Interior, T.L. Cory described the patrol as such: "while helpful [it] is not extending Canada's sovereignty in the Arctic nor is it a substantial factor in maintaining the claim already established other than relieving officials in the district and carrying supplies."[57]

Lacking any legal backing for extending the territorial waters and with a highly uncertain claim to any of the Arctic straits on a historic basis, what gradually emerged was the lumping together of the Arctic waters with the Arctic lands into a claim based on what was called the sector principle or theory. This theory assumed the use of meridians as national borders, running from a state's eastern and western extremes to the Pole. All territory bracketed by these lines (discovered or not) supposedly belonged to that country. From the beginning of the twentieth century, until at least the 1950s (and occasionally beyond) the sector was a bedrock of Arctic policy. While never made official by any legislation or decree, it remained the one reliable justification of Canadian ownership to lands and – occasionally waters – which the country otherwise had difficulty claiming under more commonly accepted principles of international law.

The sector theory was first used in a quasi-official manner in 1904 when the Department of the Interior published a map showing the nation's western boundaries as being the 141st meridian of west longitude extending to the Pole and the eastern boundary being the 60th meridian of west longitude extending north from just east of Ellesmere

[56] There were fears that the Danes might seek to claim the northern half of Ellesmere Island.
[57] Quoted from: Cory, T.L. (Department of the Interior, Canada), "British Sovereignty in the Arctic" (June 3, 1936), pp. 69.

Island.[58] The theory gained more mainstream prominence in 1907 when Senator Pascal Poirier proposed a resolution in the Canadian Senate to make a formal declaration of sovereignty based on the sector principle:

> A country whose possession today goes up to the Arctic regions will have a right, or should have a right, or has a right, to all the lands that are to be found in the waters between a line extending from its eastern extremity north, and another line extending from the western extremity north. All the lands between the two lines up to the North Pole should belong and do belong to the country whose territory abuts there … That it be resolved that the Senate is of the opinion that the time has come for Canada to make a formal declaration of possession of the lands and islands situated in the north of the Dominion, and extending to the North Pole. [59]

This motion was never seconded or voted upon and never received any official recognition. But, this notion was never explicitly denied either.

The sector theory certainly did not originate with Poirier. The Senator himself noted that it was "not a novel affair" and mentioned hearing about it at a meeting of the Arctic Club in New York the year before.[60] Rather, the theory can be traced back to the Anglo-Russian Convention of February 28, 1825 which defined the boundary between Alaska and Canada. The convention stated that the territories of the contracting parties should be separated by the meridian line 141° west "dans son prolongement jusqu'a la Mer Glaciale."[61] This definition could be interpreted as applying only to the land boundary, however when Russia sold Alaska to the United States in 1867, the treaty stated that the western limit of the territory "passes through a point in Behring Strait [sic]

[58] Donat Pharand, *Canada's Arctic Waters in International Law*, pp. 5.
[59] Canada, Parliament, *Senate Debates*, 10th Parliament, 3rd Session, February 20, 1907, pp. 266.
[60] Smith, "Sovereignty in the North: The Canadian Aspect of an International Problem," pp. 215.
[61] "The Sector Theory and Floating Ice Islands in the Arctic," [1954?], Directorate of History and Heritage (hereafter DHH), 2002/17.

on the parallel of 60° 31° North Longitude… and proceeds due north, *without limitation*, into the Frozen [Arctic] Ocean [italics added]."[62]

In an American diplomatic note of 1896, it was argued that the negotiators of the 1825 treaty intended to effect a simple division of territory by extending the lines into the Arctic Ocean and not to establish a claim over any of the Arctic seas. The British case before the Bering Sea Arbitration Tribunal of 1893 seems to bear out that assessment, ruling that American sovereignty did not extend over the sea within its 'sector' but that it did extend over the islands in that sea which might afterwards be discovered. This British decision, and a British Parliamentary paper prepared at the time, appeared to substantiate the sector principle, for the purpose of allocating land at least, in that it recognized these lines as a legitimate manner of dividing up as yet undiscovered territory.[63]

The sector appeared to be an attractive method of assuming control over vast stretches of largely unoccupied and inaccessible land and water. The Russians certainly felt that way and had made it state policy as early as 1916 when St. Petersburg sent a note to the British government announcing the annexation of certain islands in the Arctic Ocean north of Siberia as forming an integral part of the Russian Empire because they constituted a northern extension of the continental land mass.[64] By 1926 the USSR had officially adopted the sector principle, publishing its decision in the state newspaper *Izvestiya* on April 16: "… all known lands and islands lying north of the Soviet Union which were not already acknowledged to belong to some other power, as well as that

[62] Ibid.
[63] Ibid.
[64] Ibid.

might be discovered in the future, were part of the USSR."[65] Ironically, this massive territorial grab was in no small measure due to the abortive attempt by the Canadian government, and its sometimes agent Vilhjalmur Stefansson, to lay claim to Wrangle Island within that Soviet sector.[66]

Officially the Soviet claim made mention only to discovered or undiscovered lands however there were also attempts to extend the state's control over the Arctic waters as well. In the 1926 decree the Soviets claimed all land within their sector but that 'land' was assumed to include all "ice formations that are more or less immovable."[67] This was a very wide ranging definition and could be assumed to include most of the waters north of Siberia. In addition, the Soviets claimed as internal waters the East Siberian, the Chukchi, the Kara and the Laptev Seas.[68]

The theory that nations should be able to either assimilate immovable ice into the national domain, or that they should at least be allowed to exercise some jurisdiction over it enjoyed some broader international support. In 1930 W. Lakhtine, noting that immovable ice fields could be used for communication and transportation, expressed the opinion that "ice formations that are more or less immovable should enjoy a legal status equivalent to polar territory" and that polar states should automatically acquire sovereignty over this ice within their "sectors of attraction."[69] E.A. Korovin expressed a similar opinion, including "ice blocks" within the sector as state territory.[70] Leonid Breitfuss, another Soviet scholar, though then operating in Germany, assumed that the

[65] Translation of decree, enclosed in Amery to Byng, August 11, 1926, LAC, RG 25, vol. 2667, file 9057-B-40, quoted from Cavell and Noakes, pp. 245.
[66] For more on this subject see Cavell and Noakes.
[67] "Soviet Claims in the Arctic," December 1954, LAC, RG 25, vol. 4253, file 9057-40.
[68] Ibid.
[69] W. Lakhtine, "Rights over the Arctic," *The American Journal of International Law*, 24:4 (October, 1930), pp. 712.
[70] Ibid.

maritime realm should be assimilated into the state's jurisdiction either as internal waters or in some form of territorial jurisdiction. Breitfuss reasoned that frozen Arctic waters lacked the traditional characteristics of high seas and, given their lack of usability for normal maritime traffic, should be treated differently.[71]

In Canada, while there was no overt declaration on the sector, its influence in Canadian politics was heavily implied. After Poirier's declaration, Canadian maps continued to be published with northern boundaries stretching all the way to the North Pole. In July 1909, on the third of his northern voyages, Joseph Bernier and the crew of the *Arctic* erected a plaque on Melville Island "to commemorate the taking of possession . . . of the whole Arctic Archipelago lying to the north of America from long 60°W to 141°W up to latitude 90°N."[72] However, assumptions that Bernier was laying claim to the Arctic waters are clearly incorrect.[73] Captain Bernier made it clear, in his own account and in the remarks he made at the time of the ceremony, that he was referring to the 1880 transfer of "all British territory in the northern waters" with no mention of the waters themselves.[74]

Yet, there still existed a desire within Canada to extend national sovereignty, or at least jurisdiction, over this vast frozen sea. In July 1925 the government passed an order-in-council which created an Arctic wildlife preserve bounded by these sector lines, requiring trading companies, prospectors and trappers to obtain the permission of the RCMP before engaging in any commercial activity in the region – either on land or

[71] Leonid Breitfuss, "The Territorial Division of the Arctic into Sectors in Connection with the Anticipated Transarctic Air Traffic," *Geographischer Anetalt*, 74:1-2 (January 1, 1928) quoted in LAC, RG 25, vol. 2, file 9057-40.
[72] Shelagh Grant, *Sovereignty or Security?* pp. 12.
[73] For instance, this false interpretation can be seen in: Marjolaine Saint-Pierre, *Joseph-Elzéar Bernier: Champion of Canadian Sovereignty*, tr. William Barr (Montreal: Baraka Books, 2009), pp.233.
[74] J. E. Bernier, *Master Mariner and Arctic Explorer* (Ottawa: LeDroit, 1939), pp. 344.

water. This had been preceded by an important statement by Charles Stewart, then Minister of the Interior, who had told the House of Commons, and later the press, that Canada claimed the Arctic sector right up to the North Pole.[75] After Stewart's endorsement, the sector principle gained a greater degree of acceptance in Ottawa and was largely treated as policy. As late as 1939 the Minister of Mines and Resources, T.A. Crerar, told the House of Commons that the principle was "very generally recognised" and that "on the basis of that principle as well our sovereignty extends right to the Pole within the limits of the sector."[76]

The reason this principle did not find its way into Canadian law, despite its popularity, was straightforward; it was simply not a strong enough foundation for a real claim. It was not considered by most jurists to be an accepted element within international law and there was no precedent in international arbitration which might support it. Within the community of international legal experts, the sector's support was largely limited to Russian jurists, such as L. Breitfuss, W. Lakhtine, E.A. Korovin, and S.V. Sigrist.[77] Outside of Canada and the Soviet Union however support was sparse. Importantly, the theory had also been explicitly or informally rejected by most Western governments and, most importantly in the Canadian context, by the United States.[78]

Even the British, who might have been expected to support their dominion, would certainly have been wary about setting any precedent which might be seen as limiting the freedom of the seas. The Colonial Office had warned Ottawa against claiming Hudson Strait in 1906 and, in 1926, Downing Street, in consultation with the Lords

[75] Quoted from: T.L. Cory, *British Sovereignty in the Arctic* (June 3, 1936), pp. 10.
[76] Canada, House of Commons, *Debates*, 20 May, 1938, vol. 3, pp. 24.
[77] T.A. Taracouzio, *Soviets in the Arctic* (New York: Macmillan Co., 1938), pp. 320-66.
[78] "Canadian Sovereignty in the Arctic," January 22, 1949, LAC, RG 25, file 9057-40, pp. 25-26.

Commissioners of the Admiralty, had expressed its view that Canada could exercise no jurisdiction over any of the ice in the northern regions and that the only rule applying was the traditional territorial sea extending from *terra firma*.[79]

By the 1940s, Canadian ownership over the lands within its northern territories had been largely secured. The major threats which had arisen over the previous two decades had been dealt with. And, by the beginning of the Second World War the Canadian government had posts on Ellesmere and Melville Island and a series of RCMP and trading posts scattered across the southern Arctic. What other competing claims there might have been were extinguished with relative ease. By 1921 whatever danger there had been of a Danish claim to Ellesmere Island had evaporated when Copenhagen agreed to accept Canadian sovereignty over the entire Arctic Archipelago, becoming in fact, the first state to offer such recognition.[80] By 1930 Canada had also secured Norwegian recognition by paying the explorer Otto von Sverdrup $67,000 for his maps and journals. Through that payment, Canada secured the relinquishment of any Norwegian claims, based upon discovery, to the Sverdrup Island group. With these claims now on more solid ground, and with very little activity to bring attention to the region or interest foreign powers, Canada's terrestrial sovereignty was, for the moment, secure.

***

This splendid isolation ended abruptly with the coming of the Second World War. With the American entry into the war the Canadian North quickly found itself host to tens of thousands of American soldiers and civilian workers, building and maintaining a

[79] L.S. Amery to Lord Byng of Vimy January 30, 1926, LAC, RG 13, vol. 1970, file 542/1927.
[80] It is important to note that this recognition was explicitly separated from any acceptance of the sector principle, which the Danes did not accept; Letter from Grevenkop-Castenskiold to Lord Curzon, June 8, 1921 and Gregory to Churchill, June 9, 1921, Public Records Office, Foreign Office 371.6759/9296, from Cavell and Noakes, chapter 5, ft. 66.

number of wartime defence and infrastructure projects. By the summer of 1943 the number of American servicemen and civilians in the region was estimated to be anywhere from 50,000 – 70,000 with US government expenditures topping $500 million. At the same time the Canadian population in the area was only 10,000 while government spending amounted to only $5 million.[81] One report to the Wartime Information Board complained that the American forces had taken control of and "absorbed" entire areas. In Edmonton the Americans had begun referring to themselves as the "Army of Occupation," even answering the switchboard as such.[82]

From a new highway, stretching from the continental US through Canada into Alaska, to a string of airbases in the Eastern and Western Arctic used to ferry Lend-Lease warplanes to the beleaguered British and Soviet forces, these massive defence efforts sailed through without much objection from Canada.[83] Despite the understandable concerns that Canadian sovereignty might suffer from this massive influx of foreign citizens into the sparsely populated North, the government's focus was on more pressing matters, such as the European Front and the great question of national unity.[84]

After the war the entire situation in the North had changed. No longer as isolated or overlooked, the question of Canadian sovereignty had been reawakened as a significant national issue. Prime Minister Mackenzie King, who had never fully trusted American motives, confessed in 1942 that he felt the Alaska Highway "was less intended for protection against the Japanese than as one of the fingers of the hand which America

[81] Grant, *Sovereignty or Security*, pp. 113.
[82] Ibid, pp. 123, 128.
[83] For the most complete description of the various Second World War defence projects in the Canadian North see Shelagh Grant's *Polar Imperative* and *Sovereignty or Security*.
[84] The issue of national unity was a question of Québécois resentment over the imposition of conscription for overseas service. Mackenzie King, then Prime Minister, considered this to be one of the (if not the) most important issues affecting Canada at this time.

is placing more or less over the whole of the Western hemisphere."[85] By 1946 the Department of External Affairs had also grown somewhat concerned, having judged Canada's position in the North as "at best somewhat tenuous and weak."[86] Hume Wrong, then Canada's ambassador to Washington, famously summed up Canadian sovereignty as "unchallenged, but not unchallengeable."[87] The reaction of the King government was to assume control over most of the American wartime projects in the Arctic. To this end, the government authorized a payment of $123 million to reimburse the United States for most of the infrastructure which it had built on Canadian soil.[88]

Unfortunately, any hope that this repurchase would prevent a continuation, or repetition, of the American wartime activities was short lived. Shortly after the defeat of Germany and Japan it became clear to both Ottawa and Washington that their uncomfortable wartime partnership with the Soviet Union would not last long into peacetime. The divergent political, philosophical and security interests of the USSR and the Anglo-Americans in Europe, coupled with their great ideological divide, were simply too much to overcome. The zones of occupation in Europe, meant to be temporary until free elections could be held, soon solidified into permanent borders as the continent, and gradually the world, divided itself into two hostile blocks.

As this hostility between the Soviets and the West increased, the Canadian Arctic was transformed from a formally insignificant region into one of the most vital front lines of the emerging Cold War. The transpolar route had become the shortest flight path

[85] Mackenzie King, *The Diary of William Lyon Mackenzie King*, March 29, 1943.
[86] Canada, Department of External Affairs, *Documents on Canadian External Relations* (hereafter referred to as *DCER*), "Memorandum from the Department of National Defence to the Cabinet Committee," May 18, 1946, no. 913, pp. 1556.
[87] Hume Wrong to A.D.P. Heeney, June 14, 1946, LAC, RG 25, vol. 3347, file 9061-A-40, pt. 1.
[88] Grant, *Sovereignty or Security*, pp. 132.

between the two superpowers and both planned to use it for their strategic bomber forces in the event of war. The nature of the Arctic as an impenetrable barrier was altered as, in the words of Canadian General Charles Foulkes, "there were no boundaries upstairs."[89] The Cold War had placed the Canadian Arctic under the spotlight and given it a new and most unwelcome importance.

The implications for Canada's position in the North were significant as Ottawa had little hope of funding, manning and supplying the new Cold War defence projects under consideration without American assistance. The country's claims to its northern islands were largely secure as the small official presence across the region, largely in the form of RCMP posts, was widely considered to be sufficient evidence of effective occupation. While this occupation was minimal and did not cover each unpopulated island, Canada was able to rely on the fact that international law actually required very little effective control over uninhabited and hostile terrain.[90]

What caused concern within External Affairs was the optics of American soldiers again standing guard in the Canadian North, effectively exercising control over vast stretches of Canadian territory and operating, without Canadian assistance, in the Arctic Islands and the waters in between. After all, in an area such as the Arctic, even a small American manned post or airfield could effectively be the only sign of human occupation for thousands of kilometres. The prospect of new lands being discovered during the course of these defence activities was also a significant worry as such discoveries could,

[89] Joseph T. Jockel, *No Boundaries Upstairs* (Vancouver: University of British Columbia Press, 1987), pp. 4.

[90] In the Eastern Greenland case of 1933 the Danes had made a successful argument that the geographic and climactic nature of Greenland precluded fully effective occupation and, in such circumstances, a much lower standard of more localized control should be acceptable to guarantee Denmark's title to the entire island; International Court of Justice, *Eastern Greenland* Case: Denmark vs. Norway (1933).

in theory, have been backed up by effective occupation, potentially securing American title. In the spring of 1946 the United States had begun asking for extensions on many of its wartime projects, a new chain of Loran navigation stations, more reconnaissance flights and naval operations, expanded and continued operation of some airfields as well as additional weather stations.[91]

Canadian anxiety was increased by leaked American documents and careless talk in the United States where the possibility of annexing Arctic lands was being considered in some quarters. In 1945, when legislation was presented to Congress asking for an extension to the weather station network in the North, phrases like "territories claimed by Canada" gave the Canadian government the impression that Washington might seek to challenge that claim.[92] In 1946, the Canadian Embassy in Washington even came into possession of a report from the US Air Force's (USAF) Air Coordinating Committee (ACC) which raised the question of ownership over any newly discovered islands in the Arctic Ocean.[93] The ACC report indicated that sovereignty over these lands would "require careful consideration by the State Department," which might not recognize Canadian claims.[94] Later that month the ACC announced their decision to launch flights intended to discover new islands in unexplored regions of the Arctic to claim as airbases.[95] Certain members of the Air Force had never believed that Canada exercised the kind of authority and administrative control necessary for the purpose of claiming and

[91] "List of Recent United States and Permanent Joint Board on Defence Proposals for Joint Defence Projects and Cooperation Measures," June 30, 1946, LAC, RG 410/17, vol. 5 files 1-11; RG 2/18, vol. 74, file D-19-2, reproduced in Grant, *Sovereignty or Security*, pp. 176.
[92] "Ottawa Scotches US Plan to Man Weather Bases in Canadian Artic," *Financial Post*, July 20, 1946, pp. 1.
[93] *Journal of Commerce*, March 9, 1944, reproduced in Grant, *Sovereignty or Security*, pp. 245.
[94] *DCER*, Under-Secretary of State for External Affairs to Deputy Minister of Transport, "Sovereignty in the Arctic," May 4, 1946, no. 908, pp. 1545-46.
[95] *DCER*, "Appreciation" and "Basic Security Plan" from meetings May 20-23, 1946, no. 956.

maintaining sovereignty and, in a 1946 memorandum, the Air Force even suggested that Prince Patrick and Banks Island, as well as Grant Land (an American name for northern Ellesmere Island) and other areas, might be legally annexed because of the "meagre and sporadic" Canadian presence.[96]

The Canadian government took these statements seriously. Mackenzie King's decision not to allow the United States to proceed with its plans to erect a weather station on Melville Island in 1946 may well have had something to do with the fact that Melville was on the USAF's list of possible islands to claim. The loss of one island in the Archipelago, even one which had yet to be discovered, would have set a precedent which could have invalidated the sector theory and lost Canada a sizable portion of its Arctic.[97]

In the face of this concern, the status of the Arctic waters had fallen to a very distant second priority. This fact is born out in a number of studies conducted by various government departments at the time. A 1949 study entitled *Legal Aspects of Sovereignty in the Canadian Arctic* was commissioned by External Affairs as a guide to the subject, intended to deal with an ever-increasing flood of requests for information coming from both within and without the government to External Affairs and the Advisory Committee on Northern Development (ACND).[98] The document was an extensive survey of the subject, covering the basis of Canadian sovereignty and the current challenges it faced and may face in the future. Yet, nowhere in the study is the question of maritime

[96] United States, Army Air Force Headquarters, Atlantic Division; Air Transport Command (hereafter referred to as Air Transport Command) "Problems of Canada – United States Cooperation in the Arctic," October 29, 1946, National Archives and Records Administration (hereafter NARA), RG 319, Records of the Army Staff: Publication Files, 1946-51, box 2785.
[97] *DCER*, memorandum from DND to Cabinet Defence Committee, "Sovereignty in the Canadian Arctic in Relation to Joint Defence Undertakings," May 18, 1946, no. 913, pp. 1158.
[98] Department of External Affairs, January 22, 1949, LAC, RG 25, vol. 4, file 9057-40.

sovereignty even mentioned and it is made clear that the sector theory was meant only to apply to the Arctic lands.[99]

A further study, completed by Vincent C. MacDonald entitled *Canadian Sovereignty in the Arctic*, emphasised this bias. MacDonald's report was a lengthy memorandum compiled from materials in the 1949 study as well as from a lengthy document prepared by the Department of Mines and Resources entitled *Factual Record Supporting Canadian Sovereignty in the Arctic*. MacDonald described his report as an attempt to present the Canadian case "in its most effective and persuasive form" and the continued absence of any mention of maritime sovereignty is telling.[100]

Despite the obvious focus on the status and control over the lands, the postwar defence boom led inevitably to increased activity within the Arctic waters as well. Defence projects needed to be supplied and the only feasible means of doing so was by sea. This sealift in turn required new hydrographic mapping and charting in the region. In the 1940s Canada lacked the icebreakers and the shipping capacity to provide these services and thus the task fell largely to the US Navy (USN).

For Canada, the spectre of American vessels enjoying a monopoly over operations in its Arctic was disconcerting. Yet, there was little that the government could actually do about it. These defence projects needed to be built and supplied and the Departments of External Affairs and National Defence both recognized the need for increased security. They also feared that refusing the United States access to the Arctic might simply

[99] "Legal Aspects of Sovereignty in the Canadian Arctic," January 22, 1949, LAC, RG 25, file 9057-40.
[100] Vincent C. MacDonald, "Canadian Sovereignty in the Arctic," 1950, LAC, RG 25, vol. 4, file 9057-40.

provoke Washington into seeking to obtain its ends by claiming sovereignty over some of the islands as its own by right of occupation.[101]

The Canadian position with respect to the waters had not materially changed since the 1920s. There still existed a widely held assumption that they should be assimilated into Canadian territory in some fashion – though how that might be brought about was unknown, as was the precise definition of which Arctic waters should be claimed. Nor had international law changed significantly since the 1920s; the three mile rule continued to enjoy overwhelming international support and there remained no other feasible method for claiming sovereignty over large bodies of water. The only vehicle available for asserting any claim to the maritime realm was therefore to combine the frozen waters with the land and claim jurisdiction of sovereignty using the sector principle. This assertion gained more support in the late 1940s as politicians increasingly chose the largely discredited sector as a means of addressing the maritime question.

In 1946 Lester Pearson, then Canada's ambassador to the United States, published an article entitled "Canada Looks down North." In it he claimed that Canada's sovereignty extended to "not only Canada's northern mainland, but the islands and the frozen sea north of the mainland between the meridians of its east and west boundaries extending to the North Pole."[102] While not representing official policy, Pearson's position as a serving ambassador to Canada's most important partner gave the assertion a certain weight. Pearson was an strong proponent of the sector principle and, behind the scenes, he was working to advocate for a more vigorous assertion of the principle, which he had

[101] Note for Mr. Heeney, June 4, 1946, LAC, RG 25 vol. 3347, file 7598-40C.
[102] L. B. Pearson, "Canada Looks Down North," *Foreign Affairs*, 24:4 (July, 1946), 638.

considered to be a "practical solution of the Arctic question" as early as 1929.[103] At roughly the same time as he was composing his article for *Foreign Affairs*, the ambassador was requesting permission from Ottawa to "casually" suggest to the Americans that the American government recognize Canadian sovereignty over the Arctic lands, and perhaps even over the entire Canadian sector, in return for defence rights in the area.[104] Such permission was not forthcoming as Ottawa preferred not to push the issue. In its reply, External Affairs forbade Pearson to make any such suggestion.[105] After all, what could be done if Washington said no?

Pearson continued to push the sector theory, however, and his article in *Foreign Affairs* was published only two months later. That same year Hugh Keenleyside, the Deputy Minister of Mines and Resources, passed along a 1928 legal study by L. Breitfuss which advocated a sector principle being applied to the Arctic waters and which claimed that the Northwest Passage would "logically fall under the jurisdiction of Canada.[106] In 1949, Keenleyside repeated this claim, only this time it was done publicly. The Minister described Canada's Arctic as including: "the Arctic islands and their waters, the northern half of Quebec and Labrador, and that segment of the ice-capped polar sea that is caught within the Canadian sector."[107]

While men like Pearson and Keenleyside were publicly backing the sector principle the question of what Canada's claims to the Arctic waters might be, and how those claims might be supported, was also beginning to receive some attention from those

[103] L.B. Pearson, "The Question of Ownership in the Sverdrup Islands," October 28, 1929, LAC, RG 25, vol. 2667, file 9047-A-40, from Cavell and Noakes, pp.245.
[104] Letter from Lester Pearson to H.H. Wrong, June 5, 1946, LAC, RG 25 vol. 3347, file 7598-40C.
[105] Letter from H.H. Wrong to D.C. Abbott, June 13, 1946, LAC RG 25 vol. 3347, file 7598-40C.
[106] Hugh Keenleyside to Undersecretary of State for External Affairs, July 3, 1948, LAC, RG 25, Box 41, file 9057-40, pt. 4.
[107] H.L. Keenleyside, "Recent Developments in the Canadian North," in *Canadian Geographical Journal*, 39:4 (October, 1949), pp. 163.

actively involved in northern operations. This was nothing like the attention being accorded to the issue of terrestrial sovereignty but serious questions were beginning to be asked. In May 1949 J.W. Burton, the senior observer aboard an American re-supply expedition, asked J.G. Wright, Superintendent of the Eastern Arctic and Secretary of the Northwest Territories Council, what Canada's policy was vis-à-vis the Arctic waters. Specifically, Burton asked if the Canadian government considered that:

> i) A permanent surface of ice extending from the coast outward to the sea [constituted] a continuation of the land and that such an area should be subject to the same sovereignty as the land itself, or
>
> ii) A permanent ice surface should be assimilated to water and not subject to national sovereignty beyond the territorial water limit?[108]

Wright's answer, sent five days later, was merely to forward a list of relevant opinions from international jurists and to note that there are were two schools of thought on the subject – namely that Canada may or may not be entitled to claim jurisdiction over some of its Arctic ice.[109]

By 1949 the government had also established a separate body to which the issue had been delegated.[110] This group was an interdepartmental committee consisting of representatives from the Departments of External Affairs, National Defence, Fisheries, Justice, National Revenue, Transport, and Development as well as the Privy Council Office. It was tasked with examining the question of the Arctic waters, but only in the context of a much larger, general review of Canada's territorial waters. In fact, the committee's primary task was to examine the status of the Gulf of St. Lawrence after the

[108] T. Burton to J.G. Wright, May 11, 1949, LAC, RG 85, vol. 304, file 1009-5.
[109] J.W. Burton to J.G. Wright, May 16, 1950, LAC, RG 85, vol. 750.
[110] When the possibility of examining the question of Canadian policy in the Arctic waters was raised, the subject was passed over on the basis that the Committee on Territorial Waters was currently examining the issue.

union of Canada and Newfoundland. That the status of the Arctic waters were added to the review process spoke less of their importance at the time and more to the fact that it would have been odd to leave them out of any general review.

By March of 1950 the committee had held its second and last meeting and, rather than arriving at any definitive conclusions, it officially recommended the postponement of any decision on the question of Arctic maritime sovereignty. By June a study requested by the Department of Justice had determined that it could find no indication that Canada had ever actually laid down a firm ruling on the status of the waters within the Archipelago or on the legal status of the Arctic ice itself.[111]

These conclusions were not surprising and, indeed, could hardly have been different. While a broad application of the sector might have appealed to nationalistic Canadian sentiment it would hold little weight in international arbitration. Likewise, it was certainly understood that, apart from Hudson Strait, there were no maritime regions within the Arctic Archipelago to which Canada possessed a strong claim based upon historic title. In addition, it was certainly known that any direct claim would still have been challenged, and likely challenged successfully, by the United States or even perhaps by other maritime states such as Great Britain.

Such a challenge was likely given that American policy had always been consistent in its rejection of the sector as a legitimate basis for sovereignty. The United States was also the world's foremost defender of the principle of the freedom of the seas, unsurprising given its global dominance in maritime trade and naval power in the 1940s. As early as 1929 the State Department had asked the Navy for its opinion on the idea of

[111] Letter from C.S. Jackson to the Deputy Minister of Justice, June 3, 1950, LAC, RG 85, vol. 750, file 4419, file pt. 6.

dividing the Arctic up into sectors. The answer, offered by Admiral Charles Adams, Secretary of the Navy, was that such a partition "is in effect a claim of sovereignty over high seas, which are universally recognized as free to all nations, and is a novel attempt to create artificially a closed sea and thereby infringe the rights of nations to the free use of this area.[112] By 1946, the first Assistant Secretary of State for Economic Affairs, William L. Clayton, was warning Undersecretary of State Dean Acheson that if either Canada or Russia attempted to extend the sector to enclose their Arctic waters "additional and serious problems would arise." Such claims would open "fields of controversy respecting both the international legality and the practical desirability of such action." The United States would have no option but to vigorously resist any such claims. [113]

This unofficial US policy was made official in 1951 in a State Department memo which made the rejection of any claims to Arctic waters, based on the sector theory, an official American policy goal:

> Nor could the Arctic seas, in our view, be made subject to 'territorial' sovereignty of any state even though they might contain ice areas having some characteristics of land . . . The US position is that the Arctic seas and the air spaces above them, in so far as they are outside of accepted territorial limits, are open to commerce and navigation in the same degree as other open seas.[114]

With the dangers of international rejection clearly in mind, the Interdepartmental Committee's report echoed conclusions reached in 1937 and recommended that "no action be taken at present" with regards to sovereignty assertion or even policy formation

[112] Green Haywood Hackworth, *Digest of International Law* 1, (1940), pp. 464.
[113] Memorandum attached to letter: Dean Acheson to William L. Clayton, July 15, 1946, NARA, RG 165, entry 421, box 598.
[114] This was a Department of State Policy statement. These documents were written to inform American diplomats and consular officials of American policy; *FRUS*, "Department of State Policy Statement," *Polar Regions*, vol. 1, July 1, 1951, pp. 1724.

in the North.[115] This report well represented the priorities of the Canadian government at that time. The country's principle maritime sovereignty concern was not the Arctic waters but sovereignty over the Gulf of St. Lawrence. This was the case in the 1940s and would remain so until the 1970s.

Gaining international acquiescence of this claim took precedence over any other maritime issue. In their 1950 report, the Territorial Waters Committee had recommended that External Affairs actively pursue Canada's claim to the waters of the Gulf. Most importantly, it was suggested that, until the Gulf question had been "examined and settled in the light of international law, interest and prestige, any general recommendations as to policy, especially on the following points, should be withheld."[116] Those points were as follows:

a) Charting and mapping off Newfoundland
b) Ownership of Machias Seal Island
c) The Pacific Waters
d) Arctic Waters

The question of Arctic maritime sovereignty, and that of maritime sovereignty farther south, was intimately connected to the broader question of territorial waters. In the 1940s, however, the Arctic was not a high priority on Ottawa's list of maritime claims. Indeed, it was in very last place and, over the next two decades, the attention paid to the issue would be directly related to the government's continuing efforts to assert sovereignty over the Gulf of St. Lawrence and, later on, to a number of other bodies of water in the Atlantic and Pacific.

[115] Letter from Ernest Lapoint to Lord Tweedsmuire, December 18, 1937, LAC, RG 2-B-2, vol. 103, file T-30; Memorandum for head of Legal Division, 1952, LAC, RG 2-18, vol. 236, file T-30-1-C.
[116] Memorandum for Head of Legal Division, 1952, LAC, RG 2-18, vol. 236, file T-30-1-C.

To outside observers the result of this inability and unwillingness to stake out a more precise position led to a general uncertainty as to what Canadian sovereignty actually meant in the North. As early as 1945 the American State Department was uncertain as to the extent of Canada's maritime claims, yet assumed that Canada intended the sector principle to apply only to land.[117] Whether that meant that Canada claimed sovereignty over undiscovered land was not quite certain, though State Department official William Clayton surmised that "that would seem to be the logical implication of statements made by Canadian officials."[118] The American approach to Canadian sensitivities over the Arctic waters was much the same as it was over the vast tracts of unoccupied or potentially undiscovered Arctic lands. While the State Department would not, in principle, recognize any terrestrial or maritime claim which did not meet its high standards, neither did it feel the need to launch any overt challenge.

In fact, documents from the period make it clear Canadian concerns surrounding the American 'threat' to its sovereignty were overblown. The leaked reports and annexationist statements which had caused such anxiety were largely the work of low-level officers and bureaucrats whose opinion had no real bearing on the overall policy of the US State Department or military. The notion that the United States had a hidden agenda for the Canadian Arctic, implied by authors like Shelagh Grant, simply places too much significance on these lower level functionaries.[119] In fact, American decision makers had realized early on that any expansionist moves in the Arctic would have been counterproductive. By October 1946 the American government had already decided that

[117] Memorandum attached to letter: Dean Acheson to William L. Clayton, July 15, 1946. NARA, RG 165, entry 421, box 598.
[118] Ibid.
[119] Grant, *Sovereignty and Security.*

unilaterally taking possession of unoccupied Arctic islands was not an option, except in the most extreme and unforeseen circumstances. In its study entitled *Problems of Canada – US Cooperation in the Arctic*, the US Army Air Force concluded that:

> … any action on the part of the United States which could be interpreted as a usurpation of Canadian territorial rights would be followed by political consequences so great that, except in the case of a very serious emergency, they could scarcely be justified even in terms of short run expediency. The breech in Canadian – American relations might be sufficiently wide to put an end to all possibility of continued political and military cooperation, and would probably be a greater blow to the American security system than a failure to obtain Arctic bases.[120]

This appreciation was written in response to the sort of challenges to Canadian terrestrial sovereignty that groups like the ACC had been considering, however it applied equally well to how the United States chose to handle the delicate issue of the Arctic waters. Cooperation with Canada, even on inconvenient terms, was judged to be better than the dangers of a legal and political battle with Ottawa over any small piece of rock and tundra.

In keeping with the government's desire to maintain a maximum amount of control over the region, American expeditions – be they re-supply runs to joint defence projects, hydrographic surveys or naval exercises – all required the explicit permission of the Canadian government. This was the case during the US Navy's Operation *Nanook*, an operation consisting of six Navy and US Coast Guard (USCG) vessels supplying the Joint Arctic Weather Station (JAWS) program. During *Nanook* the Americans conducted reconnaissance for future installations, trained naval personnel and collected data on Arctic conditions. The same procedure applied in 1948 when the American Embassy

[120] Air Transport Command, "Problems of Canada-US Cooperation in the Arctic," October 29, 1946, NARA RG 319, box 2785.

asked permission for the USCG icebreaker *Edisto* to transit the Fury and Hecla Straits,[121] and a year later when that vessel entered Hudson Strait and Baffin Bay.[122]

Canadian concern went beyond requiring permission for American entry into the region however. Provoked by a general sense of insecurity and an uncomfortable awareness of the weakness of its sovereignty claims, the Canadian government demanded a great deal of control over every aspect of northern operations. Throughout the 1940s and 1950s, whenever the American Navy entered the waters of the Archipelago, Ottawa made sure that it was consulted on every aspect of the voyage, from activities and crew to possible routes. If a route was to be changed, Ottawa insisted on being informed. The importance of these requests was well illustrated by the fact that they were dealt with directly by External Affairs, rather than through the service-to-service channels which would have been sufficient for most other American visits to Canadian waters.[123] Relatively minor changes in the routing of American vessels were also often a cause for concern. In 1948, when American ships used the Fury and Hecla Straits, without first notifying Ottawa, and securing the necessary approvals, External Affairs immediately complained to the State Department to set the matter right.[124]

In part, this insecurity was caused by the lack of any Canadian maritime capability in the Arctic. In the 1940s neither the Royal Canadian Navy (RCN) nor the Coast Guard (CCG) possessed the icebreakers or the sealift capability needed to operate in ice infested waters. What ice-strengthened ships Canada did possess were often too

[121] Secretary of State for External Affairs to Canadian Ambassador, Washington, September 23, 1948, LAC, RG 25, vol. 3841.
[122] American Embassy to Secretary of State for External Affairs, December 19, 1949, LAC RG 25, vol. 5737, file 17-E(s).
[123] For example: Canadian Ambassador in Washington to Secretary of State for External Affairs, June 20, 1946, LAC, RG 25, vol. 3047, file 113 & Secretary of State for External Affairs to Canadian Ambassador, Washington, September 23, 1948, LAC, RG 25, vol. 3841, file 9060-G-40.
[124] D.M Johnson to Mr. Magaan, October 13, 1948, LAC, RG 25, vol. 3841, file 9061-G-40.

heavily tasked providing services in other parts of the country, such as Hudson Bay or the St. Lawrence River. The first indication that Canada intended to establish a greater operational capacity came in 1948 when the Minister of National Defence, Brooke Claxton, announced that elements of the RCN would undertake an Arctic cruise that summer, clearly stating "the importance to us of the northern waters."[125]

Yet that importance was a new element in Canadian policy and was created in large measure by circumstances. As recently as 1946 the Canadian Army had approached the RCN with a plan for joint exercises in the Arctic; the Navy, however, had proven apprehensive about the plan, considering it too ambitions.[126] By 1948 however the situation had shifted. The Navy's agreement to take on even a token Arctic responsibility followed hot on the heels of a number of very public American expeditions. Operation *Frostbite* had taken the American carrier *Midway* and her escorts into the Davis Strait in the fall and winter of 1945-1946. Later that year, Operation *Nanook*, took place in Viscount Melville and Lancaster Sound. That same season the US Navy was also experimenting with submarine operations in the region, sending the USS *Atule* to Baffin Bay to practice submerging in ice. By 1947 the Navy had ceased their exercises but was still regularity sending ships north to supply the JAWS stations in Canadian territory.

The optics of this American monopoly in so sensitive a region were unsettling and Canada had begun to feel a greater need to assert itself. Fortunately, the RCN's carrier *Magnificent* had been 'arcticized,' though this meant only that it had had its working and living quarters prepared for low temperature operations. Together with the tribal class destroyers HMCS *Nookta* and *Haida* the fleet sailed north to Hudson Strait at the

[125] Canada, House of Commons, *Debates*, June 24, 1948, pp. 5785.
[126] Elizabeth Elliot-Meisel, "Arctic Focus: The Royal Canadian Navy in Arctic Waters, 1946-1949," *The Northern Mariner* 9:2 (April, 1999), pp. 29.

beginning of September 1948. This passage marked the first time any RCN warship had entered Canadian Arctic waters. There was not much of military significance to be done in the region and the mission's stated objectives were very general: to familiarize the RCN with the area and to conduct scientific and hydrographic studies. The *Magnificent*'s doctor took the opportunity to treat the sick at local settlements and her engineer repaired a missionary's radio antenna.[127] Soon afterwards the carrier sailed for home, leaving the destroyer escorts to proceed to Churchill, making them the first RCN ships to enter Hudson Bay.

The following year the tradition was carried on by the HMCS *Swansea*, which continued the Arctic familiarization program off the southern end of Baffin Island. This however was to be the last RCN warship to visit the northern waters until the HMCS *Labrador* in 1954.[128] While there were voices within the Navy, and within the government, advocating a greater Arctic presence, the resources were simply not there for a task which most recognized as being more symbol than substance.[129] In the increasingly hostile environment of the evolving Cold War, Canada's naval requirements had become focused on preparing to fight the Soviet Union in the North Atlantic. For that, fast ships designed for anti-submarine warfare (ASW) were required. The 1949 White Paper had officially committed the RCN to protecting the Allied sea-lanes in the Atlantic and to meet these requirements a significant investment was made in building the new St. Laurent class of destroyer escorts. Given the RCN's limited budget and the increasing

[127] Kenneth C. Eyre, *Custos Borealis: The Military in the Canadian North*, Ph.D., University of London King's College, 1981, pp.184.
[128] Ibid, 187.
[129] In 1949, for instance, an opposition member requested assurances from Minister Claxton that "an adequate portion of the naval training is being carried out in Arctic waters." Eyre, *Custos Borealis*, pp. 185.

requirements to deploy elsewhere – especially after the outbreak of the Korean War – an Arctic presence was simply not sustainable.[130]

The one element of the Navy's brief flirtation with a northern vision that survived the budgetary and geostrategic realities of the late 1940s was the construction of a powerful new icebreaker. In 1948, when announcing the RCN's plans for the first northern cruise, Defence Minister Brooke Claxton had mentioned that such plans were in the works.[131] The design advanced quickly and it was decided to base the ship on the very capable US *Wind* class icebreakers. By 1949 the keel had been laid down in the Marine Industries yards at Sorel, Quebec and two years later, after a long series of delays, the HMCS *Labrador* was finally launched – though it was not until 1954 that the ship was ready and handed over to the RCN.

The rational for the construction of the *Labrador* was not as straightforward as might be supposed. While the desire to operate in the northern waters had been demonstrated by the Navy's expeditions, the focus of the *Labrador* was not primarily maritime sovereignty. The presence of American ships in the North, supplying joint defence stations without assistance from the RCN, was frustrating just as the optics of the situation proved embarrassing. However, when the issue of sovereignty entered into the equation it remained an issue of terrestrial and not maritime control. What concerned the Canadian military and government was not so much the fact that the US Navy was operating in Canadian waters, but that Canada was reliant on the Americans for the re-supply of its northern facilities. With the issue of terrestrial sovereignty still somewhat in doubt, the inability to reach the lands that Canada was claiming remained the principle

[130] Elliot-Meisel, "Royal Canadian Navy," pp. 32.
[131] Canada, House of Commons, *Debates*, June 24, 1948, 20th Parliament, 4th session, pp. 5785.

concern, as had been the case with the Eastern Arctic Patrol and with the RCMP's patrols in the 1940s. In 1940, when Captain Henry Larsen in the RCMP schooner *St. Roche* had completed the first transit of the Northwest Passage since the *Gjoa* in 1906, he recalled that his mission was: "maintaining sovereignty over the Arctic Islands, and to ascertain if it would be possible to take supplies from the west to any new detachments of the Force which may be established in the future on islands along the route."[132]

This was again the case with the *Labrador* in the 1950s. When advocating for the construction of the icebreaker in the ACND, General Andrew McNaughton, the Canadian Chairman to the Permanent Joint Board of Defence (PJBD), insisted that Canada must be in a position to maintain its sovereignty by providing access to the Arctic independent of the United States.[133] General McNaughton's concern was certainly indicative of the priorities of the Canadian government at that time. Maritime sovereignty was a secondary concern throughout the period. Activities in the region were progressing comfortably with the United States on a functional basis and, so long as the Americans proved willing to offer Canada a degree of implicit recognition, there was no urgent need to change tactics. While there existed a general desire to see these waters confirmed as Canadian, what precisely that entailed was still unknown.

The musings of men like Pearson, who sought to expand the sector to include the maritime realm, were fairly isolated and enjoyed no significant support – either in government or within the international legal community. Formulating any firm policy which might grant or maintain (depending on one's perspective) Canadian control over the region was therefore impossible. In addition, to have made the issue of the Arctic

[132] H.A. Larsen, "Our Return Voyage through the North-West Passage," *RCMP Quarterly* 10 (April, 1945), pp. 299.
[133] Minutes of the second meeting of the ACND, June 1, 1948, LAC, RG 2-B-2, vol. 6183.

waters a priority, while the seemingly far more important and immediate issue of Canadian sovereignty to the Arctic islands remained in question, would have seemed to be putting the cart before the horse. The question of what exactly Canada claimed of the Arctic waters and how it intended to claim it therefore found itself the last priority on the government's maritime agenda. In keeping with the recommendations of the Interdepartmental Committee on Territorial Waters (ICTW), the issue was deferred. This postponement would, however, not last long as the early years of the 1950s would see a dramatic shift in both the political situation in the region and within international law.

Chapter 2

'A Line Hereabouts'
The Sector, Ice-Islands and Straight Baselines: 1950-1958

The early to mid-1950s were a crucial if confused period in the formation of Canadian Arctic policy. It was during these formative years that the Canadian government, and in particular the Department of External Affairs, began to consider in detail what Canadian maritime sovereignty in the North might actually mean. By the early 1950s the issue had certainly become a more pressing one. The American presence, which had become increasingly regular throughout the late 1940s, was becoming of even greater concern. Regular re-supply and support operations had become the norm and looked likely to continue, or even increase, into the foreseeable future. The construction of the Distant Early Warning Line (DEW), from 1955-1957, was the largest construction project the Arctic had ever seen and would involve more shipping activity than had ever transited the Northwest Passage before. Meanwhile, newly discovered ice-islands, manned by American and Soviet scientists, were beginning to float across Canada's sector in the Arctic Ocean. While this growing activity was bringing more attention to the question of sovereignty, new developments in international law also appeared to be opening up fresh possibilities which Canada was beginning to examine.

As the 1950s began the question of Canada's Arctic waters remained a confusing jumble of theories and possibilities. Demands for clarification had increased but there were few answers to be had. In 1949 J.W. Burton had asked J.G. Wright, the Superintendent of the Eastern Arctic, what exactly Canada's position was in the northern waters. Burton had received no clear response and in May 1950, again heading north to

observe an American re-supply effort, he wrote to Wright and resubmitted his request for a clarification.[134] No reply exists in the records, however a very similar inquiry was made one month later by C.W. Jackson, the acting Deputy Minister of Mines and Resources to F.F. Varcoe, the Deputy Minister of Justice. Again, Jackson wrote to inquire about the specifics of Canada's claim, noting that questions about the status of the waters were now continually arising and that his department, after reviewing all the relevant files, could find no evidence of any firm ruling on the subject.[135]

Specifically, the Deputy Minister wanted to know to what distance from the Arctic Islands Canada's jurisdiction extended. Did the government consider the waters lying between the islands of the Arctic Archipelago to be under Canadian sovereignty? In particular, he specified Lancaster Sound, Barrow Strait, Viscount Melville Sound and McClure Strait as areas of special concern.[136] Again, no record of a response accompanied his inquiry. Such requests were clearly becoming more common and they were receiving no straightforward answers, if any at all. This was a particularly worrying situation since such information would have been essential for men like Burton and Jackson who were actively dealing with the diplomatic issues and clearances arising from American re-supply and naval activities within those vital straits. While the RCMP and civil servants had spent decades under the assumption that these waters were Canadian it was obvious that no one had any clear idea about how Canada might go about asserting that claim.

[134] J.W. Burton to J.G. Wright, May 29, 1950 & J.W. Burton to J.G. Wright, May 11, 1949, LAC, RG 85, vol. 750, file 4419, pt. 6.
[135] C.W. Jackson to F.F. Varcoe, June 3, 1950, LAC, RG 85, vol. 750, file 4419, pt. 6
[136] Ibid.

North of the Archipelago, the Cold War was also bringing even more remote areas into focus. The vast section of the Arctic Ocean which fell within the Canadian sector had never seen any real foreign activity before the dawn of the Cold War. The odd expedition, like Robert Peary's trek to the North Pole in 1906, was not much of a potential challenge, as polar explorers rarely chose to stay in the region longer than was necessary. By 1950, however both the United States and the Soviet Union were beginning to establish semi-permanent stations on ice-islands in the Arctic Ocean, bringing into question any potential Canadian claims to sovereignty over the vast polar sector. The question of Canadian sovereignty over these formations had been left comfortably unexamined, had never generated any excitement in Ottawa and had never elicited a firm position from the government on their status.[137] The establishment of these stations demanded however that the question be given more urgent attention.

An ice-island is essentially a floating mass of hard multi-year ice. They drift slowly with the wind and currents of the Arctic Ocean and most are large and solid enough to permit semi-permanent occupation.[138] First discovered in 1946, they are normally shaped like flat boxes or rafts which rise anywhere from seven to forty feet above sea level. The drift patterns of these islands are generally predictable, though subject to changes in ocean currents and shifts in wind patterns. Traditionally, they calf off of the huge mass of shelf ice or shore ice clinging to the northern coast of Ellesmere Island and move in a clockwise circle at about one to four nautical miles per day.[139] They

[137] Gordon Smith, *Ice Islands in Arctic Waters* (Ottawa: Department of Indian and Northern Affairs, 1980), pp. 59.
[138] Ice-island T-3 at its largest was, for instance, 17 by 18 miles with a total area of 300 square miles; Smith, *Ice Islands*, pp. 1.
[139] Donat Pharand, "Freedom of the Seas in the Ocean." *University of Toronto Law Journal* 19 (1969), pp. 219

pass along the northern fringe of the Arctic Archipelago, through the Beaufort Sea and the northern coasts of Alaska and Siberia northwards towards the Pole.[140]

In 1950 both the Soviet Union and the United States had established temporary bases on either ice-islands or ice floes in the polar pack north of Siberia and Alaska. The American base, first established as part of *Operation Ski Jump*, was set up, taken down, and re-established every year from 1950 to 1953.[141] In April 1950 the Soviets established a new station of their own, dubbed North Pole-2, at 76°N 167°W in what would technically have been the American sector. These facilities marked the beginning of a long series of polar stations which were to drift through the Arctic Ocean throughout the Cold War. The presence of Americans floating through the Canadian sector provoked some consternation within External Affairs as, for the first time, a foreign power was effectively occupying space within the sector which Canada had considered claiming, or at the very least, assumed to be within its sphere of influence.

While this American presence caused some concern within External Affairs the Russian activity was far more worrying. Soviet stations were, after all, not only a potential threat to Canadian sovereignty but also to its security. By the dawn of the Cold War Russian experience in the Arctic was extensive and its capabilities certainly exceeded those of either Canada or the United States. Between 1935 and 1941 the USSR had sent out four drift expeditions on either ships or ice-floes and had complemented that program with a series of aircraft landings on the sea-ice north of Siberia. Their first semi-permanent polar station, dubbed North Pole-1 and manned from 1937 to 1938, was set up on an ice floe only 35 miles from the Pole at 89°N 79°W. For a time it was even within

[140] Smith, *Ice Islands*, pp. 1-3.
[141] During operation *Ski Jump*, American forces, operating out of Pt. Barrow Alaska, established four drift stations and conducted oceanographic work.

the extreme northern reaches of the Canadian sector before eventually drifting east and grounding on the northeastern coast of Greenland. This however was an isolated attempt at longer term polar research and was suspended during the Second World War.

These Soviet expeditions recommenced in the post war period, with one of the more noteworthy scientific discoveries being the Lomonosov Ridge running between the New Siberian Islands and Ellesmere Island. By 1954, however, the Soviets had embarked on a significant, long term polar research program meant to be sustainable rather than simply expeditionary in nature. From 1950 to 1955 the USSR occupied four separate ice-islands or floes and as many as three at a time. These islands, like the American manned stations, generally stayed on the Soviet side of the Pole, though all this was for reasons of current and wind direction rather than political sensitivity.

When a Soviet station did drift into the Canadian sector it tended to set off alarm bells in the Department of National Defence and, ultimately, it was the activities of the Soviets in the region which prompted the first serious review of Canadian policy over the status of the ice-islands themselves and over the sector theory more generally. This review began in May 1954 when a Soviet aircraft overflew an American station on an ice-island called T-3 (or Fletcher's Island), then within the Canadian sector at 84°21°N and 81°12°W. The presence of the American station in Canadian waters was rationalized as a defence program of common interest, yet some felt that the Soviet flyover may have been a violation of sovereignty. External Affairs was unsure if such a violation had taken place, since the answer revolved on the uncertain legal status of the island itself.[142]

More concerning however was an RCAF discovery that August of an ice-island bearing a Soviet party, which the Defence Research Board estimated would soon drift

[142] Memorandum, May 20, 1954, LAC, RG 25, vol. 4, file 9057-40.

into ‘the Canadian sector. Increased surveillance was ordered and it was soon discovered that it had been a false alarm and that the station had drifted into the Danish sector north of Greenland. Regardless, in the politically charged environment of the mid-1950s the presence of a Soviet base floating towards Canada, or even the prospect of it occupying space which some Canadians considered to be national territory, provoked suspicion and provided a new impetus for action. While much of this Soviet activity was of an undeniably peaceful nature – a fact later confirmed by Canadian surveillance – it was suggested by the Canadian Chiefs of Staff that these islands could easily be used to advance military objectives.[143] The Defence Research Board believed that stations floating in the Arctic Ocean would have been useful for collecting magnetic data for use in guided missiles, in mapping the Arctic seafloor for Soviet submarines or even as staging bases in times of war.[144]

In August 1954, before the precise course of the Soviet station had been determined, the Defence Research Board published a report suggesting that “an immediate diplomatic protest” should be made by Canada to both the Soviet ‘intruders’ as well as to the Americans who were then planning on conducting flyovers to surveil the Soviet instillations.[145] The author, Trevor Harwood, also recommended a more active use of Canadian military assets to strengthen the country’s position in the region, suggesting that the RCAF reconnoitre Soviet stations and even take over occupation of ice-island T-3, which had lately been abandoned by the Americans.[146] Harwood’s was not an isolated

[143] Extract from the 569th meeting of the Chiefs of Staff Committee, November 3, 1954, DHH, 2002/17.
[144] Defence Research Board: Russian Activities on the Canadian Side of the Pole, Comments, October 14, 1954, DHH, 2002/17.
[145] D.R.B. paper by T.A. Harwood, “Probable Russian Activity in the Canadian Section of the Arctic Ocean” August 5, 1954, LAC, RG 25, vol. 4, file 9057-40.
[146] Ibid.

voice and was soon followed by another Defence Research Board report, this time by its chairman O.M. Solandt. In this Solandt warned that:

> … unfortunately at the moment it can be said without dispute that the ice covered sea beyond the north coast of Canada is now scientifically, and possibly from a military viewpoint, entirely dominated by the Soviet Union… While there may be some dispute over the value of the polar basin from a strategic point of view there can be little doubt that the presence of the polar station manned by the USSR in this period of tension should invite profound concern in their activities.[147]

These warnings were, in hindsight, likely exaggerated but were still taken seriously at the time. While manning T-3 was considered too expensive and impracticable, the RCAF did maintain surveillance over the Soviet stations – only to confirm that they were in fact concerned chiefly with decidedly non-threatening meteorological, oceanographic and zoological studies.[148]

Regardless of how threatening these Soviet bases actually were, they still provoked enough interest and concern to force the first in-depth government study of both ice-islands and the sector principle more generally. The initial result was a quickly completed preliminary review which suggested that international law had likely never sanctioned state ownership of ice-islands and that the Soviet flyover of T-3 could hardly be seen as constituting a violation of sovereignty. And, even if such sovereignty could theoretically be established, the lack of any Canadian claim or action in that area meant that its position was not strong.[149]

By the summer of 1954 External Affair had undertaken a more thorough examination, described at the time as an "exhaustive study" of the sector theory and of

[147] "Russian Activities on the Canadian Side of the Pole," August 12, 1954, RG 25, vol. 1, file 50211-40.
[148] Extract from the 569th meeting of the Chiefs of Staff Committee, November 3, 1954, DHH, 2002/17.
[149] Memorandum, May 20, 1954, LAC, RG 25, vol. 4, file 9057-40.

floating ice-islands in the Arctic.[150] What External Affairs had sought to determine was whether international law might permit these ice-islands, or perhaps the waters of the Arctic Ocean more generally, to be brought under state sovereignty by means of occupation or, perhaps, reliance on the sector principle.

International legal opinion at the time on the subject was somewhat divided as to what should hold more weight, the fact that sea-ice is merely frozen water or its potential susceptibility to effective occupation.[151] As far back as 1909 René Waultrin had theorized that perfectly immobile ice could be appropriated in the same way as land.[152] T.W. Balch appeared to agree, writing that, while the continual motion of the ice near the poles would impede permanent occupation, genuinely immobile ice was still subject to lawful occupation.[153]

Russian writers were also, understandably, supportive of the theory of ice as land. Leonid Breitfuss had proposed an all-encompassing sector theory in 1928 in which the five Arctic powers would exercise authority over not just the land but also, to a certain degree that was still to be determined internationally, "upon waters covered with ice-fields."[154] His countryman, W. Lakhtine, noted that since immovable ice fields could be used for communication and transportation "ice formations that are more or less immovable should enjoy a legal status equivalent to polar territory" and that polar states should automatically acquire sovereignty over this ice within their "sectors of

[150] Memorandum, "Russian Activities on the Canadian Side of the Pole," August 12, 1954, DHH, 2002/17.
[151] For the most complete study on this subject see: Smith, *Ice-islands*.
[152] R. Waultrin, "Le problème de la Soverainté des Pôles," *Revue Générale de Droit International Public*, 16 (1909), pp. 655-656.
[153] T.W. Balch, "Les Regions Arctiques et Antarctiques et le Droit International," *Revue de Droit Internationale et de Legislation Compare* 2:11 (1910), pp. 434-435.
[154] L. Breitfuss, "Territorial Division of the Arctic," trans. M.B.A. and R.M. Anderson, *The Dalhousie Law Review* 8:4 (January, 1929), pp. 467.

attraction."[155] E.A. Korovin forwarded a similar opinion, suggesting that states should be able to include "ice blocks" within their sector as state territory.[156]

Writing in the 1930s, the Norwegian jurist Gustav Smedal, who had already explicitly rejected the sector principle, did however state that, since there were no natural boundaries between land fast ice and sea-ice when that ice extended over water, there would be occasions when a state could assimilate certain ice into the national domain.[157] By the late 1940s C.H.M. Waldock, a British jurist, had commented on polar ice generally in his comprehensive 1948 article "Disputed Sovereignty in the Falkland Island Dependencies." Waldock stated that, in his opinion, courts might very well recognize certain projections of ice into the ocean, especially since it often remains unclear how much land is actually under it.[158]

Yet the legal opinions on the subject remained fairly sparse and were based entirely on theoretical assumptions. Apart from the work by Russian jurists, most of the legal work had also revolved around the question of land-fast ice, with little serious consideration having been done by 1954 on the relatively new question of ice far out into the Arctic Ocean.[159] Those authors who had considered the question were, however, generally in agreement that traditional maritime law must include the Arctic Ocean as well.[160]

---

[155] W. Lakhtine, "Rights over the Arctic," *The American Journal of International Law* 24:4 (October, 1930), pp. 712.
[156] Ibid.
[157] Gustav Smedal, *Acquisition of Sovereignty over Polar Areas* (Oslo: Gyldendal, 1930), pp. 30-1.
[158] C.H,M. Waldock, "Disputed Sovereignty in the Falkland Island Dependencies," *The British Year Book of International Law* 25 (1948), pp. 318.
[159] Smith, *Ice-islands*, pp. 32.
[160] Gustav Smedal, *Acquisition of Sovereignty over Polar Area* (Oslo: I Kommisjon Hos Jacob Dybwad, 1931); C. Vallaux, "Droit et Prétentions Politiques sue les Régions Polaires," *Affaires Etrangères* 14:33 (1932), pp. 26; Timothy Taracouzio, *Soviets in the Arctic: A Historical, Economic and Political Study of the Soviet Advance into the Arctic* (New York: The Macmillan Co., 1938), pp. 359; T.E.M. McKitterick,

Most importantly, there had never been an actual precedent – a case of a state successfully claiming sovereignty over any sort of ice. And, while the United States and the Soviet Union were able to occupy certain ice areas, neither had ever expressed an interest in claiming sovereignty over them. The study carried out by External Affairs in 1954, entitled "The Sector Theory and Floating Ice-islands in the Arctic," therefore focused on the actions of other states and the continued utility of the sector theory. The final report arrived at two important conclusions. Firstly, the sector could not, by itself, be a sufficient legal root of title to any of the waters of the polar sector or even to the northern islands themselves. Secondly, it was concluded that international law had not recognized the right of a state to establish sovereignty over ice-islands through effective occupation, regardless as to whether they were floating or fixed.[161]

In large measure this conclusion was based on the work of the United Nation's International Law Commission. The commission had been established in 1949 and had quickly selected the law of the sea as a high priority. By 1951 it had provisionally adopted a number of draft articles on the continental shelf and other issues relevant to the rapidly evolving law of the sea issues. The UN General Assembly had never officially adopted the articles, however they enjoyed some international recognition as an important element in the ongoing efforts to solidify the law of the sea. The article on the continental shelf, which was especially pertinent to the question at hand, had given coastal states the right to maintain on their shelves installations necessary for the exploration and

---

"The Validity of Territorial and Other Claims in Polar Regions," *Journal of Comparative Legislation and International Law* 21:1, 3rd Series (1939), pp. 95; René Dollot, "Le Droit international des Espaces Polaires," *Recueil des Cours* 75 (1949), pp. 125; Oscar Svarlien, "The Legal Status of the Arctic," *American Society of International Law Proceedings* 52 (1958), pp. 142; Ivan L. Head, "Canadian Claims to Territorial Sovereignty in the Arctic Regions," *McGill Law School Journal* 9:3 (1962-63), pp. 200-226; M.W. Mouton, "The International Regime of the Polar Regions," *Recueil des Cours* 107:111 (1962), pp. 201. Sources from Pharand, "Freedom of the Seas in the Arctic Ocean," ft. 18.

[161] "The Sector Theory and Floating Ice-islands in the Arctic," August 30, 1954, DHH, 2002/17.

exploitation of natural resources. However it specifically stated that such installations, though under the jurisdiction of the coastal state, did not possess the status of islands. These facilities would not be sovereign territory but rather, would only be under the coastal state's jurisdiction for the purpose of maintaining order and of the civil and criminal competence of its courts.[162]

External Affairs thus concluded that the Soviet aircraft which had overflown T-3 had not violated Canadian airspace and that "the movement of an ice island with a Soviet scientific establishment into the Canadian sector of the Arctic would not entitle Canada to exercise jurisdiction over the island."[163] Instead of attempting to assert a legal title to these ice-islands it was therefore recommended that Canada attempt to exercise constant surveillance over them, perhaps even to set up Canadian stations on T-3 and, if necessary, to reaffirm the state's intentions of claiming sovereignty over any territories within the sector, whatever their nature, which *are capable of appropriation*, now or in the future [italics added]."[164]

Not only was it concluded that sovereignty could not be extended over ice-islands by right of occupation but that the water and ice of the polar sector could not be claimed on the basis of the sector theory. The utility of the principle had been questioned before of course. As recently as 1950 Vincent MacDonald's important *Report on Canadian Sovereignty in the Arctic* had concluded that the principle possessed a weak foundation in international law and offered a poor basis for Canadian claims to sovereignty over anything.[165] However, it was now definitely concluded that international law did not

[162] Ibid.
[163] Ibid.
[164] Ibid.
[165] Vincent C. MacDonald, "Canadian Sovereignty in the Arctic," 1950, LAC RG 25, vol. 4, file 9057-40.

recognize the right of any state to establish sovereignty over what was essentially "solidified portions of the high seas."[166]

Examining the history of the sector, External Affairs went further and decided that the principle had never actually been intended for use over the Arctic waters. Those broad proclamations of sovereignty, which had been made, had really only referred to the land. It was also concluded that certain measures, which might have been taken as evidence of a Canadian claim to the maritime realm, such as the 1925 game conservation legislation, were intended only as functional measures of control which did not purport to change the character of the high seas. Finally, it was decided that the likelihood of any foreign state recognizing Canadian claims to the polar sector were "most unlikely" and that therefore, any claims to sovereignty over portions of the polar seas, based on the sector principle, should be avoided.[167]

Despite this seemingly decisive conclusion, the sector principle was a difficult idea to shake loose. It had been denounced before 1954 and would be denounced as useless many times in the years to come, yet it consistently managed to maintain a beachhead in Canadian thinking. After clearly stating that the sector principle had outlived its usefulness, External Affairs chose to hedge its bets, reasoning that, in theory, it might still be of use to Canada at some undetermined point in future in a number of possible ways:

> (a) It is a clear indication of Canada's intention to exercise sovereignty over any territories susceptible of occupation north of the Canadian mainland between 60W and 141W. Our intention to act as sovereign in this regard has been demonstrated in official statements, maps, orders in council and other forms of state activity.

[166] "The Sector Theory and Floating Ice-Islands in the Arctic," August 30, 1954, DHH, 2002/17.
[167] Ibid.

> (b) By affording a convenient geographical area within which our intention to exercise sovereignty over territory is evident to all and the actual display of Canadian sovereignty increasing effective, the sector theory operates to give Canada the benefit of the rule that effective occupation need not be felt in every nook and cranny of the territories claimed.
>
> (c) If permanently fixed or floating ice masses are ever recognized as capable of appropriation, the sector principle would afford evidence of our intention to exercise sovereignty over any such ice masses within the Canadian sector.[168]

The retention of the sector principle, if only as a back-up, would continue to influence Canadian policy for decades to come. While consistently recognizing the weakness of the theory in law and international politics, Canadian decision makers proved psychologically incapable of surrendering it. Prior to the 1950s, the rationale for this attitude was simply that the sector offered one of the few methods of claiming lands, and potentially even waters, in the vast unoccupied Arctic region. By the mid to late 1950s however this was no longer the case. Canada had established what most jurists would have considered a reasonable standard of effective occupation over the lands. And, with regards to the waters, there had emerged a more legally justifiable means of claiming sovereignty. By this period the retention of the sector owed more to a mistaken belief that the principle might serve as a useful secondary or reserve element in Canadian policy or, more simply put, as a kind of supporting evidence to bolster some future Canadian claim. Unfortunately, this assumption was to prove fundamentally flawed and would serve only to continually undermine Canada's position over the next two decades.

***

The mid-1950s were destined to see a fundamental shift in Canadian Arctic policy. Yet, even as External Affairs and the military grappled with the question of ice-islands and the sector principle, the subject remained of decidedly secondary importance.

[168] Ibid.

As had been the case in the 1940s, the status of the Arctic lands, and the government's ability to exercise effective control over them, remained the issue of primary concern. By the early 1950s the issue had become all the more pressing.

By 1953 the Soviet Union had leapt forward in nuclear technology, detonating its first hydrogen bomb less than a year after the Americans. Coupled with the Soviet development of a faster and longer-ranged jet bomber, the possibility of a devastating attack against North America had moved from the realm of scaremongering to actual possibility.[169] Serious planning for a northern warning line to defend against such an attack originated in the United States through the work of a number of study groups funded by the US Department of Defence beginning in 1950.

By 1953, the East River Study Group, assigned the task of analyzing the problem of civil defence, had concluded that in nuclear war there was little point in trying to mitigate the effects of an attack; the only solution was to stop it outright. It was deemed "imperative that a system of air defence be devised that aimed at destroying substantially all of the airborne attackers prior to the time that they reach the United States. If this could not be achieved, civil defence would become unmanageable and largely futile."[170] This proposal was revolutionary since, historically, no air defence had ever reached anything more than a 25% kill rate in combat.[171] What was needed to achieve this total defence was a radar chain far enough north (at least 2,000 miles from the continental United States) which could provide Canadian and American air forces with defence-in-

[169] By 1954 the Soviet Air Force had deployed the Myasishchev Mya-4, a jet bomber capable of speeds almost twice that of its piston driven predecessors; J. Gellner, "The Military Task: Sovereignty and Security, Surveillance and Control in the Far North," *The Arctic in Question*, ed. E.J. Dosman (Toronto: Oxford University Press, 1976), pp. 86.
[170] Jockel, *No Boundaries*, pp. 63.
[171] Ibid.

depth and enough warning time to alert their defending fighter squadrons and launch the US Strategic Air Command's retaliatory bombers.[172]

In December 1954 construction began on the DEW Line, an integrated chain of sixty-three radar and communication centres stretching 3,000 miles from Western Alaska across the Canadian Arctic to Greenland.[173] Over 460,000 tons of equipment and supplies were shipped north from Canada and the United States, including enough gravel to build two copies of the Great Pyramid of Giza, and all of it put together in darkness, blizzards and sub-zero cold.[174] The sudden influx of American men and material brought on by the construction and manning of these installations had the potential to fundamentally upset Canadian control over what was essentially *terra nullius*, a vast expanse of sparsely populated and unguarded no-man's land. It was reasoned that a large and unilateral American construction project in the North would inevitably see the US military exercising effective control over the region. The Americans would administer it, guard it, observe it and even, given the local demographics, populate it. While Canada may have retained the legal title to the land, this assertion of *de facto* control by a foreign state would have fundamentally undercut the image and reality of Canadian sovereignty in the North. Concerns over the construction and manning of the DEW Line normally took priority over any other sovereignty issues. While this enormous undertaking had created a serious threat to Canadian sovereignty, or perhaps more accurately a serious perception of a threat, it ironically served to put to rest most of Canada's traditional sovereignty

[172] Ibid.
[173] Lynden T Harris, *The DEW Line Chronicles*, [online] http://www.lswilson.ca/dewhist-a.htm.
[174] Western Electric, *The DEW Line Story*, [online] http://www.bellsystemMemorandumrial.com/dewline.html.

concerns and move the issue of maritime sovereignty from its place as a secondary concern to a spot of some prominence on the policy agenda.

Before allowing American construction of the DEW Line to begin, the US government had been forced to agree to a long, detailed, and comprehensive set of conditions. These conditions were imposed to ensure that American activity recognized Canadian control over its Arctic. They covered every aspect of northern activity, from the application of Canadian law, the use of radio frequencies and customs procedures, to clauses concerning the provision of hunting licenses and the protection of both the local Inuit and the environment.[175] Canadian companies and workers had to be employed, Canadian electronics purchased, Canadian law adhered to, and Canadian land titles respected. In 1954, one State Department official complained: "They are pinning us down closely and squeezing every material advantage out of a project which contributes as much to their security as it does to ours but for which we are expected to pay. Their contribution is a bit of useless land and a small sacrifice of sovereignty."[176]

The fact was the American government had very little interest in challenging Canadian sovereignty in the North and, as had been the case in the 1940s, the advantages of challenging any Canadian terrestrial claims were far outweighed by the potential political repercussions. In May 1955 some of the records of American explorer Robert Peary were found by an American naval expedition in the Arctic. At the ceremony held to honour him, his daughter inquired of a State Department official as to the status of the claims her father had laid. The answer the official received from his superiors was telling,

[175] Lexium, Canada-American Treaties: Exchange of Notes between Canada and the United States of America Governing the Establishment of a Distant Early Warning System in Canadian Territory, (May 5, 1955), [online] http://www.lexum.umontreal.ca/ca_us/en/cts.1955.08.en.html.
[176] Letter from Dan C. Bliss to Outerbridge Hursey, June 24, 1954, NARA, RG 95, box 3554, decimal file 1950-54, 702.5.

he was informed that such claims could not be pursued, as "to do so might well prejudice projects, present and planned, in that region."[177]

American acceptance of Canadian law and control in these areas meant that Canada had won what the United States had always preferred to avoid, namely, an explicit recognition of Canada's title to the High Arctic.[178] By 1956 the State Department had been willing to admit, in an internal study at least, that Canada had been given exactly that recognition. State confessed that the issue was no longer any sort of pressing legal problem and that "implicit recognition by the United States of most known territories in the sector had been given on many occasions through official application by the United States government for authorisation to explore and carry out various projects at various points in the northern Archipelago."[179] Regardless of whether the DEW Line brought this recognition as R.S. Sutherland believes or merely emphasized what had been previously recognized, as has been asserted by David Bercuson, the acceptance by the United States of these conditions did provide Canada with the recognition it needed to alleviate much of the fear surrounding the status of its Arctic lands.[180] This increasing relief over the question of terrestrial sovereignty naturally allowed more attention to be paid to the status of the waters.

In the 1950s a significant evolution in international law had also taken place, one which would finally allow more serious consideration to be given to the question of

---

[177] Memorandum: Implication of Canada – United States Basic Security Plan, December 8, 1955, NARA, RG 59 lot file 69D302, file 1.1.
[178] R.J. Sutherland, "The Strategic Significance of the Canadian Arctic," ed. R. St. J. Macdonald, *The Arctic Frontier* (Toronto: University of Toronto Press, 1966), pp. 270-1.
[179] Memorandum, "Canadian Sovereignty in the Arctic," August 15, 1956, NARA, RG 59, entry 5298, box 1.
[180] David Bercuson, "Continental Defense and Arctic Sovereignty, 1945-50: Solving the Canadian Dilemma," *The Cold War and Defense*, eds. Keith Neilson and Ronald G. Haycock (New York: Praeger Publishers, 1990).

maritime sovereignty. This was the 1951 ruling by the International Court of Justice (ICJ) in the *Anglo-Norwegian Fisheries Case* (hereafter simply referred to as the *Fisheries Case*). Dating back to the early years of the seventeenth century, the kings of Denmark and Norway (depending on the government in control of the region) had protested against the activities of foreign fishermen in waters which that monarchy had considered to be Norwegian. This practice continued into the twentieth century and, by 1911, a British ship had even been seized for fishing in those 'internal' Norwegian waters. Diplomatic discussion came to nothing and, in 1935, a Norwegian decree officially delineated its territorial waters as a four mile belt to seaward of straight baselines. These baselines were lines drawn from headland to headland along the coast which enclosed the waters to landward as internal and under the full sovereignty of the state. By this action Norway closed a section of the sea which had formerly been regarded as high seas.

Great Britain, which had important fishing interests in the region, responded by seeking redress from the ICJ. Norway countered, seeking recognition of its baselines. The result was a Norwegian victory, by a judgement of ten to two. This victory legitimized that country's claim to the archipelagic fringe along its coast as historic internal waters and, most importantly, introduced an interesting new precedent into international law. Yet the precedent was not necessarily a perfect fit for Canada as both the geography and the history behind the Norwegian claim were very different than its own. The court had upheld Norway's claim based on the nature of the coast, the long history of implicit recognition by other states and the fact that these waters had long been regarded and treated as internal by Norway.[181] The case's wider applicability was uncertain, though it was obvious from the ruling that it was not specific to Norway. While the court did place

[181] Fisheries Case (United Kingdom v. Norway), 1951, *I.C.J. Reports*, 115.

heavy emphasis on the particular nature of the area's geography, it also stated that its judgement on the 'Norwegian system' was not an exceptional case but rather "the application of general international law to a specific case."[182]

By legitimizing the enclosing of indented coastlines and archipelagos in a fashion which had previously been reserved only for historic bays, the *Fisheries Case* had provided Canada with a potential, though still uncertain, vehicle for enclosing the waters within its own northern Archipelago. The Arctic Archipelago met the basic requirements at least. It was a group of islands which formed a single unit and an integral part of the coast. The Canadian ratio of water to land was higher than in the Norwegian example at 8.22:1; however in the opinion of legal expert Donat Pharand, was close enough and enhanced by the presence of permanent ice cover.[183] Canada could also prove an economic interest of long duration in the waters of the Archipelago through the activities of the local Inuit population, which had hunted on the ice since time immemorial. The history of state control was relatively sparse, however there had never been an overt challenge to, or rejection of, Canada's authority, nor would there be until the voyage of the SS *Manhattan* in 1969.

Yet, the decision to base Canadian sovereignty claims on straight baselines was a delicate task. Despite the *Fisheries* ruling, the legal validity of any potential Canadian claim was still a great unknown. As early as 1952 the Interdepartmental Committee on Territorial Waters had been advising the Privy Council Office that the ICJ decision's applicability remained "ambiguous."[184] The exact allowable length of baselines had not been laid out in 1951, however it was no small consideration that Norway's baselines

[182] Ibid, pp. 131.
[183] Donat Pharand, *Canada's Arctic Waters in International Law*, pp. 142-143.
[184] Memorandum for Head of Legal Division, 1952 [undated], LAC, RG 2, series 8, vol. 236, file T-30-1-C.

stretched from only a few hundred yards to a maximum of 44 miles while Canada's would need to be considerably longer.[185] A preliminary survey done for the Minister of Mines and Technical Surveys in 1956, placed the total baseline length at 2,902 miles, with the largest enclosed section being M'Clure Strait at 130 miles across.

The potential status of the Arctic waters as 'historic,' a factor which had played a crucial role in the Norwegian victory, also remained tenuous. Canada's history of exercising authority over the waters in question was certainly an area of concern. The Inuit had long used the ice for hunting and transportation, however these activities only reinforced the Canadian claim to the specific areas of Inuit activity, leaving out some of the waters further west and north. Canada could also point to a series of naval expeditions; for instance the expeditions of Captain J.E. Bernier, the Eastern Arctic Patrol and the work of the CCGS *Labrador*. Yet, more important was the active application of Canadian law to these waters. This had been accomplished to some extent by amending the *Fisheries Act* in 1906 and forcing whalers to obtain licenses to operate in Hudson Bay and the waters north of the 55th parallel.[186] Despite this, Canada's historic control remained limited to a relatively few examples and still covered only a small portion of the waters in question. As such, the government lacked the confidence that its case was strong enough to risk bringing before an international tribunal.

Of even greater concern that the strict legal applicability of applying baselines to the Arctic was the ever-present fear of an American challenge to such a claim. Throughout its history the United States has remained a steadfast proponent of the freedom of the seas. It had never accepted the sector principle as a basis for claiming

[185] Pharand, "Final Revisit," pp. 22.
[186] Canada, *Statutes of Canada*, 1906, 5 Edw. VII, c. 13.

sovereignty and was unlikely to abstain from objecting to any extended maritime boundary claims, even from a close friend and ally. Ultimately, it was this fear of rejection and the uncertainty over the strength of its case that prevented Ottawa from forwarding any direct claims in the 1950s.

However, behind the scenes at least, a coherent policy of sorts was at least starting to coalesce. This policy began with the 1954 recommendation from External Affairs to downplay the sector principle. Instead, it was decided by the mid-1950s to rely primarily upon baselines to claim the waters of the Arctic Archipelago. When precisely this decision was reached is still unknown as many crucial files from the period remain classified. However, this shift to straight baselines was to become clearly evident in the months and years following the government's 1954 policy review.

That year, the Department of Mines and Resources published a survey of Canada's territorial boundaries and, despite conspicuously drawing national boundary lines through the Arctic Ocean up to the North Pole, it made a point to indicate that these waters were not necessarily Canadian. Rather, the sector lines were described as "merely lines of allocation, which are delimited through the high seas or unexplored areas for the purpose of allocating lands without conveying sovereignty over the high seas"[187]

The next year the Minister of Resources and Development, Jean Lesage, and Gordon Robertson, the Deputy Minister of the newly formed Department of Northern Affairs and National Resources, were quizzed about the presence of another Soviet ice-island floating into the Canadian sector. In response, Robertson clearly stated that Canada had never made a claim to this region of the ocean and that it did not constitute Canadian

[187] Canada, Department of Mines and Technical Surveys, *The Boundaries of Canada, its Provinces and Territories* (Ottawa: Edmond Cloutier, 1954).

territory. He however did not rule out making a claim later on by stipulating that this ice-island was "not in any Canadian territory *to which there has been a formal claim* [italics added]."[188] Essentially, Robertson was saying that these waters were not necessarily Canadian now but that the government might choose to lay a claim later on.

Yet at that same meeting Lesage went even further than Robertson, stating that Canada definitely did not base its claim to the Arctic waters on the sector principle and had no formal claim over the Arctic Ocean.[189] When questioned by opposition member Douglas Harkness about what claims Canada did make, Lesage simply replied that the entire question was under review and serious study by an inter-departmental committee.[190]

The Interdepartmental Committee on Territorial Waters had indeed been studying the broader question of maritime jurisdiction since 1949. By 1952 it was working in conjunction with noted jurist and professor of law Dean Curtis, who External Affairs had commissioned to help survey Canadian options in light of the *Fisheries Case* and other developments in international law.[191] The focus of most of this work was on the Atlantic, yet some departments were already expressing an interest in the potential of drawing baselines around the Arctic Archipelago.[192]

By 1953 Curtis had likely begun to deal with the possibility of enclosing the Archipelago with straight baselines and, while the details of that study remain classified,

---

[188] Canada, House of Commons, Special Committee on Estimates Minutes of Proceedings and Evidence, March, 23 1955, no. 5.
[189] Mr. Robertson (Expert on territorial waters brought to the committee meeting by Mr. Lesage) speaking in: Canada, House of Commons, *Special Committee on Estimates Minutes of Proceedings and Evidence*, March 23,1955, no. 15, pp. 446.
[190] Ibid.
[191] Memorandum, "US Territorial Waters," July 13, 1954, LAC, RG 25, vol. 4286, file 10600-5-40.
[192] B.G. Sivertz to M.W. Cunningham, December 24, 1952 & Deputy Attorney General to Secretary to the Cabinet, December 23, 1952, LAC, RG 2 vol. 236, file T-30-1.

later records indicate that by 1955 he had reached the conclusion that the Norwegian precedent might very well be applicable to Canada.[193] In large measure this application depended on the nature of the two coastlines. While the Canadian and Norwegian examples were different in many respects, the complexity of the Arctic coastline – when taken as a whole and with allowances made for the differences of scale – made a favourable comparison with that part of the Norwegian coast, which had been considered by the ICJ very possible.[194]

By 1955 a Cabinet committee had also been formed to study the question of the Arctic in more detail.[195] This committee's recommendations to Cabinet were presented on February 28, 1956. They were extremely conservative and appear to have differed very little from the advice offered by the Interdepartmental Committee on Territorial Waters in 1950. Namely, it was suggested that the government continue to avoid any action on the issue.[196] Yet despite the cautious recommendations, the final Cabinet decision, taken on March 15, 1956, represented a significant evolution of the Canadian position. Cabinet had essentially settled on claiming as internal the waters within the Arctic Archipelago. This decision read:

> . . . the waters of the Archipelago are Canadian inland waters. For present purposes these might be taken as waters within a line starting at Resolution Island, southeast of Baffin Island, and running from headland to headland in a

[193] During the sixth meeting of the ACND it was mentioned that an undefined study was being undertaken on the question of the Arctic waters. From the records of the 54th meeting it is made clear that Curtis had reached his conclusions regarding the Arctic by 1955. This author has assumed that the study referred to in 1953 was the one being undertaken by Dean Curtis; Minutes of the sixth meeting of the ACND, February, 16 1953, LAC, RG 2-B-2, vol. 6183; Memorandum: "Canadian Sovereignty over Arctic Waters," in Minutes of the 54th meeting of the ACND, July 6, 1959, LAC, RG 2-B-2, vol. 6128

[194] Memorandum: "Canadian Sovereignty over Arctic Waters," in Minutes of the 54th meeting of the ACND, July 6, 1959, LAC, RG 2-B-2, vol. 6128

[195] Memorandum to Cabinet, March 2, 1956, LAC, RG 2, box 81, accession 1990-91/154, file T-30 1956.

[196] Ibid.

> rough triangle north to the top of Ellesmere Island and thence southwest to Banks Island and the Arctic coast of Canada.[197]

The decision to rely on straight baselines is clearly indicated by the description of a line 'running from headland to headland' and the fact that, by November 1956, the Department of Mines and Technical Surveys had drawn up a draft of what straight baselines around the Arctic Archipelago might look like.[198]

On August 3, 1956 in the House of Commons this new direction was indicated publicly for the first time. In an exchange with Conservative Members of Parliaments Alvin Hamilton and Douglas Harkness over the status of the Arctic Ocean, Mr. Lesage announced that his government had "never subscribed to the sector theory in application to the ice" and that "to our mind the sea, be it frozen or in its natural liquid state, is the sea; and our sovereignty exists over the land and over our territorial waters."[199] When Hamilton objected to this stance, Mr. Lesage simply replied:

> … do you believe that any country in the world would recognize our sovereignty over the air space above this water in its liquid or frozen form? … Other countries would never recognize our sovereignty over these high seas, be they in liquid or frozen form… That is the law. That is what the position of the Canadian Government has been all the time.[200]

He concluded with a rhetorical backhand, stating that he hoped his colleague too believed in the freedom of the seas.[201] This statement marked the most precise explanation of Canadian sovereignty yet offered in a public forum. Lesage had publicly and unmistakably renounced any Canadian claims based on the sector theory.

---

[197] This citation quotes heavily from the Cabinet decision. The original remains classified however, as does much of the surrounding material. Memorandum from Legal Division, July 12, 1968, LAC, RG 25, vol. 15729, file 25-4-1.
[198] Memorandum: Enclosure to Letter of November 16, 1956 for Minister of Mines and Technical Surveys, LAC, RG 25, vol. 11, file 9057-40.
[199] Canada, House of Commons, *Debates*, August 3, 1956, 22nd Parliament, 3rd session, pp. 6955.
[200] Ibid.
[201] Ibid.

This Cabinet decision remained an important guide to government policy in the years to come. Used (if occasionally inconsistently) by both Liberal and Conservative administrations, it was still being referred to by External Affairs as late as 1968.[202] The decision to rely upon baselines for the Archipelago was a solid and, relative to the sector claims at least, legally defensible position. In his article "A Fit of Absence of Mind," Jack Granatstein sees the statements of Lesage and the Liberals in 1956 as those of a confused government, unsure of its policy.[203] On the contrary, Lesage's statements to the House represented the first firm policy statement which Canada had ever annunciated on the subject. In his response to Hamilton, Lesage was not disavowing Canadian sovereignty over all the Arctic waters. A closer reading of his statement indicates that he was only disavowing the sector principle and any Canadian claims to the Arctic Ocean. Nowhere does he surrender any ground on Canadian ownership of the waters within the Archipelago.

Granatstein goes on to say that on April 6, 1957 Prime Minister St. Laurent "offhandedly took back the Arctic waters" in his comments to the House of Commons.[204] St. Laurent had told the House: "Oh yes, the Canadian government considers that these are Canadian territorial waters."[205] Yet, the Prime Minster was not taking anything back which had been given away. The waters under discussion at the time were those within the Archipelago, which the government had every intention of holding onto.

While the Cabinet decision of 1956 appeared at first glance to have marked the beginnings of a unified national policy it would be a mistake to describe these actions as

---

[202] J.A. Beesley to External Affairs Legal Division, July 12, 1968, LAC, RG 25, vol. 15729, file 25-4-1.
[203] J.L. Granatstein, "A Fit of Absence of Mind: Canada's National Interest in the North to 1968," *The Arctic in Question*, ed. E.J. Dosman (Toronto, 1976), pp. 27.
[204] Ibid, pp. 28.
[205] Canada, House of Commons, *Debates*, April 6, 1957, 22nd Parliament, 5th session, pp. 3187.

a complete and coherent policy. While many of the documents surrounding the decision remain classified, it is clear from later material that no firm decision was actually made at this time regarding the broader sector claim.[206] This is made abundantly clear by the fact that, only one month after the decision had been made on the archipelagic waters, the Deputy Minister of Northern Affairs and Natural Resources wrote the Under Secretary of State for External Affairs to tell him that he felt that committing Canada to a position on ice-islands at this time remained premature.[207] It was thus clearly indicated that a decision on committing Canada to the sector, either one way or another, had not yet been reached.

In effect, Cabinet had resolved Canada's position on only half of the issue, leaving the other half open to interpretation. Government policy regarding the waters of the Archipelago also appears to have been limited to a very general intention.[208] Whether the St. Laurent government intended to claim them as historic internal waters or rather to simply rely on the region's geographic qualities to draw baselines along the lines of the Norwegian precedent remains uncertain. What the government had established was therefore not a proper policy but rather half of an objective, or at best a half a statement of intent.

The Cabinet decision also appears to have lacked any concrete plan, designed to reach this objective. To be effective, policy cannot consist merely of intent but rather must contain an element of action. This is not to imply that steps to implement the policy must have been immediately taken but rather the intent to act would be required before this could have been considered actual policy and not simply a theoretical objective.

[206] Gregoire de Blois to Allan Beesley, April 5, 1968, LAC, RG 25, vol. 15729, file 35-4-1
[207] Report of RCAF Reconnaissance of Russian Activity at 78°23'N and 138°00'W," May 29, 1956, LAC, RG 25, vol. 1, file 50211-40.
[208] As the most important documents remain classified, this is inferred from the lack of a clear and consistent understanding of the issue found in government studies and statements from later years.

Canada simply lacked this plan. The Interdepartmental Committee on Territorial Waters had recommended that the government delay action on this issue and that recommendation was certainly followed. No records have yet been discovered, at any level of government, to indicate that a coherent and practical plan either existed, or was being formulated, meeting these objectives.[209] Devising such a plan was left for another time.

One month after the Cabinet had made its decision, the Privy Council Office did in fact circulate a letter to all government departments informing them of Canada's principled decision to "lay claim to sovereignty over the waters of these channels." It also instructed the bureaucracy to take no action nor make any public statements which might prejudice a future Canadian claim.[210] However this note, in essence, merely asked that bureaucrats not renounce Arctic sovereignty over the waters of the Archipelago, something that few would have thought of doing in any event. More important was that which was not stated. Government officials were not informed in detail of the rational for the Cabinet's decision, namely *why* these waters were Canadian.

Perhaps the most damaging aspect of this lack of concrete direction and the failure to settle the issue of the sector waters was that it prevented the harmonization of government departments and politicians behind a common understanding and course of action. This lack of a precise government policy line – of what exactly the Canadian government considered its Arctic sovereignty to consist of – was to lead to both unnecessary confusion and a general weakening of the Canadian claim.

[209] It must be born in mind that a great deal of documentation remains unavailable.
[210] Mr. Beesley to Mr. de Blois, April 5, 1968, LAC, RG 25, vol. 15729, file 25-4-1.

Because this Cabinet decision remained an internal decision, these instructions also did not govern the actions of opposition MPs or the actions of the opposition when it ceased to be the opposition. In June 1957 the Liberal government was replaced by John Diefenbaker's Conservatives. While the Conservatives had access to and must have been aware of the Liberal Cabinet decision, they seem to have paid it less attention or at least interpreted it differently. Unlike Lesage, who had clearly disavowed the sector principle and sought only to lay claim to the waters of the Archipelago, the Conservatives preferred to maintain the sector principle and sought a basis for sovereignty which included the sector waters – closer to what External Affairs had recommended in 1954.

This new Conservative approach was best exemplified five months after their election when, in response to a question on the subject of Arctic sovereignty and the status of the sector from the now opposition member Jean Lesage, Hamilton offered a more ambiguous picture of government policy. He stated that:

> … the Arctic Ocean north of the Archipelago is not open water nor has it the stable qualities of land… before making any decision regarding the status which Canada might wish to contend for this area, the government will consider every aspect of the question with due regard to the best interests of Canada and to international law.[211]

This however was not simply the opinion of Hamilton, nor was it an evasion made on the spur of the moment. This answer had been worked out in close consultation with the Departments of Northern Affairs and External Affairs and must have represented the dominant views within those departments.[212] R.G. Robertson, the Deputy Minister of Northern Affairs, noted that Hamilton's statement had been carefully crafted to accomplish two objectives:

---

[211] Canada, House of Commons, *Debates*, November 27, 1957, 23rd Parliament, 57th session, pp. 1559.
[212] R.G. Robertson to Minister, February 29, 1959, LAC, DNANR, vol. 4, file, S-99-2-11.

a) To make it clear that Canada had never asserted a positive claim to sea or ice.
b) To not specifically exclude a future claim to sea or ice if this should be thought desirable at some future time.[213]

Where this split in approaches to sovereignty, between the Lesage and Hamilton schools of thought, arose is difficult to pinpoint. From his statements while in the opposition it is exceedingly clear that Hamilton preferred the retention of the sector principle, yet it would seem odd that both External Affairs and Northern Affairs would have both supported Lesage's statements in 1956 and then seek to ensure the preservation of the sector in 1957.[214] This is especially the case as there had been very little turnover at the highest levels in these two departments over that period. It is more likely that these two important departments had never supported the public renunciation of the sector and that Lesage's statements were merely his own interpretation of the government's decision and did not represent any agreed upon principles which enjoyed the support of the government as a whole. With this in mind it is important to note the differences in the approaches taken by Lesage and Robertson in 1955. While Lesage had been willing to rule out any future claim to the waters of the sector, Robertson had not.[215] It is therefore Hamilton's views of sovereignty, backed by Robertson, rather than Lesage's, which appears to have held broader support within the most relevant departments of the government bureaucracy. This confusion was the legacy of the Cabinet's failure to settle the issue of the sector in 1956 as ministers and bureaucrats began to interpret the government's position differently.

---

[213] Ibid.
[214] For the best example of Mr. Hamilton's opinions on the sector see his exchange with Mr. Lesage in 1956: Canada, House of Commons, *Debates*, August 3, 1956, 22nd Parliament, 56th session, pp. 6957.
[215] Canada, Parliament, House of Commons, *Special Committee on Estimates Minutes of Proceedings and Evidence*, March 23, 1955, no. 15, pp. 446.

The Diefenbaker era saw the return of the sector to public pronouncements and, with it, a thorough confusion of the issue. Of course it had been recognized as early as 1954 that the sector principle was not a viable means of claiming maritime sovereignty and, as such, it was supposed to be held in reserve. While that appears to have been what Hamilton was seeking to accomplish in 1957, statements after that point seem to have put an increasing degree of importance on the theory. By June of 1958 Hamilton was telling the Standing Committee on Mines, Forests and Waters that "the area to the north of Canada, including the islands and waters between the islands *and areas beyond*, are looked upon as our own and there is no doubt in the mind of this government, nor do I think in the minds of former governments of Canada, that this is national terrain [italics added]."[216] While the sector theory is not specifically mentioned, Hamilton's reference to 'areas beyond' heavily implies its application.

That August Hamilton went further. In a speech to the House of Commons he stated his opinion that the ice fields of the Canadian sector fell within the realm of Canadian sovereignty.[217] While admitting that few countries would recognize such a claim, the Minister suggested that the time might be right to seek an international agreement to establish Canada's rights to the polar ice. Nothing came of this suggestion, though it was followed by a call for an increased emphasis on 'effective occupation' to maintain Canada's claims to sovereignty within its sector. [218]

How sovereignty could realistically be exercised over the vast and frozen Arctic Ocean remains difficult to imagine, and indeed Hamilton could merely have been

[216] Canada, Parliament, House of Commons Standing Committee on Mines, Forests, and Waters, *Minutes of Proceedings and Evidence*, June 10, 1958, no. 3-6, pp. 217.
[217] Canada, House of Commons, *Debates*, August 14, 1958, 24th Parliament, 1st session, pp. 3513.
[218] Ibid.

implying a need for more attention to be paid to the Arctic lands.[219] Yet, two days later the Prime Minister told the House of Commons that: "… everything that could possibly be done should be done to assure that our sovereignty to the North Pole be asserted, and continually asserted, by Canada."[220] Again, this statement was vague and did not necessarily imply a claim to the waters of the Arctic sector. Diefenbaker was in the process of answering a question about the DEW Line and he could have been referring only to the *lands* up to the Pole. Yet, it was well known by that point that there was no land anywhere near the Pole and it could easily have been assumed that the Prime Minister and his Minister of Northern Affairs and National Resources were therefore referring to the frozen ice of the Arctic Ocean. Regardless of their specific intention, the effect of these statements by Conservative ministers was to not only bring the sector principle back into fashion but to establish it as a primary – if not the primary – vehicle by which the government sought to define its Arctic claims.

It is clear that this new Conservative approach did not represent any sort of coherent or official policy. Indeed, it is instructive to note that only ten days after the Prime Minister's statement Jules Léger, the Under-Secretary of State for External Affairs, wrote to R.G. Robertson to suggest a complete review of Canadian policy, so confusing had the situation become.[221] But it was that confusion which was perhaps the most important legacy of the early Diefenbaker years. What truly mattered was the effect these pronouncements had had on the clarity and consistency of the Canadian claim. In the space of two years the Conservative government appeared to have supported maritime

[219] The idea of effective occupation had become an important one in how the Conservatives sought to strengthen Canada's Arctic sovereignty. This was likely a reaction to the large American presence in the region surrounding the construction and manning of the DEW Line.
[220] Canada, *House of Commons Debates*, August 16, 1958, vol. 4, pp. 3652.
[221] Letter from Leger to Robertson, August 26, 1958, LAC, RG 25, vol. 7, file 9057-40.

sovereignty through both the sector theory and through effective occupation – however that might have been accomplished. The fact that the government only *appeared* to make these claims was also important. What was being claimed and why were both questions left unanswered, shrouded behind empty and inconsistent nationalism and bombast. If Canada was to successfully establish a claim to the waters which St. Laurent had marked out as his government's ultimate objective, precision and consistency were of the utmost importance. As the American geographer Isaiah Bowman once said, a boundary line "has to be here, not hereabouts."[222]

While the St. Laurent government drew that line and kept it to itself, the Diefenbaker government did even worse, it blurred it. In the mid-1950s the legal basis for the use of straight baselines remained the precedent set by the *Fisheries Case*. As Dean Curtis noted in his earlier study, the geography of a coast was important in considering whether or not baselines could withstand legal scrutiny and Canada seemed to compare favourably to Norway.[223] Yet, where the Norwegian case differed radically from any potential Canadian assertion was in the longevity and precision of its claims. The ICJ had recognized the Norwegian baselines in large part because it considered them a mere delineation of waters which Norway had always considered historic and which foreign states had implicitly accepted as such.

In order to build the kind of precedent that Norway had established by 1951 a state's claims could not be kept secret. According to Donat Pharand, while a formal announcement of sovereignty on the part of a claimant state, though helpful, may not necessarily be required, what was required however was a level of notoriety which would

[222] Gordon Smith, "Sovereignty in the North: The Canadian Aspect of an International Problem," pp. 225.
[223] Much of the work on the subject of territorial waters from this period remains classified, from what is declassified however this statement holds true.

make it impossible, or at least highly unlikely, for any party to be ignorant of a claimant state's intentions.[224] Without this notoriety, it would be difficult to prove that any state had tacitly acquiesced to a claim, a critical point since such acquiescence forms one of the most essential criteria of any claim to historic waters.

This issue of notoriety was certainly an important factor in the *Fisheries* ruling. In deciding for the Norwegians, the ICJ had cited the fact that Norway had been able to prove that it had applied the same system of delimitation consistently and without interruption for some 80 years prior to 1951.[225] The ICJ had ruled that "in the light of these considerations, and in the absence of convincing evidence to the contrary, the Court is bound to hold that the Norwegian authorities applied their system of delimitation consistently and uninterruptedly from 1869 until the time when the dispute arose."[226] The verdict was not unanimous however and the dissenting judges stated that a major flaw in the Norwegian case was its *lack* of precision. In the opinion of Judge Hus Mo, the Norwegians had not adequately defined the space which they considered to be under their control,[227] nor – according to Judges McNair and Reid – had they adequately advertised that information.[228] This argument was rejected by majority of the court which still ruled that the United Kingdom could not have been ignorant of the Norwegian decree of 1869 which had immediately elicited a request for an explanation by the French government. Nor, knowing of it, could the British have been under any misapprehension as to the significance of its terms.[229]

[224] Pharand, *The Law of the Sea of the Arctic,* pp. 108.
[225] *I.C.J. Reports* (1951), pp. 138.
[226] Ibid.
[227] Ibid, pp. 157.
[228] Ibid, pp. 180, 201.
[229] Ibid, pp.139.

Despite these shortcomings, the uncertainty of the Canadian position stands in stark contrast to the consistency and specificity of the Norwegian claims. If, as Judge Mo stated, "precision is vital to any prescriptive claim to areas of water which might otherwise be high seas," any ambiguity and inconsistency on the part of the Canadian government, could only retard the solidification of its sovereignty. A review of American Embassy and State Department documents from this period clearly shows just how confusing Canadian statements had become to foreign governments during this period. The effect of this ambiguity was to keep the Americans – the most interested and therefore important foreign party – completely in the dark as to what exactly Canada's Arctic sovereignty claims might consist of.

It is easy to understand why the nature of Canadian Arctic sovereignty was of such interest to the American State Department and military. With so much money being invested in defence projects across the region, understanding Canadian claims was seen as essential to the smooth and efficient running of America's northern operations. As early as 1954 the American Embassy was reporting to Washington that the Canadian position seemed confused. Gordon Robertson may have contributed to this impression by telling the American Embassy outright that Canada had not yet settled the issue of maritime sovereignty in either the sector or, more importantly, within the Arctic Archipelago. The Americans were told that a minority within the Canadian Cabinet still wanted to claim the waters of the sector, however the Prime Minister was in opposition to such a stance. The conclusion drawn from this report was that Canadian claims had been

limited by the reality of international politics and law and what precisely it was that Ottawa claimed "has not been made plain."[230]

The next year the US Embassy in Ottawa had noticed that Canada's claims to the water and ice of the polar sector seemed to be fading. Canadian rhetoric had noticeably diminished since St. Laurent had called for an occupation of the Arctic "right up to the pole" in 1953[231] and the Americans assumed that Canada was becoming increasingly afraid of confronting the Russians over the issue of ice-islands.[232] The assessment was perceptive as External Affairs was indeed undergoing a review of the subject at the time and was seeking to limit Canadian claims to the region. The motivation assumed by the Americans was incorrect; it was not fear of the Russians but rather a careful examination of the political and legal possibilities of asserting a claim which had tempered the Canadian desire to pursue the broader sector principle.

Up to this point any confusing signals coming out of Ottawa could be attributed to the fact that External Affairs and the Cabinet had still not settled on what Canadian sovereignty should actually consist of. By 1955 however, the principled decision to ignore, or at least defer, any claims to the sector had been made. This had been annunciated by the 1954 policy review on ice-islands as well as by Jean Lesage, who informed a government committee of that fact in March.[233] Yet, while the government's objectives had crystalized somewhat, this clarification was not made publicly apparent. The State Department was still getting confusing reports from its Ottawa diplomats, who

---

[230] Jean E. Tartter, Third Secretary of the US Embassy, Ottawa to the Department of State, March 10, 1955, NARA, RG 84, entry UD 2195C, box 26.
[231] Canada, House of Commons, *Debates*, December 8, 1953, 22nd Parliament, 1st session, pp. 700.
[232] Jean R. Tartter to the State Department, May 3, 1955, NARA, RG 59, General Records of the Department of State 1955-1959, Central Decimal File,703.022, box 2777.
[233] Canada, Parliament, House of Commons, Special Committee on Estimates Minutes of Proceedings, and Evidence, March 23, 1955, no. 5.

admitted that they were unsure as to what the Canadians actually intended to do with the North.[234] By 1956 however the situation had grown worse. Rather than simply being unsure as to what Canadian policy was, the Americans began to gain an incorrect view of what Ottawa intended.

In August 1956, when the government began to openly disavow the sector principle the State Department interpreted this as a disavowal of *any* 'excessive' maritime claims in the Arctic. In an embassy dispatch of August14 it was indicated that, while there were still some "contradictory opinions on the subject among Canadians," the most recent indications were that Canada did not claim jurisdiction over the polar ice beyond the recognized territorial limits of the individual Arctic islands.[235] This belief came from a misinterpretation of Jean Lesage's statement of August 3 to the House of Commons, when he had told Parliament that the government had "never subscribed to the sector theory in application to the ice" and that "…to our mind the sea, be it frozen or in its natural liquid state, is the sea; and our sovereignty exists over the land and over our territorial waters."[236]

As explained earlier, this statement was intended to reject only the sector theory while maintaining a Canadian claim to the waters of the Arctic Archipelago. Yet, by stating that Canadian sovereignty extended only to its "territorial waters," without explaining what Canada considered to be 'territorial,' the American diplomats could be excused for interpreting this as a renunciation of any claim beyond the internationally recognized three mile limit. This misperception continued at least into 1957. In August of

[234] US Embassy, Ottawa to The Department of State, March 10, 1955, NARA, RG 59, General Records of the Department of State 1955-1959, Central Decimal File,703.022, box 2777.
[235] US Embassy, Ottawa to the State Department, August 14, 1956, NARA, RG 84, Entry UD 2195C, box 26.
[236] Canada, House of Commons, *Debates*, August 3, 1956, 22nd Parliament, 3rd session, pp. 6955.

that year Gordon Robertson had a meeting with US Embassy official Adolph Dubs; Dubbs cited Lesage's recent renunciation of the sector principle and asked Robertson if this was in fact Canadian policy. Robertson indicated that it was but added the proviso that there remained many questions involving the territorial seas and polar ice which remained unresolved and under close examination and that, in fact, no firm position had yet been taken. Importantly, Dubbs reported back that Robertson had raised the subject of the Northwest Passage in their conversation and implied that Ottawa was still uncertain as to its position in those waters as well.[237] This appeared to have confirmed the State Department's understanding of the situation, that the Canadian government was content with sovereignty over its three mile territorial sea, which existed around each individual Arctic island and not around the Archipelago as a whole.[238]

That the Americans could be so mistaken about Canadian intentions demonstrates not inattentiveness on their part but rather a complete failure of communication on the part of the Canadian government. This unwillingness and inability to outline, maintain and communicate a consistent policy extended to statements to the general public as well and was not always the fault of Conservative ministers. Only four months after the April Cabinet meeting, Lester Pearson, then Secretary of State for External Affairs, was asked in an interview if he felt that the *Fisheries Case* decision might affect Canada's Arctic sovereignty. Despite the fact that the Curtis report had suggested that it would and despite knowledge that the government had indeed hoped to eventually establish baselines

[237] Memorandum of conversation, August 23, 1957, NARA, RG 84, entry UD 2195C, box 46.
[238] From Political Section, State Department to the US Ambassador, Canada, August 16, 1957, NARA, RG 84, entry UD2195C, box 50.

around the region, he told the reporter that he did not think so, since the baselines in the Canadian North would be too long to qualify.[239]

Why Pearson would have made such a statement is unclear. He had always been one of the government's strongest proponents of the sector theory, however, by the time of this interview External Affairs had already recommended that the sector be downplayed. By stating that straight baselines could not be applied to the Arctic, Pearson was only confusing the issue, not to mention passing up an opportunity to begin acclimatizing people to the idea of straight baselines being applied. This interview had likely been in response to another article, published 13 days earlier in the *Globe and Mail*. That story had made the assertion that Canada was soon going to claim a number of important bodies of water as internal, from the Gulf of St. Lawrence and Hectate Strait to the waters of the Arctic Archipelago.[240] In response to the inevitable calls for confirmation or denial, Pearson simply stated that the article was inaccurate and it was not yet decided "whether we will put this [claim] forward or not at this time."[241]

This statement that Canada had not yet decided to make such claims was of course true. However to announce it publicly, without adding that the government did of course consider these waters to be Canadian, might easily have conferred the impression that Canada was either indifferent or uncertain about its claims to the waters of the Archipelago – which of course it was not. These responses were being carefully followed by American diplomats and being dutifully passed on to Washington, merely confirming in the minds of State Department officials that Canada either had no intention of making

[239] Excerpt from unofficial transcript of press conference, August 30, 1956, NARA, RG 84, entry UD2195C, box 50.
[240] Dave McIntosh, "Canada will ask UN for 12-mile limits," *Globe and Mail* (August 17, 1956).
[241] Milton C. Rewinkel to the Department of State, September 7, 1956, NARA, RG 59, General Records of the Department of State, 1955-1959, Central Decimal File, 742.022, box 3215.

a claim or was so uncertain as to what that claim might be that it could not even be publicly suggested.

The secrecy which surrounded Canadian policy was not entirely unjustified. Historians Whitney Lackenbauer and Peter Kikkert make the most compelling defence of the government's policy of maintaining their level of discretion for, as they point out, the dangers of openly declaring sovereignty were serious.[242] Any explicit foreign rejection of a Canadian claim would seriously weaken the Canadian case, both legally and politically. There existed the very real chance that any straight baselines could be rejected by the United States, or another nation, and brought before international arbitration – as Great Britain had done with Norway in 1951. External Affairs recognized that the Canadian claim may not have been strong enough to survive scrutiny by an international legal tribunal or even intense political pressure from the United States. This level of confidence was demonstrated rather well by the Undersecretary of State for External Affairs, Marcel Cadieux when, in 1959, he suggested that the descriptor "good" should be removed from an important memorandum assesing the strength of Canada's legal case.[243]

Yet to have ruled out a direct claim, as Canada had, is not to say that the country's position could not still have been made known. Perhaps the inability to find a middle ground between an outright announcement of sovereignty and the confused ambiguity which actually prevailed should be considered a failure. Such a policy of consistently, if not officially or aggressively stating Canada's claims, could easily have existed between these extremes. This would have publicly established the Canadian position while

[242] Whitney Lackenbauer and Pete Kikkert "Sovereignty and Security: The Department of External Affairs, the United States, and Arctic Sovereignty, 1945-68."
[243] Minutes of the 52nd Meeting of the ACND, April 20, 1959, LAC, RG 24, vol. 8101, file NSS-1280-39.

beginning the all-important process of setting a precedent, and without doing too much to risk a politically unacceptable backlash.

It is not hindsight to suggest that it would have been simple to have maintained or even discreetly annunciated a uniform policy line which could have avoided the confusion and ambiguity which filled the policy vacuum of the time. This would have entailed little more than settling the issue of both the archipelagic and the sector waters and then coordinating statements on sovereignty to ensure that any politician or bureaucrat toed the government line. Following an official line on any given issue is not a difficult prospect for most politicians, indeed it is normally a strength. The failure of Canadian governments in the 1950s lay in their inability to crystalize and unify the thinking within the political and the bureaucratic spheres and to maintain a rational and coherent bipartisan policy line. The seemingly coherent and reasonable approach which Cabinet had arrived upon in 1956 was simply incomplete and therefore too open to interpretation and re-interpretation. This was certainly the case with the Diefenbaker government and even in some cases within the St. Laurent Liberals.

Such a discreet but consistent policy of communication would have been unlikely to have raised protests from the United States and could have been pushed with minimal political risk. Indeed, it was not until the early 1970s that such coordination was finally established and government officials began to discuss Canada's claims publicly and in a consistent manner. Such statements were never phrased as new claims but rather as reminders of what the government considered to be an existing claim of long duration.[244] This harmonization of Canadian statements also happened to take place during a period

[244] See for instance Mitchell Sharp's statement to the House of Commons: Canada, House of Commons, *Debates*, April 16, 1970, 28th Parliament, 2nd session, pp. 5953; or the statement by the Department of Justice: Statement for the Bureau of Legal Affairs (Ottawa: Queen's Printers, December 1973).

in which Canadian-American relations over maritime issues were far more acrimonious than they were in 1950s.

Indeed, during the mid to late 1950s, while the United States was still vitally concerned with the construction and smooth operation of the DEW Line and its other northern defence facilities it would have been out of character for the State Department to have considered it necessary to protest if and when a Canadian politician made a casual reference to the Northwest Passage as being Canadian waters, indeed there were no such protests to any of the assorted claims thrown about throughout the 1950s and it would seem unlikely that consistency would have produced the much feared American challenge.

Chapter 3

Don't Ask, Don't Tell
Regulating American Activity in the Arctic

Throughout the 1950s, Canada's political and military leadership found itself in a difficult position. It had become clear by the early Cold War years that the Arctic was destined to become a region of significant strategic importance. This meant a far larger and, even more importantly, a more sustained military presence would be required for continental defence. It was equally clear that Canada lacked the financial and military resources to undertake this activity by itself. The only practical solution was cooperation with – and in some sense reliance on – the United States. On the surface this cooperation, and the American presence in the North which it would necessarily entail, presented no obvious problems. The two nations were close allies and their militaries had just spent four years fighting side by side against Nazi Germany. During the war there had been tens of thousands of American civilians and servicemen stationed in Canada. The immediate post-war years had also seen some of these Americans remain to help operate joint weather and navigation stations. Yet wartime cooperation was, by definition, temporary while the immediate post-war projects had been relatively insignificant. The danger presented by the developing Cold War was that large and semi-permanent American defence projects in the region would highlight Canada's limited control and call into question the country's *de facto* sovereignty.

The problem was therefore how to handle the growing American activity in the region while protecting Canadian sovereignty and without openly claiming or demanding American recognition of Canadian sovereignty. That last point was certainly the crux of

the predicament. Recognizing that the Canadian claim to the Arctic was not unchallengeable, External Affairs realized very early on that asking the American government outright to recognize Canada's claims to either land or water was a serious risk.

Canada could have attempted to limit American access to the Arctic, thus endangering defence projects which the US considered vital. However, the dangers of that approach were clear. Firstly, it was recognized that those projects were as much in Canada's security interest as they were in America's and secondly, there was no guarantee that the United States would comply. External Affairs was alive to the possibility that any attempt by Canada to restrict American access to the Arctic might only make the situation worse; a 1946 note from within External Affairs makes this point very clearly:

> If we refuse cooperation with the U.S. in establishing posts they attach a high degree of importance to, they may seek to obtain their ends eventually by claiming sovereignty themselves and treating some of the islands – especially those far from police and trading posts and not covered by Canadian patrols – as their own territory by right of occupation.[245]

Excluding the Americans from the Arctic was thus an unacceptable option, from both a political and a national security standpoint. Yet so too was seeking American acceptance of Canadian sovereignty over either the lands or the waters. Since External Affairs understood that any overt American rejection would have been legally and politically devastating for a Canadian claim. The government had not been prepared to take that risk when Pearson had suggested it in 1946 and that would remain unchanged throughout the 1950s. In response, what emerged in the immediate post-war years and continued on

[245] Note for Mr. Heeney, June 4, 1946, LAC, RG 25 vol. 3347, file 7598-40C.

throughout the 1950s and 1960s, particularly with reference to the Arctic waters, was a practical and functional relationship.

This approach contained two important elements. The first of which is best described as a policy of gradual acquisition. Gradual acquisition was essentially the belief that time served as a Canadian ally as it worked to gradually strengthen the country's control over the Arctic. In international law this might be described as prescriptive sovereignty – the acquisition of sovereignty by a long period of uninterrupted and unchallenged possession. This general approach was not new to the Cold War period and can actually be traced back in Canadian policy to the early twentieth century. In the fall of 1903, for instance, Prime Minister Wilfred Laurier had explained his approach to Arctic sovereignty to Senator William Edwards in very gradualist terms. Laurier believed that Canada must "quietly assume jurisdiction in all directions," with police posts along with "a cruiser to patrol the waters and plant our flag at every point." Only when "we have covered the whole ground and have men stationed everywhere" would he consider a proclamation declaring sovereignty.[246]

By the 1950s this approach was still being practiced. In February 1954 the Legal Division of External Affairs laid out its policy in exactly these terms:

> Canadian sovereignty over Arctic areas only remains to be perfected by the continuous and actual exercise of state activity in this region. In time, it will be sufficient to confer an absolute title in international law … From our point of view, it would seem desirable and advisable to rely on this peaceful and effective method of perfecting our claim to sovereignty over the whole of our Arctic region.[247]

[246] Grant, *Polar Imperative*, pp. 204.
[247] Legal Division to Acting Undersecretary, External Affairs, February 23, 1954, LAC, RG 25, file 9057-40, pt. 4.

While this report was speaking specifically about Canadian claims to the Arctic Islands it was a prefect reflection of the department's approach to the question of the waters as well.

As such, Canada consistently sought to both avoid confrontation while exercising as much control and authority over American actions in the Arctic waters as was possible. Coupled with an ever increasing degree of Canadian activity in the region, it was hoped and assumed that, through this approach, sovereignty would gradually accrue to the Canadian government as a kind of *fait accompli*. This was never an official policy in the strictest sense of the word. It was more a mindset than a defined plan of action, yet it dominated government thinking and served as the framework through which Canadian governments handled American activities in the Arctic waters for decades.

Naturally, an important part of this process was avoiding any American rejection of Canadian sovereignty. Sidestepping any confrontation, on an issue where both nations clearly held opposing views, was the second part of the Canadian approach. This policy can be best described as on of 'don't ask, don't tell.' This arrangement, called a "*modus vivendi*" by the ACND in 1969, was described as a way of allowing "each country [to maintain] its position while refraining from asserting it in such a manner as to embarrass the other publicly."[248] From 1945 up until 1963, the Canadian government consciously chose to avoid asking their American counterparts for an explicit recognition of any Canadian maritime claims in the Arctic. The Americans, for their part, obliged the Canadians by simply avoiding the issue. The Americans never asked Canada what exactly its sovereignty consisted of and Canada never told.

[248] Memorandum for Cabinet, March 20, 1969, LAC, RG 12, vol. 5561, file 8100-15-4-2, pt. 1.

Ultimately, this framework enjoyed great success throughout the early Cold War because it worked in both American and Canadian interests. For their part, the Canadian government was able to avoid pressing the sensitive issue and therefore avoid any potential damage to its claim which might result from an American rejection. For the United States, this approach allowed it to proceed with the construction of its continental defence projects while avoiding much of the political drama which would have certainly accompanied a battle with Canadian authorities over the status of the Arctic lands or waters. A 1954 US Embassy report to the State Department conveys that attitude very well:

> Although the US had not recognized these claims [to the Arctic waters] it has also refrained from challenging them. In view of our primary objective of gaining and maintaining Canadian support for our hemispheric defense projects – which extend in the Arctic – and of Canadian sensitivities with respect to that region… we doubt that it would be appropriate to urge upon the Canadians a policy which would, in effect, diminish whatever validity their claims to Arctic waters may have."[249]

Avoiding the issue also exempted the State Department from making a very uncomfortable choice of its own. While challenging Canadian maritime claims in the region might have caused a catastrophic political fallout with a vital ally, recognizing them would have been in direct conflict with the long established American position on the freedom of the sea. Ironically, Washington found itself in as difficult and sensitive a position as Canada. By not asking the United States to recognize its Arctic sovereignty, the Canadian government was therefore allowing the Americans to avoid their own set of uncomfortable choices.

[249] Ernest de W. Mayer, Counselor of Embassy to William C. Herrington, Department of State, August 11, 1954, NARA, RG 84, entry UD 2195C, box 8.

This sort of practice had been common in the American naval operations of the late 1940s and the scientific expeditions to the Beaufort Sea which had begun in the early 1950s. However the increased volume of Arctic traffic seen in the mid-1950s made avoiding the touchy subject all the more important. The best example of this system in action involved the maritime elements of the DEW Line's construction. This project was the largest northern defence undertaking of the Cold War and during its construction from 1955 to 1958 the United States sent out two major convoys to the eastern and western sections of the line each year. In addition to the resupply efforts, there were hydrographic surveys to be completed, support operations, beach surveys and airstrip construction. Most of the work was done by US Navy's amphibious forces, with American contractors doing the onsite construction. Major support operations were carried out in 1956 and again in 1957, though the largest effort had been made during the initial push in 1955. During the summer of 1955, more than 100 ships were working in Arctic waters, including three American Coast Guard icebreakers.[250]

These activities were closely monitored by the Canadian government and the sealift regulations were made as stringent as those governing the DEW Line sites themselves. They governed the treatment of wildlife, pollution and marine discharge, limited American interaction with the local Inuit, prohibited hunting by ships' crews and even regulated the carrying of firearms. A ship's course was monitored and approved by Ottawa and deviations drew protest from External Affairs. Yet despite all this activity and regulation, at no point was the issue of maritime boundaries or the issue of jurisdiction ever actually clarified.

[250] US Navy Electronics Laboratory, *The Sourcebook on Submarine Arctic Operations*, April 27, 1966, Naval History and Heritage Archive (hereafter, NHH), Waldo K. Lyon Papers.

The elegance of this arrangement was that it allowed both Canada and the United States to interpret the situation in the manner most convenient to them. For Canada, this control over American shipping was taken as an implicit recognition of Canadian sovereignty. At the very least it was assumed to represent the success of gradual acquisition. As time passed without an American protest, and with an ever increasing precedent of American adherence to Canadian regulations, time appeared to be on Canada's side. Whether the United States officially recognized Canadian sovereignty or not was less important than whether they acted as though they did. In 1957, in a speech to the House of Commons, Prime Minister St. Laurent highlighted what he considered America's implicit acceptance of Canadian sovereignty. For each resupply voyage into the Arctic the US Navy had been required to apply for a waiver from the provisions of the *Canada Shipping Act*. Using these waivers as evidence, St. Laurent told the House that it was uncertain "whether we can interpret the fact that they did comply with our requirements that they obtain a waiver . . . as an admission that these are territorial waters, but if they were not territorial waters there would be no point in asking for a waiver."[251] This was a succinct representation of the Canadian position. By avoiding conflict while winning this sort of implicit recognition Canada would build an important precedent which could be of use further down the road.

In Washington however, these same regulations and requirements were interpreted entirely differently. While the US Navy consistently requested permission before sending vessels into the Arctic, even using the term "Canadian territorial waters,"

[251] Canada, House of Commons, *Debates*, 6 April 1957, 22nd Parliament, 5th session, pp. 3186.

their interpretation of the situation was very different.[252] In requesting permission to enter Canadian 'territorial waters' the American government could (and did) argue that it was referring only to the three mile strip around the Canadian mainland and the Arctic Islands. Since every American expedition passed within these boundaries at some point, Washington could interpret these requests and regulations as applying only to Canada's internationally recognized territorial seas, and not to operations in the Arctic as a whole. In 1955 for instance, Jean E. Tartter, the Third Secretary of the US Embassy in Ottawa, wrote to the State Department to inform them that, despite what Canada may have believed, the United States had never actually acknowledged any possible Canadian claim to polar ice by obtaining clearance for vessels proceeding more than three miles from land areas in the Arctic Archipelago. Citing the standard clearance given in the 1954 Beaufort Sea Expedition he wrote: "but this was only to travel in Canadian territorial waters *without specifying what these might be* [italics added]."[253]

The waivers which the United States faithfully applied for in order to resupply the DEW Line were similarly seen in a very different light. While St. Laurent interpreted these requests in the broadest possible sense, the US Navy saw only the letter of the agreement. In this case, the waivers were not meant to provide any recognition of Canadian authority over the Arctic waters but were only intended to satisfy certain Canadian regulations on coastal shipping. In fact, this interpretation would seem to hold more validity than St. Laurent's.

[252] US Embassy to Secretary of State for External Affairs, December 19, 1949, LAC, RG 25 vol. 5737, file 17.E (s).
[253] Jean E. Tartter, Third Secretary of the US Embassy, Ottawa to The Department of State, March 10, 1955, NARA, RG 84, entry UD 2195C, box 26.

These waivers was very specific in that they waived only part XIII of the *Canada Shipping Act* for American vessels moving Canadian goods between Canadian ports.[254] For example, the relevant sections of the waiver for the 1955 DEW Line sealift reads as follows:

> His Excellency the Governor General in Council, on the recommendation of the Minister of National Revenue and the Minister of Transport and under authority of section 287 of the Customs Act and section 673 of the Canada Shipping Act, is pleased to declare and doth hereby declare that the provisions of section 671 of the Canada Shipping Act relating to the use of vessels in the Canadian Coasting Trade, shall not apply to the US Government-owned vessels."[255]

It is clear therefore that the United States had not asked permission to enter the Arctic waters *per se*, but was only being exempted from certain laws relating to cabotage. And, since some of the supplies being shipped out of Boston that year were Canadian in origin, these cabotage laws did technically apply.

The fact that the Americans considered this waiver as only a technical, and not a political matter ,was made clear in the following years. In 1956 Myron Black, a counselor at the US Embassy, wrote to External Affairs to inform the department that, since the supply situation had changed somewhat, the US Navy no longer felt that a waiver would be required for that season's resupply. The reply received by Black was very diplomatic but conveyed Canada's insistence that these waivers would still be necessary. Yet, the rationale which Canadian officials cited had little to do with sovereignty; officially External Affairs still saw the possibility that certain cargos might be of Canadian origin or that it might be necessary to transfer goods once they had arrived in the Arctic –

[254] R.B. Bryce, Waiver from the Canada Shipping Act, July 12, 1956, NARA, RG 84, entry UD 2195C, box 45.
[255] G. Ignatieff, Under-Secretary of State, External Affairs to Mr. Mayer, Counselor, US Embassy, Ottawa, June 3, 1955, NARA, RG 84, entry UD2195C, box 24.

therefore making a waiver technically appropriate.[256] It was therefore requested. Again, in 1957, the US Navy questioned the need to jump through the hoop. Since American goods were being loaded in American ports the Canadian cabotage laws no longer applied. Yet again, External Affairs requested that the Americans make the application all the same and again the Americans proved willing to comply as a political expedient.[257]

Throughout this process, the department of External Affairs understood perfectly well that the American Navy did not consider these waivers as constituting any sort of recognition for Canadian sovereignty. However, so long as the Americans continued to comply, it was felt that sovereignty would continue to gradually accrue to Canada and the system would keep functioning smoothly. What the American government actually thought was therefore of secondary concern and, according to an External Affairs recommendation from 1958, American voyages continued to be authorized on "the unstated assumption that territorial waters in that area means whatever we may consider to be Canadian territorial waters, whereas the U.S. does likewise."[258]

From a legal perspective this approach had merit. In the *Fisheries Case* the Norwegian government had successfully argued that it considered the consistent absence of protest on the part of foreign states as sufficient to confirm the peaceful and continuous character of its claim.[259] Donat Pharand concluded in 1971 that that this "general toleration" by other states was indeed enough to consolidate a historic claim.[260] International legal expert Maurice Bourquin took a similar position but expanded upon it

[256] O.G. Stoner to M.L. Black, July 30, 1956, NARA, RG 84, entry UD 2195C, box 45.
[257] From Secretary of State to US Embassy, Ottawa, July 16, 1957, NARA, RG 84, entry UD 2195C, box 45.
[258] Memorandum, July 29, 1958, LAC, RG 25, file 9057-40, pt. 7.
[259] *Fisheries Case*, (1951), *I.C.J. Pleadings*, pp. 462.
[260] Donat Pharand, "Historic Waters in International Law with Special Reference to the Arctic," *University of Toronto Law Journal* 21 (1971), pp. 10.

to say that only if foreign states *actively* interfered with the exercise of sovereignty could it be considered an effective protest.[261] This principle also seems to have been confirmed in the UN's 1962 publication *Juridical Regime of Historic Waters, Including Historic Bays*.[262]

Writing in 1963, Ivan Head, then a Foreign Service Officer with the Department of External Affairs, was content that Canada had managed to meet these criteria. In an article in the *McGill Law School Journal* he wrote: "[A]s the years pass and as occupation becomes more effective, always in the absence of any foreign claim, the title assumes those characteristics of continuity and peaceful lack of disturbance which international law requires to be present in valid territorial claims."[263] American willingness to abide by Canadian regulations prevented any sort of active protest and offered the sort of implicit consent it needed. Historians such as Whitney Lackenbauer and Peter Kikkert have even pointed to this pattern as clear evidence of gradual acquisition's success.[264]

However, the Achilles heel of this approach rests with the deficiencies in Canadian policy outlined in the previous chapter. Simply put, without clarity, precedent cannot be effectively built. And, when the particulars are examined in detail, it becomes clear that at no point did the United States ever enter into any agreement, or abide by any regulation, which would clearly indicate recognition of Canadian sovereignty over any maritime area outside of the three mile territorial sea. While this Canadian approach may have had the appearance of strengthening its claim, it is unlikely that any international

[261] Maurice Bourquin, *Les Baies Historiques (*Melatiges Georges Sauser-Hall, 1952), pp. 23-51.
[262] United Nations Secretariat, *Juridical Regime of Historic Waters Including Historic Bays* A/CN.4/143 extract from the Yearbook of the International Law Commission 2 (1962).
[263] Ivan Head, "Canadian Claims to Territorial Sovereignty in the Arctic Regions," pp. 225.
[264] Whitney Lackenbauer and Pete Kikkert "Sovereignty and Security."

tribunal would have taken the Canadian view that it had truly built a precedent of effective control.

By the end of the decade implicit American recognition was becoming harder to come by as the advent of the nuclear submarine and the discovery of oil in Alaska increased American interest in the status of those waters.[265] Throughout most of the 1950s, the Arctic had been a strategically important region but only because it lay across the path of any potential Soviet bomber attack. Little military activity was actually expected to take place within the Arctic itself. By 1958 however the voyage of the USS *Nautilus*, the world's first nuclear attack submarine (SSN), under the North Pole indicated that the frozen waters of the Arctic were no longer inaccessible to modern warships. The *Nautilus*' ground-breaking operation was as much a scientific and public relations venture as a military expedition, yet its success raised the possibility of regular naval operations in a potentially important new maritime region.[266] Lying between the United States and the USSR, the Arctic Ocean offered the US Navy the possibility of operating directly off the exposed Soviet northern coast and interdicting Soviet shipping along the Northern Sea Route. From a peacetime perspective, thought was even being given to using this new route as a commercial and military transit corridor between the Pacific and Atlantic Oceans.[267]

At roughly the same time, the discovery of oil had transformed Alaska from an economically unimportant state into a potentially vital petroleum reserve. In 1958

[265] Between 1945 and 1953, 35 wildcat wells had been drilled in Alaska. By the early 1950s, they had found nearly 100 million barrels of oil.
[266] In the aftermath of the Soviet Union's Sputnik triumph, the Americans needed a dramatic accomplishment of their own and it was felt that a trans-polar voyage would serve the purpose.
[267] See for instance: Felix Belair, "Nautilus Sails under the Pole," *New York Times*, August 9, 1958, pp. 1 & Dwight Eisenhower's conversation with Peter Aurand in Marion D. Williams, *Submarines under Ice* (Annapolis: Naval Institute Press, 1998), pp. 174.

President Dwight Eisenhower's naval aide, Peter Aurand, described the President's reaction to the *Nautilus*' passage:

> The President emphasized to me the great advantages of a sea route through the Northwest Passage for commercial purposes. When you look at a map of the Arctic, commercial nuclear submarines come into the picture to great advantage by cutting the distance between Tokyo and London by thousands of miles. Moreover if they bring in large oil reserves in the Point Barrow region, in case of war, this route would be the closest supply to Europe by far.[268]

The combination of the Arctic capable nuclear submarine and Arctic oil raised some very ambitious dreams. Soon engineers and politicians were speaking of nuclear powered oil tanker submarines moving through the Arctic to southern markets.[269] These ambitious fantasies proved to be little more than that though, at the time, the prospect of commercial shipping routes opening up, either above or below the ice, generated some concern in Ottawa. In August 1958, while sitting in the opposition benches, Lester Pearson quoted *Nautilus* captain W.R. Anderson, who had announced upon completion of his polar transit: "there appears to be no upper limit to the size you may build submarines and I think cargo submarines carrying priority cargo such as oil are definitely coming along in the future." According to Pearson, taking oil under the polar ice looked to be a "very promising thing."[270]

While the prospect of submarine tankers may have been disconcerting to Canadian policy makers, they remained a distant hypothetical. The presence of American SSNs in the Arctic was however a very real and very immediate issue. Given its geographic position it was inevitable that the US Navy would seek to expand its northern operations into the Arctic Archipelago. The first such voyage was undertaken in 1960

[268] Williams, pp. 174.
[269] Belair, pp. 1.
[270] Canada, House of Commons, *Debates*, August, 1958, 24th Parliament, 1st session, pp. 3512.

when the USS *Seadragon* passed from east to west through the Parry Channel. Two years later the USS *Skate* made the same trip, though this time travelling from west to east.

These transits were handled in much the same way as shipping activity had been throughout the 1950s. The Canadian government would have preferred an official request for permission to transit, though it was understood that this would be difficult to secure. Still, as early as 1959 External Affairs and the Navy were trying to find a way to "maneuver" their American counterparts into making such a request. By 1960 however, hopes for such an easy solution had been dashed as any suggestion that the United States might recognize Canadian sovereignty was refused outright.[271] While neither the US Navy nor the State Department were seeking to antagonize their country's ally, they remained leery of creeping maritime jurisdiction and the setting of any precedents which might infringe upon the freedom of the seas and American rights of navigation elsewhere.[272]

Still, the American government was willing to continue its tradition of offering some implicit recognition of Canadian control over the Northwest Passage. During the *Seadragon's* transit Canada had an officer aboard in the person of Commodore O.C.S. Robertson (RCN) and, according to Canadian documents, the Americans had even requested "Canadian concurrence" in advance of the voyage.[273] This concurrence was not the same as permission though External Affairs was still pleased to offer it since it

[271] John Diefenbaker, memorandum, "Canadian Position in Relation to Arctic Waters; Passage of USS Seadragon," May 21, 1960, DHH, MG 01/XII/C/125, Defence, 1952-62, vol. 56.
[272] At the time the US was actively opposing expanded maritime claims elsewhere. By 1960 Indonesia had drawn baselines around its entire archipelago and the Philippines would do likewise in June 1961. Unlike the Arctic however, these nations lay astride vital sea lanes and their actions provoked vigorous American protests. In 1960 the US conveyed its displeasure by sailing the submarine *Triton* through the waters about to be claimed by the Philippines on its circumnavigation of the globe.
[273] Memorandum from Under-Secretary of State for External Affairs to Secretary of State for External Affairs, June 10, 1960, *DCER*, vol. 27 (1960), no. 665.

believed that even concurrence would strengthen Canada's claim. As such, clearance was granted in accordance with the Canada-US agreed clearance procedure for visits by public vessels and a reply was sent on a service to service basis.[274]

This arrangement worked well since the government had classed the *Seadragon*'s voyage as an operational visit and only notification, rather than an official request for permission, was technically required.[275] The ship's captain, George Steele, had also made it clear in his 1962 book, *Seadragon, Northwest under the Ice*, that the voyage had been undertaken with the assistance of Canada and in the context of joint alliance cooperation.[276] The 1962 voyage of the USS *Skate* worked in the much the same way. Canada was "formally notified" of the *Skate*'s plans and the Department of National Defence recognized that this notification was being made in accordance with established procedures for operational visits. It was again explicitly assumed that American concurrence was strengthening Canadian sovereignty.[277]

As was standard practice, the issue of sovereignty was purposefully avoided by both parties. Following the voyage of the *Seadragon*, Captain Steele was instructed to stay away from discussions on the issue with reporters and, if the question of "internal versus territorial waters" should arise, he was told to simply refer the matter back to the Department of the Navy. Just as importantly, Steele was also told to avoid answering any question about whether or not Canadian clearance had been requested for the passage.[278]

---

[274] Ibid.
[275] PJBD Recommendation 52/1, NARA, RG 59, General Records of the Department of State, PJBD Subject File 1940-59, box 6.
[276] G.P. Steele, *Seadragon: Northwest under the Ice* (New York, 1962).
[277] Memorandum from the Deputy Minister of Defence to the Undersecretary of State for External Affairs, July 18, 1962, LAC, RG 25, vol. 11, file 9057-40.
[278] Naval Message, from CHINFO to USS *Seadragon*, September 1960, NARA, RG 59, entry 5298, box 13, Bureau of European Affairs: Country Director for Canada, Records Relating to Military Affairs, 1942-1966.

The US Navy felt that they had not requested Canadian permission to transit while Ottawa clearly felt differently.

During the early 1960s this framework for Arctic operations remained in place; however Ottawa found controlling American activity to be increasingly difficult. By 1962 an External Affairs memo described the Americans as being "fully alive to the sovereignty question" and likely to "balk" at recognizing any Canadian claims outside of the three mile territorial limits.[279] And, while there was still no thought in Washington of challenging Canadian sovereignty, Ottawa had still lost some of its leverage. In previous years it had been much easier to maintain control over American shipping activity since that activity had normally been part of a joint mission and headed towards a radar site, weather station or other facility over which Canada enjoyed undisputed sovereignty. Submarines were different. In transiting the Northwest Passage they did not need to enter Canada's territorial sea or unload their cargo on Canadian territory.

During the 1962 return voyage of the USS *Skate* for instance, External Affairs learned of the transit only after it had already begun. This represented carelessness on the part of the US Department of Defense rather than a real change of policy, still External Affairs felt the need to protest. Yet, this protest had to be phrased in such a way as to avoid any misunderstandings or create any "political embarrassment."[280] Seeking to re-establish some control over future voyages, a number of unorthodox ideas were advanced. The Interdepartmental Committee on Territorial Waters suggested that the RCN should make it clear to the United States that the Canadian Nuclear Safety

[279] Note: Re. "Draft Memorandum for Minister on Arctic Sovereignty," September 18, 1962, LAC, RG 25, vol. 11, file 9057-40.
[280] Memorandum on Passage of USS *Skate*, September 20, 1962, LAC, RG 25, vol. 11, file 9057-40.

Committee must be consulted before transit approval could be given to American submarines; ultimately however this procedure was not followed.[281]

External Affairs also endeavored to convince the US Navy to avoid the release of any information which might cast doubt on the effectiveness of Canadian control. The State Department was told that, while Canada had no intention of raising the sovereignty issue, it felt that any press release concerning American activities "which did not imply Canadian complicity" could conceivably encourage the Russians to demand passage as well.[282] With regards to publicity it was hoped that the United States might be willing to consult with Canada before releasing any information on transits, though it was admitted that specifying the basis of Canada's right to be consulted had to be expressly avoided, since doing so might also provoke an undesirable reply.[283] While nuclear safety and Russian incursions may have been legitimate concerns, declassified External Affairs documents clearly demonstrate that the real issue remained the image of Canadian control over the Arctic waters and the persistent worry that the United States might choose to simply stop playing the game.[284]

Because External Affairs feared the political embarrassment and potential repercussions if their American colleagues chose to demand some clarity about Canadian claims, changes were also made to the channel through which these transits were handled. The submarine voyages, for instance, were arranged on a service to service basis. This was consistent with standard naval practice, however it was a departure from the norm of Arctic operations. In the 1950s External Affairs had preferred to deal directly

[281] Ibid.
[282] Note for Mr. Cadieux, Re: Draft Memorandum to Minister on Arctic Sovereignty, September 18, 1962, LAC, RG 25, vol. 11, file 9057-40].
[283] Ibid.
[284] Ibid..

with the State Department, given the importance of the issue.[285] Yet, by the 1960s External Affairs was purposefully encouraging this service to service communication because of its concern that the State Department might now have an "adverse approach to the question."[286]

At the highest levels of the Canadian government the issue of American activity in the Arctic was often a source of anxiety and concern. This is hardly surprising given the awkwardness of the process by which External Affairs had to exercise and demonstrate its control. Yet, examining only the high-level political interactions and policy development in Canada would provide a skewed image of Canadian-American interaction in the Arctic. Whatever legal and political difference might have existed, on the ground this relationship was characterized not by suspicion or political calculation but by an extraordinarily high level of trust, respect and cooperation.

The Arctic submarine program is a perfect example of this side of the relationship. It has already been mentioned that a Canadian representative, Commodore Robertson, was invited aboard during the *Seadragon's* transit. It is revealing to note however that, while aboard, the Commodore served as more than a symbolic observer. In fact, he played a very active role and contributed to the success of the voyage. As the former commander of the icebreaker HMCS *Labrador*, Robertson was as familiar with the region as anyone in the service and his advice was actively sought by the ship's

[285] For example: Letter from Canadian Ambassador in Washington to Secretary of State for External Affairs," June 20, 1946, LAC, RG 25, vol. 3047, file 113 & Secretary of State for External Affairs to Canadian Ambassador in Washington, September, 23, 1948, RG 25, vol. 3841, file 9060-G-40.
[286] Note: Re. "Draft Memorandum for Minister on Arctic Sovereignty," 18 Sept. 1962, LAC, RG 25, vol. 11, file 9057-40.

command and by the civilian scientists aboard.[287] This kind of hands-on participation is recounted best by Captain Steele in his account of the voyage. When contemplating a move through some light ice, Steele asked Robertson if he thought it possible to move forward without damaging the bow sonar. Robertson replied that he thought he could, but asked to go down and watch the bow, just in case. What the Captain saw both surprised and impressed him:

> When I next looked there was Commodore OCS Robertson, RCN, Naval Member Canadian Joint Staff, Washington DC, and Canadian Naval Attaché, spread-eagle on deck with his head over the bow. One upraised arm beckoned me on. Gingerly, I gave her slight headway with the electric propulsion motors. The ice began to shatter and break as the orange-coated figure waved cheerfully, to the amusement of those on deck.[288]

Throughout the voyage, Robertson clearly functioned as more than a token representative. Afterwards, he even authored a short piece on the importance of continued and even increased US submarine operations in the Canadian Arctic, a document which carried enough weight with the Americans to eventually find its way into the *Seadragon*'s final patrol report.[289] After his excursion aboard the *Seadragon*, Robertson was even invited aboard the USS *Sargo* for a second short trip that same year. The *Sargo's* voyage was not through the Northwest Passage (though it did briefly enter McClure Strait), so it seems that Robertson's invitation was a genuine show of service to service respect and camaraderie, rather than the result of any political posturing.

On the other side of the Arctic in 1960 American submarine operations were also taking place in Hudson Bay. From September to October the USS *Archerfish*, a diesel

---

[287] For an excellent account of Robertson's voyage see: Jason Delaney and Michael Whitby. "The Very Image of a Man of the Arctic: Commodore O.C.S. Robertson," *Canadian Naval Review* 4:4 (Winter 2009), pp. 25-29.
[288] Steel, pp. 229.
[289] "The Arctic as a Theatre of War in 'SUBICEX 3-60," October 4, 1960, NHH, Waldo K. Lyon Papers.

powered boat, was undertaking a program of oceanographic study and working on the question of ballistic missile flight trajectories. The USS *George Washington*, the world's first nuclear powered ballistic missile submarine (SSBN), had entered into service in 1959 and concerns had arisen that such vessels might one day be used in the Far North. The study was the first to examine the potential of using the Arctic as a missile firing location and covered a wide swath of waters considered by Canada as internal: Hudson Bay, Ungava Bay, Hudson Strait, Foxe Basin, Frobisher Bay and Cumberland Sound. Again, there was a Canadian technical observer aboard.[290]

Canada participated in these voyages, not simply as a matter of political necessity, but also out of a genuine recognition of the defence requirements created by the changing strategic circumstances. Within both military establishments the threat of Soviet submarines duplicating American under-ice capabilities, and moving into the North American Arctic, was well understood. Those fears appeared to have been realized as early as July 1962 when the *Leninskiy Komsomol* surfaced at the North Pole to much fanfare in the USSR. American records indicate another "probable" under-ice operation in September 1963 and then another two through the Northern Sea Route that same year.[291] And, while External Affairs might have been concerned by the legal and political ramifications of these operations, other Canadian agencies were actively assisting the American effort and had been for years.

While Commander of the *Labrador* from 1954-1955 Robertson had been asked by Waldo K. Lyon, head of the US Navy's Arctic Submarine Laboratory, to take as many soundings along potential submarine routes as possible. Robertson obliged and, during

[290] Minutes of the 58th meeting of the ACND, November 28, 1960, LAC, RG 22, vol. 838.
[291] Memorandum from Richard J. B. to Waldo Lyon, July 21, 1966, NHH, Waldo K. Lyon Papers.

the *Labrador's* operations in the Northwest Passage, hundreds of depth measurements were taken and thereafter passed along to the Americans.[292] The US Navy was also in contact with both the Department of Mines and Technical Surveys and the Canadian Hydrographic Service, both of which proved happy to hand over whatever information Canada possessed on the Queen Elizabeth Islands and the Parry Channel.[293] Since much of the hydrographic information in areas such as Barrow Strait and Lancaster Sound had not been updated since William Parry's expedition in the early 1820s, the assistance of the *Labrador* and the Canadian mapping agencies proved of great importance to the safe operations of American boats.[294]

In the Western Arctic the two nations had also been quietly preparing the ground for submarine operations throughout the 1950s. As early as 1952, during the first joint Canada-US Beaufort Sea expedition, the two states had conducted operations designed to test the feasibility of Arctic submarine combat.[295] That year the USS *Burton Island*, an icebreaker, the USS *Redfish*, a diesel sub, and the Canadian cargo vessel *Cancolim* were deployed to conduct studies on under-ice navigation and icebreaker-submarine combat conditions. The two countries ran this exercise again in the summer of 1953 and it was decided then that the Arctic Archipelago had to be surveyed to allow for future under-ice operations.[296]

With the cooperation of the HMCS *Labrador*, these studies began in 1954. Described by a US Navy submarine manual "as one of the most comprehensive scientific

[292] Delaney and Whitby, pp. 27.
[293] W.M. Cameron to Waldo K. Lyon. October 23, 1963 & N.C. Nash to Waldo K. Lyon. November 21, 1963, NHH, Waldo K. Lyon Papers.
[294] Delaney and Whitby, pp.28.
[295] These joint operations were a continuation of American work begun in the Beaufort and Chukchi Seas in 1949.
[296] US Navy Electronics Laboratory, *Sourcebook on Submarine Arctic Operations*, NHH, Waldo K. Lyon Papers.

efforts undertaken in the Arctic to that point," effort was put into improving hydrographic and oceanographic information in the western Archipelago, with a major emphasis on McClure and Prince of Wales Straits and Viscount Melville Sound. [297] By the end of 1954, these operations had charted most of the waters from the Chukchi Sea to Amundsen Gulf.

While turning over this cartographic material, the RCN was also looking towards the day when submarine operations in the North would become common practice. As early as 1961, National Defence had begun studying the possibility of building a small fleet of Arctic patrol boats. The primary mission of these craft was seen as maintaining Canada's maritime sovereignty while supporting national research and defence efforts. Yet, it was also hoped that they might provide a refueling and general assistance capability for submarines operating in the area. Given that Canada had no such vessels and, despite an ongoing submarine acquisition review, was unlikely to for some time, it was most likely that the planners had envisioned these craft supporting American boats. Providing that support, while simultaneously working to maintain sovereignty, were therefore not considered contradictory objectives.[298]

This sort of deeply enmeshed cooperative relationship did not always fit seamlessly with the political concerns of External Affairs. And indeed, Arctic operations were sometimes made more difficult by the intrusion of politics. In 1953, for instance, while Canadian and American servicemen and scientists were embarked on the joint Beaufort Sea expedition, the Canadian government had become nervous that American vessels might be seen moving too deeply into the Arctic Archipelago. As such, Ottawa

[297] Ibid.
[298] Draft Ship Characteristics: Arctic Patrol Vessel, March 28, 1961, DHH, 79/246.

began to impose restrictions, limiting the Americans' area of operations to waters west of longitude 108°, a line which runs roughly through the centre of Victoria Island.

This artificial boundary prevented much work from being done in the Viscount Melville Sound and was considered both awkward and unnecessary by American and Canadian members of the project. Despite the strict regulation, the American vessels on the 1954 expedition still appear to have exceeded these geographic confines. In formulating a response, the ACND noted that adherence to these terms was crucial for the maintenance of Canadian sovereignty, though it could not be explained why that was. All the same, the committee took this as a good opportunity to "remind" the Americans of their operational terms, though they were naturally careful to avoid being too overt and therefore risking some uncomfortable follow-up questions. Thus a subtle reminder was sent through service channels by means of the PJBD.[299]

Conflicts between operational and political requirements arose again at the end of the 1954 season. With ice forming in the Chukchi Sea, the American section of the Beaufort Sea Expedition suggested that their vessels retire eastward after completing their scientific work. This request had nothing to do with issues of sovereignty or politics, however the prospect of an American squadron making the first deep-draft transit of the Northwest Passage provoked what Waldo K. Lyon conservatively described as "considerable discussion."[300] Canadian resistance to the transit was actually quite strong. Lyon ascribed it to something he called the "psychological-publicity factor of Canadian sovereignty…a factor which is impossible to define and always embarrasses the

[299] Minutes of the 10th meeting of the ACND, June 15, 1953, LAC, RG 22, vol. 837, file 87-3-1A, part 2.
[300] Waldo K. Lyon, trip report – Ottawa conference on Arctic expedition, January 22, 1954, Waldo K. Lyon Papers.

Canadian scientific members of our joint expeditions. The factor is real, defies argument and did considerably curtail our 1953 expedition."[301]

Through his conversations with Graham Rowley, then head of the ACND, and members of the Canadian Defence Research Board, he noticed that this political anxiety really only existed at the highest levels. The Arctic practitioners, for their part, seemed to "deplore this nationalistic bias" and were actually pressing for the Americans to be allowed to take the Northwest Passage.[302] In the end, despite a recommendation by the ACND that the transit be allowed – "providing that this is specifically mentioned in the official request for permission to operate in Canadian waters" – the operation was not given permission and did not take place.[303]

The Canadian concern for image and perception identified by Lyon was indeed a very real phenomenon. Under the circumstances it was an understandable one as well. In both a political and a legal sense Canada needed to demonstrate that it controlled its northern waters.

In part this could be accomplished by gaining a certain degree of control over American operations and by placing observers onboard American craft. Yet, at the end of the day it was recognized that Canada needed to demonstrate an independent capability of its own. To this end the government began to invest in a number of military and civilian capabilities capable of augmenting the Canadian footprint in the Northwest Passage.

[301] Ibid.
[302] Ibid.
[303] Minutes of the 13th Meeting of the ACND, November 23, 1953, LAC, RG 22, vol. 837, file 87-3-1A (2).

At the heart of this drive to increase the RCN's capability in the region was the construction of Canada's first icebreaker, the HMCS *Labrador*.[304] Displacing 6,790 tons and capable of 10,000 horse power, the *Labrador* was a cutting edge vessel and, at the time, the RCN's second largest. The vessel had been laid down in Sorel, Quebec in 1951 with a design based on the successful American *Wind* class icebreakers. Construction was slower than expected and the ship was not commissioned until July of 1954. However, a mere two weeks after commissioning, the *Labrador* was on its way to the Arctic.

The ship had five official duties. The first and most important was to carry out patrols of the northern waters and provide the RCN with the knowledge and experience needed for further Arctic operations. In addition, there were scientific duties, such as the carrying out of hydrographic and oceanographic surveys needed by naval and civilian shipping. The vessel was also tasked with providing badly needed icebreaking, rescue and salvage services in the region, and finally, with providing the logistic support badly required by Canadian and joint defence facilities.[305]

By the end of her first mission in the summer of 1954, the *Labrador* had visited as far north as Kane Basin, engaged in joint survey operations with the USS *Burton Island* and the USGS *Northwind* in the Beaufort Sea and had made a complete east to west transit of the Northwest Passage. The country's first truly Arctic capable vessel had proved itself a highly effective tool and offered the government a powerful symbol of Canadian control in waters which had heretofore been an American lake. The significance of the *Labrador*'s presence is well stated in the ship's unofficial history which noted a highly symbolic victory from its first mission:

[304] Canada had operated a number of ice-strengthened vessels prior to the *Labrador*, however these were not ice-breakers.
[305] Eyre, *Custos Borealis*, pp. 188.

> It marked the first incursion of a Canadian naval vessel into waters which the US Navy and Coast Guard might well be excused for considering *mare nostrum.* For a good many years, particularly since the establishment of the Joint US-Canadian weather stations in 1947, the only ships seen in the waters of the Canadian Arctic Archipelago, apart from a few government supply ships, were those flying the Stars and Stripes. In 1954 for the first time Canada had a ship patrolling her northern waters.[306]

In the years to follow, the vessel was to prove a highly versatile tool. Apart from the theoretical Arctic military capability it offered the RCN (though she was unarmed), the *Labrador* was used extensively by National Defence as a research platform, by the Department of Mines and Technical Surveys for charting duties and by Fisheries Research Board for northern fisheries studies.[307]

Yet, while serving as Canada's symbol of sovereignty in the Arctic, most of the *Labrador*'s duties were actually in support of American led projects and in cooperation with the US Navy and Coast Guard. In 1955 and 1956 the *Labrador* played a role assisting in the construction of the DEW Line through preparatory hydrographic surveys, installing navigational control stations, surveying beaches and providing crucial icebreaking support for the supply and construction convoys. By 1957 she had been attached to an American squadron consisting of the USCG *Storis*, *Spar* and *Bramble* which had crossed the Northwest Passage and were conducting hydrographic research to find alternate routes for deep draft ships. The mission was a success and a new passage was located through the narrow Bellot Strait which thereafter offered vessels an escape route should the more northerly straits ice up unexpectedly. During the operation, the *Labrador* even rescued the American icebreaker *Edisto*, which had lost her starboard propeller shortly after entering the Gulf of Boothia. Admiral Roy Gano of the US Navy

[306] Quoted in Eyre, *Custos Borealis,* pp. 190.
[307] Eyre, *Custos Borealis,* pp. 191.

called the whole operation "an outstanding example of what can be achieved by Canadian and US national co-operation."[308]

For Captain Pullen and the RCN there was no contradiction in the *Labrador*'s (and the Navy's) dual roles: cooperating with American forces while simultaneously serving as a mobile flagpole for Canadian sovereignty. When the ship was transferred to American operational control for the 1957 sea lift, Captain Thomas Charles Pullen described the cooperative command structure as a "novel and thoroughly enjoyable experience."[309] Ironically, the only group which seemed indifferent to the *Labrador* was the RCN itself.[310] For the Canadian Navy, operations in the Arctic were a nice public relations boost and added a theoretically valuable component to their force's skill set but, when placed against the more immediate and practical concerns facing the service, an Arctic capability appeared to be an expensive luxury. The Navy's focus was simply not on the North. It had spent the 1950s preparing to fight a third world war against the Soviet Union in the North Atlantic and many within the service felt that any effort spent elsewhere was simply being wasted. Despite the beginnings of Arctic submarine operations in the latter half of the 1950s, there was really no real threat of conflict in the Far North. And, even if American and Soviet SSNs were to find themselves in a shooting war in the Arctic waters there would have been little that an icebreaker – or any platform which the RCN possessed – could actually have done to assist.

In October, 1956 the Canadian Naval Staff had therefore accepted arguments put forward by Captain William Landymore and others that the Navy did not need an

[308] Elizabeth B. Elliot-Meisel, *Arctic Diplomacy* (New York: Peter Lang Publishing Ltd., 1998), pp. 106.
[309] T.C. Pullen, "What Price Canadian Sovereignty?" *US Naval Institute Proceedings* 113 (September, 1987), pp. 68.
[310] Eyre, *Custos Borealis*, pp. 191.

icebreaking capability and recommended a departmental transfer. By the summer of 1957 the Department of Transport had offered to take over operating the ship and, by 1958, the HMCS *Labrador* had been transferred to the Coast Guard to become the CCGS *Labrador*. By the time she was transferred the vessel had contributed more to Canada's understanding of the Arctic than had any other ship or expedition in the country's history. The *Labrador* had conducted over 12,000 miles of soundings and prepared a host of charts and sailing directions while also taking thousands of panoramic and radar photographs. She had established 200 oceanographic stations, 236 bathythermograph casts, collected 72 bottom samples and thousands of salinity and oxygen samples, and this was simply the scientific work which was never allowed to interfere with her other operational duties.[311]

The record was certainly impressive and there were those in the Navy who objected strenuously to the transfer. T.C. Captain Pullen, Captain of the *Labrador*, criticized it harshly: "…those devils at HQ Bill Landymore has had his way. VCNS, Radm. Lay too. Blast their eyes."[312] According to Pullen, the Navy had chosen to commission a couple of obsolete frigates over maintaining its presence in the North.[313] However, the transfer made sense for a Navy which preferred to focus on its war-fighting capability and less on hydrographic surveys and resupply missions. Ultimately, the move had little real impact on the *Labrador*'s operations or its impact on Canadian Arctic sovereignty. Whether operated by Navy or Coast Guard, the vessel performed most of the same duties and continued to offer the nation the same capabilities.

[311] J.M. Lemming, "HMCS Labrador and the Canadian Arctic," *RCN in Retrospective*, ed. James A. Boutilier (Vancouver: University of British Columbia Press, 1982), pp. 302.
[312] Elliot-Meisel, *Arctic Diplomacy* pp. 109.
[313] Ibid.

As a Coast Guard vessel, it also continued to spearhead the country's scientific and logistical efforts in the region and, by 1959, the ACND was even calling on the service to find more research work for the ship as a means of strengthening Canadian sovereignty. In fact, unilateral and cooperative work on scientific research was to become one of the most actively employed methods for demonstrating Canada's presence in the North. In 1959 Graham Rowley noted in an ACND meeting that, when the United States saw the need to conduct scientific research work in the Arctic they would probably do so with or without Canadian assistance.[314]

In seeking to exercise some control over the passage of American SSNs and improve the political optics of the situation, the government sought to bring that American work within the framework of joint research. In the summer of 1959, for instance, when the ACND was informed that the USS *Skate* was to pass through the Archipelago, Canada invited the US Navy to co-operate in a program of scientific research which, conveniently enough, included the work of the *Skate*. When the proposal was mentioned at an ACND meeting that July the scientific benefits of such a program were certainly recognized but it was also hoped that such an arrangement might present the submarine's passage as less of a unilateral American operation.[315]

Purely Canadian scientific endeavours were also valuable tools for demonstrating national control. In 1958, as American and Soviet expeditions into the region were increasing throughout the Polar Basin, the ACND prepared a report for Cabinet recommending an expanded research program as a partial response. To that point, Canada had conducted no independent research in the area apart from one expedition to the

[314] Memorandum, June 12, 1959, LAC, RG 22, vol. 545, file Rowley-ACND-1959.
[315] Minutes of the 54th Meeting of the ACND, July 6, 1959, LAC, RG 22, vol. 838.

Ellesmere Island Ice Shelf by the Defence Research Board and two seasons of hydrographic work with a small vessel in the Western Arctic. If Canada was to maintain a claim in the region it was imperative that it, and not a foreign power, be seen conducting the majority of the research in the area.[316]

The most well-known and significant program to result from this assessment was the Polar Continental Shelf Program. This undertaking, which has continued into the twenty-first century, was an initiative designed to study and chart Canada's vast Arctic continental shelf. In 1958 the United Nations Law of the Sea Conference had awarded nations the right to mineral and other resources on their shelves out to 200 metres, or beyond that point to water depths at which exploitation was possible. At the time, Canada knew more about the surface of the moon than it did about its northern continental shelf.

During its first few seasons of operations the project concentrated on the 1,500 mile long western margin of the Arctic Archipelago, using the Joint Arctic Weather Stations as centres of operation. By the late 1960s the studies had moved towards the center of the Archipelago and the operations became larger, sometimes involving 80 or more employees from different agencies examining the seabed, the water and islands as well as their flora and fauna.[317] Government efforts were eventually supplemented by those of academic and other research institutions so that, by the mid-1970s, there were as many as 150 different projects being carried out annually under, or in conjunction with,

[316] Memorandum to Cabinet on Canadian activities in the Polar Basin, February 1958, LAC, RG 25, vol. 5915, file 50197-D-40, pt.3.
[317] Mossis Zaslow, *The Northward Expansion of Canada: 1914-1967* (Toronto: McClelland and Stewart, 1988), pp. 350-1.

the program.[318] In terms of both enhancing Canada's understanding of the North and asserting a very visual presence, the program was a resounding success.

***

By the end of the 1950s the Canadian position in the waters was therefore stronger 'on the ground' than it had been ten years earlier. The activities of the Canadian Navy and Coast Guard, along with work of government sponsored scientists and academics, had vastly improved the country's understanding of its northern waters and of the Arctic in general. The United States had spent the decade engaged in the same sort of research and had itself accumulated a vast amount of knowledge. American icebreakers had charted new passages through the Archipelago and the US Navy had proven itself capable of running submarines through the region at any time of the year. Yet despite the political sensitivity which surrounded so much of this activity, the congenial and cooperative manner in which so much of the joint Arctic activity took place meant that Canadian sovereignty emerged from the decade unscathed and perhaps even strengthened in the minds of the public and policy makers. Internal documents strongly suggest that External Affairs felt that its cooperative approach was winning American acceptance and, as late as 1963, Ivan Head, a future advisor to Prime Minster Trudeau on the subject, clearly conveyed that impression in an influential article entitled "Canadian Claims to Territorial Sovereignty in the Arctic Regions."[319]

Yet, despite the relative comfort provided by the government's functional relationship with the United States, the fact remained that Canada still had no clear notion of what its sovereignty actually meant. By August of 1958, Canadian politicians seemed

[318] Ibid.
[319] Head, "Canadian Claims to Territorial Sovereignty in the Arctic Regions," pp. 225.

as confused as they had ever been. Only ten days after a particularly ambiguous statement from Prime Minister Diefenbaker, Jules Léger, the Under-Secretary of State for External Affairs wrote to R.G. Robertson to suggest a complete review of Canadian policy.[320] What Léger started would be the first comprehensive attempt to settle the government's Arctic strategy. It was initiated by the bureaucracy, rather than the politicians, and was driven by fear that the increasing activity in the region would place more strain upon the unspoken Canadian-American arrangements which had worked so well over the past decade.

Léger's suggestion found a willing recipient in Gordon Robertson, who was then the Deputy Minister of Northern Affairs and National Resources. Robertson suggested working through the ACND and two days later he tasked Graham Rowley, the head of the committee, with preparing a preliminary discussion paper which might serve as the basis of future Canadian policy.[321] Over the following two months Rowley and his staff worked on this paper and, by October, it had been completed and sent out for comments to the many different government departments with an interest in the region. The issues and questions for which Rowley had asked for comments indicate how broad the scope of this review actually was and how uncertain Canada still was about the nature of its claims:

1) What advantages and disadvantages would there be in asserting sovereignty over
    a. The polar basin or the ice pack and
    b. The channels lying within the Arctic Archipelago?
2) What advantages and disadvantages would there be in asserting sovereignty over the landfast ice?

[320] Leger to Robertson, August 26, 1958, LAC, RG 25, vol. 7, file 9057-40; see Prime Minister's statements here regarding Canada, House of Commons, *Debates*, August 16, 1958, vol. 4, pp. 3652.
[321] R.G. Robertson to Leger, August 28, 1958, LAC, RG 25, vol. 7, file 9057-40.

3) What advantages and disadvantages would there be in asserting sovereignty over ice-islands, both within the sector and within the Arctic Archipelago?[322]

By December the ACND was beginning to receive responses. The Department of National Defence was the first to reply and its position was quite clear. According to DND, there was simply no military advantage to claiming the waters of the polar sector. In fact, it was felt that to do so would encourage other Arctic states, particularly the USSR, to follow suit – something which was decidedly not in Canada's best interest. Any such claim would also be virtually impossible to support with operations on the ground (or ice). Perhaps most importantly the ice-islands, which had caused so much concern in certain quarters, were deemed fairly harmless. Missiles could not be based there and any control posts or bases which the Soviets might choose to establish would be extremely vulnerable to air attack and only too easy to destroy in the event of war. On the other hand, claiming sovereignty over the waters of the Arctic Archipelago was seen as essential for an assortment of reasons.

As these surveys were returned to the ACND it soon became apparent that the rest of the departments were largely in agreement with DND over what Canadian sovereignty should encompass and what it should not. Not surprisingly, this consensus was little different from that which had been reached in previous studies. In general, few advantages and several serious disadvantages were perceived in advancing any claims to the water and ice within the Polar Basin. It was admitted that there might be some future fishing and seal resources in the Western Arctic, which such a claim might secure however, apart from that small prize, there was simply nothing much in the Arctic Ocean that could be considered of value.

[322] Letter from R.G. Robertson, Chairman ACND, to the Deputy Minister of National Defence, October 30, 1958, LAC, RG 24, vol. 8101, file NSS-1280-39.

On the other hand, the disadvantages of forwarding such a claim were numerous and severe. A compilation of these points from the various surveys indicated the following major concerns:

1) Under the then current concepts of international law it would be "difficult to support a claim and almost impossible to enforce one." The sector theory itself has never been tested in a maritime application and was considered to be "of very dubious value."

2) There was no substantial economic gain to be had, especially since the resources of the polar continental shelf had already been guaranteed by the 1958 UN Convention on the Continental Shelf.

3) Such a claim would provoke the USSR and perhaps the USA to do the same, thus hindering Canadian reconnaissance north of the Soviet Union and its ability to transit north of Alaska.

4) It would be very costly to exercise sovereignty in the Arctic Ocean. Air and naval patrols in the region were both incredibly expensive and difficult to supply.

5) Should a violation of Canadian sovereignty occur in this area it would be hard to detect and even harder to interdict.

6) An effective customs control would be virtually impossible to impose.

7) A division of the Arctic into sovereign sectors would seriously impede the free movement of research personnel and hinder scientific research efforts.[323]

As had been the case in 1956, claiming sovereignty over the waters of the Archipelago received far more widespread support. Since that time, Canada's position had also been strengthened by the general international acceptance of Article 4 of the Convention of the Territorial Sea and the Contiguous Zone. This provided legal justification for a country seeking to delimit its territorial sea by the application of straight baselines in circumstances where the coast was deeply indented or where a fringe

[323] Memorandum: "Canadian Sovereignty over Arctic Waters," in minutes of the 54th meeting of the ACND, July 6, 1959, LAC, RG 2-B-2, vol. 6182

of islands existed along the coast.[324] It was therefore assumed that nations which might strongly object to a Canadian claim on the basis of the sector principle might object less to a claim based upon straight baselines.

This is not to say that anyone in Ottawa foresaw clear sailing. It was recognized that Canada could still expect diplomatic protest from the United States, Great Britain and possibly even Australia and the Scandinavian countries. Such protest had also become more likely as the Arctic channels became increasingly practicable sea routes for both submarines and, potentially for cargo vessels. In the broader international context, it was also well understood that any Canadian claim might be seen as establishing a dangerous precedent which could be of use to Indonesia, the Philippines and other archipelagic states seeking legitimacy for their own expanded maritime claims.[325]

Despite the potential challenges, the benefits of enclosing the Archipelago with straight baselines seemed worth pursuing. Asserting such a claim would not only provide Canada with an enhanced degree of control over surface traffic in the Northwest Passage but would also, in theory, prevent foreign governments from operating submarines in the Archipelago without Canadian permission. Likewise, Soviet reconnaissance above the waters in the region could be forbidden. Such a claim would be far cheaper and easier to enforce than one to the Polar Basin and, unlike the Arctic Ocean, the waters of the Archipelago were also considered a far richer prize, with an abundant supply of sea mammals and rich fisheries from which foreign interests could be excluded.[326]

This case seemed to be clear and decisive with widespread agreement from across the government. The report had been compiled and sent to Cabinet by June 1959 with the

[324] Ibid.
[325] Ibid.
[326] Ibid.

recommendation that Canada focus its efforts on securing international recognition to its maritime claims within the Archipelago. Despite these conclusions, the sector theory was still not entirely discarded. Again, it was assumed that there could yet be changes to the law of the sea or that some future event might grant states new powers to assimilate ice into their national domain. As had been the case throughout the 1950s, it was therefore recommended that the sector theory should not be disavowed but rather, "held in abeyance."[327]

While the sector was retained it was destined to play a far smaller role in Canadian policy. The point had been made exceedingly clear that there was neither a reason nor a way for Canada to lay claim to any of the Arctic Ocean. In public, vestiges of the theory remained and it would still be raised from time to time by politicians. Yet, this was not necessarily an attempt to revive the sector but more to avoid any uncomfortable questions about what Canada's claims might actually be. In 1959, for instance, when the subject of removing the sector lines from Canada's maps was raised in the ACND, Robertson and the committee agreed to retain them. This was not done because those lines represented government policy but because their removal might be seen as implying a more limited claim or, even worse, an abandonment of Arctic sovereignty generally.[328] The sector lines would therefore remain on the map, as they still do into the twenty-first century, and the theory would continue to enjoy at least some token standing in Canadian policy. For all intents and purposes however, by 1959, it had ceased to be a serious factor in official consideration.

[327] Ibid.
[328] Minutes of the 52nd meeting of the ACND, April 20, 1959, LAC, RG 85, vol. 1902, file 1009-3A, pt.2.

By 1959 Canada had essentially settled upon what it was seeking to claim. What remained, however, was how it might go about doing so. It was recognized within the ACND and External Affairs that its chances of success depended largely on timing and on whether or not the United States and Great Britain would offer their support or opposition. Since support, or at least neutrality, was considered so essential it was agreed that no Canadian claim could be made prematurely, before proper consultation had been conducted and perhaps even an understanding reached in advance.[329] Bringing such an agreement about would certainly not be a simple matter. By July, 1959 therefore the ACND had added a special section on tactics to its working report, yet this largely concluded that it would be a mistake to make a public declaration of sovereignty or even to privately inform the Americans or British of what it was that Canada ultimately intended to do.

This deferral was not necessarily procrastination. It was clearly understood at the time that the law of the sea was in a state of flux. The 1958 convention had laid out a series of accepted articles governing the continental shelf, baselines, the high seas and fisheries but these articles were not to enter into force until the 1960s. One of the most important issues, the breadth of the territorial sea, had also not been settled. Many nations, including Canada, were seeking an extension of that limit while the traditional maritime powers, such as the United States and Great Britain, maintained their strong support for the long-standing three mile limit. To have made an announcement on Arctic sovereignty before the conference was scheduled to reconvene to discuss these matters in 1960 would have been to inject a highly destabilizing element into a very delicate and complex diplomatic situation. Making such a claim at that time would also have raised

[329] Ibid.

speculation that Ottawa was seeking to derail the convention by encouraging other states, such as Indonesia and the Philippines, to make similar claims. To do so would almost certainly have hurt Canada's Arctic claims while simultaneously weakening its negotiating position on the important issue of the territorial sea.[330]

The political atmosphere at the time was, for these same reasons, hardly conducive to any fresh Canadian claims. Canada's territorial waters and fisheries objectives at the 1958 conference had clashed with those of the maritime powers and, as a result, the diplomatic atmosphere on law of the sea matters between Canada and the United States was already frosty. As such, very little came out of the ACND's recommendations in the short term. Canada was forced to continue to wait and the memorandum which had been circulated in 1956, warning departments against making any statements which might prejudice a Canadian claim, was sent out once again.[331] While awaiting both a Cabinet decision on the subject and the opportune time to make a final claim, the ACND suggested only a continuation of Arctic research activities to further solidify the Canadian position.[332]

Despite the lack of direct action, this review was still a watershed moment in the development of Canadian Arctic policy. What it was that Canada sought to claim had been largely settled. The basis of that claim was not given too much thought, nor was how the country might go about asserting it. But, the first step had at least been taken. Importantly, this step had been taken by the bureaucracy and largely represented the opinions of bureaucrats rather than that of the politicians. In fact, in the years to follow

[330] Memorandum: "Canadian Sovereignty over Arctic Waters," in minutes of the 54th meeting of the ACND, July 6, 1959, LAC, RG 2-B-2, vol. 6128
[331] Minutes of the 52nd meeting of the ACND, April 20, 1959, LAC, RG 85, vol. 1902, file 1009-3A, pt.2.
[332] Ibid.

that was essentially where the matter stood. That the ACND's review had not been considered, or at the very least had not yet filtered into government pronouncements, remained clear well into 1960. In March of that year, Liberal MP Paul Hellyer asked the Prime Minister if the government still subscribed to the sector theory, Hellyer received the evasive response of "we subscribe to the Canadian theory of sovereignty."[333] What exactly that meant remained a mystery and would remain so for at least the next few years.

[333] Canada, House of Commons, *Debates*, March 29, 1960, 24th Parliament, 3rd session, pp. 2577.

Chapter 4

Priorities
The Law of the Sea, Fisheries and Canada's First Arctic Claim

As the 1960s began, Canada's position in the Arctic remained uncertain. Despite the ACND's lengthy and thorough study, the Diefenbaker Cabinet had not made Arctic sovereignty a priority. The committee's report had been submitted to Cabinet in 1959 yet there it was to languish for years in political limbo. Cabinet records indicate that, while the law of the sea remained a high priority for the government, it was not until February 22, 1963 that the issue of Arctic sovereignty was actually addressed.[334]

Unlike the 1950s, which had been a time of ever increasing activity and political pressure in the Arctic, the 1960s were to see a general lull. The DEW Line had been built and Canada had taken over much of the Arctic resupply duties from the US Navy. The advent of the intercontinental ballistic missile (ICMB) had also greatly reduced the threat posed by Soviet bombers travelling over the Pole. Subsequently, the perceived danger from any potential Soviet base on an ice-island had similarly receded. Even American submarine activity had been dramatically curtailed. After the voyage of the *Skate* in 1962 logistical limitations, created by the Navy's new SubSafe submarine retrofit program, kept American boats out of the Archipelago for over a decade and even the Arctic Ocean itself until 1969.[335] As such, much of the impetus for government action began to fade away.

[334] Canada, Cabinet Meeting, February 22, 1963, LAC, RG 2, series A-5-a, vol. 6253.
[335] The USS *Queenfish* did however venture into Davis Strait in 1967.

With this lull in activity came a commensurate diminishment in both interest and concern. Edgar Dosman described these as the "golden tranquil years,"[336] and both he and others have suggested that this tranquility might have offered the Canadian government the ideal opportunity to finally cement its Arctic claims. Indeed, by 1962 Ivan Head was claiming that the defence activities of the 1950s had demonstrated an American recognition that the archipelagic waters were territorial and publicly called for a historic waters claim to be made.[337] Yet to presume that this lack of activity had rendered the Canadian position in the North more secure would be, in a sense, to miss the forest for the trees. Though relatively little was actually happening in the Arctic, the international maritime system at large was undergoing a dramatic shift which would directly affect the Canadian North.

In Canada the issue of Arctic maritime sovereignty had never existed in a vacuum and cannot be fully understood in isolation from the country's other law of the sea concerns. As early as 1937 the Interdepartmental Committee on Territorial Waters had suggested that the question of Arctic sovereignty be left unresolved so long as more pressing issues, such as the Gulf of St. Lawrence, remained unsettled.[338] Again in 1950 the committee advised that, until those more pressing maritime concerns were finally resolved, the government not pursue its more peripheral claims. [339] By the late 1950s this prioritization had become even more entrenched in government thinking and policy.

---

[336] Edgar Dosman, "The Northern Sovereignty Crisis," *The Arctic in Question*, ed. Edgar Dosman (Toronto, 1976), pp. 34-5.
[337] Head, "Canadian Claims to Territorial Sovereignty in the Arctic Regions," pp. 219.
[338] Letter from Ernest Lapoint to Lord Tweedsmuire, December 18, 1937, LAC, RG 2-B-2, vol. 103, file T-30.
[339] Memorandum for Head of Legal Division, 1952, LAC, RG 2-18, vol. 236, file T-30-1-C.

Simply put, the Arctic waters were not seen as a unique concern, they were simply another maritime issue which had to be attended to in due course. And, when placed in the context of Canada's larger law of the sea agenda, the Arctic consistently found itself relegated to the very last priority. Indeed, it was not hard to see why that was. There were no foreign fishing fleets in the Arctic, nor commercial fishing interests to accommodate, there was little economic activity of any sort and no pressure groups hounding the government for action. Every government possesses only a limited amount of time, energy and political capital to spend on any given issue and, by the end of the 1950s, Canada's maritime agenda was simply too cluttered by more important matters to invest much time and energy into an issue which most felt could be safely deferred.

By the late 1950 and early 1960s, Canadian governments had two primary maritime objectives: the extension of the country's territorial waters and/or fishing rights out from the existing three miles to 12 miles and sovereignty over what were then called the 'special bodies of water.' These special bodies were maritime areas which Canada felt a strong and immediate need to claim as internal for both economic and purely nationalistic reasons. They consisted of the Gulf of St. Lawrence first and foremost, as well as a number of other traditional Canadian claims: the Bay of Fundy, Hudson Bay and Strait, Hectate Strait, Dixon Entrance and the Queen Charlotte Sound. As soon as Newfoundland had joined confederation in 1949, the St. Laurent government had begun to consider enclosing the Gulf of St. Lawrence as internal Canadian waters. The area was surrounded by Canadian territory, it was an important fishing zone and it had a certain strategic importance, serving as it did as the gateway to the St. Lawrence River.

American pressure had prevented both the St. Laurent and Diefenbaker governments from expanding Canadian control over the Gulf or any of the other special bodies which Ottawa had hoped to claim as internal. Yet, throughout the 1960s, the extension of Canadian fishing rights and the enclosure of these special bodies (in that order) remained the overriding priorities in the country's law of the sea agenda. Ironically, the government's position on Arctic sovereignty was to have very little to do with what was transpiring in the Arctic itself. As had been the case in decades past, pushing the issue was seen as both unimportant and a potential threat to negotiations taking place over more important maritime concerns.

At the time, Canada's desire to expand its maritime control was actually part of a much larger international movement to revise certain long held notions of maritime jurisdiction. By the 1950s, international pressure had begun to mount for modifying the existing law of the sea. New technologies were very quickly rendering many of the old standards inadequate as offshore drilling and seabed mining raised the issue of ownership of subsea resources outside the three mile limit. Likewise, the development of large, industrial fishing fleets had generated a widespread international desire for enhanced control over local fisheries beyond the narrow band of territorial sea. The concerns motivating this push for change were understandable since, from 1950 to 1969, the world fish catch would triple, putting in danger many local stocks around the world. Some of this push had come from developed states like Canada. With significant fisheries on both east and west coasts, the Canadian government spent much of the 1950s and 1960s facing steadily escalating pressure from the fishing industry for either an expansion of the country's territorial waters or the creation of an exclusive fishing zone to defend against

foreign competition. However, the greatest push for increased jurisdiction was to come from the Third World.

From the end of the Second World War the community of nations had rapidly expanded as the old European empires collapsed and their former colonies gained their independence. From 55 members in 1946 the United Nations had increased to 104 in 1960. Many of these new states had coastlines and offshore resources – both living and mineral – which they hoped to profitably extract. None had a powerful navy or merchant marine and few felt as though they derived any benefit from the navigational freedoms provided by the existing legal regime. Fewer still felt any obligation to the traditional laws of the sea which had emerged from centuries of European practice and agreement over which they had had no say in making.

For the United States, France, Great Britain and many of the world's other traditional maritime nations, this new direction was seen as fundamentally inconsistent with their global security and commercial interests. Maritime powers relied upon the free use of the world's oceans for trade, communication and the projection of naval power and any restriction was therefore seen as potentially damaging to these vital interests.

For these powers, the seriousness of the situation was demonstrated by the rapidly increasing number of states who were choosing to unilaterally increase their territorial seas or establish straight baselines around their coasts. As early as 1952 the US State Department had officially protested the extension of territorial waters by Mexico, Costa Rica, El Salvador, Honduras, Saudi Arabia, Egypt, Korea, Rumania, Bulgaria, Argentina, Chile, Peru and Ecuador. Of these, the latter four had extended their jurisdiction out to an unprecedented 200 nautical miles.

Of greatest concern was the effect such expanded territorial waters or jurisdictional claims might have on the world's system of straits. While any expansion of state sovereignty would limit the sea-space open to transit and international activity, the closing of certain straits could potentially shut down vital sea routes and force vessels into lengthy diversions. Such diversions had the potential to both fundamentally upset the economics of international trade and to limit American and NATO sea power. In fact, a global extension of the territorial sea to 12 miles would have had the effect of enclosing 116 of the world's straits as territorial waters.[340] While vessels transiting these straits would still enjoy the right of innocent passage, a right which had been codified in UNCLOS I, the definition of 'innocent' was somewhat ambiguous and, it was feared, open to interpretation.

Part I, Article 14 of the Convention on the Territorial Sea and the Contiguous Zone had stated that: "Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal state."[341] The convention lists a series of activities which might be considered prejudicial, one of which was "wilful or serious pollution."[342] Because of this, coastal states were given the right to enact laws and regulations controlling innocent passage which could deal with safety, conservation and sanitation. While technically these restrictions would not interrupt commerce or naval deployments, it was feared by many in the United States, and within the Navy in particular, that some coastal states might consider oil tankers or nuclear powered naval vessels to be an inherent pollution risk, and so bar their passage.

[340] Draft Article, 1973, NARA, RG 26, Office of Operations, Ocean Operations Division – Maritime Laws and Treaty Branch: Correspondence, 1964-1973, box 28.
[341] Convention on the Territorial Sea and the Contiguous Zone, Part II, Section 19(1)
[342] Convention on the Territorial Sea and the Contiguous Zone, Part II, Section 19(2)

Also of concern was the fact that existing law demanded that submarines travelling through territorial waters do so on the surface.[343] This was a serious strategic limitation for a type of vessel whose deployments and operations were normally intended to be secret and of particular concern for the US strategic missile fleet. A critical leg of the American nuclear triad was its sea-based Polaris submarine launched ballistic missile (SLBM) capability. These Polaris SSBNs, which had first entered service in 1960, served as America's invulnerable second strike capability, patrolling the world's oceans undetected and in constant readiness to respond to a Soviet first strike. Limiting their movements, or forcing them to surface, was considered an unacceptable strategic threat. Coupled with the demands made by many states for prior authorization for warships passing through their territorial water, the closing of so many straits was considered unacceptable by the maritime powers. It was in this global context, that Canada sought to gain its maritime objectives. In pushing its agenda, Canada had to deal therefore not only with American concerns surrounding the Arctic and those other special bodies of water, but with the global interests and issues which the United States was then attempting to balance.

Accompanying this global push to extend the limit of territorial waters was an ever increasing global application of straight baselines. After the *Fisheries Case* had legitimized their use in 1952, Canada was far from the only country to consider applying them to its shores. By 1955 Iceland, Bulgaria, Ethiopia, Saudi Arabia, Norway and Yugoslavia had all announced baselines for their own coasts. Most importantly, some of these straight baselines were being drawn across important and well-travelled sea routes. In the mid-1950s the Philippines and Indonesia began to publicly consider enclosing the

[343] Convention on the Territorial Sea and the Contiguous Zone, Part II, Section 3 (20)

important waters between the islands of their Archipelagoes. In 1960 Indonesia followed through and officially closed off its entire Archipelago. The Philippines followed suit in June 1961.[344]

In Canada, altering the *status quo* had been an important issue for some time as well and, at the heart of the matter, was the fishing industry. For years foreign fishing interests – particularly the Europeans, Japanese and Soviets – had been increasing their presence off the Canadian coasts and endangering stocks through overfishing. Most galling to Canadian fisherman was the fact that national legislation placed them at a considerable disadvantage to their foreign competitors. Under Canadian law, nationally flagged trawlers over 65 feet in length, were forbidden to fish within 12 miles of the coast. This was a conservation measure which Canada could not impose on foreign trawlers, all of which were of course allowed to fish just outside the three mile limit.

Both the St. Laurent and Diefenbaker governments had been lobbying internationally for an extension of territorial waters since the early 1950s. Politically it was a popular issue, with strong support from a wide segment of the Canadian public.[345] Yet both governments had stopped short of unilateral action. One reason was that the Canadian government has always held a genuine respect for the process by which international law was formed and recognized the desirability of resolving the issue through an international forum. Of equal importance was the fact that any suggestion that Canada extend its maritime jurisdiction had met with swift and powerful, if discreet,

[344] Because of the similarities between the Canadian Arctic and the Indonesian and Pilipino claims, Canada broke ranks with the US and some of its traditional Western European allies by refraining from condemning Indonesia and the Philippines. Throughout the 1960s and 1970s, both of these states continued to discuss the possibility, though neither actually drew straight baselines until archipelagic baselines were recognized by the 1982 Convention on the Law of the Sea; Note From Deputy Minister of Transport to Under Secretary of External Affairs, May 23, 1962, LAC, RG 25 vol. 22, file 9057-40.
[345] US Embassy, Ottawa to The Department of State, August 30, 1956, NARA, RG 59, Central Decimal File, 1955-1958, box 3215.

condemnation from the US State Department. As early as 1956 the Canadian government had floated the idea of Canada claiming full sovereignty over the Gulf and the other special bodies in order to gauge the American response.[346] Washington's answer was of course extremely negative and the St. Laurent government backed off. Similar feelers continued to be put out by External Affairs under Diefenbaker and were likewise rejected.[347]

The United States was naturally concerned that an extension of the territorial sea, by a state as large and influential as Canada, would set a dangerous precedent, one which might encourage others to follow suit and accelerate the already deteriorating stability of the international system. In their discussions with Ottawa, American negotiations traditionally highlighted the dangers inherent in such restrictions since of course, without free use of the world's oceans, the entire Western world's ability to defend itself might be compromised. As the American diplomats put it, such a situation would only "play into the hands of the USSR."[348] Canada officially recognized and acknowledged this fact but admitted that internal political pressure would eventually have to be taken account of.[349]

Canada was hesitant to make such claims without first being assured of American acquiescence for the same reasons it feared coming forward with its Arctic claim. Ottawa knew that its legal position in the Gulf of St. Lawrence, and the other special bodies, was not particularly strong and might very well fail to stand up to any direct challenge. As was the thinking in the Arctic, it was thought better to bide one's time and await a change

[346] US Embassy, Ottawa to The Department of State, 30 August, 1956, NARA RG 59, General Records of the Department of State, 1955-1959, Central Decimal File, 742.022; Memorandum, September 14, 1956, NARA, Central Decimal File, 1955-1958, box 3215.
[347] Meeting Notes for President Kennedy, May 3, 1963, NARA RG 59, entry 3051B(8), box, 311.
[348] Discussion on the effect of the 12-mile limit between Canadian and US officials, November 2, 1956, LAC, MG 31-E-87, vol. 6.
[349] Ibid.

in international law or international politics which might provide Canada with a better opportunity.

After nearly a decade of turbulence in international maritime law there were high hopes that a UN sponsored conference might be able to re-establish a common, internationally accepted set of rules. The United Nation's International Law Commission (ILC) had begun work on the subject in 1951 and, by 1956, the Commission had produced a series of draft articles covering every aspect of the law of the sea with any contemporary importance. These draft articles were intended to form the basis of international agreement and were the starting place for the 1958 UN Conference on the Law of the Sea (UNCLOS I).

UNCLOS I was widely seen, in Canada and amongst most of the world's coastal states, as the best opportunity to responsibly change the prevailing law of the sea to include a broader territorial sea and enhanced protection for coastal fisheries. For the United States and the maritime powers it was seen as a means of finally bringing order and uniformity to international maritime claims, whose increasing fragmentation had become confusing and potentially dangerous.

In large measure the conference was a success, and four important conventions were adopted: The Convention on the Territorial Sea and the Contiguous Zone; the Continental Shelf; the High Seas; and on Fishing and Conservation of the Living Resource of the High Seas. These conventions established an internationally recognized set of guidelines governing a wide array of maritime issues. Perhaps the most important element of the conference, from the Canadian perspective at least, was the solidification of straight baselines in international law. Article 4 of the Convention on the Territorial

Sea and the Contiguous Zone contained provisions for the drawing of straight baselines where a coastline is "is deeply indented and cut into, or if there is a fringe of islands along the coast."[350] While the *Fisheries Case* had embedded the principle in customary international law UNCLOS I codified it as accepted conventional law as well.[351]

Where Article 4 differed slightly from the *Fisheries* decision was in the addition of a permissive criterion, which, in addition to the normal three compulsory criteria for drawing baselines, added economic interest as a factor to be taken into consideration – the reality and importance of which should be clearly evidenced by long usage.[352] This was an important addition for Canada since it provided a stronger basis for using Inuit hunting and historical activity to reinforce its claim and, in 1958, the concept had been both codified and given a new prominence.

The convention had also failed to set any accepted length for baselines. In Norway, the 47 baselines had varied from a few hundred yards to 44 miles, while in the Canadian Arctic some would have to be considerably longer. This failure to set a limit implied that any baselines which could be justified under the compulsory geographical criteria and under the permissive economic criteria would be valid regardless of length.[353] Though Canada did not immediately ratify the convention, which would come into effect in 1964, this new codification of baselines in conventional law certainly imparted a higher degree of legitimacy and international acceptance on the practice.

Despite making considerable progress on many fronts, the conference was not a complete success. The global divisions between coastal and maritime states had been too

[350] The Convention on the Territorial Sea and the Contiguous Zone, Article 4(1).
[351] Even states which did not ratify the Convention, ultimately accepted it as established international law.
[352] The Convention of the Territorial Sea and Contiguous Zone, Article 4(4).
[353] Pharand, "The Waters of the Canadian Arctic Islands," *Ottawa Law Review* 3 (1969), pp. 426.

great to bridge and an agreement on the vital question of the breadth of the territorial sea and on fisheries jurisdiction had been impossible to reach. To reach agreement on this matter, the UN General Assembly authorized another conference and UNCLOS II took place only two years later. Again, however, the conference failed to come to an agreement.

In the aftermath of this failure a large number of nations took the opportunity for unilateral action and extended their territorial seas and exclusive fishing zones, normally to 12 miles. In Ottawa, the Diefenbaker government was forced to review its diminished options. In a Cabinet meeting in May 1960 External Affairs presented the government with a number of potential avenues of advance. Taking no action at all was considered politically impossible and that option was easily rejected, but so too was bilateral or unilateral action. Canada still hoped to resolve its maritime issues multilaterally and the defeat at Geneva in 1960 by only one vote inspired some hope that an international agreement might still be reached. Over the next two years Canada's diplomatic corps and its international allies in Britain and Australia lobbied foreign governments for support.[354] Yet, American support was not forthcoming and the possibilities for a successful agreement appeared to be dead. In August of 1962, Cabinet had given External Affairs the order to discontinue its lobbying efforts and its quest for a multilateral agreement. The issue would be raised again when the timing was dubbed 'opportune.'[355]

With the question of extending the country's territorial waters temporarily shelved it was recommended soon thereafter to begin moving forward with a unilateral claim to the special bodies of water. In January 1963 the Secretary of State for External Affairs

[354] Canada, Minutes of Cabinet Meeting, February 1, 1962, RG 2- A-5-a, vol. 6192.
[355] Canada, Minutes of Cabinet Meeting, August 23, 1962, RG 2- A-5-a, vol. 6193.

had told Cabinet that the time had come for Canada to assert its jurisdiction over the Bay of Fundy, the Gulf of St. Lawrence, Hudson Bay and Strait, Hectate Strait and the Dixon Entrance. In a clear reference to the Arctic waters (other than Hudson Strait), it was noted that "other matters" should be deferred. [356]

There was some support within Cabinet for including the waters of the Archipelago on this extensive list. The Cabinet Committee on Territorial Waters believed that Canada would ultimately need to use baselines in the Arctic, however even as the government moved away from multilateralism towards a far more unilateral track, it was still felt that the state's claim in the North was weak enough to be a liability and should be deferred until the matter of the other special areas had been satisfactorily resolved.[357]

After the decision to proceed with a unilateral claim was made, the Diefenbaker government moved swiftly. In an attempt to smooth the path to acceptance, External Affairs put together a package of its 'new' claims – which did not include the Arctic waters, save Hudson Bay and Strait – and communicated its intentions to the American government. It was recognized within External Affairs that many of these claims were of questionable legal validity and would have had little chance of being recognized without American acquiescence. That acceptance was therefore vital but, by early February, the government had received a very negative response, certainly not what it had hoped for. Despite the fact that the Diefenbaker government had received similar responses to its calls for expanded maritime jurisdiction in the past it still caught the Cabinet off guard. In

[356] Canada, Minutes of Cabinet Meeting, January 22, 1963 RG 2- A-5-a, vol. 6253.
[357] Ibid.

March 1963 the Prime Minister described this response as "not only faster, but more vigorous and more negative than had been expected."[358]

Regardless, Howard Greene, the Secretary of State for External Affairs recommended – and Cabinet agreed – that Canada should still move forward with its claims.[359] By early March it had become very obvious that the American position was more immovable than External Affairs had originally hoped. Worries soon arose of economic impacts if the dispute provoked the United States into restricting imports of Canadian fish or even other staples like oil and lumber.[360] In fact, the American reaction had so frightened the ministers that on March 3, Cabinet recommended that the government reverse course and allow the matter to drop. It was only the intervention of Diefenbaker and Greene who, after arriving at an agreement amongst themselves, decided that Canada would continue to move forward.[361]

Yet, the Diefenbaker government was never to see this decision through. In April 1963 the Conservative government was replaced by Lester Pearson's Liberals, which had won their own minority government and took over where the Conservatives had left off. Throughout the 1960s it would be Pearson and the Liberals that would push the issue of Canadian maritime sovereignty and even bring the waters of the Arctic Archipelago to the international stage for the first time.

***

Pearson had run his campaign on a promise of immediate action on a number of important issues. One of which was the expansion of Canadian maritime jurisdiction, by

[358] Memorandum, March 2, 1963, DHH, 2004/79, file 35, box 1.
[359] Canada, Minutes of Cabinet Meeting, February 8, 1963, RG 2- A-5-a vol. 6253.
[360] Canada, Minutes of Cabinet Meeting, March 4, 1963, RG 2- A-5-a vol. 6253.
[361] Canada, Minutes of Cabinet Meeting, March 4, 1963, RG 2- A-5-a vol. 6253.

agreement with interested parties if possible and by unilateral action if necessary. Less than a month after his election, Pearson headed south for his first foreign visit as Prime Minister. Meeting with John F. Kennedy in Hyannisport, Massachusetts the Prime Minister informed the President of his intention to use straight baselines to enclose the special bodies of water as internal.[362] Kennedy reiterated his government's position, however the meeting remained cordial as neither leader wished to make a bad first impression. In Kennedy's case there must also have been some relief that, while the maritime issues had not changed, at least it was no longer Diefenbaker with whom he had to deal.[363]

The new Canadian government knew full well how negatively the Americans viewed the Canadian position and that winning American acceptance was therefore unlikely. Their strategy was not to necessarily win Washington's approval however, but simply its neutrality. Since the United States was considered the global leader amongst those maritime states opposed to creeping maritime jurisdiction and, because it had the most economic and historic interest in the regions in question, it was imperative that it be convinced to let the new boundaries pass without taking the issue to the International Court or aggressively challenging the claims. It was felt that American inaction, or perhaps even just a protest for the record, would allow the claims to survive broader international scrutiny.[364]

[362] Records from this meeting remain partially classified and it is uncertain if the Arctic waters were raised or not. There is also a conflict in Canadian and American records as to whether or not Pearson actually mentioned Canada's intention to use straight baselines or simply to assert more jurisdiction.
[363] The relationship between Kennedy and Diefenbaker was an acrimonious one, poisoned in part by the two men's disagreement over the handling of the Cuban Missile Crisis.
[364] Canada, Cabinet Conclusions, August 7, 1963, LAC, RG 2, vol. 6245.

It was hoped that such neutrality could be bought, in part, by assuring the Americans that their fishermen would not be impacted by the move but also by focusing on the security benefits which would accrue to the entire continent with increased Canadian control over these strategically important waters.[365] Ultimately this hope was to prove futile however, in early 1963, it did not appear out of the realm of possibility.

While there was not much faith in the overall strength of the Canadian claims, the situation had at least improved from the 1950s. After UNCLOS I, the right of nations to draw baselines along their coasts, under certain geographic circumstances, had been accepted as international law – even if the convention had not been ratified by either Canada or the United States. The global increase in unilateral maritime claims also worked to Canada's benefit. While the United States was always conscious about stemming the tide of creeping jurisdiction, it possessed only so many metaphorical thumbs and there were a great number of holes in the dyke. The reality of Cold War politics was that Washington simply could not be as aggressive in its diplomacy as it might have liked. In its zero-sum competition with the Soviet Union for international influence, to take too hard a line on such matters was often not worth the political cost.

In dealing with the deluge of new, unilateral maritime claims the State Department found itself in a difficult position, forced into a careful balancing act between its position on the freedom of the seas and its wider political interests. It was recognized that too firm a stance on certain maritime issues might jeopardize a number of important relationships and provide the Soviet Union – which supported a wider territorial sea –

[365] By the early 1960s, Soviet trawlers conducting surveillance of the region and NATO naval movements in particular, had increased. As early as 1960 Canadian officials had considered using this as a rational for enhancing their control over the area; see for instance: Canada, Minutes of Cabinet Meeting, January 22, 1963, RG 2- A-5-a, vol. 6253.

with a political advantage in the Third World. As such, since the early 1950s, the American government had often chosen to avoid political friction at the expense of its maritime position. According to State Department documents it had normally: "taken, as a rule, the minimum remedial action available, and has even desisted on occasion from opposing a claim at all or from defending its own interests in freedom of the seas when offered a legitimate forum to do so."[366]

By 1963 little had changed in this balancing act and, by that point, it was even recognized within the State Department itself that the American maritime position was becoming "more hollow each day as country after country extends its territorial sea or its fishing jurisdiction beyond that limit and thus *pro tanto* makes customary international law."[367] It was in these circumstances, and armed with what it thought might be sufficient inducements to bring the United States to once again sacrifice its maritime interests for its political ones, that Ottawa set out to dramatically increase its maritime sovereignty, this time on all three coasts.

By late 1963 Canadian officials had begun serious negotiations with their American counterparts. The focus was clearly on the special bodies of water, however from the records available it is also clear that the Pearson government had chosen to include the waters of the Arctic Archipelago on its list. Precisely when this claim was forwarded to the American delegation is difficult to pinpoint, however it was definitely being discussed in Washington as early as that September.[368]

---

[366] "Statement of Policy of the United States on the Freedom of the Seas," 1954, NARA, RG 59, entry A1 3071, box 4.
[367] Memorandum for the Deputy Undersecretary for Political Affairs, June 8, 1963, NARA, RG 59, Central Foreign Policy Files, 1963, box 3801.
[368] Letter to Alexis Johnson, September 16, 1963, Alpha-Numeric Political and Defence Files, box 3856.

The Canadian position in the Arctic had been strengthened somewhat over the previous few years. Aside from the new codification of straight baselines there had also been a limited degree of new international support. Canadian diplomats were certainly heartened by statements from the British government in 1960 which implied that London saw the Arctic Archipelago as a very different case than the contentious Indonesian situation – a comparison that the Canadian government had always striven to avoid. [369] Yet, how precisely Canada was seeking to claim the waters was uncertain. All of the other special bodies were being claimed by Canada as historic internal waters. Baselines were to be drawn around them, not necessarily to enclose them as internal, but rather to mark off the boundaries of what had historically been considered internal – as had been the case in Norway in 1952. The Arctic waters however were never listed as 'historic.'[370] There is no evidence of the American delegation seeking to resolve this issue and they appear to have concluded that Canada was simply basing its Arctic claims on Article 4 of UNCLOS I and on the archipelagic doctrine.[371]

In part, Canada may have gone in this direction because of the higher standard of proof required for claims of historic waters. It seems likely that the Canadian government felt that this standard could not be met and so avoided use of the term 'historic'. Instead, the Canadian delegation focused upon the strategic gains to be had from exclusive Canadian control. It was pointed out to the State Department that Soviet

[369] Minutes of the 58th meeting of the ACND, December 5, 1960, LAC, RG 22, vol. 838.
[370] Whenever the American delegation listed Canada's new historic waters claims in internal memoranda the waters of the Archipelago were never included. For example see: Attorney General to Alexis Johnson, October 25, 1963 & Robert Kennedy to Attorney General, September 5, 1963, NARA, RG 59, 1963 Alpha-Numeric Political and Defence Files, box 3856.
[371] The archipelagic doctrine was a theory which supposed a right for archipelagic states to exercise sovereignty over waters within an archipelago enclosed by straight baselines; Statement of the Deputy Undersecretary of State to a meeting with Canadian External Affairs representatives, December 4, 1963, NARA, RG 59, Central Foreign Policy Files 1957-1966, Pol 33-8 CAN-US.

submarines had been sighted in the Arctic and that the region had the potential to become a highway from the Russian bases on the Kola Peninsula to the Atlantic. It was also pointed out that future developments in missile technology would likely make the Arctic and, Hudson Bay in particular, ideal havens for missile launching Soviet submarines. Enclosing the waters as Canadian would allow the RCN and the US Navy to exclude Soviet boats from the region and would facilitate the defence of the continent.[372]

To these claims the American representatives responded that there were other ways to guard against Soviet activities through joint naval cooperation.[373] The State Department also pointed out that the American concern for the freedom of the seas trumped more localized security issues. For a government which recognized the right of Soviet vessels to be three miles off the coast of Florida, near the important Cape Kennedy space facilities, Soviet activities in the Arctic were obviously of secondary concern.[374] More important for the United States was the broader Western defence effort. It was still assumed that American and NATO defences would be hindered by the limitations placed on Western warships by the recognition of new internal waters around the world. While the Americans were willing to recognize baselines drawn in conformity with their more rigid interpretation of the 1958 Geneva Convention, they felt that the large areas claimed by Canada, both in the Arctic and the other special bodies, simply did not meet those criteria.[375] And, as the United States had vigorously protested similar claims made by the

[372] Canada – U.S. Meeting on the law of the sea, August 28, 1963, NARA, RG 59, Subject Numeric Files, POL CAN-US 33-4, entry 1613, box 2152,
[373] Deputy Secretary of Defence to Alexis Johnson, September 16, 1963, NARA, RG 59, Central Foreign Policy Files, Canada-US, POL 33-4 1963.
[374] Memorandum of conversation discussion of proposed extension of fisheries zone, February 12, 1964, NARA, RG 59, Central Foreign Policy Files 1957-1966, POL 33-4 CAN-US.
[375] Memorandum of conversation: Raymond T. Yingliong, Bernard Glaxer, Guiseppe Maria Borga (Italian Embassy), NARA, RG 59, Central Files 1957-1966, POL 33-4 CAN-US.

Philippines and Indonesia it could hardly be seen recognizing extensive baselines in Canada without facing charges of favoritism and hypocrisy. [376]

To condone Canada's drawing straight baselines around the Arctic Archipelago in particular would also have provided a convenient justification for the Soviet Union to enclose much of its own Arctic waters. At this time the Soviets already claimed the areas east of Novaya Zemlya and the White Sea as historical internal waters and even cited Canada's claim to Hudson Bay as justification for their sovereignty over Peter the Great Bay.[377] In 1964 the US Department of Defence had pointed out to the State Department that, even if the broader Canadian Arctic claims could be substantiated in law, the risk of the Soviets excluding US submarines and warships by enclosing the Kara, Laptev and Okhotsk seas would still necessitate a rejection by the United States.[378]

For decades, the State Department and the US Navy had aggressively disputed Soviet claims of sovereignty to much of its Arctic waters. By the 1960s those Soviet claims were even being physically challenged. In 1963 the USCG *Northwind* was sent through the Sannikov Straits in Eastern Siberia, ostensibly for scientific purposes but really as a political statement. The next year the USCG *Burton Island* performed similar duties in the East Siberian Sea. By the time of the *Burton Island*'*s* transit, the Soviet government had become more alive to the issue and was far more involved in monitoring what it considered to be an intrusion. When the icebreaker attempted to pass between

[376] Statement of the Deputy Undersecretary of State to a meeting with Canadian External Affairs Representatives, December 4, 1963, NARA, RG 59, Central Foreign Policy Files 1957-1966, POL 33-8 CAN-US.
[377] Letter from Fisher Howe to Mr. Elbrick, July 29, 1957, NARA, RG 59, Central Decimal File, 1955-1959, box 3508.
[378] Statement of the Deputy Undersecretary of State to a meeting with Canadian External Affairs Representatives, December 4, 1963, NARA, RG 59, Central Foreign Policy Files 1957-1966, Pol 33-8 CAN-US.

Novosibirskie Ostrova and the mainland, Moscow issued a strong protest and reminded the Americans that this area was claimed as internal Soviet waters.

In 1965 the American Coast Guard again sent an icebreaker to the Soviet North, this time it was the USCG *Northwind*. The *Northwind* travelled through the Barents and Kara Seas, both areas claimed as internal by the Soviets. Again the transit was listed as a research voyage but, in reality, it was a means of asserting American rights of passage through the region. This was certainly the impression held by the Soviet government. Politburo member Aleksandr Shelepin noted: "it is probably not from a love of the beauties of the Northern Region that in these days the American military icebreaker *Northwind* is plowing its severe waters."[379] In response, the Soviets dispatched a number of badger bombers to buzz the vessel at a very low altitude flashing 'Very' lights in the code green-white-white, meaning 'you are trespassing.' When the signal was ignored by the *Northwind* the Soviet Navy dispatched a squadron of warships which intercepted it near Novaya Zemlya. One of the Soviet frigates even attempted the dangerous manoeuver of cutting the icebreaker off. The last such passage took place in 1967 when the US Coast Guard cutters *Edisto* and *Eastwind* repeated the voyage of the *Northwind* – heading north of Severnaya Zemlya to the Bering Strait. Only when the Soviet government threatened to detain the vessels or stop them forcibly, did the United States decide that it was not worth risking a war over the issue.[380]

That these transits normally went ahead, despite the high political tensions which existed at the time, and occasionally strong recommendations from within the State Department against carrying them out, is a clear indication of how seriously the

[379] Llewellyn E. Thompson to Cyrus Vance, August 9, 1965, NARA, RG 59, Central Foreign Policy Files 1964-1966, box 2873.
[380] Pier Horensma, *The Soviet Arctic* (New York: Routledge, 1991), pp. 111-112.

American government took the issue of navigational freedom and of the status of the Soviet Arctic seas in particular.[381] Accepting Canadian claims might very well have meant legitimizing the Soviet claim to its Arctic straits and the surrounding waters. This would have made submarine surveillance far more difficult and dangerous while pushing American naval surveillance farther away from the USSR's primary naval bases. It was these broad strategic concerns which drove the American defence establishment to reject Canada's Arctic claims so completely. Exclusion from the Canadian Arctic itself was never really an issue. The two nations had spent the better part of two decades cooperating in the region and there was little question within the American Department of Defence that Canadian sovereignty would in any way limit American access to the region.[382]

For many of the same reasons the Americans rejected, in no uncertain terms, all of Canada's broader claims in the Atlantic and Pacific regions. In fact the only claim which the US government found to be justifiable under international law was that of Hudson Bay (though not Hudson Strait).[383] The American reaction to the Canadian claims was obviously not what Canada would have liked and it quickly became apparent that there would be no easy agreement. Nor did it seem as though the US would be willing to merely offer the hoped for token resistance to the Canadian program.

In the face of these difficulties the first casualty was Canada's Arctic claims. On January 22, 1964 the Cabinet made the final decision to drop the Arctic waters from its list in the hopes of making the overall package more acceptable to the American

[381] For a demonstration of such opposition see: Llewellyn E. Thompson to Cyrus Vance, August 9, 1965, NARA, RG 59, Central Foreign Policy Files 1964-1966, box 2873.
[382] Memorandum, October 28, 1963, NARA, RG 59, entry MLR-A-1 (5550), lot 96D695, box 86.
[383] Memorandum of conversation, discussion of proposed extension of fisheries zone, February 12, 1964, NARA, RG 59 Central Foreign Policy Files 1957-1966, POL 33-4 CAN-US.

delegation.[384] On February 5, 1964 the Secretary of State for External Affairs, Paul Martin, opened a fresh round of negotiations with his American counterparts. He informed them that, while Canada was not formally abandoning its claims to the Arctic waters, he was now officially deferring them.[385] Unfortunately the concession had little impact on the American representatives, whose principled objection to the broader Canadian claims remained. According to the State Department, Martin had expressed "disappointment that the Canadian concession on the Arctic Archipelago had not been more impressive to the U.S. He described Canada as having made fundamental concessions without having received anything in return."[386]

While many of the official records on this subject remain classified it seems unlikely that the concession of the Arctic waters was quite as dramatic or 'fundamental' as Martin had tried to make it appear. In fact, contrary to what Martin tried to convey with his feigned outrage and lamentation, it seems as though the government's push for Arctic sovereignty in 1963 was not particularly heartfelt and that the region had never really been an important objective or part of the Canadian strategy.

During the years of back and forth diplomacy the region garnered far less attention from both the External Affairs and State Department representatives than any of the other bodies of water being discussed and it appears to have been little more than an afterthought during the entire process. This is hardly surprising. Dean Curtis had already advised the government that its legal claims to the northern waters were not strong and,

---

[384] Statement of the Deputy Undersecretary of State to a meeting with Canadian External Affairs Representatives, December 4, 1963, NARA, RG 59, Central Foreign Policy Files 1957-1966, POL 33-8 CAN-US.

[385] Memorandum of conversation, February 5, 1964, NARA, RG 59, Central Foreign Policy Files 1957-1966, POL 33-4 CAN-US & memorandum of conversation, July 6, 1964, NARA, RG 59, Central Foreign Policy Files 1957-1966, POL 33-8 CAN-US.

[386] Memorandum of conversation, February 5, 1964, NARA, RG 59, Central Foreign Policy Files 1957-1966, POL 33-4 CAN-US.

since External Affairs recognized that American acceptance of their entire proposal was unlikely, they rationally chose not to highlight what may have been the weakest link in the chain.[387] In fact by August 1963, before these negotiations had even begun, External Affairs had concurred in this assessment and had already decided to seriously push its Arctic claims only if a general American agreement appeared to be within reach on the broader issue or territorial waters, fishing zones and sovereignty over the special bodies of water.[388]

After the negotiations had begun in earnest and American resistance had become clear the decision was made to abandon the weakest and least essential elements on Ottawa's list: the Queen Charlotte Sound and the Arctic. Yet, it was still hoped that the government could get some mileage out of the claims before they were dropped. In a meeting held in late December 1963 the Cabinet clearly decided that, while neither of these two claims would be pushed, "they should be used as bargaining counters and the Canadian representatives should, generally, take a tough line."[389]

When, a month later, Paul Martin expressed his astonishment that the US had been unmoved by Canada's deferral of its Arctic claims, this indignation must have been largely hollow. It is fairly clear that Canada had introduced the Arctic into this dynamic in the faint hope that there would be no real dispute over the issues that were of real concern. In such circumstances, the government would then have had the luxury of addressing matters in the North. If not, it could be used as a bargaining chip. In fact, Canada had spent so little energy pushing the Arctic claims that that Americans can be

[387] Canada, Cabinet Conclusions, January 22, 1964, LAC, RG 2, vol. 6253.
[388] Memorandum: "Law of the Sea Negotiations," August 16, 1963, LAC, RG 25, vol. 5388, file 10600-5-40.
[389] Canada, minutes of Cabinet meeting December 21, 1963, RG 2- A-5-a vol. 6254,

excused for not placing much value on their deferral. State Department records indicate that, as early as December 1963 , two months before Martin officially made the deferral – the American delegation already felt that Canada had dropped its claims to the Arctic waters.[390]

The skeptical American reaction to Canada's defence-based case for the northern waters also appears justified. The Canadian delegation had sought acceptance of these baselines largely on defence grounds, as a means of excluding Soviet submarines which, the Americans were told, were likely to become an increasing threat to the continent. How genuine this fear actually was remains open to debate. Only one year before the Canadian delegation presented this argument to the Americans the Minister of National Defence had written to Cabinet to convey his opinion that there was really no such threat and no real strategic need to draw straight baselines around the Arctic waters.[391]

By 1964 the Canadian Submarine Acquisition Committee, which was studying the possibility of acquiring nuclear submarines for the RCN, had reached a similar conclusion. The committee's report from that year read as follows:

> By operating its submarines in the Canadian Arctic the USSR can acquire no major military capability which it would otherwise lack nor can it achieve any strategically significant result. Indeed, one can argue in all seriousness that there are few areas in which the USSR could achieve less for a given expenditure of resources than by deploying its submarines in the Canadian Arctic.[392]

Only two months before this report, the Department of National Defence had produced its White Paper, outlining what it considered to be the threats facing Canada and how the Canadian services were to deploy their resources in response.[393] The fact that the Arctic

[390] Memorandum, December 11, 1963, NARA, RG 59, entry MLR-A-1 (5550), lot 96D695, box 86.
[391] Memorandum to Cabinet, March 9, 1962, DHH 2004/79.
[392] "A Canadian Nuclear Submarine Program," May 9, 1964, DHH, 88/64, box 1.
[393] Canadian Department of National Defence, *White Paper on Defence*, Ottawa: Queen's Printers, 1964.

did not even warrant a reference – coupled with the decision not to proceed with the purchase of the SSNS – is indicative of how serious the Canadian military actually took this Soviet threat to its northern waters.

It seems likely therefore that Canada's sudden concern for its Arctic security was largely invented for the purpose of justifying its proposed baselines. When it became obvious that the principal elements of the Canadian claim were in danger of complete rejection the threat of Soviet submarines became less of a concern than fishing interests in the Gulf of St. Lawrence. The Arctic waters (and the Queen Charlotte Sound) were therefore abandoned for tactical reasons. Simply put, the Arctic had never truly been a priority and, when it became necessary, was used as a bargaining chip.

In the end it was a singularly unsuccessful bargaining chip. The Canadian government had gone out onto a political limb by claiming the waters off the Pacific and Atlantic coasts and the Pearson government believed it would be political suicide to abandon those claims, particularly those in the East. By February 1964 the State Department even described Canada as essentially having asked the United States to "bail them out."[394]

The United States believed that, while publicly, the Canadian claims were being justified as economic and strategic necessity "its basic and privately confirmed origins lay in its political appeal to Canadian nationalism."[395] Whether this was true or not, Washington was simply not prepared to sacrifice its strongly held interests to gratify what it perceived as Canadian nationalism. By 1964, the Americans were even threatening to

[394] Memorandum of conversation, NARA, RG 59, Central Files 1964-66, POL 33-4 CAN-US.
[395] John Leddy to Acting Secretary, Department of State, December 15, 1966, NARA, POL 33-8 Canada-US.

take any Canadian legislation proposing straight baselines to the International Court.[396] Whether this was a bluff is uncertain and any final decision might have had to await an official Canadian declaration; however by 1966 the State Department already had a draft note on file ready to be delivered to the Canadian Embassy, formally notifying Canada that the matter was being referred to the ICJ.[397] The threat had an effect. In 1964 Paul Martin admitted to Cabinet that the Canadian case "on strict legal terms, was simply not strong on the basis of historic title, in any case except that of Hudson Bay."[398] Taking the issue to international arbitration would likely result in a complete loss for Canada.

After deferring its Arctic claims Martin realized that the country had played its cards and lost. He therefore advised Cabinet that the government would likely have to begin backing away from its more ambitious claims. It was suggested that the negotiators give Canada's position one last try at their next meeting and, if the Americans persisted in their opposition, Canada would have to change tack. Politically it was imperative that something would have to be accomplished. If this could not be sovereignty over the Arctic and the other special bodies of water, then Canada would have to amend its position and try and win American acceptance for enhanced fisheries jurisdiction. Cabinet agreed and, when the Americans continued to hold firm, this became the new direction of Canadian efforts.[399]

---

[396] Ibid.
[397] "Draft Contingency Note," August 9, 1966, RG 59, Central Foreign Policy Files, 1964-1966, box 1999.
[398] Canada, minutes of Cabinet meeting, February 11, 1964, RG 2- A-5-a, vol. 6264.
[399] While Canada offered to protect American fishing rights in this new zone the US delegation persisted in their rejection. The issue for the Americans continued to be one of international precedent – both for American transit as well as fishing rights. In particular, the US government was concerned that an extended Canadian fishing zone would lead its Latin American neighbours to undertake similar expansions. In those areas, the US was less likely to win protection for its fishing rights. Paul Martin recognized that it might be necessary for the US to make a formal protest, though he hoped that the that Washington would not speak too loudly, "just loud enough for the Latin Americans to hear;" Memorandum of conversation, September 29, 1966, NARA, RG 59 Central Foreign Policy Files, 1964-1966, box, 1999.

In the years following the deferral of Arctic sovereignty Canada and the United States continued to negotiate over fishing rights and the applicability of straight baselines. These issues would remain unresolved well into the 1970s and, ultimately, would merge into the next great Arctic sovereignty crisis. By the end of the decade Canada had managed to draw some limited coastal baselines along the coasts of Newfoundland and Nova Scotia, however none of the special bodies of water had been enclosed as either internal waters or fisheries zones. Canadian diplomats had certainly achieved far less in their negotiations than they would have liked and, by 1967, the Prime Minister was willing to concede that his law of the sea policy had been "singularly unsuccessful."[400] However, in the midst of it all, an important precedent had still been set for the Arctic waters. For the first time the Canadian government had told the Americans what it was in the Arctic that Canada intended to claim. The rationale for that claim was still ambiguous, however this clarification was no small feat since, even as late as 1963, the Canadian government was still acting as though it might adhere to the sector theory,[401] something which the State Department certainly noticed.[402]

While the claim had been 'indefinitely deferred' in 1964, it was never formally abandoned. Indeed, Paul Martin had made sure to mention, on more than one occasion,

---

[400] Canada, Cabinet minutes, March 2, 1967.

[401] The best example of this behavior comes from January, 1963. That month the International Civil Aviation Organization Secretariat (ICAO) was working on a technical paper on compass reliability in the Arctic. This area extended from the North Pole south along the 140th meridian as far as the continent and thence south east to Churchill. In the east, the area was bounded by the 60th meridian from the Pole to Cumberland Sound and Baffin Island and thence Southwest to Churchill. The ICAO draft said that the delineation of the area from the Pole to parallel 70˚N should be specified by the ICAO and not Canada because it comprised international waters. External Affairs asked that it be changed to read: "with the exception of the international waters lying between Greenland and Canada this area lies within Canadian territory and the precise determination of the boundaries of the area can, therefore, be left to the appropriate Canadian authorities;" Legal Division to Economic Division, External Affairs, January 17, 1963, LAC, vol. 12, file 9057-40.

[402] Letter to Alexis Johnson, September 16, 1963, NARA, RG 59, 1963 Alpha-Numeric Political and Defence Files, box 3856.

that Canada had not surrendered its sovereignty and, in fact, the very nature of a deferral implied that the claim would be raised again in the future. Once that deferral was announced however, the question of Arctic sovereignty was dropped completely from the agendas of both Canadian and American governments and this is the way matters would rest for the remainder of the decade.

That Arctic sovereignty should have been given so little weight during the negotiations and then abandoned so readily, should not come as much of a surprise given its economic and political importance, relative to the Gulf of St. Lawrence and the other areas in question. Nor should it really be seen as any sort of surprising abandonment. In fact there was nothing fundamentally new to the Canadian policy and the tactics employed throughout this process. Since the 1930s, successive Canadian governments have had a clear understanding of the country's maritime priorities and the Arctic was simply not at the top of that list.

The prominence of the Gulf of St. Lawrence and the other special bodies of water was owed to their economic, strategic and even emotional importance on a national scale. These were all important and frequently travelled bodies of water whose possession would have greatly increased Canadian control over foreign activities along its coast. The Arctic, on the other hand, had no economic significance, next to no shipping activity and even fewer registered voters.[403] Even in 1956, after the government had finally settled upon drawing baselines around the Arctic Archipelago, Graham Rowley, head of the ACND and avid Arctic explorer, had admitted that the government must settle its maritime disputes in the Atlantic and Pacific before worrying about the Arctic.[404]

[403] It was only in 1962 that ballot boxes were finally placed in all Inuit communities for federal elections.
[404] "Canadian Sovereignty in the Arctic," 1965, LAC, RG 22, vol. 546, file Rowley-ACND-1965.

The 1960s were a quiet time in the North and it was thought that that state of affairs would continue. As such, there would be another opportunity to raise the issue at a time of the government's choosing. There was no expectation however, that within six years, outside events would fundamentally upset that calculation and catapult the region from obscurity to international prominence. And, in the process, the government's traditional maritime priorities, which had remained so constant for so long, would be radically upset.

Chapter 5

Charting a New Course:
The Manhattan Crisis and the Arctic Waters Pollution Prevention Act

On July 18, 1968 the *Anchorage Times* published a story confirming rumors which had been swirling for months in the oil industry. The headline read "Arctic Oil Find is Huge."[405] Exploration activity in northern Alaska had paid off with a gigantic strike at Prudhoe Bay. Early estimates put this new super-giant field at roughly 15 billion barrels of oil, making it the largest on the continent. Apart from promising a handsome return to investors, its discoverer came at a critical time for the United States, as domestic oil production was just starting to peak and global supply was becoming increasingly unreliable. In a stroke Prudhoe Bay had effectively increased America's proven reserves by approximately a third and provided the country with a new and badly needed source of production growth.[406]

This discovery had opened a new world of possibilities for Canada as well. Since the 1950s, governments in Ottawa had been promoting northern development and the discovery of commercially viable oil reserves, just over the border, made a parallel exploration boom in the Canadian North inevitable. Yet it also brought with it a new set of dangers. By focusing domestic and international attention on the region, these discoveries could hardly help but raise many of the awkward questions surrounding sovereignty, questions which Ottawa had spent the past two decades intentionally avoiding. The consequences of this attention would quickly upset decades of Arctic

[405] "Prudhoe Bay Production," *ANWR.org*, [online] http://www.anwr.org.
[406] By 2009 Prudhoe Bay's reserves had been set at 15.7 billion barrels produced with an additional 35-36 billion in proved reserves remaining (including nearby fields subsequently discovered). NETL, *Alaska North Slope Oil and Gas A Promising Future or an Area in Decline?* Addendum Report DOE/NETL-2009/1385 (April 2009).

policy and force a fundamental re-evaluation of the government's priorities in the Arctic. The politics of deferral, which had defined the Canadian approach to the Arctic for so long, were no longer a sustainable approach. Arctic oil had forced the issue and the status of Canada's northern waters had become a very immediate concern.

Hydrocarbon exploration was nothing new in the North American Arctic. Geologists had long recognized the region's potential, yet because of its remoteness and distance from established infrastructure and markets, the relatively small finds which had been made had never been developed.[407] In Alaska, the Russians had discovered oil seepages before the territory had been acquired by the United States while in the Canadian North Alexander Mackenzie had spotted it coming out of the ground near Norman Wells as early as 1789. Commercial exploration had begun in the early twentieth century with the drilling of several wells in the Katalla district of Alaska in 1911. In a cautionary tale for future operations, the expense of doing so proved too much and the project was shut down in 1920. Oil discoveries along the Mackenzie Valley had encountered similar economic hurdles. An attempt to bring oil from Norman Wells to Alaskan military bases during the Second World War ended in complete failure when the Canol pipeline proved both unnecessary and uneconomical.

By the 1960s exploration had picked up again across the North. In Alaska the focus of most of this new activity was on the North Slope and the Brooks Range while, in Canada, exploration had largely moved to the Queen Elizabeth Islands and by the middle of the decade, the Beaufort Sea and the Sverdrup Basin. Canadian development had also been given something of an artificial boost. In 1958 the federal Conservatives had run on

[407] The one small exception in Canada was the field at Norman Wells, which had been developed by Imperial Oil in 1937.

a platform of northern development, a plan which Diefenbaker had termed the 'Northern Vision.' The key ingredient of this new plan was the 'roads to resources' program designed to link the North's great national resource potential to southern markets. By developing the Arctic, Diefenbaker dreamed of raising the standard of living of Canada's northern residents, providing material benefits to the rest of the country and, like the Canadian Pacific Railway 73 years earlier, of serving as a great nation building exercise.

The initial results were promising. As early as 1958 Alvin Hamilton announced that, in the past seven months, Northern Affairs and Natural Resources had issued more than 602 oil exploration permits to about 200 different firms.[408] By April 1960, permits for 98 million acres had been issued for the Yukon and the continental Northwest Territories, with a further 142 million acres in permits spread across the Arctic Archipelago.[409] To push this development further, the government promulgated its new Oil and Gas Land Regulations in 1961, offering tax relief, grants and incentives to private companies to reduce their investment risk.

The search for oil and other natural resources during the 1960s was significant, yet the anticipated flood of discoveries never materialized while the cost of northern operations continued to limit the feasibility of developing the resources which had been uncovered. In the end the Northern Vision was a bust and, by the mid-1960s, much of the government funding for infrastructure was withdrawn. As such, much of the industry activity shifted to Alaska by the end of the decade.

---

[408] Clark Davey, "Spurred By Promise, 33 Firms Seeking Oil in Northwest Area," *Globe & Mail*, April 25, 1958.
[409] Memorandum, Alvin Hamilton to J.G. Diefenbaker, April 27, 1960," Diefenbaker Canada Centre, series VII, vol. 189.

It was in Alaska where the long sought after super-giant oil field – large enough to be economically exploited – was discovered. The oil struck on the North Slope was a transformative event for the state and for the region as a whole. Within months, the original discoverers, Atlantic Richfield and Exxon were joined in the area by Standard Oil of Ohio, Humble Oil, British Petroleum, ConocoPhillips and others. The most pressing concern for the companies involved was, of course, how to transport this new oil south to refineries and markets. While some ambitious proposals were revived for the employment of cargo-carrying submarines there were really only two viable options: pipelines or tankers.[410] The pipeline proponents had considered a system stretching nearly 800 miles from Prudhoe Bay to Valdez in southern Alaska. A second option was to go east to the Mackenzie Valley Delta, where it could connect to anticipated Canadian oil developments and proceed south along the Mackenzie Valley. Such a system was not expected to come cheap however. Both pipeline options stretched more than a thousand kilometres, while the favoured all-Alaska route crossed two major mountain ranges, a series of rivers and miles of swampy terrain.

In 1968 the widespread assumption was that tanker transport would be both easier and cheaper. Calculations varied, however some estimates put tanker costs at up to 50% less than either of the pipeline alternatives.[411] This was all speculation and guess work since no company had ever attempted to run a tanker through the harsh ice-covered waters of the Arctic. Nor had any shipyard built anything like the necessary ice-

[410] General Dynamic, for instance, had designed a 1,000 foot long submarine of 173,900 dwt. The company calculated submarine tanker costs at 25 cents per barrel less than any pipeline option. It should be kept in mind that this was likely a biased calculation; *Nuclear Submarine Tanker*, February 4, 1970, LAC, RG 22, vol. 547, file Rowley-Advisor-1970.[410]

[411] A.H.G. Storrs and T.C. Pullen, "S.S. Manhattan in Arctic Waters," *Canadian Geographic Journal* 80:5 (1970) pp. 167.

strengthened vessel capable of year-round Arctic operations. What experience existed in Arctic navigation were largely confined to purpose-built icebreakers or seasonally employed cargo ships incapable of handling thick multiyear ice.

Despite having operated ships in the region for the past 70 years Canada also had a fairly poor understanding of Arctic ice dynamics. There was little information on shipping through the deep water Parry Channel since most northern maritime activity took place along the easier but narrower and shallow southern routes. In fact, travel through the Viscount Melville Sound, McClure Strait and the Beaufort Sea had no past precedent of deep draft commercial operations to offer any guidance. If tankers were to be considered a viable alternative a major test would be required, both to ensure that such a passage could be made safely and to gather much of the technical data needed to build future Arctic fleets.

The companies involved and the US government itself had strong incentives to begin moving this oil to southern markets as quickly as possible. Oil prices in the 1960s were not particularly high, ranging from $2.90 per barrel in 1960 to $3.39 in 1970; however by 1967 the first Arab oil embargo unnerved many Western governments. A lack of solidarity in the execution of the embargo and the tapping of spare American production capacity kept oil prices from climbing out of control but the event had raised the specter of a broader and more coordinated embargo which might have serious repercussions for the Western economies.[412] This threat was all the more pronounced given that American oil production reached its peak in 1970, forcing a rapid increase in

[412] This was exactly what took place in 1973 when the second Arab oil embargo raised global crude prices 82% in one year and caused considerable supply disruption in the American market.

imports. Between 1968 and 1972 these imports had jumped by 42% from 19% of domestic consumption to 27%.[413]

Only three months after the announcement of the Prudhoe Bay discoveries, the Marine Department of Imperial Oil had submitted a request to the Canadian Department of Transport for an informal meeting between a consortium of oil companies and those Canadian departments concerned with Arctic development. The subject was an Arctic tanker test through the Northwest Passage. During the meeting, held that November, the oil company representatives conveyed their interest in conducting such an experiment and informed the Canadian government that they had begun procuring a test vessel, a tanker called the *Manhattan*. Requests were naturally made for Canadian icebreaker support and any ice data which the government could provide.[414] From the beginning, Humble Oil, Exxon and the other participating companies were extremely interested in Canadian input and participation in what was, for them, a great leap into the unknown. Consultation on technical matters, and on the progress of the program more generally, was therefore continued on a regular basis throughout 1968.

The *Manhattan* itself was rapidly refitted in preparation for its transit. Since there were no existing Arctic capable tankers, the vessel was turned into something of a hybrid for the purpose. It had been built in 1961 at Quincy Massachusetts at a time when shipyards were still trying to solve the structural problems of constructing tankers of that size. As such, a great deal of extra steel had been put into her construction, as much as would go into a ship more than twice her size built in 1970. To augment her for Arctic conditions the original bow was cut off and replaced with a specially designed

[413] U.S. Energy Information Administration, "Total Energy: Petroleum and Other Liquids Overview, 1949-2010," [online] www.eia.gov.
[414] A.H.G. Storrs to Dr. Claude Isbister, March 5, 1969, LAC, RG 12, vol. 5561, file 8100-15-4-2, pt. 1.

icebreaking section and an ice belt of high tensile steel was stretched around the whole length of the ship. In total, 10,000 extra tons of this Arctic ready steel had been added. Internal stiffening was also reinforced to help resist ice pressure, a second skin around the engine and boiler rooms was added and a helicopter pad was attached. To assist in the myriad of tests and measurements which the vessel was supposed to undertake a great deal of sophisticated sensor and computer equipment was also brought aboard.[415] In the end, the budget for the project reached $26 million, a tidy sum in 1969. [416]

Once the conversion was complete, the 150,000 ton *Manhattan* had become one of the most powerful ice-capable vessels in the world. Yet, it was still only a half scale model of the Arctic class supertankers ultimately envisioned. If these tests proved successful, plans called for the construction of 26 to 30 massive 1,200 feet long icebreaking Ultra Large Crude Carriers of 350,000 tons, each capable of carrying 1 million barrels of oil.[417] Each was expected to cost between $60 to $70 million, or twice the cost of a similar non ice-strengthened ship.[418]

Construction work proceeded rapidly and on August 25, 1969 the *Manhattan* left the US Eastern Seaboard. After making a quick stop in Halifax to pick up additional crew and a handful of scientists, the supertanker headed up the Davis Strait and into Baffin Bay, where it met up with her icebreaker escorts, the CCGS *John A. Macdonald* and the USCG *Northwind*. Together the three ships headed westward together through the

[415] Not all of this equipment worked perfectly. The devices designed to measure speed, for instance, soon failed because of pressure damage to the hull. Ultimately, the ship's speed had to be measured by throwing bits of wood over the side of the fo'c'sle shouting "mark!" Others on the stern would reply when the wood passed them and, by knowing the length of the ship and the time it took the wood to reach the aft section, the ship's speed could be calculated; Storrs and Pullen, pp. 172.
[416] This would equate to $161,104,538 in 2012 dollars; A.H.G. Storrs to Dr. Claude Isbister, March 5, 1969, LAC, RG 12, vol. 5561, file 8100-15-4-2, pt. 1.
[417] Minutes of the 73rd meeting of the ACND, December 19, 1968, LAC, RG 112, vol. 29803, file 170-80/A6, pt. 7.
[418] Storrs and Pullen, pp. 179.

Northwest Passage without difficulty. Ice conditions were terrible that year, however the *Manhattan's* weight gave her a power which even her escorts lacked and she quickly proved herself a very capable icebreaker.[419] At Resolute the ship was greeted by the CCGS *Labrador* and an assembly of Canadian parliamentarians who had been invited onboard for a tour. Some of those MPs had attempted to overfly the ship the day before in order to welcome her to Canadian waters, however the fog had been too thick for the plane to be visible.

The transit was a complete success until the supertanker reached the heavy ice in the McClure Strait. While the Prince of Wales Strait offered an easier route to the *Manhattan*, the purpose of the entire exercise was to push the ship to its limits and to see what it, and other ships like it, might be capable of. The older and relatively underpowered *Northwind* had to peel off to take a more southerly coastal route and, as it turned out, the icepack in McClure was to prove too much for even the 150,000 ton tanker. Just inside the strait, the *Manhattan* found itself stuck in a vast polar floe and progress was slowed to a crawl. As the ship gained ground at a snail's pace it was forced to rely on the *Macdonald* to break a path forward and remove some of the constraining ice. It soon became clear that making it through the McClure Strait, while desirable for publicity's sake, was simply not worth the time and risk involved. After 34 hours stuck in the ice, the pair of ships turned back and headed south through the Prince of Wales Strait and into the open water west of Banks Island. By 15 September they had cleared the Northwest Passage and were proceeding through calm seas to Alaska.

[419] Icebreaking power is directly connected to the weight of the ship since the process of breaking ice involves riding up on the sheet and then crushing it with the weight of the ship. What the *Manhattan* lacked however was the manoeuverability and the power to back up and then quickly build up speed to break free of an icepack.

On an operational level the voyage had been a dramatic display of the kind of Canadian-American cooperation which had long typified joint Arctic operations. The two coast guards had worked very well together and the experiment could not have been a success without the assistance of the *Macdonald*. To coordinate this cooperation T.C. Pullen, the former captain of the *Labrador*, had even been invited aboard the supertanker to serve as a Canadian observer and advisor. Like Commander Robertson aboard the *Seadragon* nine years earlier, Pullen served as more than a symbolic representative; he was an active member of the crew whose experience in the dangerous Arctic seas had been eagerly sought after and proved to be an invaluable asset.

Despite the underlying political concerns, such as those which had prompted the party of MPs to overfly the tanker, both Canadian and American governments were anxious to see the experiment succeed. For the United States, Alaskan oil represented a new strategic asset. For Canada it represented a very real opportunity to develop its own Arctic hydrocarbon reserves and to restart the process of northern development which had largely stalled in the 1960s. The matter of sovereignty was, for the most part, not allowed to intrude on these plans. The two nations had managed similar operations since the 1950s without upsetting the political waters and there was no reason to think that those informal arrangements could not continue.[420] In fact, when the prospect of Arctic oil development had first come to be discussed, cooperation was the order of the day. Four months before the *Manhattan* experiment was first suggested, the two coast guards, along with Canadian Department of Transport officials, had begun meeting to exchange information and ideas on the Arctic. Both states knew that Arctic oil exploration, and

[420] E.B. Wang, "Role of Canadian Armed Forces in Defending Sovereignty," April 30, 1969, LAC, RG 25, vol. 10322, file 27-10-2-2, pt. 1.

possibly even development, would soon be heating up and there was a widespread and general agreement that the two countries could accomplish more by working together.[421]

The intent of these early meetings was to work out an information sharing system whereby icebreaking technology research and ice studies could be shared. However more grandiose notions were soon advanced. According to American officials, "the value of a joint U.S.-Canadian approach to the problem of the Northwest Passage became quite clear [underlining in the original]." The USCG felt that some form of passage authority, with control over icebreaker operations, ports, routes, insurance and the like would smooth the path to northern development and work in everyone's interest.[422] The American representatives even suggested that the two governments consider establishing a joint icebreaker fleet. While this suggestion was rejected on the basis of cost, the rest of these proposals received a warm reception in Canada.[423]

The political concerns which would ultimately come to dominate the experiment were simply not present and, when they peaked through, they were hardly paramount. As late as August 20, only five days before the *Manhattan's* departure, the Interdepartmental Committee on Territorial Waters (ICTW) concluded that the project would not jeopardize Canadian sovereignty.[424] Indeed, even in early September, Cabinet remained enthusiastic and confident that it was in a win-win position. If the *Manhattan* succeeded then Canada would see the economic benefits incidental to a new shipping route. If it failed then the

[421] Memorandum to the ACND, July 23, 1968, LAC, RG 22, vol. 1859, file 87-3-1, pt.8.
[422] Project Manager, Polar Transportation Study to Chief, Office of Public and International Affairs, USGC, July 3, 1968, NARA, RG 26, Ocean Operations Division, Correspondence Concerning Icebreaking and Polar Operations, 1968-78, box 3.
[423] Memorandum from Legal Division of External Affairs to USA Division, July 10, 1968, LAC RG 25, vol. 15729, file 25-4-1.
[424] Addendum to the minutes of the 74th meeting of the ACND, August 20, 1969, LAC, RG 112, vol. 29803, file 170-80/A6, pt. 7.

alternative might still be a pipeline down the Mackenzie Valley, with all the economic benefits which would naturally flow from that.[425]

This was therefore the manner in which the Canadian government originally sought to deal with the voyage of the *Manhattan* in particular and of Arctic oil and gas development in general. Cooperation was the order of the day while questions of sovereignty continued to be set aside, as had been the case in years past. The traditional, functional approach, whereby neither party raised the matter of sovereignty, would be maintained and the issue would not be forced.[426] Sovereignty would be guarded not with declarations or legislation but through participation and a visible Canadian presence. It was felt that Captain Pullen's place on the *Manhattan* and the participation of the *Macdonald*, and later the *Louis St. Laurent* (which had met the *Manhattan* on her return voyage), were sufficiently obvious symbols of Canadian control and a clear enough demonstration that the passage was being made possible only through Canadian assistance.[427]

In retrospect this approach, along with the conclusions reached by the Cabinet and the ICTW, appears to have been somewhat blind to the potential political and legal dangers presented by the *Manhattan's* voyage. Yet, the government had not necessarily been overcome by irrational optimism. Indeed, there was really little reason to believe

[425] Canada, Cabinet Conclusions, September 11, 1969, LAC RG2, Privy Council Office, series A-5-a, vol. 6340.
[426] Memorandum for Cabinet, March 20, 1969, LAC, RG 12, vol. 5561, file 8100-15-4-2, pt. 1.
[427] This was something which had been worked out very early on. In December 1968 the ACND agreed to send the Canadian icebreaker *John A. Macdonald* to cooperate with the *Manhattan* as a way of retaining the image of Canadian control. It was hoped that, by assisting the *Manhattan*, Canada could present the enterprise as a joint project and thus avoid both a potential confrontation with the US and the nationalistic anger of an aroused Canadian public; Dosman, "The Northern Sovereignty Crisis," pp. 39-40.

that decades of functional cooperation would not continue, especially since the *Manhattan's* voyage had never been intended as any sort of a challenge.

Prior to the voyage, the Canadian government had suggested that the State Department make an outright request for permission to transit the Northwest Passage, a request which Washington had refused. Yet, this refusal hardly came as a surprise to External Affairs; the American government had not recognized Canadian ownership over the Arctic waters in 1964 and bilateral relations on law of the sea matters had hardly improved since then. Yet, permission had never been sought for the US Navy's submarine operations or any of the re-supply expeditions which had taken place in decades past and there was little reason to think that the *Manhattan's* transit would be fundamentally different.

However comforting such a request would have been it was also not technically necessary. The assistance rendered to the *Manhattan* by the Canadian Coast Guard and other agencies made the federal government an important partner in the experiment. The idea of the tanker as any sort of unilateral American operation or challenge to Canadian sovereignty was therefore easily refuted. Likewise it would have been hard to argue that the *Manhattan* was contributing to a precedent of foreign use of the passage precisely because of that Canadian assistance. While the escorting *Northwind* had not asked for or required any such Canadian assistance, its participation in what was clearly a joint operation made its presence in the Northwest Passage less politically offensive than it might have been if it had transited on its own.

Unfortunately for the Canadian government, such unexciting interpretations rarely play well in newspaper headlines. And, while similar American transits had effectively

flown under the Canadian public's radar, the *Manhattan* was very different. The sheer size of the supertanker and the prospect of many more like her arriving in the North was enough to warrant more publicity than past American resupply runs or hydrographic surveys. The fact that the *Manhattan* experiment might very well lead to the establishment of a major petroleum shipping route through the Arctic's sensitive waters also added a new and important element to the equation.

In fact, the spectre of pollution in the country's pristine northern environment had raised a great deal of public concern. Disastrous under normal circumstances, oil spills in the High North would have been especially devastating. Because of the minute rate of hydrocarbon decomposition at frigid temperatures, as well as the region's minimal biodiversity and slow plant growth rate, the contamination from such an accident might have been nearly permanent.[428] A string of recent disasters had certainly added some urgency to the issue. In 1967 the Liberian tanker *Torrey Canyon* had struck a reef and spilt her 868,700 barrels of oil between the Cornish mainland and the Scilly Islands. Two years later a Union Oil platform off Santa Barbara blew out, spilling from 80,000-100,000 barrels of oil onto the California coast. In a disaster closer to home, the Liberian flagged *Arrow* ran aground off Nova Scotia in early 1970, spilling all 108,000 barrels stored in her bunkers. These incidents, coming as they did in quick succession, and in the case of the *Arrow* in Canadian waters, greatly increased public concern that such a disaster could occur in the Arctic. This was hardly a sensational fear given that icebergs and hard multi-year ice made the region a far more hazardous environment for a supertanker than the waters off Nova Scotia.

[428] Department of National Defence, Directorate of Continental Plans, "Law of the Sea – Future Implications for Sovereignty," April 28, 1970, DHH, 82/125.

Existing international law on maritime pollution prevention was also relatively limited and, for the most part, favoured the maritime states and international shipping concerns. At UNCLOS I, then the acknowledged basis of most maritime law, the only attempt to deal with the issue of pollution had been a provision within the convention dealing with radioactive waste. This was followed by the International Convention for the Prevention of Pollution of the Sea by Oil of 1954, (amended in 1962 and 1969) and finally the conventions of 1969 concerning intervention on the high seas in the event of oil pollution and on civil liability for damage caused by spills. These conventions had all shunned preventative action in favour of reactive action, or at most intervention when a spill seemed imminent. Under the International Convention Relating to Intervention on the High Seas in Cases of Pollution Casualties (November, 1969) coastal states were only permitted to:

> … take such measures on the high seas as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat of pollution of the sea by oil following upon a maritime casualty or acts related to such a casualty, which may reasonably be expected to result in major circumstances.[429]

It was also only in cases of "extreme urgency," if a tanker had become grounded outside of a state's territorial waters, for instance, that it could take any action without first consulting the flag state.[430] In Canada this was considered inadequate; speaking at a conference in April 1971, Allan Beesley likened this approach to locking the stable door only after the horse has been stolen.[431]

[429] Green, pp. 765.
[430] Ibid.
[431] Notes for a statement by Mr. J.A. Beesley, Ditchley Conference, April, 1971, LAC, ACND Files, DRBS 770-80/A6, vol. 14.

By the summer of 1969 fears of an Arctic oil spill had merged with the more traditional sovereignty concerns, causing an upsurge in popular interest which caught the government off-guard. Since it had never intended to press the issue of sovereignty the Trudeau government found itself scrambling to determine what Canada's position on the subject should be. The issue had been allowed to drop in 1964 and there had been very little work done to clarify or advance the country's stance since then. It had been decided in the late 1950's that the ultimate objective of the government was to establish the waters of the archipelago as internal, yet how this was to be done remained in question. Whether these lines were to be considered historic waters or merely enclosed as internal with baselines was still uncertain. So too was the legal basis which Canada might employ in establishing those baselines. Whether they were based on the precedent established in the *Fisheries Case* or conventional law as laid down in UNCLOS I, remained unsettled and might have had a significant impact on future rights of transit through the Northwest Passage.

By early March 1969 the Prime Minister had ordered the government's departments to begin a thorough investigation into Canada's international legal position and to research past government decisions on the subject to determine what past policies had been and upon what precedents the administration might now rely upon. The conclusion of this study was that the March 1956 Cabinet directive had been the only binding decision issued by any Canadian government on the subject.[432] Lacking a clear idea of how to proceed, there were even some passing suggestions of a return to the sector principle. While this was never really seriously considered, an exasperated Ivan Head expressed his profound annoyance that even after so many years it was still

[432] Gregoire de Bois to Mr. Beesley, April 5, 1968, LAC, RG 25, vol. 15729, file 25-4-1.

necessary to spend time pointing out to government ministers that the sector had no standing in international law and to advise that it continue to play no role in Canadian policy.[433]

In the House of Commons the government's position was hesitant and uncertain. In March 1969 the Prime Minister was still unable to clearly explain the country's official position. Instead, he stated only that the matter remained in question and that the question was still under review.[434] Indeed, Canadian policy seemed no clearer than it had been in 1955 when Jean Lesage gave the same answer to that same question. By May, Trudeau was still publicly non-committal, claiming that the status of the Northwest Passage remained unresolved. International law was, the PM argued, really quite complicated.[435]

Despite the long search for Arctic oil the government was equally unready for the practical necessities of regulating tanker traffic in the Arctic waters. Only a month before the discoveries at Prudhoe Bay, the ACND had warned that an intensive hunt for oil was taking place in the region and that, under existing regulations, there were no controls governing the use of Canadian Arctic waters (outside the three mile limit) by foreign registered ships. This was considered a potential problem given that oil exploration could be expected to attract an influx of such vessels which could certainly sail outside of the country's territorial limits.[436] At a committee meeting in December 1967 a report was discussed which recommended a control system to regulate foreign owned ships in the North as well as the formation of an interdepartmental committee to review possible

[433] Ivan Head to Prime Minister, March 20, 1969, LAC, R 12259, file 26.
[434] Canada, House of Commons, *Debates*, March 7, 1969, 28th Parliament, 1st session, pp. 6339 & March, 10 1969, pp. 6396.
[435] Canada, House of Commons, *Debates*, March 15, 1969, 28th Parliament, 1st session, pp. 8720.
[436] Minutes of the 71st meeting of the ACND, December 18, 1967, LAC, 22, vol. 1358, file 87-3-1, pt.7.

options and government roles. That committee was however never formed and no action was ever taken.[437]

In large measure, the reason the government found itself unprepared to handle these practical questions was that few had ever expected to move from exploration to production so quickly, just as few had foreseen continental production peaking quite so soon. On the political front, so little progress had been made on the question of sovereignty because many of the law of the sea issues, which had troubled Canadian-American relations since 1963, remained unresolved. While Canada had abandoned its plans to enclose the special bodies of water with straight baselines, the Trudeau government had continued the drive begun by Diefenbaker and Pearson to expand the country's maritime jurisdiction. In April 1969, only four months before the *Manhattan* sailed, Canada announced its intention to draw coastal baselines along the eastern coasts of Nova Scotia and Labrador, around Newfoundland and along the western coast of Vancouver Island and the Queen Charlotte Islands.[438] It also announced that it would close Hectate Strait and certain other areas to American fishermen with fisheries closing lines.[439] By 1970 these lines were also extended across the Gulf of St. Lawrence, the Bay of Fundy, Queen Charlotte Sound and Dixon Entrance. Indeed, in February 1969, before the public furor over the *Manhattan* had really begun, Marcell Cadieux, writing to the Minister of Transport, warned that Canada should really seek to avoid provoking a controversy over the tanker's transit since it was only one of a number of difficult law of

[437] Dosman, "Northern Sovereignty Crisis," pp. 37.
[438] These coastal baselines differed from straight baselines in that they were drawn along the coast to establish a line from which territorial waters could be extended, as opposed to straight baselines which stretched across open water to enclose large areas.
[439] Fisheries closing lines were similar to straight baselines except they delineated a claim to fishing rights within the enclosed waters rather than complete sovereignty.

the sea problems which Canada was then grappling with and still not the most important.[440]

While neither the coastal baselines nor the fisheries closing lines had enclosed any large bodies of water, the State Department and the US Navy still considered these moves to be in violation of international law and their proclamation continued to strain Canadian-American relations. Baselines which were not drawn in strict conformity with the standards laid out at UNCLOS I (as interpreted by Washington) were considered a dangerous global precedent, whilst the new fisheries lines threatened to set a similar precedent which, it was feared, might limit American fishing rights in certain important Latin American fishing grounds. It was also widely assumed in Washington that these moves were merely precursors to an eventual Canadian claim to full sovereignty – an assumption which was hardly farfetched given Canadian objective in the 1960s.

As such, the period surrounding the voyage of the *Manhattan* was perhaps the historic low point in Canadian-American relations, at least where maritime matters were concerned. This animosity and frustration, built up over seven years of maritime disputes negotiations, would have a powerful influence on the handling of the crisis, hardening American attitudes towards Canadian claims and making Washington far less willing to play its old role in the two states' traditional Arctic *modus vivendi*.

With increasing domestic pressure and a flat-out refusal from Washington to request permission for the *Manhattan* and the *Northwind* to transit the passage, the Canadian government was forced to re-evaluate its position in the spring of 1969. By March the ACND and the ICTW had submitted their joint review of Arctic sovereignty and the current shipping situation. The advantages and disadvantages of immediately

[440] Memorandum for the minister, February 26, 1969, LAC, RG 12, vol. 5561, file 8100-15-4-2, pt. 1.

claiming the waters as internal were laid out and, not surprisingly, the conclusions differed very little from what had been settled upon a decade earlier. Baselines were still considered desirable from a number of standpoints but the international legal and political hurdles had become even more pronounced.[441]

As such, the two committees offered the government what it considered to be its only three options. To begin with, Canada could assert its Arctic claims with straight baselines. It was recognized however that this might very well lead to a direct American challenge and a case before the ICJ. There was doubt within the ACND as to Canada's ability to win such a case and a defeat might deal an irrecoverable blow to Canada's claims.[442] It was also assumed that this move would provoke serious political and economic consequences. The second option was as simple as it was politically impossible, Canada could abandon its claim and allow unimpeded foreign transit. This would make the lives of Canadian diplomats far easier; however there was never any serious consideration of surrender on an issue which resonated so powerfully with so broad a section of the Canadian public. The third option was to try and maintain the *status quo*. This meant continuing to defer any claim, asserting a physical Canadian presence and hoping that the issue could be managed rather than resolved – essentially a continuation of gradual acquisition.[443] The first option was rejected as being too dangerous and the second as political suicide. That left the *status quo*.

Similar advice had come from a separate ACND report three months earlier and was also coming in March of 1969 from the Task Force on Northern Development, which

[441] Memorandum for Cabinet, March 20, 1969, LAC, RG 12, vol. 5561, file 8100-15-4-2, pt. 1.
[442] Minutes of the 73rd meeting of the ACND, December 19, 1968, LAC, RG 112, vol. 29803, file 170-80/A6, pt. 7.
[443] Memorandum for Cabinet, March 20, 1969, LAC, RG 12, vol. 5561, file 8100-15-4-2, pt. 1.

had been set up that year to provide policy advice.[444] In its first memorandum to Cabinet, the task force avoided any reference to a potential political solution and instead recommended that the government respond to the challenge by increasing its northern activity as a way of ensuring a continuation of "effective occupation."[445] This it did in the spring of 1969. That April the Governor General was sent on a tour of the North while the Prime Minister officially outlined Canada's new national defence priorities which, not coincidentally, focused on sovereignty and surveillance of the country's coastlines.

Thus the government sought to approach the *Manhattan* in the same spirit as it had so many Cold War defence activities. The country's presence in the North would be increased while the precise nature and extent of Canadian sovereignty would be left ambiguous. Hopefully this presence and participation would be sufficient to satisfy the domestic public, the traditional 'don't ask, don't tell' dynamic would survive and, it was hoped, the United States would avoid pushing the issue. To this end the government's main objective became avoiding a public controversy and, in the words of the ACND, through active participation, to "give [the *Manhattan* experiment] the appearance and character of a joint undertaking."[446]

This was the position annunciated in mid-May by the Prime Minister to the House of Commons:

> … the legal status of the waters of Canada's Arctic Archipelago is not at issue in the proposed transit of the Northwest Passage … The trials of the Manhattan may be of considerable significance for the development of Arctic navigation. Such development is consistent with both Canadian and international interests, and I do not see any conflict between Canada's national policy and international

[444] Dosman, "The Northern Sovereignty Crisis," pp. 39-40.
[445] John Kirton and Don Munton, "The Negotiation of Article 234," *Politics of the Northwest Passage*, Franklyn Griffiths ed. (Kingston: McGill-Queen's University press, 1987), pp. 75.
[446] Memorandum for Cabinet, March 20, 1969, LAC, RG 12, vol. 5561, file 8100-15-4-2, pt. 1.

> responsibilities … the Canadian government has welcomed the Manhattan exercise, has concurred in it and will participate in it.[447]

On the question of sovereignty the Prime Minister made no new pronouncements and simply cited the earlier, somewhat ambiguous, 1958 pronouncement by former Minister of Northern Affairs Alvin Hamilton that "the waters between the islands … are looked upon as our own." He went on to qualify his remarks by adding: "it is known that not all countries would accept the view that the waters between the islands of the archipelago are internal waters over which Canada has full sovereignty. The contrary view is indeed that Canada's sea extends only to the territorial sea around each island."[448] The message was clear, Canada considered the Arctic waters to be her own but did not consider the *Manhattan* to be a threat to that ownership and in fact fully supported the experiment.

This interpretation of events was sent to the US Embassy in June when the United States was informed that "the status of Canadian jurisdiction over the waters of the Arctic Archipelago was not affected by the Manhattan project."[449] Edgar Dosman has phrased it best: the government was essentially trying to say "we know you are challenging Canadian sovereignty in the North, but we have decided that you are not challenging northern sovereignty. You may not have asked our permission … indeed you have explicitly refused to notify us, but we are granting permission anyway."[450]

Unfortunately for the Canadian government, 1969 was not 1959. The traditional approach of setting the sovereignty question aside was no longer a truly viable option as

---

[447] Canada, House of Commons, *Debates*,. May 15, 1969, 28th Parliament, 1st session, pp. 8720
[448] Ibid.
[449] Edgar Dosman, *The National Interest*: *The Politics of Northern Development 1968-75* (Toronto: McClelland and Stewart Ltd., 1975), pp. 53.
[450] Dosman, "The Northern Sovereignty Crisis," pp. 40.

Washington was no longer willing to play its traditional role of offering Canada its implicit recognition. To External Affairs' June note the State Department returned a bluntly worded reply informing Ottawa that the United States did not recognize Canadian sovereignty over the waters of the Arctic Archipelago or to any water outside its three mile territorial sea.[451] This was a far more direct approach to the question than the Americans had employed in the 1950s or even the early 1960s. By 1969 the United States had begun to state publicly that it considered the Northwest Passage an international strait, a move which caused no small amount of anxiety in Ottawa.

An international strait is a body of water passing through a state's territorial sea which is commonly used for international navigation and which connects two parts of the high seas, or the high sea and a state's territorial sea. Under existing conventional law, these straits are considered international waters and, should the Northwest Passage have been defined as such, Canada would have lost its ability to regulate shipping, enforce Canadian laws or institute pollution prevention measures along the waterway. Although no precise definition of an international strait has ever been set, the criteria had generally been established by the ICJ in the 1949 *Corfu Channel Case*. In this case the court ruled on the status of the small Corfu Channel, which lies between Albania and the island of Corfu. The United Kingdom had brought suit against the Albanian government, which had mined the straits and fired on British warships. In its landmark ruling, the ICJ determined that the Corfu Channel did in fact constitute an international strait, the decisive criteria of which was the "geographic situation as connecting two parts of the high seas and the fact of its being used for international navigation."[452]

[451] Ibid, pp. 47.
[452] International Court of Justice, *Corfu Channel Case: United Kingdom v. Albania* (April 9, 1949).

These two criteria: the geographic (meaning that a strait must connect two bodies of high seas) and functional (meaning that it must have been a useful passage for international traffic) have been most commonly used to describe and define international straits. The Northwest Passage clearly meets the requirements of the geographic criteria since it connects the Atlantic to the Beaufort Sea. On a functional basis however the Arctic straits had never seen enough use to meet the functional requirement. In the *Corfu Channel Case* the ICJ was given shipping statistics from April 1, 1936 to December 31, 1937 amounting to 2,884 transits by vessesl of various states which had put into the port of Corfu while passing through the channel (this excluded transiting ships which did not put into the port).[453] This was fairly light traffic, yet it dwarves the six foreign vessels which had transited the Northwest Passage up to that point. These six were also not what might be considered normal international navigation. [454]

Three of those voyages were made by American icebreakers and two were by American nuclear submarines, all of which were collaborating with Canadian forces in some way on joint defence projects. In fact the only foreign transit to have taken place without the explicit concurrence or participation from the Canadian government was that of the tiny sloop *Gjoa* whose captain, Roald Amundsen, had spent nearly three years working his way through the icy passage at the turn of the century. By this definition therefore the Northwest Passage was not an international strait. The United States however, has historically disagreed with this interpretation, preferring to consider the functional criteria as implying that a strait need only possess the *potential* for use rather

[453] International Court of Justice, *Corfu Channel Case (Merits) United Kingdom v. Albania* (April 9, 1949), pp. 29.
[454] These transits were made by the *Gjoa* (1903-6), the USCGS *Storis, Spar* and *Bramble* (1957), the USS *Seadragon* (1960) and the USS *Skate* (1962).

than a proper history of *actual* usage. That the weight of international judicial opinion has never supported the American interpretation has not altered American policy.[455]

The prospect of regular shipping through the Northwest Passage would, however, have radically changed the existing dynamic. "If successful" the petroleum companies noted, the voyage of the *Manhattan* "could result in the establishment of a new commercial shipping route through the Arctic region with broad implications for future Arctic development and international trade."[456] No longer would the northern waters be the exclusive preserve of Canadian icebreakers and joint defence operations; tanker shipping would mean the continuous presence of foreign flagged commercial vessels using the Northwest Passage as a 'useful route for international commerce.' The scale of this traffic would have been significant; in 1969 the tanker fleet which the oil companies had envisioned consisted of 26 to 30 vessels, of which six would be in the Northwest Passage at any given time.[457]

These projections also took into account only those vessels needed to transport Prudhoe Bay oil. Had development followed in Canadian territory, foreign owned tankers and a small fleet of service vessels and drilling rigs would have been needed in the region as well. In the heady days of the late 1960s the Arctic appeared poised for growth across the resource spectrum. In 1963 one of the world's largest iron ore deposits was discovered at Mary River on Baffin Island and, by the early 1970s, Baffinland Iron Mines Ltd. was lobbying the government for support to begin production. Farther west, Japanese business interests were examining the possibility of extracting copper

[455] Donat Pharand, "Final Revisit," pp. 35-36.
[456] "Oil Concerns seek a Northwest Passage to Unlock the Arctic," *The Wall Street Journal*, December 17, 1968.
[457] Storrs and Pullen, pp. 179.

concentrate from Hope Lake, west of Coppermine (modern Kugluktuk). By 1968 plans had also begun for the export of copper from the Coronation Gulf Area. In this case the Soviets suggested that its winterized ships might be useful for transporting the metals and that a Soviet icebreaker could even be sent into Coronation Gulf on a test run.[458] How serious these offers were remains open to question however, some of these new mines seemed likely to come online soon and, given the territory's dearth of transport infrastructure, they would have relied almost entirely on maritime transport.

Even if all this new shipping had materialized, the level of activity would still have fallen well short of the levels reached in the *Corfu Channel Case*. Yet that number had not been intended to represent a bare minimum and most legal studies on the subject have suggested that, given the remote location of the Arctic, a far lower level of activity would have been sufficient to turn it into an international strait.[459] The government therefore took every public occasion to reinforce its view that this level of traffic had not materialized and that the Northwest Passage could not be considered an international strait. In the Department of Transport press release covering the *Manhattan's* voyage, for instance, the prospect of future traffic was tempered by the reassurance that "owing to economic, geographic, climatic and ice conditions, the so-called passage has never been an international waterway.[460] In a note to the State Department, sent in April 1970, this position was emphasized again: "the Canadian government is aware of U.S.A. interest in ensuring freedom of transit through international straits, but rejects any suggestion that the Northwest Passage is such a strait … the Northwest Passage has not attained the

[458] "Background paper," ACND working group, March 19, 1968, LAC, 22, vol. 1358, file 87-3-1, pt.7
[459] See for instance: Donat Pharand, "Final Revisit," pp. 44.
[460] Canada, Department of Transport, "D.O.T. Assists in Historic Cruise through Northwest Passage," March 26, 1970, LAC, RG 12, vol. 3855.

status of an international strait by customary usage nor has it been defined as such by conventional international law."[461]

It was obvious to the government that if the Northwest Passage was not to gain this status it could not permit significant new traffic to treat these waters as though they were the high seas. On a practical level Canada would need to enhance its pollution control measures while politically the American rejection of Canadian sovereignty meant that some more forceful assertion of authority was vital to safeguard Canadian claims, however nebulous they may still have publicly been. The most popular option in 1969 was the simplest: a straightforward claim to the waters as being entirely Canadian. Governments had been saying – or at least implying – that they were Canadian for decades and an outright claim to sovereignty seemed, if anything, past due. Public support for a full declaration of sovereignty was naturally taken up by the Conservative opposition. While the Conservatives themselves had spent their previous term in office avoiding the question, the sudden political gain to be had appears to have convinced them and they attacked the Liberals with all the zeal of the newly converted.[462]

By the end of the year the Liberal government had become besieged on all sides as Arctic sovereignty had become the national "cause célèbre."[463] The *Globe and Mail*, the *Toronto Star* and the *Toronto Telegram* had all published editorials demanding an outright declaration of sovereignty and much of the same sort of suggestions were coming from the northern territories and even from within the Liberal Party itself.[464] The Standing Committee on Indian and Northern Affairs, which was predominantly Liberal,

[461] Pharand, *The Law of the Sea and the Arctic*, pp. 59.
[462] Kirton & Munton, pp. 86.
[463] Ibid, pp. 74.
[464] Ibid, pp. 78 & Canada, House of Commons, *Debates*, January 22, 1970, 28th Parliament, 2nd session pp. 2721.

had issued its report to Parliament in December 1969 calling on the government to claim the waters of the Arctic Archipelago as internal.[465]

At first glance, the establishment of straight baselines and the enclosure of the Arctic waters seemed the obvious choice. It had clearly been Canadian policy for decades to assert sovereignty over the Arctic waters and at least since the late 1950s to do so using baselines; an attempt had already been made to do exactly that only seven years earlier. Most importantly, it would have been the simplest, the most effective and certainly the most popular decision which the government could have made. Yet the reality of the situation was that at no point did this option ever enjoy any real support in Cabinet and was never seriously considered.

While baselines would have been politically expedient the principle deterrent, which had retarded Canadian actions for decades, continued to loom large. The Trudeau government was simply not confident enough in its legal and political position to risk either a political battle or international arbitration. Ivan Head, then a special assistant to the Prime Minister, wrote to Trudeau in September 1969 to inform him of the weakness of the Canadian claim, stating his opinion that the application of straight baselines would be a "grotesque application" of the principle. In the spirit of 1964 however, Head did suggest that the baselines might be of use as a negotiation tool to win concessions elsewhere.[466]

It was clear that to have moved forward with any straightforward claim to sovereignty would have risked complete defeat at the hands of the ICJ and there was little doubt that the United States would have been willing to seek international arbitration on

[465] "Claim Waters Now, MPs of all Parties Urge," *Globe and Mail*, December 17, 1969.
[466] Ivan Head to the Prime Minister, September 26, 1969, LAC, R 12259, file 26.

the question. Threats of this nature had been made repeatedly from the mid-1960s onwards with regards to Ottawa's previous attempts to close off other large bodies of water and, as early as September 1969, American officials were informing visiting MPs that any Canadian claim to the Northwest Passage would be immediately referred to the ICJ.[467] In theory Canada could have refused to have the case heard by the court by placing a reservation with the ICJ. A reservation is an action taken by a state when it has decided to refuse future ICJ adjudication on a particular matter. Canada could have invoked this measure and avoided arbitration, however in doing so it would have been clearly admitting the weakness of its position. Such an act would also have been a considerable departure from the country's traditional support for international law and the ICJ in particular.

External Affairs was equally afraid of what might happen if Canada tried to exercise its sovereignty by excluding or regulating American vessels in an area which the American government clearly considered international waters. Seizing a 'trespassing' American tanker would have had obvious political ramifications of its own. In the event of such a confrontation it seemed unlikely that Canada could really have enforced its claims. Robert Orange, Liberal MP for the Northwest Territories, put it succinctly in the House of Commons: "We can stand up, shout and scream, but can we stop them?"[468]

In fact, an American ship physically testing Canada's sovereignty was seen as a real possibility. This form of gunboat diplomacy was an effective means of conveying both America's rejection of a state's claim and sometimes as a demonstration of a claimant state's inability to actively assert its control over the waters in question. The US

[467] Kirton and Munton, pp. 76.
[468] Canada, House of Commons, *Debates*, January 22, 1970, 28th Parliament, 2nd session, pp. 2723.

Coast Guard had used this tactic in the Russian Arctic repeatedly during the 1960s while the US Navy had also sent ships into Libya's Gulf of Sidra and deep into the Black Sea on a route that deliberately passed through the Soviet Union's claimed twelve mile territorial sea. Even during the Cold War, at a time when brinkmanship courted nuclear disaster, the American insistence on establishing the right of innocent passage through straits was unshakable.

The Canadian government was fully alive to the possibility of an American challenge of this sort and took it very seriously.[469] Gordon Robertson, Clerk of the Privy Council and Secretary to Cabinet, explained the government's position:

> The government realized that the greatest single obstacle or hurdle that had to be taken was to get the recognition/acceptance of the American government… [We] were perfectly aware that if Canada moved directly [i.e. the proclamation of straight baselines in the North] on this matter we would be met with resistance by the United States… We were very conscious of the risk there would be if … we produced a frontal United States rejection.[470]

In addition to the obvious political ramifications, the government continued to fear the economic consequences as well. As had been the case over the other special bodies of water, Canada's trading relationship with the large American market was used to keep the Canadians in line. In March 1970, in retaliation for its planned pollution control jurisdiction, the American government imposed a new limit of 395,000 barrels per day on imports of Canadian oil (a reduction of 20%). A week later, President Richard Nixon telephoned Trudeau to warn of even more severe cuts if Canada went ahead with its proposed legislation. These were the consequences for simply proposing a unilateral

[469]Christopher Kirkey, "The Arctic Waters Pollution Prevention Initiatives: Canada's Response to an American Challenge." *International Journal of Canadian Studies* 13 (Spring, 1996), pp. 45.
[470] Ibid, pp. 44.

extension of jurisdiction; it seemed certain that Washington would have reacted even more severely had Canada attempted to enclose those waters as internal.

Despite the allure of claiming complete sovereignty, it was also uncertain whether or not straight baselines would have achieved the hoped for results. Even if Canada enclosed the waters as intended, there remained the technical possibility that a right of innocent passage might still exist through the Northwest Passage. The 1958 UNCLOS Convention on the Territorial Sea and the Contiguous Zone stipulated that this right would exist "if the establishment of a straight baseline … has the effect of enclosing as internal waters areas which previously had been considered as part of the territorial sea or of the high seas." It was possible that this provision might have applied to the Northwest Passage since it would have been difficult for Canada to have made the case that the waters in question had been considered Canadian prior to 1958.

The application of this principle was in some doubt as Canada had not yet ratified the Territorial Sea Convention and might therefore have been able to rely instead upon the *Fisheries* decision which was still considered the customary international law on the subject and which did not stipulate any right of innocent passage through newly enclosed waters. Whether this would have been proper is uncertain however as UNCLOS I was still considered as defining the state of conventional international law on the subject, regardless of whether or not Canada had actually ratified it. The Supreme Court of Canada, held to this view, as demonstrated by its ruling in the *Ownership of Off-Shore Mineral Rights* case (1967). Yet, in a number of separate cases the World Court seemed to disagree.[471]

[471] Green, pp. 759.

It was therefore highly uncertain what legal, economic or political ramifications an overt declaration of sovereignty would have had; yet it would likely have been damaging to Canada's trade and its diplomatic relations with Washington and, ironically enough, potentially hazardous to its legal position in the Arctic. The Trudeau government was loath to open this Pandora's Box and the government therefore considered it necessary for the final policy decision to avoid any challenge to Canada's claims and to be defensible against any American protest.

In order to meet this criteria the Liberals spent weeks trying to bury the Standing Committee's report and fend off the opposition's demands. On September 11, 1969, Cabinet met and it was likely here that the decision to avoid an outright declaration of sovereignty was firmly settled. One week later the Minister for External Affairs, Mitchell Sharp, made this position public in a *Globe and Mail* article, in which he came out against what he dubbed " . . . sweeping assertions to reinforce our position. That might satisfy our ego but would not add a whit to the international acceptance of our position."[472] By January 1970, after much debate, Sharp had also dismissed the Standing Committee's straight baseline recommendations in the House of Commons, saying: "the committee does not have the responsibilities of government . . . the committee cannot answer for the consequences of its own recommendations. On the other hand the government must answer for the consequences of all its policies and all its actions."[473]

Within the government the major departments had conflicting views on the various options and, generally speaking, were also opposed to straight baselines. Certain elements within Indian and Northern Affairs supported a declaration of sovereignty as a

[472] Mitchell Sharp, "A Ship and Sovereignty in the North," *The Globe and Mail*, September 18, 1969, pp. 7.
[473] Canada, House of Commons, *Debates*, January 22, 1970, 28th Parliament, 2nd session, pp. 2712-3

means of asserting more control over the region; yet the department had always supported northern development – which a shipping route would help create – and was therefore generally opposed to any action which might limit shipping. Fisheries, Forestry and Wildlife preferred a course which offered strict pollution regulation while Energy, Mines and Resources was inclined to oppose strong environmental legislation or any action which might seriously retard foreign investment and economic development. External Affairs, the department most attuned to the problems of winning international support for Canadian policy, was generally opposed to straight baselines and, instead, supported increasing the territorial sea to twelve miles from the standard three, since this position was relatively defensible under international law and less likely to draw an American challenge.[474]

The Department of National Defence was torn internally. DND appreciated the possibility of restricting Soviet activity in the area and perhaps of winning new funding in an age of defence cuts, yet it remained concerned that it would be unable to exercise effective control of the area if Canadian claims went too far.[475] There was also a degree of sympathy within the Canadian military for the American position on the freedom of the seas. Canada's security, as much as that of the United States, relied on Western strategic mobility and naval power projection. A study on the subject prepared in April 1970 by the Directorate of History, with help from the Department of Justice and the Defence Services Program, made that point very clearly, stating that "although at the

[474] Memorandum for Cabinet: "Suggested Statement for the Prime Minister on Arctic Sovereignty," April 1969, LAC, RG 25, vol. 15729, file 24-4-1.
[475] DND recognized that even expanding Canada's territorial sea out to 12 miles would stretch its enforcement and patrol capacity; memorandum by K.W. Macdonald, April 28, 1970, DHH, 82/125.

moment chauvinism or ultra-nationalism may be regarded as the popular stance … it is in Canada's interest to keep the sea-lanes open."[476]

With baselines thus rejected for political and legal reasons, support seemed to center on two alternatives: the expansion of the Canadian territorial sea and/or the imposition of strict new pollution prevention legislation. Expanding the territorial sea from three to 12 miles was seen as an easy and relatively safe means of expanding Canadian control over some of the more vital choke points in the Northwest Passage and was a move which Canadian governments had been considering for close to two decades. That the United States did not recognize territorial seas past three miles might have caused political difficulties, indeed, it had been the subject of intense negotiations through the mid-1960s. However, by 1969 the number of states claiming a territorial limit beyond the traditional three miles had grown to 57. By 1969 therefore, while the 12 mile territorial sea still had no legitimacy in conventional law, in reality it was an established fact.

By early November it had also been decided to compliment expanded territorial seas with extensive and wide reaching pollution prevention legislation which would extend beyond the country's territorial limits and could be formally based on the country's right of environmental self-defence, the protection of its coastal regions, its fisheries and maritime resources from pollution, and the safeguarding of the welfare of the aboriginal population, which relied on the sea to provide their living.

The proposed legislation would see designated (but as yet undefined) pollution control zones established beyond the territorial sea where certain prohibitions could be

[476] Memorandum by K.W. Macdonald, April 28, 1970, DHH, 82/125.

applied, financial liabilities established and preventative measures required.[477] Politically this action would be less likely to attract an American challenge since it was an extension of jurisdiction rather than of complete sovereignty. Still, that did not mean it was likely to win American support or even acceptance. Unlike the expansion of the territorial sea, there was no international precedent for unilateral extensions of pollution control measures. By late November, Indian and Northern Affairs had been instructed to determine the area of applicability and draft the details, the Privy Council Office was tasked with preparing a memorandum for Cabinet proposing the legislation and External Affairs with preparing a plan for how Canada should proceed internationally.[478]

By the fall of 1969 Canada's path had been set. Rather than seeking sovereignty over the Arctic waters it would pursue enhanced jurisdictional control and expand its territorial waters to 12 miles. This functional approach had the potential to fulfill the country's policy requirements quite elegantly. It guaranteed the pollution control which the government considered a high priority and – while it was not an overt declaration of sovereignty – by legislating itself new jurisdictional powers it would at least convey a powerful image of Canadian control.

The concept, if not the details, was officially unveiled by the Governor General in his Speech from the Throne on October 23, 1969. Speaking to the press the next day, Trudeau described the proposed legislation as an innovative approach to a changing world and one which would ultimately benefit the entire planet. Rather than being presented as a sovereignty grab, the legislation was framed as the beginning of a new international standard. In this vein the Prime Minister invited the international

[477] Kirton and Munton, pp. 83.
[478] Kirton and Munton, pp. 83-84.

community to join with Canada to support the initiative as a new concept for "an international legal regime designed to ensure human beings the right to live in a wholesome natural environment."[479] Trudeau followed up this talk with a visit to the UN Secretary General on November 11 to discuss his ideas for an international regime and to project an air of internationality and consensus seeking about the Canadian approach.[480]

In so doing, the government had invented a clever fourth option which had not been seriously considered in 1968. Since both claiming and abandoning sovereignty were politically impossible and the *status quo* had become untenable, unilateral environmental legislation – which still went well beyond what international law then provided for – allowed the government to assert many of the powers commonly understood as stemming from sovereignty without making the assertion itself. Unlike an assertion of sovereignty proper, environmental legislation also possessed a degree of international defensibility, which straight baselines would not have enjoyed.

Officially the government continued to state that such action had been forced upon it by the deficiencies in *current* international law – the implication naturally being that international law was ever-changing and would eventually come to accept the new Canadian legislation. The state of this law with regards to pollution prevention has been described and, given the fragility of the Arctic environment, a good case could be made that the focus on reaction rather than prevention in existing law was indeed insufficient. In the House of Commons in October 1969, Trudeau explained that:

> … the way international law exists now it is definitely biased in favour of the shipping in the high seas … this was fine in the past, but now with the advance of

[479] Peter Thomson, "MP won't allow Arctic Challenge," *Telegram*, October 25, 1969.
[480] Thant told Trudeau that the UN was not opposed to the concept but that there would not soon be any UN agreement on an international regime in the Arctic; Kirton and Munton, pp. 81.

> technology and the importance which is coming forth to us all in all parts of the world … We're saying international law has not developed in this direction.[481]

In that same session, the Prime Minister reasoned that "[w]e do not doubt for a moment that the rest of the world would find us at fault, and hold us liable, should we fail to ensure adequate protection of that environment from pollution or artificial deterioration."[482] Or, in the words of Mitchell Sharp from six months earlier:

> … [pollution presents] a grave danger to the environment of a state, constitutes a threat to its security, and indeed perhaps to its continued existence … Thus the Arctic waters pollution prevention legislation constitutes an exercise of the fundamental right of self defence which lies at the heart of international order" [483]

In presenting the new legislation as a means of self-defence and as an attempt to contribute to the development of international law, Canada was largely successful in portraying its actions as constructive rather than acquisitive. The comparison most often offered by Canadian officials was to President Harry Truman's unilateral claim in 1945 to ownership over the resources of the American continental shelf.[484] At the time such an extension of jurisdiction was unprecedented, yet in so doing, the Americans had inspired many other states to extend similar claims and, by 1958, the principle had been codified in the Convention on the Continental Shelf. While this act was fundamentally different from what Canada was seeking to achieve (since it applied to the continental shelf and not to maritime space) it was still held up as an excellent example of a unilateral, but sensible, extension of jurisdiction which was eventually accepted as common practice.

Despite its hopes that this new legislation would ultimately be legitimized and accepted as a global standard it was still well outside what either conventional or

---

[481] Canada, House of Commons, *Debates*, October 24, 1969, 28th Parliament, 2nd session, pp. 38.
[482] Ibid, pp. 39.
[483] Canada, House of Commons, *Debates*, April 16, 1970, 28th Parliament, 2nd session pp. 5953.
[484] See for instance: A speech given by Mr. J.A. Beesley at the Ditchley Conference. Notes for a Statement by Mr. J.A. Beesley, Ditchley Conference, April 1971, LAC, ACND Files, DRBS 770-80/A6, vol. 14.

customary law might have allowed. The danger was therefore that an American challenge to the ICJ might very well result in a ruling against it. Whether or not to issue a reservation to the court in order to shield its new regulations was a controversial subject and, in late January and into February 1970, the Cabinet debated the merits of such action. In Canada's case, reserving ICJ authority was an awkward question since it had long supported the authority of the court and of international law in general and it was felt that any reservation would directly conflict with the nation's internationalist principles. Yet the principles underlying the new legislation were so clearly 'in advance' of established law (or in violation of it, depending on one's perspective) that it was generally agreed that Canada could not proceed under the threat of an American legal challenge.[485] Ultimately only Mitchell Sharp and Paul Martin, the government's Senate leader, opposed the reservation.[486]

This reservation stated that Canada did not recognize the court's jurisdiction over: "disputes arising out of or concerning jurisdiction or rights claimed or exercised by Canada in respect to the conservation, management or exploitation of the living resources of the sea, or in respect of the preservation or control of pollution or contamination of the marine environment in marine areas adjacent to the coast of Canada."[487] The note was delivered to the United Nations immediately before the introduction of the legislation and, with the stroke of a pen, ended the threat of an American legal challenge.

Ironically it seems likely that any policy Canada could have adopted, strong enough to satisfy its public, would have required such a reservation from the court. Edgar

[485] In retrospect, the Canadian legislation truly was in advance of international law and would later be codified at the Third UN Conference on the Law of the Sea.
[486] Kirton and Munton, pp. 90.
[487] "Documentation Concerning Canadian Legislation on Arctic Pollution and Territorial Sea and Fishing Zones," *International Legal Materials* 9 (1970), pp. 599.

Dosman has even argued that the inevitability of such action was good reason to have simply declared straight baselines and issued a reservation on that basis instead.[488] However, the benefit of the pollution prevention approach was that a reservation to the ICJ was not only easier to defend politically but far less damaging to Canada's reputation and to international law more generally.

Had Canada simply closed off its Arctic with straight baselines and refused to accept ICJ authority on the subject, the government would have been forced to explain why it had refused the court's authority on an issue where international law was already well developed. It seems unlikely that it would have been able to produce an acceptable response. The Canadian claim and subsequent reservation would have simply appeared the result of greed and insecurity, rather than a product of the high-minded principles which stood behind the concept of pollution legislation. With pollution control legislation, Canada was forced to apply for a reservation but it was able to claim, believably enough, that the basis for such a reservation was the underdeveloped nature of law on the question of maritime pollution. A reservation made to straight baselines, where law was fairly developed, would simply have laid bare the weakness of Canada's legal position and may very well have invited a more forceful American reaction.

In fact, the Canadian claim that its actions did not represent a rejection of international law, but merely an interim measure until that law had developed, was largely accepted by the broader international community in a way in which baselines would not have been. This international acceptance came from what the Department of National Defence described in 1968 as the nebulous but important factor of "world public

[488] Dosman, "Northern Sovereignty Crisis," pp. 47.

opinion."[489] In the case of the Arctic, international public opinion appeared very much on Canada's side. Leonard Legault, a legal adviser to External Affairs, argued that the genius of the legislation was that it "put you on the high ground in the way of argumentation." Rather than dealing from a possessive, territorial, acquisitive point of view, Canada's actions were seen as noble and progressive – both in Canada and with large segments of the American and international public.[490]

The *Washington Post* and the *New York Times* applauded the Canadian initiative and, by 1970, the majority of American newspaper editorials surveyed by Canadian Foreign Service officials were described as either pro-Canada or at least not overtly opposed to the Canadian measures.[491] Even an American Senator from Alaska had called the legislation an "intelligent innovation."[492] This widespread acceptance of Canadian actions greatly strengthened the government's hand, a fact elegantly demonstrated in April 1970 when, during a phone call with the Prime Minister, Secretary of State William Rogers threatened to challenge the Canadian legislation publicly.[493] Trudeau warned Rogers that Canada would respond to any American challenge and would "have the world on our side."[494]

The details of the proposed legislation took form in January and February 1970 as the government carefully considered its options in determining what exactly needed to be done to meet its pollution control objectives. Despite objections from men like Martin

---

[489] DND Paper on the Canadian Forces and the maintenance of sovereignty, August 2, 1968, LAC 25, vol. 10322, file 27-10-2-2, pt. 1.
[490] Kirkey, "The Arctic Pollution Prevention Initiatives," pp. 52; Howard Hume, *Toward a Canadian Arctic Policy* (Kingston: University of Rhode Island), pp. 22; *New York Times*, April 20, 1970.
[491] Telegram from Canadian Embassy, Washington to External Affairs, May 15, 1970, LAC, RG 112, vol. 29803, file 170-80/A6, pt.8.
[492] Ivan Head and Pierre Trudeau, *The Canadian Way: Shaping Canada's Foreign Policy, 1968-1984* (Toronto: McClelland and Stewart, 1995), pp. 55 and 58.
[493] Ibid, pp. 58.
[494] Ibid.

and Sharp, who were loath to place Canada outside of existing international law, Cabinet agreed to proceed with the extension of its environmental jurisdiction out to 100 nautical miles and the policy was unveiled publicly on January 22, 1970 just in time to be applied to the second voyage of the *Manhattan* scheduled for that April. It was soon made clear to Humble Oil that, in order to proceed with its second voyage, strict adherence would be required to Canada's new if as yet unpassed regulations.

These regulations were presented to the House of Commons on April 8, 1970 and passed as Bill C-202 under the official title of the *Arctic Waters Pollution Prevention Ac*t (AWPPA). In its final form, the AWPPA was a thorough and novel piece of legislation designed to control pollution along the Arctic coast by giving Canada jurisdiction over ships passing through the region. The act gave the Governor in Council power to prescribe "shipping safety control zone[s]" and empowered the government to make regulations relating to navigation in any of these zones or to prohibit any ship from entering until it met the prescribed regulations. These regulations could relate to hull and fuel tank construction, navigational aids, safety equipment, qualification of personnel, time and route of passage, pilotage, icebreaker escort and more. At certain times of the year, or when certain ice conditions prevailed, ships could be excluded entirely from any given area. The Act further provided for the appointment of pollution prevention officers with broad powers, including the authorization to board ships within the shipping control zones for inspection purposes, and to order ships in or near a control zone to remain outside of it if the officer suspected that it did not comply with the Canadian regulations applicable for the zone in question.

The remedial provisions of the Act were as comprehensive as its preventative elements. Any person found to be depositing waste in the Arctic waters in violation of the Act was liable to a fine not exceeding $5,000 and any ship depositing waste to a fine not to exceed $100,000, with each day on which the offense was committed being considered a separate offense. In addition, any person failing to comply with various orders or regulations and any ship found to be out of compliance, was liable for fines of up to $25,000. The Act also provided for civil liability both for costs incurred by the Canadian government related to any violation and for any actual losses or damage incurred by other persons from the deposit of waste. Such liability was absolute and did not depend upon proof of fault or negligence.

In extreme circumstances, a pollution prevention officer might even be authorized to seize a ship and its cargo anywhere within the 100 mile limit when he suspected, on reasonable grounds, that the ship or the cargo owners had contravened the provisions of the Act, possibly leading to the forfeiture of the ship or cargo at the hands of a Canadian court. Looking ahead to future development, the Act also provided provisions for the government to demand evidence of financial responsibility adequate to cover any cleanup or damage which may result from pollution from companies exploiting natural resources.[495] Enforcement was given to Transport Canada, Indian and Northern Affairs and Natural Resources Canada, which were expected to work with the resources already fielded by the Coast Guard and other agencies.

The extension of Canada's territorial waters was passed at the same time as Bill C-230. In so doing the Canadian government effectively closed off the entrances to the

[495] *Arctic Waters Pollution Prevention Act* (Canada, 1970); description from Richard Bilder, "The Canadian Arctic Waters Pollution Prevention Act: New Stresses on the Law of the Sea," *Michigan Law Review* 69:1 (November, 1970), pp. 9-10.

Northwest Passage as territorial waters at Barrow and Prince of Wales Strait. While the United States might not have formally recognized this closure, it gave Canada acceptable grounds to claim jurisdiction over passing commercial vessels. If any of those were American flagged, the onus would be on the United States to decide whether or not it wanted expanded confrontation on legal grounds likely favourable to Canada.

While the extension of the Canadian territorial sea and the new pollution prevention act did not provoke as strong a response as a declaration of sovereignty certainly would have, the American government was still adamantly opposed. On March 11, 1970 American officials were informed by Canada's ambassador of Ottawa's intention to introduce this legislation before the Easter recess. Within nine days a team headed by Under-Secretary of State Alexis Johnson had arrived in Ottawa to discuss the situation and hopefully to convince the Canadians to back away from their unilateral approach.

These discussions made very little headway. The Americans continued to focus on the damaging precedent which they believed this legislation would set while the Canadians refused to budge on the essentials.[496] The Americans disliked the AWPPA not so much because of the restrictions it placed on Arctic shipping, but because it was feared that other states might begin to imitate Canada and a hodgepodge of new and stringent regulations might begin to crop up around the world. Regardless of whether this jurisdiction was called sovereignty or simply pollution prevention, the end result might very well have been the same – severe restrictions to global maritime commerce and naval mobility.

[496] Talking Points for Ambassador Johnson, March 20, 1970, LAC, RG 2, series A-5-a, vol. 6359.

Despite their longstanding opposition to such creeping jurisdiction, the American State Department and its negotiators remained pragmatic. Washington recognized the political pressure which the Canadian government was under (something which the Canadian delegates emphasized repeatedly) and suggested a compromise. What really bothered the Americans was the geographic extent of the legislation and, on March 23, Johnson suggested that Canada instead limit its pollution prevention measures to cargo vessels and extend it only out to 12 miles, or even to simply leave the distance unspecified. It was argued that 12 miles would give Canada the functional control it needed and, if and when it was considered necessary, it could still reach out to 100 miles in the event of an imminent pollution threat, justifying such action on the basis of the principles laid down in the 1969 Brussels IMCO Convention.[497] This approach was rejected by the Canadian negotiators, in part, because it offered only reactive powers rather than the broad preventative measures provided by the AWPPA.

Once it had become clear to the American negotiators that the Canadians were unwilling to surrender on any of the fundamentals of the legislation, the State Department attempted to involve the broader international community. It was hoped that if a multinational agreement could be reached, much of the precedent set by Canada's unilateral action might be nullified. On April 14, the State Department proposed a conference to resolve the issue and invited the Canadian government to co-sponsor the event.

This was a clever manoeuver on the part of the Americans and represented a potential problem for Ottawa. Any success in establishing an international pollution prevention regime would call into question the stated Canadian concern with the absence

[497] Memorandum to Cabinet, March 23, 1970, LAC, RG 2, series A-5-a, vol. 6359.

of effective international law. As such, Canada initially resisted the proposal, stating that it had no intention of submitting questions of national jurisdiction to the international community. In proposing the conference, the United States had stressed its desire for a consensus approach and its lack of interest in provoking a jurisdictional dispute. Yet, as Ivan Head explained afterwards, Canadian officials remained wary about American motives and assumed that any international conference would inevitably attract many of the world's maritime and fishing nations – normally those most interested in preserving a maximum level of navigational freedom – and therefore stacking the deck against Canada.[498]

Refusing to participate in such a conference would have been politically difficult however and so Canada sought to delay the process and to restrict its agenda and participation to favour its own position as much as possible.[499] And, while the majority of the European states continued to support the American position on the freedom of the seas, Canada was able to win the critical support of the world's Arctic nations. Norway's Foreign Affairs Department was described by Canadian officials as "very enthusiastic" about the AWPPA. The Finns seemed to react with sympathy and Iceland left no doubt that it was in favour of the measure.[500] The Swedish Foreign Affairs Ministry expressed "sympathy" while the Danes were simply non-committal.[501] As the most important Arctic state, the Soviet Union's support for any new circumpolar shipping and pollution prevention regulations would also have been essential. And it was with the Soviets that

[498] Interview with Ivan Head in: Kirkey, "The Arctic Waters Pollution Prevention Initiatives: Canada's Response to an American Challenge," pp. 55.
[499] Kirton and Munton, pp. 94.
[500] Iceland had itself been involved in a controversial attempt to unilaterally extend fishing jurisdiction around its island.
[501] "Foreign Reactions to Canadian Legislation," May 8, 1970, LAC, RG 112, vol. 29803, file 170-80/A6, pt.8.

the American push for a conference met a dead end. The USSR supported the Canadian position out of its own self-interest. As the owner of the world's longest and most active Arctic sea routes, the Soviets resented any foreign interference and preferred to do as Ottawa had done and regulate its own territory.[502]

Of the 14 other governments which the United States had approached with invitations only the Netherlands seemed to be in favour of a conference, with most of the remaining states either ambivalent or outright opposed to the idea. Thus, by the summer of 1970 the proposal had failed and resistance to the AWPPA largely died away. The United States still possessed significant economic and diplomatic avenues of protest, but it had become clear that the Canadians would not be moved and, just as importantly, that global opinion (and even domestic American opinion) seemed to be against aggressive action.

In 1970 the AWPPA was a resounding success in meeting the government's most immediate objective: providing it with the jurisdictional control required to protect the Arctic marine environment. It was of no small importance that the second voyage of the *Manhattan* demonstrated that corporations could be made to submit to the provisions of the Act even if their parent governments did not recognize its legitimacy. In April 1970, Humble Oil agreed to comply with Canada's regulations and allowed the Department of Transport to inspect the hull and other equipment aboard the *Manhattan*. The company even agreed to cede ultimate control of the voyage to the captain of the accompanying Canadian icebreaker – actions which would have been completely unnecessary in transiting an international strait. And, since the *Manhattan* was a privately owned vessel

[502] Ibid.

whose operators were willing to comply, there was little grounds for Washington to object.

For the Liberals, the domestic public's reaction to the measures represented a significant success as well, not only in gaining public support but in tamping down awkward demands for sovereignty. In September 1969 Ivan Head wrote to Trudeau to warn the Prime Minister that the nationalistic sentiment which seemed to be building was nearing the point of xenophobia and that "should this emotion be permitted to develop in a narrow, chauvinistic fashion it will be detrimental not only to the policies of this government but to Canada's economic development and our international relations."[503] That the government managed to sate this intense public pressure without significantly damaging the state's interests must be considered a significant accomplishment.

The AWPPA and the 12 mile extension worked well in satisfying this nationalism and preventing public pressure from forcing the government's hand with regards to straight baselines. Yet, this is not to imply that the Liberals had in any way surrendered Canada's traditional claim to the Arctic waters. It was recognized at the time that the bitter political atmosphere of 1969 was the worst possible occasion to press a major new maritime claim. However, through public statements and official communiques surrounding the *Manhattan* voyages, and in the bilateral negotiations which followed, the Canadian government made it clear that it continued to view the Arctic waters as internal.

In February 1970 Mitchell Sharp described the Northwest Passage as "..our waters" and implied that Canada might consider a historic waters claim: "…there has never been any question of that. We have *always* regarded them as our waters [italics

[503] Ivan Head to the Prime Minister, September 26, 1969, LAC, R 12259, file 26.

added].”[504] Two months later the minister was even more explicit. In responding to a question by Conservative MP Gordon Aiken about whether or not the new 12 mile territorial sea limits would be drawn as baselines, Sharp told the House that: “since obviously we claim these to be Canadian internal waters we would not draw such lines.”[505] The use of the word ‘internal’ certainly signaled a shift in the manner in which the government chose to approach the issue in public. For decades it had proven safer to simply describe the Arctic waters as ‘Canadian’ or ‘ours.’ These terms conveyed the same meaning, but their imprecision made them harder to challenge and therefore less threatening. Ironically, while seeking to avoid being cornered into making an explicit claim, the government was also seeking to clarify and strengthen its position.

When Sharp was accused by the Conservatives of abandoning the traditional Canadian claim by choosing an expansion of the territorial sea over an overt declaration of sovereignty, Sharp stated: “it is quite clear that whether or not the Canadian government chooses to establish at this time its claim to the whole of the waters of the Arctic Archipelago … and that previous Canadian governments have not done so, does not hereby weaken our sovereignty claim.”[506] This approach was taken in official communications with the Americans as well. In March 1970 Alexis Johnson asked Marcel Cadieux to clarify Canada’s position in the North. Johnson’s impression was that Canada had always acted “as though it had sovereignty but has not up to now taken formal legal action to assert it.” Cadieux responded that that was in fact the case.[507] This

[504] John Doig, “Arctic Pollution,” *Toronto Star*, February 20, 1970.
[505] Canada, House of Commons, *Debates*, April 16, 1970, 28th Parliament, 2nd session, pp. 5953.
[506] Telegram from US Embassy, Ottawa to Department of State, NARA, RG 26, Ocean Office of Operations Division, Correspondence Concerning Icebreaking and Polar Operations, box 1.
[507] Telegram, March 13, 1970, LAC, RG 2, series A-5-a, vol. 6359.

is hardly a clear-cut definition, yet it still represents a more direct assertion than what was being conveyed to the Americans only a few months earlier.[508]

The bulk of literature on the subject, from historians and international lawyers alike, has tended to place the AWPPA into what Andrea Charron has called the 'sovereignty to the side' school of thought.[509] This understanding held that the government had been willing to look past the issue of sovereignty in order to reach practical solutions to more immediate problems. Franklyn Griffiths, John Kirton and Don Munton, for instance, all considered pollution control as having been the government's primary objective throughout the crisis.[510] Griffiths even bemoans what he called the government's retreat from sovereignty and its policy of sacrificing Arctic sovereignty for lesser functional objectives.[511] Yet sovereignty was never really being put to the side. In fact, the maintenance and strengthening of the Canadian claim remained a primary objective – even if the Prime Minster could not admit as much publicly. In reality, the AWPPA was never an attempt to circumvent the issue of sovereignty; it was merely a novel approach to dealing with it.

While the AWPPA was a means of avoiding a direct claim it was also seen as a circuitous way of strengthening it for the future. In an interview given years later, Gordon Robertson, then Clerk of the Privy Council and Secretary to the Cabinet, explained that:

> . . . the ultimate objective was to establish and get international recognition for Canadian sovereignty over the waters of the Canadian Arctic Archipelago. That

[508] For instance in a June 1969 note the Canadian position was that it "had inevitably the greatest interest in the Arctic waters in the Northwest Passage given historic, geographic, climatic and economic factors;" Kirton and Munton, pp. 75.
[509] Andrea Charron, "The Northwest Passage Shipping Channel: Is Canada's Sovereignty Really Floating Away?" CDAI-CDFAI, 7th Annual Graduate Student Symposium, RMC, October 29-30, 2004.
[510] John Kirton and Don Munton; Franklyn Griffiths, "Canada's Sovereignty and Arctic International Relations," *The Arctic in Question*, E.J. Dosman ed. (Toronto: Oxford University Press, 1976).
[511] Franklyn Griffiths, "Canada's Sovereignty and Arctic International Relations," *The Arctic in Question*, E.J. Dosman ed. (Toronto: Oxford University Press, 1976), pp. 143.

> was the overall objective . . . There was also a legitimate concern about the consequences of oil spills or even just pollution from ships operating [in the area] and we did want to have the means for controlling these possibilities, but we also recognized that if we did something of that kind and it was legitimate and if we carried out jurisdiction in a respectable way, that would over a period strengthen the claim that there was effective Canadian administration of these waters and therefore provide a better basis for an overall claim for sovereignty at some appropriate time.[512]

Canadian policy had thus returned to 'gradual acquisition' however in a modified form. While avoiding a confrontation with the United States remained essential, the government had recognized that it could no longer rely on American acquiescence to strengthen its position. Instead, Canadian sovereignty would have to be gradually strengthened by a more active assertion of Canadian control. The AWPPA was at the heart of this policy. It was designed to reinforce the implied Canadian claim by allowing the government to exercise many of the powers normally attributed to sovereignty within the archipelagic waters, even when the government was unable to actually claim that sovereignty.

Ivan Head, the legal assistant to Prime Minister Trudeau in 1969 and Special Assistant with responsibility for advice on foreign policy and the conduct of foreign relations in 1970, was one of the primary architects of the AWPPA. Head himself recalled that he had always seen the legislation as merely the latest Canadian approach to gradually building its sovereignty. "Step by step, fiber by fiber we were weaving a fabric of sovereignty in the north" Head later declared. This new "environmental concern" was merely the latest fiber in this fabric.[513]

In this context Ottawa's stubborn negotiating stance in 1970 appears less an exercise in obstructionism and more a carefully calculated attempt to ensure that the

[512] Kirkey, "The Arctic Pollution Prevention Initiatives," pp. 44.
[513] Kirkey, "The Arctic Pollution Prevention Initiatives," pp. 44.

perception of its sovereignty was not diluted by multilateral action. If pollution prevention was in fact the government's overriding concern then the multilateral, or even bilateral, approach favoured by the Americans would likely have been worth pursuing. Officially the reason for this unilateralism was that international approaches took too long and the situation was too urgent.[514] Indeed Canada's experience at the drawn out UN Law of the Sea Conferences in 1958 and 1960, as well as the Brussels Marine Pollution Conference of 1969, had not been encouraging.[515] Yet the American negotiators had recognized the need for expediency in this matter and had intended for the conference to have concluded as early as June of 1970, years before any actual shipping might have begun.

If the matter of the *Manhattan*'s second voyage in April 1970 was an issue, State Department officials had offered a proposal for a bilateral pollution prevention regime for commercial vessels. This would have involved a joint committee to decide on appropriate pollution controls and it was even promised that this commission would use the initial Canadian regulations tabled in Parliament as its foundation. Most importantly, the Americans offered to establish these controls right away and work out some more permanent arrangement later.[516]

Such an agreement would have immediately provided Canada with the pollution controls it required – with the added benefit of American participation, a helpful addition when most of the vessels to be inspected would likely have been American. This solution was a practical one which the Canadian government should have considered had

[514] For instance Trudeau's comment: "We have no reason to believe that such an effective international regime can be expected in the next few months, or even years;" Richard B. Bilder, ft. 90.
[515] Ibid, 23-4.
[516] Talking points for Ambassador Johnson, DHH, 82/123.

pollution been the primary concern. It was rejected because sovereignty considerations weighed just as heavily on the minds of Canadian negotiators. In January 1970, before serious negotiations had even begun, Gordon Stead of the Canadian Coast Guard, when considering the initial American proposals, wrote that: "in practical terms [bilateral discussion] would produce satisfactory answers … but does not satisfy the political problem." He continued on to say that multinational solutions were likewise unacceptable, since "the flaw in either of these is that they both suggest that other countries have a sovereign interest in our Arctic. The only solution I see at this stage is discussions with the Americans to examine the alternatives and come up with the least offensive solution which we would then declare unilaterally."[517]

Control was the overarching objective behind Canadian actions, and only through a unilateral declaration of jurisdiction could Ottawa gain the powers it needed to assert the functional control it required while avoiding any impression of a delegation of its sovereign rights and responsibilities. Even the appearance of talking to Washington about the subject was a touchy matter, since no state would see it necessary to negotiate over an area it considered its sovereign territory. In 1970 American negotiators conveyed their impressions to the President that the "Canadians are very sensitive on its becoming known that they are discussing [Arctic sovereignty] [underlining in the original]."[518]

Ultimately, the Canadian government was successful in obtaining its objectives. The AWPPA and the expanded territorial sea gave the country the required jurisdictional control while the unilateral manner in which it went about obtaining it strengthened the perception of Canadian sovereignty which was so carefully being cultivated. The two

[517] Gordon W. Stead, January 21, 1970, LAC, RG 12, vol. 5561, file 8100-15-4-2, pt. 2.
[518] Memorandum for the President, March 21, 1970, NARA, National Security Subject Files, box 308.

year-long political crises had, however, shaken the traditional government understanding of how Canada could assert its claims and what Ottawa could expect from the United States should another crisis arise. It was clear that Washington would not simply come to recognize the Arctic waters as Canadian. At the time it also appeared as though the inactivity and remoteness, which had traditionally characterized the region and protected Canada's ambiguous position from domestic or international scrutiny, was unlikely to last much longer.

The voyage of the *Manhattan* had therefore served to fundamentally rearrange the traditional order of Canada's maritime priorities. By the 1970s, the Arctic had moved from its traditional spot at the bottom of that list straight to the top. While the *Manhattan* may not have forced the Canadian government to assert a direct claim to the Arctic waters, it did accomplish something close; it forced a recognition that the standard methods of dealing with the region were no longer appropriate and that a fundamental re-evaluation of how it approached the Arctic was now a necessity.

Chapter 6

Speaking Softly and Carrying a Bigg(er) Stick
The Solidification of Canadian Policy 1970-1979

In the aftermath of the *Manhattan* crisis and the two years of quiet but hostile diplomatic wrangling with the United States, the Trudeau government began a gradual but significant shift away from Canada's traditional approach to Arctic sovereignty. The *Manhattan* had demonstrated beyond a doubt that Canada's traditionally reactive approach to the North was no longer a tenable strategy. The public had shown that it was no longer disinterested in the region, resource exploration was increasing and Ottawa had an important new piece of pollution control legislation which it needed to enforce. The Arctic Waters Pollution Prevention Act itself had been a political victory however its international legitimacy remained in serious question while the control it offered still fell well short of the government's ultimate political objectives. To achieve these, Canada required a clear and practical plan and a new investment of diplomatic and financial capital to strengthen both its legal position and its physical control while advancing its claims. It needed this control for domestic political reasons but also in preparation for what it considered to be the inevitable development of the region. Legally the Canadian position had proven too weak to risk in 1970 and thus bolstering it had become an active concern as well.

While there was to be no outright declaration of sovereignty during the decade, the government worked diligently to clarify its legal position while expanding its footprint in the North. Paralleling this public assertion of Canadian sovereignty was a concerted and ultimately effective diplomatic push to exceptionalize the Northwest

Passage in international law, to legitimize the AWPPA and to quietly lay the legal and political groundwork for the claim which the government knew must someday be made.

By 1971 the government had effectively ended its traditional habit of issuing conflicting, ambiguous or confusing statements about the Arctic waters. In the new atmosphere of close public scrutiny and political pressure, such ambiguity was simply no longer effective or even politically possible. The first clear indication of a newly refined policy had begun to emerge during the *Manhattan* crisis itself when in political debates and public addresses government ministers began to consistently refer to the northern waters as 'internal' or 'inland.'

While the ACND and External Affairs had been recommending that Canada consider these waters to be internal since the 1950s, it was a policy line which had never been publicly embraced. Indeed, even during the *Manhattan* crisis the government had initially been quite unwilling to make that leap. While the Trudeau government's stance had become steadily less ambiguous throughout the months of Commons debates, as late as February 1970 the Prime Minister was still refusing to answer straight forward questions from the opposition as to whether or not the government considered the waters to be internal or not.[519] Indeed, it was not until mid-April that a government minister was willing to use the term in the House.[520] Yet, by 1971 the White Paper on National Defence had put the term into print, describing the waters as Canada's "Northern inland waters."[521] This claim was repeated by the Department of Justice in 1973 when it was openly stated that the Canadian government considered the waters of the Archipelago to be internal, even "if they had not been declared as such by any treaty or by any

[519] Canada, House of Commons, *Debates*, February 20, 1970, 28th Parliament, 2nd session.
[520] Canada, House of Commons, *Debates*, April 16, 1970, 28th Parliament, 2nd session, pp. 5953.
[521] Canada, Department of National Defence, *Defence in the 70's* (Ottawa: Queen's Printers, 1971), pp. 1.

legislation."[522] Again, this was repeated in 1975 by the Secretary of State for External Affairs when speaking to the Standing Committee on External Affairs and National Defence.[523]

The consistent application of the term 'internal,' and the avoidance of any conflicting government pronouncements, was a far cry from the confusing policy atmosphere of the 1950s and even from the government's early statements during the *Manhattan* affair.[524] Rather than simply calling them 'Canadian' waters or 'our' waters, the use of the terms internal and inland clearly conveyed a very specific legal status which the government was seeking to apply. It also marked a decisive break in the manner in which the Arctic was discussed publicly. While a specific claim may have been impracticable at the moment, this harmonization of public statements was a vital first step in clarifying the country's position and disposing of much of the damaging ambiguity and confusion which had long characterized past governments' communication on the subject. Canada had finally defined publicly what it sought to claim and what precisely that claim entailed.

By the mid-1970s a basis for sovereignty had also been established. Rather than simply resting its claim on the principle of straight baselines, it had been decided to apply historic waters doctrine as well. When precisely this decision was made remains classified. Past governments had often implied some form of historic title, however when

---

[522] Statement for the Bureau of Legal Affairs (Ottawa: Queen's Printers, December 1973) reproduced in Honderich, pp.52; Elizabeth Elliot-Meisel, "Still Unresolved after Fifty Years: The Northwest Passage in Canadian-American Relations, 1946-1998," *The American Review of Canadian Studies* 29:3 (Fall, 1999).

[523] Memorandum for Cabinet, May 12, 1976, LAC, RG 12 Vol. 5561, file 8100-15-4-2, pt. 3.

[524] On May 20, 1969, in response to an opposition question, Trudeau stated: "[we are considering] whether it will eventually be in Canada's interest to have these waters declared Canadian internal waters." In that same conversation, the PM told the House that it was not a question worth discussing until Canada was in a better position to decide whether to substantiate its claims or withdraw them; Canada, House of Commons, *Debates*, 28 March, 1969, 28th Parliament, 1st session, pp. 8826.

it came to official policy no firm decisions had been made. On this score it should be remembered that, when the Pearson government had put the Arctic waters on its negotiating agenda in 1963 they were the only waters which Canada was then *not* claiming as historic. By 1969 however Trudeau had clearly implied this shift when speaking to the House of Commons:

> Canadian activities in the northern reaches of this continent have been far flung but pronounced for many years, to the exclusion of the activities of any other government. The Royal Canadian Mounted Police patrols and administers justice in these regions on land and ice, in the air and in the water… In all these activities, and in others, ranging from geophysical explorations to the distribution of family allowance cheques, Arctic North America has for 450 years, progressively become the Canadian Arctic.[525]

The first semi-official, public, application of the doctrine came in the House of Commons in April 1970.[526] And, by 1976 at the latest, this approach had become official policy when Cabinet formally approved the application of this doctrine in an internal document that recognized a need to: "reaffirm Canada's historic claim to the water within the Arctic Archipelago."[527] Canadian diplomats and government officials were then officially advised to respond to questions on the subject with the following scripted answer, as telegraphed to the Canadian embassy in Washington: "CDA has historic claim to title to and exercises sovereignty over all waters within Arctic Archipelago. These waters are internal CDN waters as stated by SSEA before House Standing CTTEE on EXT AFFS and NATL Defence on May 22/75."[528]

---

[525] Canada, House of Commons, *Debates*, October 24, 1969, 28th Parliament, 2nd session, pp. 30-40.
[526] Canada, House of Commons, *Debates*, 16 April, 1970, 28th Parliament, 2nd session, pp. 5953.
[527] Memorandum for ministers, "Status of the Canadian Archipelagic Waters," October 5, 1979, LAC, RG 12 vol. 5561, file 8100-15-4-2, pt. 3.
[528] Telegram from External Affairs to Canadian Embassy, Washington, July 5, 1976, LAC, RG 12 vol. 5561, file 8100-15-4-2, pt. 2.

Despite this clarification, political factors continued to prevent the government from completely abandoning the remnants of some of its more exaggerated claims. Men like Ivan Head could advise the Prime Minister to ignore the discredited sector theory yet, in the politically charged atmosphere surrounding the *Manhattan* trials, appearing to sacrifice sovereignty of any sort was a non-starter. As such, while trying to clarify its Arctic position the government was forced, for political reasons, to maintain an untenable and even embarrassing level of support for the sector principle. In the same dispatch to Washington which had instructed the Embassy's diplomats to begin advancing a historic waters claim it was noted that any questions concerning Canada's reliance on the sector theory should simply be met with a "no comment." In such instances, officials were instructed to not go beyond that and to refer the matter to External Affairs if absolutely necessary.[529]

This policy dichotomy was clearly demonstrated in late 1970 by a murder on the American ice-island T-3 which just happened to be floating through the Canadian sector at the time. On July 16 Bennie Lightsey, station manager of the island's weather facility, was murdered by co-worker Mario Jamie Escamilla while adrift 200 miles west of Ellesmere Island at coordinates 84° 45.8' N and 106° 24.4'W. Lightsey was brought back to the United States and convicted of manslaughter on the high seas. Word of the homicide reached the Legal Affairs division of External Affairs 13 days after it had taken place and, the next day, Under-Secretary Edgar Ritchie informed his minister in a lengthy memorandum:

> … fortunately, the press has not yet raised the question as to whether or not criminal jurisdiction in this case rests with the Canadian or American authorities.

[529] Telegram from External Affairs to Canadian Embassy, Washington, July 5, 1976, LAC, RG 12 vol. 5561, file 8100-15-4-2, pt. 2.

> We have discussed this aspect of the problem with the Departments of Justice, Northern Affairs, National Defence and the R.C.M.P and it has been agreed that for the time being any inquiries from the press would be answered by indicating that the Canadian Government is aware of the case and that officials are examining all aspects of the question."[530]

Seeking to draw as little attention to the matter as possible – from both the Canadian press as well as from the State Department – External Affairs sent only a low key note to the United States, stating that the government had noted the events, had chosen "to reserve its position on the matter" and merely asked to be kept abreast of developments.[531]

Within a month however the opposition had got wind of the case and jumped on the opportunity to embarrass the government. That August Ged Baldwin, the Conservative House Leader, declared: "We in the Conservative Opposition pressed the Government earlier this year for an outright declaration of sovereignty over Arctic waters. But they were content to legislate on pollution stating that this was an exercise of sovereignty. Now the ineptitude of this legislation is apparent."[532] In another press release a week later, Baldwin again pointed to the murder and used it to illustrate how the Liberal's functional policy was endangering Canadian sovereignty. The Liberals, Ged claimed, had "pussy-footed and [thrown] away what advantages Canada possessed."[533] The government's response was naturally handicapped. Giving legitimacy to any sector claims could have delegitimized sovereignty over the archipelagic waters yet the sector theory could not have been discarded outright since such an action could easily have been spun by the opposition and the media into a general Liberal abandonment of Arctic

[530] Most of this memorandum remains classified. Memorandum quoted in part in Smith, *Ice Islands*, pp. 84.
[531] Quoted in: Smith, *Ice Islands*, pp. 85
[532] Canada, House of Commons, Press Release, August 19, 1970, quoted in Smith, *Ice Islands*, pp. 86.
[533] Canada, House of Commons, Press Release, August 25, 1970, quoted in Smith, *Ice Islands*, pp. 87.

sovereignty. Baldwin's attacks clearly indicated how willing the Conservatives were to use just such an opportunity.

With the US government, Canada's inability to shed its informal association with the sector theory was awkward. In May 1971, during Mr. Lightsey's trial, External Affairs wrote the State Department to inform them that "the Canadian government continues to reserve its position on the question of jurisdiction over the alleged offence … and if it is considered necessary for the purposes of the legal proceedings in question the Canadian government hereby waives jurisdiction."[534] When Mr. Lightsey's attorneys persisted in trying to get behind the meaning of the Canadian note they were unable to get any clear answers on what exactly Canada's official position was. The reaction of the American court to the Canadian note was described in a telegram from the Canadian Embassy to External Affairs:

> Judge Lewis said that if you really got behind big fancy words used in note all it really meant was that Cda was saying it reserved right at some time in the future if it ever thought worth its while to claim as much jurisdiction as it could get away with. This caused great deal of laughter in court room, particularly from State Dept. reps.[535]

Fortunately for Canada the *Escamilla Case* was a relatively isolated incident and, throughout the 1970s, few events took place in the vast polar sector which might have further highlighted the divide between Canada's official claims to the archipelagic waters and its more nebulous position on the vast polar sector. When Soviet occupied ice-islands did float through, as in the case of NP-22 in 1977, the RCAF maintained surveillance but Ottawa refrained from drawing too much attention to the 'intrusion.' That the Minister of National Defence felt the need to drop a beer bottle onto NP-22 with a message reading

[534] External Affairs to State Department, May 19, 1971,quoted in Smith, *Ice Islands*, pp. 87.
[535] Gordon Smith, *Ice Islands*, pp. 88.

"welcome to Canada" at least indicated that the sector principle had not yet been formally renounced, even if the government continued to keep it out of official policy pronouncements.[536]

The official historic waters claim which was then being articulated publicly by Cabinet ministers and official government communications was, however, still quite weak. International recognition of that claim had never materialized, while the facts on the ground seemed only to reinforce the tenuousness of Canada's control in the region. The *Manhattan* had done more than create a temporary political crisis, it had ushered in a new era of northern activity which was rapidly transforming the region from a forgotten backwater to a new frontier in global energy exploration. By the mid-1970s American production was in decline while, in 1973, the second Arab oil embargo seized global energy markets and sent crude prices from $3.50 per barrel in 1972 to $12.00 in 1974.

The Western world needed new sources of oil and the Arctic was the obvious place to look. It was widely assumed that discoveries, like those so recently made at Prudhoe Bay, would soon be made on the Canadian side of the border. And in fact they were. On January 14, 1970 Imperial struck oil at Atkinson Point on the Tuktoyaktuk Peninsula and estimates were soon published which placed these reserves at anywhere from 50 billion barrels of oil and 300 trillion cubic feet of natural gas to over 100 billion barrels of oil and 650 trillion cubic feet of gas. Put into perspective, the super-giant Ghawar field in Saudi Arabia – the world's largest oil field which, for the fifty years after its discovery, produced more than 60% of the Kingdom's crude – has recoverable

[536] Franklyn Griffiths, *A Northern Foreign Policy* (Toronto: Canadian Institute of International Affairs, 1979), pp. 26.

reserves of roughly 100 billion barrels. These numbers were obviously not realistic, yet they inspired a great deal of enthusiasm.[537]

In the aftermath of Prudhoe Bay and the initially promising discoveries in the Canadian North the international oil majors scrambled to acquire some 28 million acres of new exploration leases.[538] By the end of 1970 there were 32 drilling rigs either operating or preparing for operations in the Northwest Territories and the Yukon, employing over 1,000 workers with a collective budget of nearly $100 million.[539] By 1971 the pace of exploration had only increased as Imperial Oil, and then Mobile and Gulf, announced more finds of both oil and gas to the east and west of Tuktoyaktuk. By 1975 a federal commission led by Thomas Berger was even investigating a proposal, forwarded by a consortium of American and Canadian producers, for a gas pipeline to be built from the Mackenzie Delta down the Mackenzie Valley to existing pipeline infrastructure in Alberta.

In the face of this growing activity the question of sovereignty took a backseat to the more immediate concern of asserting the country's functional jurisdiction. Oil and gas exploration had to be monitored and policed while the new pollution control regulations had to be applied to the current and anticipated influx of vessels and drilling rigs. And, despite the passing of the AWPPA, the framework of government control in the North remained exceedingly limited. By mid-decade the government had still not managed to coordinate its bureaucracy and settle upon a system of admitting and monitoring foreign

[537] Modern surveys place reserves in the Mackenzie region at closer to 2.8 billion barrels of crude oil reserves and more than 60 trillion cubic feet of natural gas; Centre for Energy, *Canada: NWT Statistics*, [online] http://www.centreforenergy.ca. Further east, the Geological Survey of Canada has estimated that the Sverdrup Basin contains 4.3 billion barrels of oil and 79.8 trillion cubic feet of gas; Graham Chandler, "Stranded Gas," *Up Here Business* (June 2008).
[538] Richard Rhomer, *Arctic Imperative* (Toronto: McClelland and Stewart Ltd., 1973), pp. 73.
[539] This would equate to $600 million in 2012 dollars; Rhomer, pp. 74.

vessels into the Arctic. The passage of the Polish ship *Gedania*, which had sailed into the Archipelago in the summer of 1975, was an uncomfortable demonstration of the confusion which remained and the work which still needed to be done.

The *Gedania* was an oceanographic research vessel which had been denied permission to pass through the Northwest Passage. When the ship ignored Canada's refusal and sailed some 350 miles through Canadian waters to Resolute Bay without being detected it caused a great deal of concern and confusion within the relevant departments and agencies over how to act and in what framework they could respond. There was no interagency response plan to actually deal with an intrusion or even standard procedure for obtaining clearance.[540] It did not help the situation that, after three days of searching, the military had proven completely unable to track the vessel.[541] To avoid similar situations in the future, and to ensure that the image of effective Canadian control suffered no further damage, the Cabinet established an interdepartmental panel on the Arctic waters in July 1976. The panel was responsible for responding to any foreign incursions into the area and with coordinating the response between the interested departments and agencies.[542]

To formalize that control, Cabinet decided in July 1976 to expand the Eastern Canada Vessel Traffic Services Zone (ECAREG) to the North. This system, which became the Canadian Arctic Vessel Traffic Reporting System, more commonly known as NORDREG, was implemented to keep track of ships traveling through

[540] Meeting on foreign use of Canadian Arctic waters, October 22, 1975, LAC, RG 12, vol. 5561, file 8100-15-4-2(5), pt. 3.
[541] The search had cost the Forces $200,000 in a fuel budget so tight that it forced a cutback on patrols to make up the difference; Gerald Porter, *In Retreat: The Canadian Forces in the Trudeau Years* (Canada: Deneau and Greenberg, 1978), pp. 67.

[542] Letter from R. Quail to W.A. O'Neil, October 14, 1977, LAC, RG 12, vol. 5561, file 8100-15-4-2, pt. 3.

Canadian Arctic waters.[543] Since making it mandatory without first claiming sovereignty would have been politically difficult it was operated on a voluntary basis. This was also made necessary by the fact that the Coast Guard lacked the resources to enforce it effectively. Yet it was a success all the same as compliance with NORDREG soon became the norm. Indeed, Transport Canada estimates indicate that 98% of all vessels entering the region chose to report to the system, a sensible decision given that compliance gained access to Canadian weather and ice-reporting services and ensured that a ship's position was known in the event of a disaster.[544]

Through NORDREG, Canada was able to gain a new level of functional control over the region. The system provided the country with an accurate picture of what was transpiring in the North and allowed it to better implement its laws and regulations. These laws were also being increasingly applied to the waters outside of the 12 mile limit. These included the AWPPA and the Criminal Code and *Narcotics Control Act*, to basic customs jurisdiction, which the Department of National Revenue had begun to exercise throughout the Archipelago in 1975 on the newly public assumption that these were internal waters.[545] And, despite the controversy which surrounded Canada's assertion of jurisdiction in 1970, there was actually very little resistance to the application of these laws and regulations. The most noticeable of which, the AWPPA, was applied to all commercial vessels, which generally complied without issue.[546]

Most of this effective jurisdiction was conducted by civilian agencies. Law enforcement was handled by the RCMP, NORDREG was run by the Coast Guard and

[543] Letter to Mr. Fairweather, August 10, 1976, LAC, RG 12 vol. 5561, file 8100-15-4-2, pt. 3.
[544] Michael Byers, *Who Owns the Arctic? Understanding Sovereignty Disputes in the North* (Vancouver: Douglas & McIntyre, 2010), pp. 71.
[545] Memorandum for Cabinet, May 12, 1976, LAC, RG 12 vol. 5561, file 8100-15-4-2, pt. 3.
[546] Panel on Arctic Waters meeting, June 27, 1979, LAC, RG 12 vol. 5561, file 8100-15-4-2, pt. 3.

the AWPPA administered by the Department of Transport. Yet the principle agency responsible for asserting Canadian control in the 1970s was the Canadian military, which gained this role by virtue of the capabilities it brought to the table. No other department had the ability to transport men and equipment to the High North, to conduct surveillance and to project the image of strength and control like the Canadian Forces.

Prior to the *Manhattan*, the military's presence in the Arctic was extremely limited. The Canadian Forces' footprint in the late 1960s was limited to about 400 personnel north of 60˚, almost all of which were stationed at either the four manned Dew Line posts or the radio stations at Churchill, Whitehorse, Frobisher (Iqaluit), Inuvik and Alert. By 1967 the decision had even been made to close down the first three of these stations.[547] Naval, air and land exercises were also infrequent. In 1968, for instance, there was one Army exercise in the North and it involved only 40 men conducting manoeuvers outside Churchill.[548] This limited presence had still served the nation well enough in a region which saw little activity and which faced no conceivable military threats; yet in the 1970s this was changing.

The combination of increased economic activity, often involving foreign oil companies, and the popular impression that Canada's claim to the region was in peril, had forced a revaluation of how military forces would be used in the Arctic. In 1969 Canadian defence policy had shifted abruptly, away from the old hallmarks of North American defence and NATO participation and towards a far more inwardly focused

[547] Eyre,"Custos Borealis," pp. 253.
[548] E.B. Wang, "Role of Canadian Armed Forces in Defending Sovereignty," April 30, 1969, LAC, RG 25, vol. 10322, file 27-10-2-2, pt. 1.

emphasis on national security and the protection of Canadian sovereignty.[549] By April 1970, before the *Manhattan* had even begun its second voyage, Trudeau had already begun that transition, claiming that the "first priority in our defence policy is the protection of Canadian sovereignty."[550]

Sovereignty was soon to become the defence buzzword of the 1970s. This new direction was made clear by the Department of National Defence's new White Paper, *Defence in the 70s*, a document which altered the way the political and defence establishments thought about security. Since the 1950s, the principle objective of the Canadian military had been the construction of a war fighting force designed to confront and defeat the Soviet Union in conventional combat in alliance with NATO in the North Atlantic and on the North German plains. The term 'defence' had always been understood in a traditional sense, as referring to weapons systems, forces and their potential employment in military operations. *Defence in the 70s* shifted this traditional definition by re-evaluating the threats which the military was supposed to engage. In an era of détente and mutually assured destruction the Trudeau government felt the possibility of a third world war to be minuscule. Fighting, or even deterring such a conflict, was thought outside of Canadian capabilities and therefore not a primary concern of Canadian defence policy. Instead, the principle 'threat' to Canadian independence and sovereignty was projected to come from environmental degradation and foreign economic and maritime activity.[551] By 1970 the first priority for Canadian

[549] Canada's commitment to NATO was to be cut in half to 10,000 men and the commitment to assist in the defence of Norway was cancelled altogether.
[550] *Globe and Mail*, April 4, 1969.
[551] This approach to Canadian defence policy was visible throughout the Trudeau years and was summed up well in a Defence Department Report as early as 1970; "Force Development Objectives C-1/70: Military Activity in the Canadian North, Interim Report," December 4, 1970, DHH, 82/124 and Canada, Department of National Defence, *Defence in the 70's* (Ottawa: Queen's Printers, 1971), pp. 6.

defence policy was described in the White Paper as: "the surveillance of our own territory and coast-lines, i.e. the protection of our sovereignty."[552] While coastal surveillance had received mention in the previous, 1964 *White Paper on Defence* it was far from the military's primary focus. Arctic sovereignty and the Arctic in general had received no mention at all.[553]

While this new focus on sovereignty was intended to apply across Canada it was clear from the outset that the emphasis was on the one region where that sovereignty was actually in question – the Arctic. That the cover of *Defence in the 70s* was a photograph of Canadian soldiers deploying with snowshoes and winter gear left the reader in no doubt of that.[554] The Navy, whose role had traditionally consisted of anti-submarine warfare and the defence of the Atlantic convoy lanes, had its mission officially shifted to include the maintenance of sovereignty and the enforcement of extra-territorial jurisdiction.[555] For the Army an Arctic training program was planned while the Air Force was to receive a series of new forward airbases across the High Arctic.[556] The White Paper and other Defence reports had also called for a number of new capabilities and capital projects. An underwater Arctic sensor network, similar to the American Sound Surveillance System (SOSUS), was the most significant but an augmented search and

[552] *Defence in the 70s*, pp. 16.
[553] Canada, Department of National Defence, *White Paper on Defence* (Ottawa: Queen's Printers, 1964).
[554] *Defence in the 70s.*
[555] Canada, House of Commons, Standing Committee on External Affairs and National Defence, June 1970; Department of National Defence, Briefing: "Role of the Canadian Armed Forces," May 1970, DHH, 79/527.
[556] *Defence in the 70s*, pp. 24 & "Force Development Objectives C-1/70: Military Activity in the Canadian North Interim Report," December 4, 1970, DHH 82/124.

rescue capability, new navigational assistance and better northern communications were all recommended as well.[557]

This new focus did not receive a universally warm reception. Many in the military rejected the downplaying of their traditional war fighting role, almost as much as they resented the cuts to their budgets.[558] The absence of an appreciable military threat to the Arctic also provoked serious questions about what precisely the military was supposed to do to defend sovereignty. In April 1969, after Trudeau had laid out the country's new priorities, E.B. Wang, then at Canadian Forces Headquarters, endeavoured to determine how the PM's statement could actually be productively applied to defence policy. In an influential policy guidance paper entitled *Role of Canadian Armed Forces in Defending Sovereignty*, Wang concluded that historic force levels in the region, while low, had always been more than sufficient to maintain Canada's territorial sovereignty over the land and continental shelf areas – the ownership of which was not in question.[559]

With regards to the waters of the Archipelago, Wang's assessment was that the issue remained a strictly legal and political one. For Wang, it was difficult to see how an increased deployment of military force could materially strengthen the Canadian claim. While the presence of troops in the North might certainly produce political dividends, an effective defence policy should seek these only as by-products of an otherwise effective defence posture based upon specific and targeted objectives designed to ensure Canadian security. Ultimately, Wang's conclusion was that:

---

[557] "Force Development Objectives C-1/70: Military Activity in the Canadian North Interim Report," December 4, 1970, DHH 82/124.In June 1970, The House of Commons, Standing Committee on External Affairs and National Defence also called on the government to acquire a submarine sensor network and increase its surveillance of the region.

[558] Trudeau was to cut the Forces' strength by 20% and freeze the defence budget –essentially a cut in a decade where annual inflation averaged from between 6% to 12%.

[559] These conclusions were later included in a Canadian Defence Staff Paper and circulated.

> … to build a role for the Canadian forces merely to satisfy the optical demands of political sovereignty would be to build on shifting sands. It would not be long before somebody noticed that one visit of the Governor-General, accompanied by an enthusiastic press corps, can provide a sovereign presence to a remote area much more effectively and much more cheaply than 100 CF surveillance overflights."[560]

Presence for the sake of presence was, in short, considered to be both pointless and wasteful. [561]

While still in draft form, *Defence in the 70s* received similar criticism from External Affairs. Leonard Legault, then Director-General of the Legal Bureau, wrote to the division's Director, Allan Beesley, to mock the document's underlying principle. Surveillance, Legault said, seemed to have been transformed into some sort of "mystic right rather than a functional requirement to meet well defined needs." [562] Sovereignty, it seems, had been separated from security in Canada's new policy approach and segregated into a separate, even mutually exclusive, objective.[563] Like Wang, Legault and many in External Affairs felt that current functional needs, rather than demonstrations of sovereignty, should have remained the touchstone of any rational policy.[564]

While Wang was certainly correct about the functional usefulness of the military in asserting Canadian jurisdiction in the North, he may have underestimated the importance of the political dividends it paid. For the Canadian public this symbolic presence was an important visual representation of national control and, for the government, it was the best way to be seen exercising sovereignty. This was made all the more important by the fact that the time was judged as being inappropriate for a direct

[560] E.B. Wang, "Role of Canadian Armed Forces in Defending Sovereignty," April 30, 1968, LAC, RG 25, vol. 10322, file 27-10-2-2, pt. 1.
[561] Ibid.
[562] Legault to Beesley, February 2, 1971, LAC, RG 25, vol. 10322, file 27-10-2-2, pt. 2.
[563] External Affairs draft paper on defence policy, January 18, 1971, LAC, RG 25, vol. 10322, file 27-10-2-2, pt.2.
[564] Legault to Beesley, February 2, 1971, LAC, RG 25, vol. 10322, file 27-10-2-2, pt. 2.

claim. Deferring this claim remained politically uncomfortable since inaction on the subject left the government open to what one Cabinet memo labelled "political and popular pressure."[565] With this in mind, External Affairs, Indian and Northern Affairs and Fisheries had recommended that this pressure could at least be mitigated by providing public assurances that the government was actively seeking to maintain that sovereignty, even if it could not actively claim it.[566] As such, despite objections that this new approach was both wasteful and unfocused, the word from the top was clear. An increased presence in the Canadian North was politically essential.

In keeping with this new philosophy, government activity in the region expanded dramatically. In 1968 there was really no significant military activity in the Arctic. The Army had conducted one small exercise while the RCAF had carried out some 400 hours in search and rescue operations, though flights dedicated to sovereignty or surveillance had been stopped in 1965.[567] By 1969 however that activity had ballooned to 1,004 hours of surveillance and other air operations north of 60˚ by Argus aircraft flying out of Prince Edward Island, Nova Scotia and British Columbia.[568] The Army had also deployed troops to the Mackenzie Delta and the central Archipelago in several land based patrols and operations.[569]

By the time the *Manhattan* had finished its second voyage, military deployments in the Arctic had increased in lockstep with the rising political tensions. In 1970 Canada's portion of the DEW Line and the joint Arctic weather stations were Canadianized – with

[565] Memorandum to Cabinet, 1976, LAC, RI 2069, vol. 145, pt. 8.
[566] Ibid.
[567] Advisory Committee on Northern Development, *Government Activities in the North* (Ottawa: Dept. of Northern Affairs and National Resources, 1968).
[568] Advisory Committee on Northern Development, *Government Activities in the North* (Ottawa: Dept. of Northern Affairs and National Resources, 1969), pp. 180.
[569] Ibid, pp. 180-181.

the country's commanders finally being given full responsibility for the sites. At the same time, the RCN's sovereignty patrols and surveillance flying hours had increased to 2,200 for the year while the RCAF increased its air operations to 1,273 hours of search and rescue and 419 hours of what were dubbed 'familiarization' operations.[570] Four RCN naval vessels had also been deployed north of 60˚ in the first northern operation in eight years. These ships sailed the waters of the eastern Northwest Territories in what was dubbed a NORPLOY – an exercise which would continue sporadically into the twenty first century. The Navy had also begun the process of regaining some of the skills it had lost with the transfer of the *Labrador* by seconding officers and men to the Coast Guard for indoctrination service aboard icebreakers.[571] Meanwhile the remote airfields program had been authorized and the construction or expansion of airfields would soon begin at Pangnirtung, Cape Dorset, Whale Cove, Chesterfield Inlet, Igloolik and Pond Inlet.[572]

In 1970 the Amy began its own regular deployment in what it dubbed the New Viking exercises, designed to familiarize officers and men with Arctic conditions and operations. The headquarters for the project was established at Churchill in facilities loaned to DND by the Department of Public Works; there a small staff of instructors handled a new group of candidates every two weeks on a year-round basis.[573] Troops would be flown into Churchill during the winter and to Resolute during the summer; from there the soldiers spent the first week studying the basics of Arctic proficiency, such as how to handle dangerous wind chills on open tundra and navigation in areas where

[570] Advisory Committee on Northern Development, *Government Activities in the North* (Ottawa: Dept. of Northern Affairs and National Resources, 1970), pp. 94-5.
[571] Ibid, pp. 94.
[572] This program was a joint venture with Indian and Northern Affairs and ultimately provided DND with four northern airstrips capable of landing the heavy Hercules C-130s of the Air Transport Command.
[573] Eyre, Kenneth, "Forty Years of Military Activity in the Canadian North, 1947-87," *Arctic*, 40:4 (December, 1987), pp. 297.

magnetic compasses were of little use. The following week the troops were redeployed by air to more advanced patrol bases such as Baker Lake, Rankin Inlet, Frobisher (Iqaluit), Coral Harbour, Sacks Harbour or the weather stations at Mould Bay Isaachsen or Eureka. From those remote communities, groups would strike out on their own, traditionally covering 50 km during a week of advanced patrol.[574] To coordinate much of this new activity a regional DND headquarters was also established at Yellowknife that May, creating the largest military district in the world.

By 1971, after the full impact of the *Manhattan* crisis had been digested, sovereignty flights almost doubled to 2,319 patrol hours.[575] The RCN deployed again and spent three weeks with a task force of three ships conducting exercises north of the Arctic Circle, a first in Canadian history. These ships even encountered a significant Soviet force north of Alaska (consisting of a cruiser, two destroyers, three submarines and a tender) and, in the company of American warships, trailed it through the Bering Strait and towards Hawaii. The New Viking exercises continued and the RCAF even moved a number of its CF-5 fighters north that year to take part in a number of Army operations.

For the remainder of the decade this level of military activity remained fairly consistent. Sovereignty and surveillance flight hours normally ranged from 1,000 to 2,000 hours (see figure 6.1) the RCN deployed a number of ships for NORPLOYS nearly every year and the Army normally sent in the range of 100-200 troops for training exercises. Some of these exercises were even fairly large, occasionally reaching battalion level deployments. An Army exercise in 1971, for instance, saw the entire Airborne Regiment dropping at Resolute Bay in December while a few months later a second

[574] Eyre, *Custos Borealis*, pp. 268-9.
[575] Advisory Committee on Northern Development, *Government Activities in the North* (Ottawa: Dept. of Northern Affairs and National Resources, 1971), pp. 84

major airborne deployment was conducted at Frobisher Bay, amounting to 1,500 troops in total.[576]

The objective of some of these operations was also quite ambitious. Since *Operation Muskox* in 1946 it had been largely assumed that significant combat operations in the High Arctic would have been next to impossible, due to environmental and logistical impediments.[577] As such, the Canadian military had never devoted much energy to developing a real Arctic combat capability. While the New Viking program had been set up for basic Arctic indoctrination, the Airborne Regiment was clearly working to develop that genuine northern combat capability.[578]

What Canada needed this capability for (or a naval presence for that matter) remained in question. The military threat to the Arctic had not actually increased in the late 1960s. In 1968 a Canadian defence review had concluded that the Soviet threat was minimal and there really only existed a need for the military to prevent occasional intrusions and offer support to other government agencies.[579] These conclusions were mirrored by those of the Steering Committee on the Canadian North, which also rated the Soviet threat as minimal and really only a concern in the context of a nuclear war – by which point global Armageddon and not Arctic security would have been a more pressing issue in any event.[580] In theory, Soviet paratroopers might choose to drop into the

[576] Eyre "Forty Years of Military Activity in the Canadian North," pp. 298.
[577] The exercises throughout the 1970s and early 1980s demonstrated that soldiers would have to use at least 80% of their energy simply to survive – leaving only 20% for such tasks as manoeuver and combat; Harriet Critchley, "Defence and Policing in Arctic Canada," *Politics of the Northwest Passage*, ed Franklyn Griffiths (Canada: McGill-Queen's University Press, 1987), pp. 208.
[578] Eyre, Kenneth, "Forty Years of Military Activity in the Canadian North," pp. 298.
[579] Arthur Kroeger, "The Canadian Forces and the Maintenance of Canadian Sovereignty," August 2, 1968, LAC, RG 25, vol. 10322, file 27-10-2-2, pt.1, quoted from Lackenbauer & Kikkert, *The Canadian Forces & Arctic Sovereignty*, pp. 47-61.
[580] Report of the Steering Committee on the Canadian North, December 5, 1969, DHH, 73/1223.987, box 52, quoted in Lackenbauer & Kikkert, *The Canadian Forces & Arctic Sovereignty*, pp.146-156.

Canadian North at the outbreak of war, either as a diversion or to disable the DEW Line facilities. Yet by the 1970s, ICBMs had rendered the bomber fleets of the 1950s (and therefore the DEW Line) largely obsolete, or at least not of critical importance. It is equally hard to see what could have been gained by Soviet paratroopers which could not more easily have been achieved by bombers. These at least were the conclusions of the official CANUS '70 threat appreciation.[581]

The objectives of these deployments were therefore not strictly military, yet neither were the forces directly involved in asserting functional jurisdiction. There were no further tanker tests to monitor and the application of the AWPPA proceeded without the need for military enforcement. Indeed, with such ambiguous objectives and so little seemingly being achieved, many in the Canadian military felt the effort to be a waste of increasingly scarce resources. Admiral Robert Falls, Chief of the Defence Staff from 1977-1980, observed:

> … we conducted superficial acts. We flew aircraft in the north on monthly patrols … they never made contact … we flew in complete darkness, figuratively and literally, most of the time. We sent ships into the north and damaged their hulls, they weren't made for that type of action. It was a complete waste of time, but it satisfied the politicians.[582]

It was unclear to DND if the government's new emphasis on Arctic sovereignty was actually intended to achieve any specific military outcome or if it was entirely political.[583] If this augmented presence really could strengthen Canadian sovereignty then its questionable military value might truly have been dismissed. However the impact of this new policy on the Canadian legal position remains equally uncertain. This is an issue most thoroughly examined by Lackenbauer and Kikkert in their 2010 work *The Canadian*

[581] Shenstone to PSI, June 10, 1970, LAC, RG 25, vol. 10322, file 27-10-2-2, pt.1
[582] Douglas Bland, *Chiefs of Defence* (Toronto: Canadian Institute of Strategic Studies, 1995), pp. 232-233.
[583] Shenstone to PSI, June 10, 1970, LAC, RG 25, vol. 10322, file 27-10-2-2, pt.1

Forces and Arctic Sovereignty.[584] These authors are sympathetic to the views of men like Wang and Legault and have questioned both the legal effectiveness of an increased military presence as well as the idea that any additional surveillance might have served to shift the American government's firmly held position.

Yet, while this activity achieved little of strategic value, and may not have been the most efficient use of resources, it still served an important political purpose and fit into Canada's emerging long-term strategy. From a legal perspective, a claim to these waters as historic internal waters could theoretically have been strengthened by an increased military presence. Indeed, *Defence in the 70s* had recognised that military forces would have to be used, not only to counter traditional security threats, but also as tools to strengthen Canada's legal and political position. If Canada was going to call the Northwest Passage historic Canadian waters then it would have to start meeting the criteria of that definition.

While there has never been a universally accepted definition of 'historic waters,' there was at least a generally accepted understanding that the occupation and control of the space in question played an important role in any potential claim. This understanding was based on the ICJ's decision in the *Fisheries Case* and from two important UN Secretariat documents, prepared at the time of UNCLOS I and UNCLOS II. The first such document was a 1957 *Memorandum on Historic Bays* and the second, a 1962 study on the *Juridical Regime of Historic Waters, including Historic Bays*. These studies pointed out the close relationship between the concept of historic waters and historic rights on the one hand and of custom, prescription and occupation on the other. It was presumed that any historic rights and titles must have been preceded by two elements: a

[584] Lackenbauer & Kikkert, *The Canadian Forces & Arctic Sovereignty*.

constant exercise of state authority and a toleration or acquiescence on the part of other states, particularly those directly concerned or affected by the practice in question.[585] To prove that constant exercise of sovereignty, regular naval deployments and aerial patrols might very well have been useful – even if they accomplished little of material value.

Contrary to what men like Eric Wang had suggested, Canadian sovereignty might, theoretically, have benefited from the increased level of control being applied by the Trudeau government.[586] If Canada's objective was to establish the archipelagic waters as historic internal waters then it would have to prove that it was actively occupying and controlling that area. Kenneth Eyre has made the comparison between this deployment and Canada's northern ventures of the 1920s. Then, Canada sought to strengthen its sovereignty by launching the Eastern Arctic patrol and deploying the RCMP to the North to provide that symbolic presence and to ward off any potential Danish or American claims.

Not all these activities had a practical purpose. In 1926, for instance, an RCMP manned post office was established on the Bache Peninsula on the east coast of Ellesmere Island at 79°N latitude. Though there were no Canadians living within hundreds of kilometres of the station the mail was still delivered by boat once a year. This exercise served no practical purpose since the only letters being mailed were from the RCMP officers themselves. But, a post office was an internationally recognized symbol of sovereignty and thus a worthwhile endeavour, given that the objective was increasing Canada's symbolic presence and not postal delivery. Likewise, in the 1970s, Canada's

[585] United Nations Secretariat, "Juridical Regime of Historic Waters Including Historic Bays" A/CN.4/143 Extract from the *Yearbook of the International Law Commission* 2 (1962).
[586] Any practical benefit from this increased occupation to a concept as nebulous as sovereignty is naturally impossible to definitely measure and its final impact on Canada's legal position might have to await the results of arbitration.

objective was to increase its presence, more for symbolic than practical purposes. On a material level these activities may have achieved little more than was accomplished by those lonely Mounties on Ellesmere Island, but that was beside the point.[587]

Despite the lofty proclamations of the 1971 White Paper, Canada's military presence in the North was never going to be anything but symbolic. Vice Admiral J.C. O'Brian, then commanding the Navy, estimated the cost of actually building the infrastructure needed to control the Arctic waters would have run up to $2.5 billion. This estimate included a new fleet of six nuclear submarines, greatly increased air surveillance, more navigational aids and an increased escort capacity.[588] Yet, by 1975, DND was only spending $14,436,000 – or 0.7% of its budget – on defending the Arctic. Even though military spending in the North had increased some 600% in the three years after 1969, that cost had started from such a low number that the real total remained minute.[589] In practice, neither the Department of National Defence nor the Canadian Coast Guard was ever actually given the resources necessary to go beyond a symbolic presence.[590] Initiatives aimed at reconstituting the Canadian Rangers – a community based militia force comprised largely of Inuit – of establishing new training facilities, the acquisition of a northern SOSUS network or new equipment designed for northern operations all foundered on the issue of cost.[591]

---

[587] Ken Eyre, *Custos Borealis*, pp. 266.
[588] JC O'Brian, "Address to Canadian Naval Officers Association," *Montreal Star*, March 2, 1970 as quoted in Ken Eyre, "Custos Borealis," pp. 279.
[589] In 1969 Canada spent $1.5 million on its northern defence. By 1972 that number had increased to $10.5 million. Even by 1981 it would reach only $47 million ($22.4 million in 1970 dollars when adjusted for inflation); Advisory Committee on Northern Development, *Government Activities in the North* (Ottawa: Dept. of Northern Affairs and National Resources, 1982-83).
[590] Advisory Committee on Northern Development, *Annual Northern Expenditure Plan 1976-1977* (Ottawa: Information Canada), pp. 21.
[591] *Defence in the 70s*

Throughout the 1970s the Arctic suffered from the same cuts in defence spending as the rest of the armed forces. The Canadian Navy spent the decade largely attempting to make ends meet and, in 1975, it actually had to dip into the service's $17 million fuel budget just to meet its payroll.[592] Constructing the icebreakers and infrastructure, which had been called for to turn the Northwest Passage into a usable waterway, had proven to be a fantasy.[593] The surveillance flights suffered from the same lack of resources. By October 1974 the Argus patrols were actually eliminated in order to save money on fuel and, only after MPs complained, were they reinstituted at a token one per month.[594] By 1977 Cabinet had even turned down an American offer to sell Canada six nuclear attack submarines – the only vessels capable of patrolling under the Arctic ice.[595]

Yet, there always remained the possibility that this symbolic presence would eventually have to evolve into a more robust form of effective control. While in 1970 even Canada's relatively modest deployments might have appeared excessive, all that was required to change that was the discovery of one commercially viable oil deposit. It soon became clear that Arctic shipping was not going to come from the Prudhoe Bay discovery. Soon after the completion of the *Manhattan* experiments, the companies involved decided that transportation of that oil to southern markets would be cheaper and easier by pipeline. Plans to build the Trans-Alaska Pipeline System were approved by the US federal government in November 1973 and construction was only expedited by the 1973 oil embargo and the subsequent global fuel shortages. Yet, despite this setback, it

[592] Porter, pp. 59.
[593] The Department of Transport had considered three polar icebreakers necessary for maintaining Canadian control and assisting international shipping in the Northwest Passage; Department of National Defence, Directorate of Continental Plans, "Law of the Sea – Future Implications for Sovereignty," April 28, 1970, DHH, 82/125.
[594] P.C. Dobell, "The Policy Dimension," *The Arctic in Question*, ed. E.J. Dosman (Toronto: Oxford University Press, 1976), pp. 128.
[595] Porter, pp. 36.

still seemed possible, and even likely, that the Northwest Passage would soon become an important maritime highway.

Activity in the Mackenzie Delta was of course still booming and, by 1974, offshore drilling had been authorized in the Beaufort Sea. The federal government was anxious to see this program succeed and provided extremely generous tax incentives to facilitate and encourage northern development. As offshore activity began in earnest, the Trudeau government introduced an incentive formerly referred to as the Frontier Exploration Allowance but more commonly known as 'super depletion' or the 'Gallagher Amendment.'[596] This 1977 amendment allowed companies spending more than $5 million on a well to write off 120% of those expenses for tax purposes. The effect on northern operations, which were of course notoriously expensive, was like fuel to a flame. Now funded through tax breaks which could be applied to more profitable operations elsewhere, drilling activity skyrocketed.[597]

By the end of the decade there had been nearly 100 wells drilled in the Canadian Arctic, 33 of which had been offshore. New purpose built icebreakers and supply ships were being moved into the Beaufort Sea and Dome Petroleum, a company which had staked its future on Arctic operations, had even purchased an entire shipyard in Quebec to produce the ice-strengthened vessels it thought its future operations would require.[598] Throughout the decade, despite the extreme difficulties and ridiculously high costs of

[596] So named after Jack Gallagher, the CEO of Dome Petroleum and the man most responsible for the lobbying which resulted in the bill.
[597] By August 1979, the Calgary Herald had calculated that of the $150 million spent in the Beaufort Sea in 1978 the government had paid for $130-140 million of it; Karin Clark et al, *Breaking Ice with Finesse: Oil and gas Exploration in the Canadian Arctic* (Calgary: The Arctic Institute of North America, 1997), pp. 206.
[598] Dome Petroleum, the most active company in the area, alone operated a fleet of three drill-ships, seven ice-reinforced supply ships and a cargo/base vessel through its subsidiary Canadian Marine Drilling; Dome Petroleum, *Beaufort Sea/Mackenzie Delta Development Plan* (November, 1980).

operating in the North (and especially the offshore areas), optimism remained very high. The investments made by Dome and its peers were considered justified by visions of significant Arctic production. In 1976, for instance, a Department of Energy study foresaw the Arctic region providing fully half of Canada's natural gas requirements by 1990.[599] Oil forecasts were equally ambitious. In 1980, Dome publications anticipated commercial production of petroleum to start as early as 1986 and perhaps reach up to 1.5 million barrels per day (bpd) by 2000.[600] To put these figures into context, in 1976 when the government first opened offshore drilling, total Canadian petroleum production amounted to only 479,397 barrels per year.[601] If Dome's estimates were proven correct it could have amounted to a more than 300% increase in national output.

These forecasts were, of course, never to be realized. Dome Petroleum was soon bankrupt and the region was abandoned in the face of falling oil prices during the mid-1980s. Yet, throughout the 1970s the optimism which surrounded northern development seemed well founded and, had oil prices remained high, the Beaufort may well have seen a great deal more activity. The Navy at least was anticipating such development and was conscious that its resources would be increasingly needed to provide both security and surveillance.[602] In such circumstances the 'superficial acts,' which Admiral Falls had decried, might have been very useful training for work in a region seeing rapid development. If Dome had been correct, and tankers had been sailing the Northwest Passage in 1985, Canada would have needed a northern naval presence and aerial

[599] Canada, Department of Energy Mines and Resources, *An Energy Strategy for Canada* (Ottawa, 1976), pp. 67.
[600] Dome Petroleum, *Beaufort Sea/Mackenzie Delta Development Plan* (November, 1980).
[601] Statistics Canada, *Historical Statistics of Canada,* Table Q19-25, [online:] http://www.statcan.gc.ca.
[602] "Operational Order for Maritime Command: Operations in the Arctic," June 15, 1972, DHH, 82/132.

surveillance would have been essential, if only for pollution control and emergency response.

The push to increase Canada's presence in the region should thus not be either exaggerated or considered out of context. From the beginning it had never been intended to counter a military threat. It was a reaction to what the Trudeau government considered a new type of threat, one centred on maritime sovereignty, pollution prevention and foreign economic activity in a region where Canada enjoyed little functional control. Complete control over the area had also never been intended or even possible, since this would have strained a defence budget already nearing the breaking point. Rather, the surveillance flights, naval patrols and Army exercises were meant to provide a symbolic presence; a presence meant to alleviate political pressure while simultaneously preparing the Forces for an anticipated influx of commercial activity and, hopefully, reinforcing Canada's newly asserted historic waters claim.

***

While enhancing its regulatory control and physical presence in the region were both important political and practical requirements, the government still recognized that these measures could neither legitimize that control in the eyes of the world nor win international recognition of its sovereignty. These measures were therefore paralleled by a concerted push to achieve those goals through a more traditional Canadian vehicle: diplomacy.

During the *Manhattan* crisis Canadian and American diplomats had discussed the possibility of establishing an interim, joint pollution prevention regime; though this initiative had foundered on the Canadian political need for unilateral action. By 1971

however both governments were still discussing a possible Arctic Treaty. This treaty was designed to protect the environment from maritime pollution by specifying vessel construction standards and providing for financial compensation after damage caused by pollution. By 1971 a draft treaty had even been passed along to Moscow in the hopes that the Soviets, and perhaps later the other Arctic powers, might sign on. This initiative was the first attempt to win international recognition of the AWPPA and therefore of Canadian jurisdiction over the Arctic waters. It differed from what the United States had suggested a year earlier in that it appeared to grant states the right to implement their own pollution regulations in addition to those agreed to by the wider international community.[603] Indeed, this was perhaps the sticking point as the treaty never moved past negotiating drafts and the AWPPA remained outside of recognized international law.

After the failure of these bilateral negotiations Canadian diplomats chose a more multilateral approach. In 1972 a Canadian delegation was active at the Stockholm Conference on the Human Environment, seeking the inclusion of an article on marine pollution for that conference's working group. That article was designed to insert a broader exception to the accepted rules of international navigation. It stated that:

> …a state may exercise special authority in areas of the sea adjacent to its territorial waters where functional controls of a continuing nature are necessary for the effective prevention of pollution which could cause damage or injury to the land or marine environment under its exclusive or sovereign authority.[604]

This approach won some support from other non-Arctic coastal states, many of which were themselves seeking increased pollution control over their surrounding waters. The amendment was neither accepted nor rejected but instead referred to the 1973 Inter-

[603] "Draft Arctic Treaty," September, 1970, LAC, RG 112, vol. 29804, file 170-80/A6, pt.11.
[604] D.M. McRae, "The Negotiation of Article 234," *Politics of the Northwest Passage*, ed Franklyn Griffiths (Kingston: McGill-Queen's University press, 1987), pp. 103.

Governmental Maritime Consultative Organization (IMCO) Conference on Maritime Pollution and to the UN General Assembly's Seabed Committee. While nothing concrete emerged from this initiative, Canada had clearly begun to gather support for some form of extended state jurisdiction for the purpose of pollution prevention.

At the IMCO meeting in 1973 Canada again proposed measures which would provide some international recognition for "environmental protection zones.[605] These measures were quickly defeated, however, as the organization – as its name would suggest – was dominated by maritime and flag state representatives loath to see any limitations set on their freedom of navigation. Yet the Canadian effort still enjoyed enough support to bring forward a series of counter articles which recognized that, in principle, certain "special measures" might be taken by coastal states in waters which were exceptionally vulnerable to pollution.[606] These standards did not go as far as Canada had desired in authorizing the coastal state to set its own design, construction and manning standards. Yet, the concept had been refined and focused on specific areas off the coast which could be qualified as 'exceptionally vulnerable.' The Canadian negotiators had won a victory of sorts by beginning the conversation and winning a general, if still non-committal, acceptance that these 'special areas' might require some extra protection.

The question of the special areas and of the Arctic's 'exceptionalization' – meaning the creation of a special legal regime to separate it from normal coastal waters – was fully and finally played out at the Third UN Conference on the Law of the Sea which began in Caracas, Venezuela in 1974. The need for a third such conference had been

[605] Ibid.
[606] IMCO Document MP/CONF/C.1./W.P. 36, quoted in McRae, pp. 103-4.

evident since the failure of UNCLOS II to set an internationally recognized limit for the territorial sea. Ocean use had accelerated dramatically and so too had the number of conflicting ocean claims. New technology had made global fisheries again a pressing issue along with the emerging prospects for mining seabed nodules in international waters for vital materials such as nickel and manganese. This deep seabed mining, in particular, also raised the vital question of who would control what was then being called the 'common heritage of mankind.'

As had been the case at the previous Law of the Sea Conferences, Canada saw the process as an invaluable opportunity to press its extended maritime claims and was to make maximum use of the opportunity it presented. The nation's focus at UNCLOS III had however changed dramatically from the previous two conferences, reflecting the shift in priorities which had taken place within the government's maritime agenda. Canada had a number of important interests at UNCLOS: securing coastal states rights to anadromous species fisheries (of which salmon was the most important), confirming exclusive economic rights out to the continental margins and protecting Canada's mining industry from potential seabed mining competition (particularly the nickel industry). Yet the dominant objectives in 1974 were solidifying its control over the Arctic by legitimizing the AWPPA and ensuring that the Northwest Passage was not categorized as an international strait.[607]

Only four years earlier the possibility of gaining international acceptance for such provisions would have seemed highly unlikely and Canada had little of substance to show for its years of lobbying. Yet by the mid-1970s the international environment had shifted

[607] Ted McDorman, *Salt Water Neighbors: International Ocean Law Relations Between the United States and Canada* (USA: Oxford University Press, 2009), pp. 92.

in Canada's favour. Most importantly, in the years running up to the conference, the United States, which had stood fast for so long against expanded maritime jurisdiction, appeared to have reevaluated some of its core principles.

As early as February 18, 1970 the United States had begun to make this shift public. In what must have been a coordinated set of statements, President Nixon announced that the United States now considered that: "the most pressing issue regarding the law of the sea is the need to achieve agreement on the breadth of the territorial sea, to head off the threat of escalating national claims over the ocean."[608] That same day John Stevenson, who was later to be a special presidential representative and ambassador at the Law of the Sea Conference, announced that the American government was prepared to revise its traditional stance on the three mile limit and to conclude a "new international treaty fixing the limitation of the territorial sea at 12 miles and providing freedom of navigation through and over international straits and carefully defined preferential fishing rights for coastal states on the high seas."[609]

In the late 1960s these were some of the questions which had led to years of hostile bilateral negotiations, threats of a referral to the ICJ or of an open challenge to Canadian fishing zones and territorial waters. For the United States however this had been a losing battle. The American political pressure had certainly limited Canada's unilateral actions in the past but the global trend towards expanded maritime jurisdiction had become unstoppable.

When UNCLOS I was convened in 1958 the majority of the world's states still claimed a three mile territorial sea, by 1967 however only one third of states maintained

[608] Richard Nixon, Report to Congress, *US Foreign Policy for the 1970s*, February 18, 1970.
[609] Speech to Philadelphia Bar Association and the Philadelphia World Affairs Council, February 18, 1970; Press Release 49, *Department of Sate Bulletin*, 62, March 16, 1970.

this claim. By the late 1960s the movement away from the traditional three mile limit had quickened and from 1967 to 1973 alone, 81 states had asserted 230 new jurisdictional claims of various sorts.[610] When President Nixon gave his 1971 'State of the World' address, fully 65 states had already claimed a territorial sea of 12 miles or more.[611] The sheer volume of these claims had effectively defeated the American attempt to limit maritime expansion. By the 1970s the question was no longer whether the United States could find support for its traditional approach, but whether or not it could stop the rapidly accelerating trend of creeping maritime jurisdiction and bring some order and consistency to the proliferation of heterogeneous maritime claims.

The need to do so was considered urgent in Washington. As had long been the case, the United States was concerned with its access to the world's seas for both commercial and strategic purposes, yet the pace and scope of emerging maritime claims had made a resolution of the question more vital than ever. By 1971 roughly 80% of US foreign trade moved by ship while a majority of the world's tanker traffic travelled through the crucial Straits of Malacca, Hormuz, and Gibraltar – all of which would be enclosed by a 12 mile territorial sea.[612] Ships transiting territorial sea through these routes already enjoyed the right of innocent passage yet, as has been the concern in 1960, 'innocent passage' was a concept open to very subjective interpretation. It was a provision inserted into conventional international law in UNCLOS I to grant vessels the right to pass through the territorial waters of another state so long as they did not threaten

[610] James K. Sebenius, *Negotiating the Law of the Sea* (Cambridge: Harvard University Press, 1984), pp. 11.
[611] Statement by John N. Irwin II, Undersecretary of State before the Subcommittee on the Oceans and International Environment of the Senate Committee on Foreign Relations, July 9, 1971, NARA, RG 59, Briefing Books 1958-76, lot 72D170, box 53.
[612] Ibid.

the peace, good order and security of that state. And, of concern to maritime powers like the United States, was the fact that that many coastal states took this to mean that economic, environmental and political interests could be used to justify prohibition or control over shipping.[613]

Such restrictions could, in theory, have blocked American shipping through many of the world's most crucial straits or, even if vessels were simply rerouted, have dramatically increased the cost and time required to move goods or naval forces. In a study on the subject in 1974 the American delegation to UNCLOS III determined that, of the 2,200 mile route between oil producing Venezuela and New York, 1,540 miles would fall into the jurisdictional waters of five different countries. The route between Libya and the Great Britain was 2,700 miles, of which 2,650 would fall within the coastal jurisdiction of one state or another and would also require passage through the straits of Gibraltar. Tanker movements around the coast of Africa from the Persian Gulf to Europe were already subject to a number of national regulations and, when that traffic moved east it had to pass through a myriad of choke points such as the Malacca, Lombok, Sunda or Bass Straits.[614]

By the early 1970s many countries had already begun to impose new regulations on vessels of certain categories or tonnage. Oil tankers were the main focus of these new regulations but nuclear powered vessels, or those carrying hazardous cargoes, were also singled out by various states for special controls or rerouting. In some cases, coastal states demanded superior construction standards or that certain ships stop for costly inspections, limit their speed or accept other fees.

[613] "Maritime Transportation of Energy Study," June 26, 1974, NARA, RG 43, entry 32, box 19
[614] Ibid.

In 1972 Singapore and Malaysia jointly issued a decree with potentially severe consequences for global trade, demanding that oil tankers over 200,000 dwt not use the straits of Malacca. This decree was not immediately enforced and was in fact largely ignored by shipping companies; however the American government understandably feared that those two states might choose to put this regulation into force if the Law of the Sea Conference should fail. If that were to happen, it was calculated that the use of the Lombok Strait (rather than the Straits of Malacca) would add four cents a barrel of oil, while the use of the Bass Strait would add 35 cents. Given that the average price of oil in 1971 was only $3.60/barrel, this would have amounted to a 1-10% increase in the price of crude upon delivery to American refineries.[615]

Of equal importance to the United States was the element of strategic mobility. The US Navy had long relied on the world's straits to deploy its warships around the globe and any limitation to these rights of navigation was considered a grave matter of national security. While this had long been a concern, the need for secure transit rights to maintain overseas deployments and strategic patrol routes had only increased since the last law of the sea conference. By the 1970s an increasingly large percentage of America's nuclear strike capability was being placed on the US Navy's growing fleet of SSBNs, boats which relied on their access to the vast world ocean for their manoeuverability and stealth. The decade also witnessed a considerable shift in the global balance of naval power. In the 1960s the Soviet Union had begun a massive naval building program which had borne fruit by the 1970s. By the time of UNCLOS III the USSR had constructed the world's second most powerful navy and, with it, had acquired a new and correspondingly enhanced set of global ambitions. With Soviet squadrons now

[615] Ibid.

regularly sailing the waters off India, Africa and the Pacific Rim any restriction to the US Navy's strategic mobility was considered a serious danger.

These concerns, coupled with a general acceptance that the time of the narrow territorial sea was finally over, led the United States and most of the world's other traditional maritime powers to accept that concessions would have to be made. By 1974 John Stephenson stated plainly that the United States, Japan and the other Western maritime powers were finally ready to negotiate with Canada and the other coastal states on maritime jurisdiction. But, as Stephenson put it, these concessions were possible only so long as they were part of an acceptable and comprehensive package which would guarantee American mobility.[616] Canada too wanted to see a new, stable law of the sea regime which guaranteed passage through international straits and settled the territorial sea at 12 miles. For Ottawa however, its support on these matters was contingent upon excluding the Northwest Passage from such a regime while winning international acceptance of Canada's pollution jurisdiction in the North.[617] At UNCLOS III, these objectives – both Canadian and American were largely achieved through careful diplomacy and no small amount of compromise.

Going into the conference, the initial Canadian position was a continuation of its lobbying efforts from the past three years; this meant continuing to seek support for the concept of special maritime areas, over which a coastal state would be allowed to exercise jurisdiction for the purposes of pollution control. And, by 1975, the Canadian delegation had offered a draft article which proposed just such a concept. The wording of this article referred specifically to areas with "exceptional hazards to navigation" caused

[616] John Stevenson, *UNCLOS III, Official Records*, vol. 1, Second Session, 38th Plenary meeting, July 11, 1974, pp. 160.
[617] Canada, Cabinet Conclusions, May 30, 1974, RG2, Privy Council Office, series A-5-a, vol. 6436.

by "severe climactic conditions."[618] This broad approach was hardly limited to the Arctic and could have been applicable to many maritime areas around the world. In a sense this was a strength, as many coastal states saw in this an opportunity to gain control over certain crucial areas of their own and thus lent the proposition their support.

Yet the potentially broad application was also a serious liability. If applied globally such a measure would have granted states precisely the sort of jurisdiction which the maritime powers were then seeking to limit and harmonize. If the definition of a special area, and those regulations required to protect it, were left to individual states to determine as they saw fit, the inevitable result would have been a hodgepodge of various regulatory regimes covering all manner of newly protected coastal zones. For the American delegation the prospect of a hundred different AWPPAs popping up across the world was unacceptable.[619]

The Americans may have resigned themselves to some sort of special pollution control measures, but the breadth of the Canadian proposal, and its reliance on individual states to define their own jurisdiction, was simply too much. Yet, for the American delegation, Canadian support for their proposals on international straits was very important. Canada remained a highly influential leader of the coastal state group and held a great deal of sway with many of the newly formed third world nations.

From 1974 to 1976 therefore, Canada and the United States continued a parallel set of bilateral negotiations behind closed doors in an effort to resolve this impasse. And,

---

[618] Clyde Sanger, *Ordering the Oceans: The Making of the Law of the Sea* (Toronto: University of Toronto Press), pp. 114.

[619] In 1971 John Irwin, Undersecretary of State, had remarked: "One can easily imagine the consequences for our maritime interests if every coastal state took similar action [to the AWPPA] and established different requirements;" Statement by John N. Irwin II, Undersecretary of State before the Subcommittee on the Oceans and International Environment of the Senate Committee on Foreign Relations, July 9, 1971, NARA, RG 59, Briefing Books 1958-76, lot 72D170, box 53.

by the spring of 1975, a solution had been reached. The special areas concept was decoupled from the Arctic and two categories of protected areas emerged. It was agreed that in ice-covered areas special protective measures could be established by the coastal state while all other special areas could have extra protective measures decided upon by the IMCO. This compromise thus neatly secured Canada's Arctic objectives while preventing a proliferation of unilateral claims from popping up around the world.[620]

By 1976 the specifics of what would ultimately become Article 234 of the UN Convention on the Law of the Sea, more commonly known as the 'Arctic Exception,' had been hammered out and a tentative agreement reached. By the time the conference had moved to New York the United States, Canada and the Soviet Union were able to arrive at an agreement relatively quickly and with minimal interference from the rest of the UNCLOS delegations by working outside the regular conference committees. In fact, the article was so limited geographically that the rest of the world showed little interest, considering it a subject best left to those states most immediately concerned, whose decision on the matter most were perfectly willing to accept.[621] The final draft of the Arctic Exception, as it would appear in UNCLOS III, read as follows:

> Coastal States have the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance. Such laws and regulations shall have due regard to navigation and the protection and preservation of the marine environment based on the best available scientific evidence.[622]

---

[620] McRae, pp. 108.
[621] Ibid.
[622] United Nations Convention on the Law of the Sea, December 10, 1982, 1833 U.N.T.S. 3, 397; 21 I.L.M. 1261 (1982), Part XII, Section 8, Article 234.

The Arctic Exception was a significant concession from the American delegation. Only six years after the bitter dispute over the AWPPA, the United States was explicitly admitting the international legitimacy of those regulations.[623] For Canada it represented the achievement of its primary objective of exceptionalizing the Arctic waters and gaining international support for its expanded jurisdiction. It was also a considerable political victory as any success in increasing Canadian powers in the Arctic was greeted warmly by the domestic public.

Yet the United States was not willing to simply make such significant concessions without a corresponding *quid pro quo* from Canada. The cost of American support for Article 234 was Canadian support for the American delegation's principle objective, the confirmation of the new right of transit passage and the establishment of an international straits regime. Transit passage was essentially an expansion on the concept of innocent passage. It applied to all ships and aircraft, granting them the right to travel unmolested between any part of the high sea or the exclusive economic zone of one state to another. Naturally transit passage retained some protection for coastal states. Passage was reserved for the purpose of "continuous and expeditious transit of a strait," and excluded activities such as weapons tests, research, fishing or any other activity "other than those incident to … normal modes of continuous and expeditious transit."[624] These were acceptable limitations however as transit passage would guarantee that right of easy

[623] The US made this connection quite clear, stating: "The purpose of article 234 … is to provide the basis for implementing the provisions applicable to commercial and private vessels found in the 1970 Canadian Arctic Waters Pollution Prevention Act." McDorman, *Salt Water Neighbors* pp. 94.
[624] UNCLOS III, Part III, Section 2(2).

access which the US Navy and American shipping interests considered so vital to the country's trade and security.[625]

The American acceptance of the Arctic Exception was reliant on Canada's support for its own objectives at the conference and this arrangement came to be referred to as the 'package deal.' The specifics of which were as follows:

1) While Canada would be allowed to apply its Arctic pollution prevention legislation, foreign warships, naval auxiliary and non-commercial state vessels and aircraft would be exempt from any environmental laws passed.
2) Disputes regarding the application of the Arctic Exception (other than those arising from military vessels) would be subject to the binding international disputes settlement provisions set out in the Law of the Sea Convention.
3) The United States offered to refrain from applying the provisions of the straits regime to the Juan de Fuca Strait and Head Harbour Passage, leaving these to bilateral settlement.
4) Canada agreed to support publicly the provisions of the The Revised Single Negotiating Text on international straits and not press for national rules and standards for the prevention of vessel-source pollution in non-ice covered areas and support claims by other coastal states to adopt such national rules and standards in 'special areas.'[626]

For Canada the package deal was not an easy decision. While it was certainly in the country's national interest to see unrestricted global maritime trade continue, the application of transit passage to Canadian straits was an uncomfortable concession. While the Americans had offered to negotiate bilaterally on two of the most important such areas, the government was still uncomfortable with the prospect of the straits regime eventually applying to the Northwest Passage.

If transit passage were to be applied to the Northwest Passage then the long-term objective of securing those waters as internal would be considerably compromised by the existence of a right of transit for foreign vessels – especially naval vessels. Canada would

[625] Importantly, transit passage guaranteed vessels the right to travel by their 'normal modes' of transit. For submarines this meant the right to travel submerged, rather than having to surface when traveling through a state's territorial sea.
[626] Memorandum to Cabinet. 1976, LAC, RG 12 vol. 5561, file 8100-15-4-2, pt. 2.

not be able to exclude vessels from entering the Canadian North, nor would its legislation apply to foreign warships or icebreakers. In 1976 the discussion within the conference also seemed to be leaning towards allowing certain straits to become international in the future based on what was being called "the usage of convenience."[627] This might mean that, even if not international in 1976, the Northwest Passage might gain that status as the result of future transits. The Canadian delegation spent considerable energy seeking to remove that implication by rephrasing the definition of an international strait to apply only to those waterways which have "customarily (or traditionally)" been used for international navigation. Yet its efforts were without success.[628] Despite that failure, the conference delegates were still unable to able to arrive at an acceptable compromise and, as such, the final convention contained no specific definition of a strait, referring instead only to "straits used for international navigation."[629]

With no broader resolution possible on a precise definition of a strait, the Canadian and American negotiators were ultimately able to agree on a compromise between themselves. The United States promised not to apply the transit regime to the Northwest Passage and the two states agreed to continue to disagree on the status of those waters – which neither would bring up at the conference itself.[630] That the convention allowed states to avoid compulsory adjudication over matters of historic titles (an option which Canada was to exercise) provided some welcome assurance and tempered fears of a future challenge. With this hurdle cleared, the matter was referred to Cabinet in April

[627] Memorandum to the Minister of the Environment from the Deputy Minister, March 15, 1976, LAC, RI 2069, vol. 145, pt. 5.
[628] Memorandum to the Minister of the Environment from the Deputy Minister, March 15, 1976, LAC, RI 2069, vol. 145, pt. 5.
[629] UNCLOS III, Part III, Section 1 Article 34.
[630] Memorandum to the Minister of the Environment from the Deputy Minister, March 15, 1976, LAC, RI 2069, vol. 145, pt. 5; memorandum to Cabinet, 1976, LAC, RG 12 vol. 5561, file 8100-15-4-2, pt. 2.

1976. In a lengthy memorandum, Allan Beesley, then at the head of the Canadian delegation, recommended acceptance, arguing that the benefits generally outweighed the drawbacks.[631]

Aside from the obvious benefits to the Arctic, a great deal of Canadian prestige was at stake. The government had made the Arctic the centerpiece of its negotiating strategy and had been seeking to achieve international recognition of its jurisdiction since 1970. Failure to achieve these objectives at the conference would have been humiliating. More practically, it was recognized that the Arctic exception would also have served as a valuable backup should Canada's ultimate objective of securing the region as internal waters fail.[632] As such, Cabinet agreed with Beesley's recommendation and approved the package deal on June 30, 1976.[633] The United States gained a valuable ally in securing its straits regime and Canada gained an important political and practical victory, increasing its jurisdiction over the Arctic waters while also differentiating the Arctic straits from those of the rest of the world.

As significant a victory as the Arctic Exception was for Canada the broader issue of sovereignty remained unresolved and it was recognized that Article 234 did not answer that question.[634] That matter had been set aside after the *Manhattan* and, while the government had decided that it would begin using the term historic internal waters, the details of how and when Canada would act to secure this claim appear to have been left unsettled. The review of the question seems to have begun in the summer of 1976, only weeks after Cabinet had finally agreed to the American package deal. During a meeting

[631] Telegram from Beesley to External Affairs, April 28, 1976, LAC, RI 2069, vol. 145, pt. 5.
[632] Memorandum to Cabinet, 1976, LAC, RG 12 vol. 5561, file 8100-15-4-2, pt. 2.
[633] Memorandum to Cabinet, 1976, LAC, RI 2069, vol. 145, pt. 8.
[634] Minutes of the ACND Transportation Committee, October 27, 1980, LAC, RG 39, box 28, file 1165-36/A70, pt.5.

on July 30 Cabinet affirmed its intention to draw straight baselines around the Arctic "at an appropriate time and in accordance with accepted principles of international law."[635] In keeping with this decision, it called upon all government departments and agencies to act consistently with this claim, much as it had done 20 years earlier after reaching a similar decision.[636]

Decisive action was, however, still postponed. The Law of the Sea Convention was still ongoing – and would continue until 1982 – and it was believed that unilateral action in the Arctic might alienate key supporters, jeopardize the Arctic Exception and weaken Canada's influence at the conference.[637] In a lengthy memorandum from External Affairs, together with the Departments of Fisheries, Justice, Indian and Northern Affairs and National Defence, Cabinet was advised that such action, before the conference had concluded, would be seen by the United States, Great Britain and many other European states as "unduly acquisitive and disruptive."[638] This was especially the case since the delicate issue of straits and archipelagic waters remained unsettled.[639] As such, these five departments recommended that Cabinet avoid any action on baselines until the international situation had settled and international law was in less of a state of flux.[640]

The question was therefore postponed some months while negotiations were finalized with the Americans and Soviets over Article 234. By October 1976 the decision had been made that Canada must absolutely draw baselines in the Arctic to both solidify its position and to ensure that no right of transit passage would exist in the region once

[635] Memorandum to Cabinet, 1976, LAC, RI 2069, vol. 145, pt. 8.
[636] Ibid.
[637] Memorandum for ministers, "Status of the Canadian Archipelagic Waters," October 5, 1979, LAC, RG 12 vol. 5561, file 8100-15-4-2, pt. 3.
[638] Memorandum to Cabinet, 1976, LAC, RI 2069, vol. 145, pt. 8.
[639] Ibid.
[640] Ibid.

the economic activity, then budding in the region, evolved into something more significant. Cabinet therefore decided that baselines would be drawn as soon as the Law of the Sea Conference had concluded and the international situation permitted.[641]

This wait-and-see approach was nothing new to Canadian Arctic policy and, indeed, awaiting a more propitious moment to act had been the Canadian *modus operandi* since the 1950s. By 1976 however the situation had changed and Canadian policy had changed with it. Canada had developed a precise and defensible position on Arctic sovereignty and its postponement of the issue was no longer open-ended. The matter had been delayed until 1976 in order to solidify the country's functional position while awaiting the outcome of the expected Law of the Sea Conference. That year the matter was again delayed but on the very reasonable grounds that premature action would likely damage Canadian interests in both the Arctic and elsewhere. It was also postponed on the clear understanding that it would be taken up again in 1979 and in the belief that the new Law of the Sea Convention would likely be far more favourable to the Canadian position.[642]

While the Cabinet accepted the need to postpone any official declaration of sovereignty it was recognized that the United States must at least be informed of its decision. On the one hand, External Affairs feared that if nothing definite was conveyed to the US, Washington might assume that the Canadians had been satisfied by the Arctic Exception and had allowed the matter to rest there. On the other hand it was admitted that, should Canada accept the package deal and then proceed to draw straight baselines

[641] Cabinet Committee on External Policy and Defence meeting, October 28, 1976, LAC, RG 12 vol. 5561, file 8100-15-4-2, pt. 2.
[642] Memorandum to Cabinet, 1976, LAC, RI 2069, vol. 145, pt. 8.

after the conference, it might be accused of negotiating in bad faith.[643] In October 1976 it was therefore resolved to remind the Americans of Canada's claim to the region and to inform them that the country had every intention of drawing straight baselines as soon as circumstances permitted.

The government also had some reason to hope that the American position on the matter might have softened somewhat since the *Manhattan*. The previous April, Allan Beesley had conveyed to External Affairs some conflicting reports he had received from within the US delegation about how controversial Canadian baselines might still be. Beesley believed that, if such a decision were coupled with a clear treaty commitment to allow the United States a right of passage (while excluding the USSR) then such action "could conceivably be made palatable to the USA."[644]

Canada's intentions were therefore communicated to the American delegation at the conference in August 1976. The Canadian statement, as written in a memorandum to Cabinet read as follows:

> Canada intends at an appropriate time to draw straight baselines, in accordance with generally accepted principles of international law, around the perimeter of the Arctic Archipelago, thereby delimiting the waters regarded by Canada as internal; and Canada assures the USA that this reaffirmation, and the future delimitation of the Canadian claims to the waters of the Archipelago, are not intended to restrict access to, or transit of those waters by military vessels of the USA operating in pursuance of common defence interests. Accordingly, Canada is prepared to make appropriate arrangements with the USA providing for such access and transit, to become effective concurrently with delimitation of the archipelagic waters. Canada also undertakes to permit the use of these waters, subject to Canadian law, by foreign commercial vessels.[645]

[643] Memorandum to Cabinet. October, 1976, LAC, RG 12, vol. 5561, file 8100-15-4-2, pt. 2.
[644] Telegram from Beesley to External Affairs, April 28, 1976, LAC, RI 2069, vol. 145, pt. 5.
[645] Memorandum for ministers: "Status of the Canadian Archipelagic Waters," October 5, 1979, LAC, RG 12 vol. 5561, file 8100-15-4-2, pt. 3.

How exactly the American delegation reacted to this statement is not entirely clear; however in a separate External Affairs memorandum written six years later, the American members were described as being generally "sympathetic" to the Canadian position. It was also reported that, while the American delegates had clearly said that the United States could not accept Arctic baselines, it might conceivably make only "*pro forma* noises."[646] This generally sympathetic position, which was a far cry from the hostility shown in 1963-64 and 1969-70, was attributed to an American recognition of the increased possibility of the Soviets using the right of transit passage to operate more freely in the Arctic seas.[647]

By the end of 1976 most of the contentious issues at the conference had been resolved, though the proceedings would carry on until 1982 – largely because of the difficult matter of deep-seabed mining. It was this issue which also prevented the United States from ratifying the treaty after its completion, a fact which caused the Canadian government some considerable distress. Yet, it soon became clear that, even if it had not ratified the convention, the United States still considered the treaty as representative of international law. And, to appease the Canadians, Washington specifically reaffirmed its support and respect for Article 234.[648] Ironically, after so much effort, Canada also put off signing the treaty until 2003, largely because of its own concerns over the deep seabed mining provisions. Yet during the two years that the convention remained open to

[646] Memorandum to Cabinet: "Status of the Arctic Archipelagic Waters – Annex V," June 1, 1982, LAC, RG 12, vol. 5561, file 8100-15-4-2, pt. 4.
[647] By 1976 the Soviet nuclear submarine fleet had expanded dramatically and had become increasingly active in the Arctic. Memorandum to Cabinet, "Status of Arctic Archipelagic Waters," June 1, 1982, LAC, RG 12, vol. 5561, file 8100-14-4-2 (s) pt. 4.
[648] McDorman, *Salt Water Neighbors* pp. 105.

signatures, 157 states signed and the convention formally entered into force in 1994 after the requisite 60 ratifications.

Even if it was unwilling to ratify the convention, the negotiations had still been a resounding triumph for Canada. The country's negotiators had achieved almost all of their objectives without having to sacrifice any vital interest. The process had capped a decade of quiet negotiation and lobbying on the part of External Affairs and had finally legitimized the Arctic Waters Pollution Prevention Act while serving to further exceptionalize the Arctic waters themselves. The Canadians had failed to specifically exclude the Northwest Passage from the straits regime or to convince the other delegations to agree upon an acceptable definition of either historic waters or international straits. However, Canada had also avoided any definition of these crucial terms which might have been detrimental to its cause.

The decade also saw a considerable improvement in Canadian-American relations over maritime issues as the two nations managed to move past the *Manhattan* incident and begin again to work cooperatively in the Arctic. By 1977 Joe Clark, then on the Arctic Waters Panel, was speaking of a 'gentleman's agreement' having come out of 1976 – representing an American promise to abstain from any open challenge to Canada's Arctic claims.[649] By 1978 the two countries had also agreed to settle the matter bilaterally, without recourse to international arbitration and all the political damage which that might entail.[650] These two concessions were of great importance. On the practical side, it meant far less political tension and easier relations in the Arctic. From a legal perspective an American decision to avoid any overt challenges was imperative for the

[649] Panel on Arctic Waters Meeting, June 27, 1979, LAC, RG 12 vol. 5561, file 8100-15-4-2, pt. 3.
[650] Memorandum from M.D. Copithorne on the status of the ICLOS, September 12, 1977, LAC, R12069, vol. 396, file1130-L1.

solidification of a Canadian claim based on historic waters doctrine. Such claims of course required an absence of protest from those states most concerned and a general acceptance of the claimant state's sovereignty. While the United States was not going to explicitly accept Canadian sovereignty it appeared willing to at least exercise its disapproval in a far less public manner.

The 1970s were a very productive time in the evolution of Canadian Arctic policy. Even though the government had found itself unable to assert a direct claim to the waters, it had radically changed its approach. No longer was Canadian policy confusing and ambiguous, it had been clarified both internally and for the public. The hazy and imprecise terminology of the 1950s and 1960s had been replaced by a clear, consistent and defensible approach. Moreover, this policy was being clearly communicated to the United States, ensuring that the most interested foreign state was fully aware of the Canadian position. This quiet diplomacy complimented the enhanced control and even the symbolic presence which continued to take place through the decade to demonstrate Canada's interest in the region and served as clear notice of the nation's intention to control and govern its Arctic waters.

Chapter 7

The Cold War Under-Ice
The Practical Requirements of Arctic Defence

While many of the key legal issues surrounding the Arctic waters had not been settled at UNCLOS III, Canadian-American relations, in the maritime sphere at least, had improved dramatically all the same. By the end of the 1970s, the State Department had agreed to avoid any overt challenges to Canadian sovereignty while many of the long term legal disputes which had poisoned the bilateral atmosphere had been resolved, or at least put aside by mutual agreement. On a political level this meant a more cooperative and relaxed atmosphere though, on a practical level not a great deal had changed.

While the great law of the sea issues and the seemingly interminable question of sovereignty had so often determined the approach to the sovereignty question taken by External Affairs and the assortment of departments and committees tasked with Arctic policy development, such concerns had never really dominated at the practical level of Arctic operations. For the practitioners within the Coast Guard, the military, the assorted defence research agencies and related bodies, practical cooperation had almost always trumped politics. For those services and agencies tasked with actually working in the Arctic, the principle objective had always been smooth and efficient operations. This had certainly been the case during the construction, operation and supply of the DEW Line and the rest of the joint defence projects of the 1940s and 1950s, which had proven how effectively the two countries could cooperate when the security of the continent was at stake.

Yet, during the mid-1970s and into the 1980s the threats to continental and alliance security emerging in the Arctic had shifted from the air and land to the maritime and under-ice environment, centred on the one craft capable of navigating the polar seas, the nuclear submarine. The maritime realm had always presented uncomfortable questions for the Canadian government because of the greater legal and political uncertainty surrounding it; yet, as had been the case on land, the question of sovereignty was never the defining element in the defence relationship. On and under the Arctic waters, sovereignty was put aside and the essential elements of alliance security were to prove as practical, collaborative and professional as continental defence had ever been on land.

Submarine operations in the Arctic had begun in 1958 with the path breaking voyage of the USS *Nautilus*. Over the following three years, the US Navy deployed three more boats into the waters of the Polar Basin and the Chukchi Sea.[651] By 1960 operations had also begun in Canadian waters with the passage of the *Seadragon*.[652] As mentioned earlier, these two operations were undertaken in a genuinely cooperative framework, despite some trepidation at the political level in Ottawa. At the time, these voyages had seemed to herald a new age of under-ice operations and potentially even combat.

In Canada the defence establishment understood that Soviet boats might soon follow the Americans into the region and, potentially even into Canadian waters. This concern was a real one and, in the early 1960s, some within the RCN were even looking

[651] The USS *Skate* was deployed in 1958 and again in 1959 while the USS *Sargo* was send north in the winter of 1960.
[652] For further details on the voyage of the *Skate* and *Seadragon,* see chapter three. For more information on submarine transits during this period see: William M. Leary, *Under Ice: Waldo Lyon and the Development of the Arctic Submarine* (College Station: Texas A&M University Press, 1999) and Appendix 2.

towards building a genuine under-ice defence capability, in the form of SSNs of their own. In April 1958 the Canadian Naval Board had kicked off a lengthy study into the feasibility of acquiring nuclear boats for the RCN. At the time the US Skipjack class was considered ideal, with a made-in-Canada price tag of only $65 million.[653] At the time these boats were intended for operations in the Atlantic and Pacific Oceans, with Arctic considerations seen as far less important. By the time the *Seadragon* and *Skate* had transited the Northwest Passage, however, the need for an under-ice capability had been moved front and centre.

By 1962 the RCN was considering six Thresher class boats (plus three diesel subs) with the express intention of operating in the Arctic Archipelago.[654] The Arctic had become a serious consideration and the report of the RCN's Submarine Committee was predicting that, within four years, nuclear submarines would be able to transit the Arctic Ocean with ease and Soviet submarines would be able to deploy by this route from their bases along the Kola Peninsula into the Atlantic. It was presumed that this threat would only increase as the proportion of SSNs grew within the Soviet fleet. Canadian intelligence estimates certainly saw this increase coming, predicting the construction of 15-20 new Soviet nuclear attack boats every year.[655]

In the United States many of these concerns were shared and, in response to both the new potential and the new dangers that the Arctic seemed to present, the US Navy had prepared an ambitious seven year program of operational and research cruises in the

[653] Adjusted for inflation this would be $485 million. "The Report of the Nuclear Submarine Survey Team," June, 1959, DHH, 79/246.
[654] "Report of the 1962 Submarine Committee: Chapter One: The Requirement for Submarines in the RCN," 1962, DHH, 75/149.
[655] Forward to the" Report of the 1962 Submarine Committee," 1962, DHH, 75/149.

year following the voyage of the *Skate*.[656] Two of these voyages, planned for 1967 and 1968, were even scheduled to be in Canadian waters.[657] By 1963 however, this entire program had fallen through. Logistically the decade was a difficult time for the US submarine service. In 1963 the USS *Thresher* had been lost with all hands while performing deep diving trials in the Atlantic. The disaster was the first loss of a nuclear boat that the Navy had ever suffered and it sent shockwaves through the service. It had also revealed certain structural deficiencies in American boats and forced the Navy into a major overhaul program called SubSafe. The effect was to curtail the availability of nuclear submarines for operational deployment and, against the Navy's more pressing conventional missions, the Arctic program was considered expendable.[658]

By the mid-1960s the prospect of deploying American SSBNs under the polar cap had also been quashed. In the aftermath of the success of the *Seadragon* and *Skate* there had been some initial support for developing just such a capability, even winning the backing of Dr. Edward Teller, the father of the American hydrogen bomb, and James T. Strong, Commander of the Navy's most advanced SSBN.[659] However, in the opinion of the Navy brass, the advantages of hiding submarines in the ice, closer to the Soviet shore, were not sufficient to offset the dangers posed by Arctic navigation. American boats were simply not vulnerable enough in the open ocean to force them north and, on the list of future deployment areas, the Arctic came dead last.[660] This policy continued throughout the 1960s and appears to have remained in place for most if not all of the Cold War. Indeed, up until 1985 at least there was only ever one American SSBN deployed into the

[656] OpNav Instruction 03470.4, May 27, 1963, NHH, Waldo K. Lyon Papers.
[657] Comments on Draft Seven Year Program, November 22, 1962, NHH, Waldo K. Lyon Papers.
[658] Leary, pp. 227-8.
[659] Ibid, pp. 230-31.
[660] Ibid, pp. 231-32.

Arctic, the USS *Daniel Webster*, which assisted the USS *Spadefish* during its SSBN tracking exercises in the spring of 1983.[661] The end result of the US Navy's SubSafe program, and its decision to avoid use of the Arctic for its SSBNs, was that after the USS *Sargo*'s 1962 transit, the circumpolar Arctic was abandoned entirely for five years.

In Canada, the concern over Arctic defence seemed to have collapsed at roughly the same time. By 1963 the focus on the Arctic in the Canadian Navy's nuclear submarine acquisition program was still there and the requirement to build a northern operational capability remained near the top of the proposed boat's operational requirements.[662] Yet, by 1964 this perceived need had fallen away. By this point the Submarine Acquisition Committee's staff study had concluded that the need for Arctic operations had become minimal, that the Soviet threat was small and that northern defence might be more economically carried out using passive sensors to simply monitor the entrances of the Northwest Passage.[663] While in 1962 sovereignty was still an important consideration in the program, by 1964 the Navy's priorities had changed. In the committee's annual report, it was simply stated that: "the task appears to be more political than military and it is difficult to see how a submarine operating under ice would accomplish this."[664]

One of the main reasons for this decline in relevance was that the anticipated Soviet threat to the region had simply failed to materialize. The Soviet SSN fleet in the early 1960s was small and what concerns existed in both Ottawa and Washington over its

[661] See Appendix 2.
[662] "Staff Study of the Operational Requirements in the Canadian Arctic," April 9, 1963, DHH, 79/246.
[663] "Staff Study of the Requirements for Nuclear Powered Submarines in the RCN," June 14, 1964, DHH, 90/215.
[664] Ibid.

Arctic activities were based on potentiality rather than any existing danger. By 1964, the Submarine Program Report was concluding that:

> … the USSR can acquire no major military capability which it would otherwise lack nor can it achieve any strategically significant result. Indeed, one can argue in all seriousness that there are few areas in which the USSR could achieve less for a given expenditure of resources than by deploying its submarines to the Canadian Arctic.[665]

By the mid-1960s this assessment appears to have been firmly established in the US Navy as well. In 1967 the Chief of Naval Operations wrote to Waldo K. Lyon, the head of the US Arctic Submarine Laboratory, to inform him that the Navy had no information that the Soviets had made a complete Arctic transit, had modified their boats for that purpose or had any intention of deploying further assets to the region.[666] The potential missile firing locations in the Arctic at the time were considered inferior to those in the Atlantic or Pacific, not for geographic reasons but because operating in an ice-infested region was hazardous in even the best circumstances.

Yet, while Soviet polar operations were not considered pressing enough to warrant much American attention, and certainly not significant enough to justify the acquisition of SSNs for the Canadian Navy, work continued on under-ice detection systems and their accompanying technology.[667] Records on Canadian defence research remain largely classified; however from what is available, it is clear that these projects had even preceded the first American submarine deployments. The earliest such tests, in Canadian waters at least, was undertaken in the late 1950s and consisted of under-ice

[665] Canadian Nuclear Powered Submarine Program Report, May 1964, DHH, Gigg Papers 88/64, box 1.
[666] Office of the Chief of Naval Operations to Waldo K. Lyon, September 26, 1967, NHH, Waldo K. Lyon Papers.
[667] In the late 1950s and early 1960s the RCN was considering the purchase or construction on two Thresher class SSNs.

sound transmission studies and ambient noise measurements, designed primarily to gain a preliminary understanding of the region's acoustic properties.[668]

It was in the late 1960s that joint efforts had begun in earnest to develop a prototype detection system, or at least to seriously test the feasibility of the idea.[669] These experiments were being conducted in Canada but they were different from the sort of defence measures being implemented by the Trudeau government at the time. These were not public displays of national authority like the surveillance flights or Army manoeuvers, nor were they being undertaken to enhance Canadian sovereignty or to assert a greater degree of Canadian control over the region, though that might have been a happy by-product. These experiments were joint operations, run in collaboration with the US Navy and a number of other American defence agencies, to enhance North American and alliance security in the region.

In 1967 the DREP conducted preliminary experiments by placing five recording instrument packages on the seafloor at strategic choke points through which enemy submarines would have to pass to transit the Archipelago. These noise spectrum analyzers recorded underwater sounds once per hour for a year in a continuing effort to improve allied understanding of sound transmission characteristics in Arctic waters.[670] That same year the Canadian Defence Research Establishment Atlantic (DREA) was working on a separate sound propagation study in Hudson Bay and Hudson Strait.[671] Both projects were joint ventures, undertaken with the help of the US Underwater Sound

[668] The DREP had conducted a program of underwater/under-ice sound transmission studies and ambient noise measurements in Barrow Strait in April 1959, followed by further tests in the Archipelago in 1961 and in the Polar Basin in 1962; DHH, 79/246, "Staff Study of the Operational Requirements in the Canadian Arctic," April, 9 1963.
[669] Memorandum, August 25, 1969, LAC, RG 24, vol. 24033, file 3801-06.
[670] A.R. Milne to Chairman, Defence Research Board, LAC, RG 24, vol. 24033, file 3801-06.
[671] W.A. von Winkle (Commanding Officer, Naval Underwater Systems Centre) to Chief of Naval Operations (U.S.), CANUS Project Data, September 22, 1970, LAC, RG 24, vol. 24033, file 3801-06.

Laboratory, the Naval Ordinance Laboratory and the Naval Underwater Weapons Research and Engineering Station. The purpose of all this effort was to improve northern anti-submarine capabilities and, ultimately, to create an operational submarine detection network.[672]

The first really practical experiments with a prototype system began in 1969.[673] The controversial voyage of the SS *Manhattan* that year had certainly spurred the Trudeau government into placing more emphasis on the Arctic and a subsurface surveillance system had even been called for in the 1971 Defence White Paper.[674] Yet, this system was envisioned as part of a larger North American detection grid while research continued to be undertaken as a joint Canada-US exercise – an ironic fact given the only serious threat to Arctic sovereignty at the time was seen as coming from the United States. In fact, despite the political difficulties created by the voyage of the *Manhattan* and the stark difference of opinion as to the status of the Arctic waters, this defence work continued both uninterrupted and on a highly cooperative basis.

The system installed in 1969 by the DREP was a test 'barrier' of sono-buoys in Viscount Melville Sound and M'Clure Strait. The buoys had been donated by the United States and were meant to determine how such a barrier might be practically deployed and

---

[672] R.E. Banks to Director, Northern Economic Development, July 24, 1970, LAC, RG 24, vol. 24033, file 3801-06 & R.E. Banks to M. Shanstone, July 17, 1970, LAC, RG 24, vol. 24033, file 3801-06.
[673] Information on similar listening systems outside of the Canadian Arctic remain largely classified, however it appears as though the first Arctic array had been installed by the Americans in the mid-1960s on Ice Island T-3. This was a fixed array consisting of 30-40 hydrophones. However it was a limited test since funding restrictions meant that it operated only a couple weeks out of the year. By the late 1960s the US was working on something more permanent, a prototype called MOSES which, it was hoped, might be deployed to a number of different northern locations; D. Schofield to Director General, DREP, June 23, 1969, LAC, RG 24, vol. 24033, file 3801-06.
[674] *Defence in the 70s*, pp. 18.

whether or not it might work as a kind of "interim" system.[675] By April 1970, while the *Manhattan* was beginning its second voyage and diplomats were arguing over the AWPPA, defence cooperation was actually expanding. In conjunction with the RCN, the DREA had deployed a similar barrier through the ice in a wide ranging test which stretched from M'Clure Strait to the Labrador Sea and from Davis Strait to Baffin Bay to measure ice drift and under-ice ambient noise.[676] To the north the DREP was also working on a trial detection system in Robeson Channel, the idea being that hydrophones off of Wrangle Bay might be able to transmit usable data to facilities at Alert.[677] And, in the Hudson Bay/Strait area the DREA was working with the US Underwater Sound Laboratory on a sound propagation study.[678]

By 1972 the joint tests had moved to employing specially modified 'Jezebel' buoys which, it was hoped, could be dropped through holes blasted in the ice when and where needed.[679] For this experiment the Canadian research teams had partnered again with the US Coast Guard in what was dubbed operation *Polar Bear II*. The joint project deployed buoys in leads 55 miles north of Pt. Barrow, using a USCG icebreaker as the primary research vessel. *Polar Bear II* was different from previous studies however, in that it was also part of a larger allied program, involving similar sensor deployment

[675] J.H. Granton to Chairman, Defence Research Board, "Sonobuoys for Arctic Use," December 11, 1969, LAC, RG 24, vol. 24033, file 3801-06.
[676] Defence Research Board Progress Report, December 31, 1970, LAC, RG 112, vol. 29804, file 170-80/A6, pt.12.
[677] A.R. Milne to Lt. Col. W.R Allen (Director of Intelligence Operations), "DREP Arctic Acoustic Program," December 3, 1970, LAC, RG 24, vol. 24033, file 3801-06.
[678] W.A. von Winkle (Commanding Officer, Naval Underwater Systems Centre) to Chief of Naval Operations (USN), "CANUS Project Data," September 22, 1970, LAC, RG 24, vol. 24033, file 3801-06.
[679] Defence Research Board: "Underwater Acoustics and Oceanographic Research Related to ASW," December 31, 1970, LAC, RG 112, vol. 29804, file 170-80-A6, pt. 12.

between Greenland and Spitsbergen.[680] By 1973 the Canadian Defence Research Staff (CDRS) had moved *Polar Bear III* testing into Baffin Bay in cooperation with the US Naval Ordinance Laboratory, the US Naval Oceanographic Office, the RCN and the DREP. That same year DREP had also begun experiments with a larger vertical line array system, which it had also borrowed from the United States, in Barrow Strait.[681] The fixed arrays showed some promise since they were more powerful and less likely to be crushed by sea-ice, however they were far less versatile, harder to build and use and still in constant danger of iceberg scouring. Indeed, the DREP even had an instrument damaged at a depth of 1,400 feet by a passing iceberg, highlighting just how difficult it would be to set up a wider fixed system.[682]

The systems being developed were temporary at best. The fixed arrays were difficult to maintain and experiments had shown that the region's harsh ice conditions would destroy 80% of the deployed sono-buoys within five months.[683] Getting usable and reliable acoustic data from under the ice was also far more difficult than it was in open water. The constant movement and grinding of the ice created a great deal of background noise which had to be filtered out and the jagged and uneven ice layer found in the marginal ice-zones (those not permanently frozen – i.e. the Canadian Arctic) tended to refract and weaken signals much faster than warm water.[684] An Arctic detection capability of any reliability was going to be an extremely tall order. Indeed, these early

---

[680] R.E. Banks to Chief, Canadian Defence Research Staff, "Status Report," October 16, 1972, LAC, RG 24, vol. 34033, file 3801-26.
[681] A.M. Patterson (Deputy Chief, Canadian Defence Research Staff) to Chief of Defence Research Establishment Pacific, LAC, RG 24, vol. 34033, file 3801-26.
[682] J.E.D McCord to Chairman, Defence Research Board. May 26, 1969, LAC, RG 24, vol. 24033, file 3801-06.
[683] Note from Stan Toole to 'Miss. Johnson,' April 29, 1972, LAC, RG 24, vol. 34033, file 3801-26.
[684] Christie A. O'Hara and Jon M. Collis, "Underwater Acoustics in Arctic Environments," *ASA Language Papers*, 162nd Acoustical Society of American Meeting, November 1, 2011 [online] http://www.acoustics.org.

tests not only failed to survive more than a short period in the icepack, they failed to provide any usable acoustic and tracking data. Still, work continued to try to find a more survivable system which might eventually evolve into something deployable.

How far this research program advanced remains classified, however it is clear that National Defence had hoped to deploy an operational system as early as 1976.[685] While little of immediate significance seems to have been accomplished, this work had still built a strong research foundation and established a firm precedent of cooperation in under-ice defence. Indeed, it is illustrative of the strength and depth of the Canadian-American defence relationship that, even in the midst of the *Manhattan* crisis, the politics of sovereignty could be effectively separated from the practical requirements of continental defence. Across the Arctic, Canadian defence labs were able to continue their work with their American counterparts in waters which were then being hotly contested.

While these defence activities demonstrated how capable the bilateral defence relationship still was of moving beyond the sovereignty paradigm they were still small scale activities. Since the voyage of the *Skate*, there had actually been no significant American deployments in Canada's Arctic waters. By the late-1970s however, that was beginning to change. By that point the Soviet Navy had grown into a legitimate blue water fleet with a powerful nuclear submarine arm and an expanding Arctic capability. The Soviet arsenal of modern SSN and SSBNs had increased dramatically and the range of Soviet SLBMs had kept pace.[686] While the details of this naval evolution are well documented elsewhere, the relevant point is that, by 1972, the Soviet's new SS-N-8

[685] Meeting of the Arctic Underwater Surveillance Steering Committee, November 19, LAC, RG 24-G-1, vol. 23720, file 19711150-110/A55, pt. 1.
[686] The Soviet fleet had expanded from three SSNs in 1960 to 40 in 1975. The SSBN fleet had undergone a similar growth, from one ship in 1960 to 60 in 1975; Norman Polmar, *The Naval Institute Guide to the Soviet Navy* (Annapolis: US Naval Institute, 1986).

missile, with a range of 7,800 km, offered its navy the capability of striking North American targets from firing positions in the Arctic.

By 1975 the SS-N-8 model two, with a range of 9,100km, offered the new Delta class submarines the ability to strike the entire United States from as far away as the North Pole. These new missiles also made the Arctic an ideal launch position, and in some cases the only one, from which Soviet submarines could attack both European and North American targets.[687] The effect was to allow Soviet SSBNs to forego transiting the heavily monitored GIUK gap en route to their patrol stations. By the mid-1970s this shift had been confirmed by NATO listening posts in the gap as detections had dropped sharply.[688] Given how rapidly that chokepoint would have been swarmed by NATO ASW forces, the Arctic 'back door' might have provided a very convenient route into the Atlantic sea-lanes.[689] The Soviet threat from the Arctic, which had been envisioned in the early 1960s, seemed to have finally emerged.

Waldo K. Lyon, the senior under-ice submarine expert in the United States, wrote in 1972 that the growing Soviet threat had prompted a reaction from the Canadian government, which was moving faster towards developing a functional Arctic SOSUS network.[690] Lyon had extensive contacts within the Canadian Arctic scientific and military communities and would certainly have been familiar with the mindset and intentions of those groups – if not necessarily that of the political establishment. By 1974 it was clear from Lyon's papers that no such system existed. Though, in a situation

[687] Critchley, pp. 842.
[688] Honderich, pp. 92.
[689] Joseph Jockel, *Security to the North: Canada-US Defence Relations in the 1990s* (East Lansing: Michigan State University Press, 1991), pp. 165.
[690] Waldo K. Lyon, "Possible Utilization of Submarine (NR-1) in Support of Arctic Surveillance Missions," October 6, 1972, NHH, Waldo K. Lyon Papers.

review brief that year, Lyon did write that one was under consideration for installation as early as 1975.[691]

How this system was further developed remains classified. Joseph Jockel for one believes that it was abandoned in the mid-1970s after it was realized that it would have required SSNs to make it truly effective.[692] Since the 1971 White Paper there had also been little further public mention of an Arctic SOSUS net and, in 1983, the government's own Senate Standing Committee on Foreign Affairs certainly implied that it did not exist by stating that the construction of an Arctic detection capability would have been useful, if it could be accomplished at a reasonable cost.[693] Accepted opinion is therefore that Canada was never able to develop a detection capability of any real effectiveness and had therefore always lacked a clear understanding of what was transpiring in its Arctic. While there is not enough evidence to dispute this conclusion with any certainty, documents from the PJBD, as well as the personal papers of Waldo K. Lyon, seem to imply that such a system, or a number of such systems, actually reached an advanced experimental stage in the early 1980s and perhaps even a level of functionality that is not generally appreciated.

Evidence of this development is fragmented but can be found in a number of American reports and in the operational details of the few submarines which transited the Archipelago during the late 1970s and early 1980s. Such transits were actually relatively infrequent, however the most common tasks listed, aside from survey work, was the

[691] "Situation Review 1974," (precise date unknown), NHH, Waldo K. Lyon Papers.
[692] Joseph Jockel, *The U.S. Navy, MARCOM and the Arctic*, (paper presented to the Conference on Undersea Dimensions, of Maritime Strategy, Halifax, Nova Scotia, Canada, June 21-24, 1989), pp. 31, DHH, 39/436.
[693] Report of the Sub-Committee on National Defence of the Standing Senate Committee on Foreign Affairs, "Canada's Maritime Defence," May 1983, pp. 51.

testing of under-water detection systems. The first American operation in Canadian waters since the early 1960s appears to have taken place in 1977, when the USS *Flying Fish* conducted operations in the Arctic Archipelago. While complete records of that operation are unavailable, one of that boat's missions was listed as providing services to Canadian ASW research personnel in Barrow Strait and to acoustic research studies in the Kane Basin.[694]

By 1981 Canada was involved in a joint 'Canada-UK-US' submarine exercise, labeled SUBICEX 1-81. According to records left in the PJBD journal, one of the participating American boats, the USS *Silversides*, was tasked with providing "a realistic target for the Canadian sensor system in the Canadian Archipelago, which is designed to interdict submarine infiltration from across the polar cap."[695] That same year, in a study examining the feasibility of resupplying SSNs from icebreakers, this network was mentioned again and described as an "undersea defence sensor and communication system which was *actively* monitoring submarines leaving for and returning from patrol and able to detect hostile intruders [italics added]."[696] Two years later the USS *L. Mendel Rivers* was again testing what were described as acoustic sensors in Nares Strait and magnetic sensors in Barrow Strait, the same areas where the USS *Flying Fish* had provided research support four years earlier. That year, Waldo K. Lyon also cited this capability in a report, stating that the Canadian defence establishment was currently operating acoustic and magnetic sensors in chokepoints in certain key passages "which

[694] Waldo K. Lyon and Allan Beal, "Proposal for Forward Area Logistic Support of Submarines in the Arctic," August 1, 1983 & message to CINCLANDFLT, March 1977, NHH, Waldo K. Lyon Papers.
[695] PJBD, Journal of Discussions: 160th Meeting, October 20-23, 1981, DHH, 82/196.
[696] R.R. Carrett to Commander, Naval Ocean System Centre, June 4, 1981, NHH, Waldo K. Lyon Papers.

have been tested against U.S. submarines many times."[697] Lyon even assumed their integration into the US command structure in the event of a major conflict.[698]

How operational and permanent this system ultimately became remains in question. In 1985, Canadian Senator Paul Lafond, the chairperson of the Senate Committee on National Defence, had confirmed in an interview that an experimental hydrophone system had in fact been installed in the narrows of Lancaster Sound between Borden Peninsula and Devon Island.[699] Yet throughout the late 1980s most public statements, by both Canadian defence and political officials, suggested that any system which had been built was not a permanent fixture. By 1986 Allan Lawrence, head of the Canadian section of the PJBD, and Fred Crickard, a high ranking DND official, were calling for such a network to be installed in the Northwest Passage, implying at least that whatever was being experimented with in the early 1980s had been decommissioned by 1986 – or was at least extremely classified.[700] There was certainly no system in place in the early 1990s since by that point the Canadian military was actively seeking contractor quotes for its proposed 'Arctic subsurface surveillance system,' or ARCCSSS – which was supposed to establish fixed listening arrays in Robeson Channel, Jones Sound and Barrow Strait.[701] And in fact, while the limited documentation surrounding this project makes some mention of the early acoustic research conducted in the 1970s, there is no mention of any system operating in the 1980s.[702]

---

[697] Waldo K. Lyon and Allan Beal, "Proposal for Forward Area Logistic Support of Submarines in the Arctic," August 1, 1983, NHH, Waldo K. Lyon Papers.
[698] Ibid.
[699] "Detection System in Arctic Revealed," *Halifax Chronicle Herald*, August 21, 1985.
[700] Peter Cowan, "Tories Admit Foreign Subs Sometimes Intrude in Arctic," *The Ottawa Citizen*, December 10, 1986, pp. A3.
[701] "Arctic Subsurface Surveillance System," July 28, 1992, DHH, 93/110. This project was ultimately cancelled on the basis of cost.
[702] Ibid.

It therefore seems likely that whatever had been installed never became permanent or fully operational. Regardless, two facts stand out. Firstly, the Canadian military was not quite as blind to what was transpiring in the region as was generally presumed and secondly, far from sneaking about the Canadian North without regards to Canadian sovereignty, the United States appears to have been working closely with Canadian defence agencies to maximize Canada's surveillance capabilities.

A closer look at American submarine operations, from the resumption of activity in Canadian waters in 1977 until 1986 (when even partially declassified documentation ends) bears out this trend of close cooperation and gives lie to the assumptions that Canada was either ignorant of or uninvolved in the defence of its Arctic waters. Including the voyages of the USS *Skate*, *Seadragon* and *Sargo* there were a total of nine American SSN operations in the waters of the Archipelago. Records indicate that the majority (and perhaps all) of these were undertaken with the full knowledge, concurrence and often the participation of the Canadian government. The USS *Seadragon* and *Skate* had requested concurrence to transit the Northwest Passage while Commodore Robertson was invited aboard both the *Seadragon* and the *Sargo* when they had entered Canadian waters. The presence of the next submarine in the Canadian Arctic was the USS *Flying Fish* in 1977 and it actually appears to have been made at the request of the Canadian government. In a message to the Commander of the Atlantic Fleet offering details on the operation, the *Flying Fish's* presence in the Barrow Strait was said to have been made "in accordance with the Canadian request for services."[703]

The 1979 voyage of the USS *Archerfish* was a cooperative venture and officially labeled a joint 'Canada-UK-US' exercise. On its northbound passage, through the

[703] Message to CINCLANDFLT, March 1977, NHH, Waldo K. Lyon Papers.

Labrador Sea and Davis Strait, it even engaged in war games with Canadian Forces aircraft and the HMCS *Ojibwa*. The second such three-nation-exercise was undertaken in 1981 when the USS *Silversides*, as already mentioned, provided detection services to Canadian arrays. Two years later, the USS *L. Mendel Rivers* undertook similar duties, testing magnetic sensors in the Barrow Strait and acoustic devices in the Nares Strait.[704]

These voyages actually represented a fair percentage of American operations during the decade. Between 1970 and 1980 the USN deployed only 11 boats into the circumpolar waters, and three of those entered the Canadian Arctic. Yet, they had failed to provoke the same kind of nationalistic outrage in Canada as the *Manhattan's* transits, for the very simple reason that they were handled in complete secrecy. This allowed American activity in the Arctic to fly under the Canadian public's radar. Yet, by the 1980s, this popular disinterest in Arctic defence had begun to shift. The strategic importance of the region was becoming far more apparent, the US Navy had begun to increase its presence and, even more importantly, the United States had begun to publicize its intentions in the broader circumpolar North.

Throughout the 1980s the Soviet Northern Fleet had grown in both size and importance. In 1981 the Soviet Navy had deployed the Typhoon class SSBN. Built with a reinforced titanium hull, the Typhoon was the first Soviet boat specifically designed for under ice operations. The submarine was a giant, with a 25,000 ton submerged displacement it was larger than a British Invincible class aircraft carrier and 25% bigger than the American equivalent SSBN, the Ohio class – itself not an insignificant craft. By 1981 there was a total of 82 SSBNs stationed at Soviet Arctic bases equipped with an

[704] Submarine Cruises, (list compilation date unknown), NHH, Waldo K. Lyon Papers.

estimated 991 SLBMs.[705] These missiles could be launched from Soviet home waters, however, a launch from Canadian waters, or even as far north as the Lincoln Sea off the northern tip of Greenland, would cut SLBM flight time in half (from 30 to 15 minutes) and potentially hinder American detection, since the flight trajectory would be significantly lower.[706] The development of the long range cruise missile also caused serious concern within defence circles. The short range and slow speeds of the cruise had traditionally limited its use in strategic attacks. However, the development of missiles with a 3,000km range, like the SS-NX-24, gave the weapon a potential role in a nuclear exchange, and perhaps even a first strike role. With that extended range, Soviet boats could use launch positions within Canadian Arctic waters to strike at targets deep into North America.[707] These strikes could have been made from easier launch positions in the Atlantic, however those waters were areas of heavy surveillance and patrolled regularly by American SSNs and ASW surface craft.

The Arctic had thus became an ideal first strike launch position for either cruise missiles or ICBMs, close to the major North American cities while far from significant Western anti-submarine warfare assets.[708] In part a reaction to this Soviet build-up, American naval strategy in the 1980s underwent a significant and aggressive shift towards Arctic operations. Articulated for the first time in 1984 by Admiral James D. Watkins, the 'Maritime Strategy' was a broad maritime concept for the global conduct of

---

[705] Honderich, pp. 99.
[706] G. Leonard Johnson, David Bradley and Robert S. Winokur, "United States Security Interests in the Arctic," *United States Arctic interests: The 1980s and 1990s* (New York: Springer-Verlag,1984), pp. 271.
[707] According to a study released by the Directorate of Strategic Policy Planning of the Canadian Department of National Defence, only five realistic launch sites existed from submarine launched cruise missiles (SLCMs): South of Banks Island, Davis Strait, East of Frobisher Bay, Hudson Strait and the Gulf of Boothia; Peter Haydon, "The Strategic Importance of the Arctic: Understanding the Military Issues." Ottawa: Department of National Defence, Directorate of Strategic Policy Planning, Strategic Issues Paper 1/87, March, 1987.
[708] Joseph Jockel, "The U.S. Navy, MARCOM and the Arctic," pp.4-5

war in which the US Navy planned to pressure and attack Soviet forces directly in their northern bases (and elsewhere). This new forward maritime strategy was not a radical departure from traditional American naval thinking, nor was it a specific and detailed plan of operations. Rather it was a clarification of the general strategic posture which the US Navy intended to take, both to deter a war and to fight one if it should become necessary.

One of the principle objects of the Maritime Strategy was an aggressive approach to the Soviet's Northern Fleet. It was here that the USSR had placed most of its high value SSBNs with the intention of guarding them in wartime within well defended 'bastions.' This bastion strategy had been forced on the Soviets by both inferior engineering and restricted geography. While the US Navy had traditionally been able to rely on the open oceans to hide its SSBNs, the Soviet Navy lacked both the easy access, as well as the quieting technology to ensure their boats the same level of survivability. Instead, it was predicted that the SSBN fleet would be assembled into bastions at the outbreak of war in the Barents Sea and the Sea of Okhotsk, areas which would be heavily defended by SSNs, light surface craft and ground based air power. It was assumed that Soviet boats would either remain in these bastions and/or be deployed out under the Arctic icecap, an area impenetrable to all NATO antisubmarine weapons, save the SSN. The icecap was, according to Admiral Watson, "a beautiful place to hide" and the US Navy would have to be able to find and kill them there.[709]

Since it was the only force capable of operating under ice, the American SSN fleet was naturally a central component in the Arctic element of the new Maritime Strategy.

[709] Robert J. Brandt, *Defeating the Next Generation SSBN Threat in the Arctic* (Newport: Naval War College, 1983), pp. 1 & 7.

And, as Admiral Watkins explained, this meant that the United States was "putting increased emphasis" on under-ice operations.[710] This emphasis was important since the US Navy's under-ice capabilities were surprisingly limited. Between 1946 and 1980 the Navy had run a total of 37 submarines under the Arctic ice, though 13 of these had been diesel electric boats operating only at the edge of the icepack. Yet despite all this activity, preparations for under-ice combat operations had been extremely limited and retarded by serious technical problems.

The most pressing of these was something dubbed the 'Arctic Enigma' by Waldo K. Lyon.[711] This enigma was a tactical problem created by the unique conditions found in marginal sea-ice. War-games had repeatedly demonstrated that, once a hostile submarine had taken station anywhere in that marginal ice canopy there was virtually no way of approaching and killing it. When stationary in the jungle of sea-ice created by the dynamic confusion of shapes, blocks, angles and slopes of the ice canopy, a hostile submarine was silent and could not be discriminated from the surrounding ice. And, while approaching this stationary submarine, any attacker would be extremely vulnerable, since its room to manoeuver would be limited by the surrounding ice.[712]

By the early 1980s, as the US Navy was seriously preparing to fight the Soviets under Arctic ice, the fact that their ships were not prepared for active combat operations in the theatre had begun to receive widespread attention.[713] By 1982 the Navy had realized that its Mk48 torpedo, with its proven high probability of misidentifying ice

[710] Naval Submarine League (July 1983), pp. 4-5.
[711] Waldo Lyon, "Warfighting in Ice Covered Seas Arctic Submarine Warfare Defence of North America Arctic Submarine Laboratory Situation Report," 1997, NHH, Waldo K. Lyon Papers.
[712] Ibid.
[713] Letter from Secretary of the Navy to Charles E. Bennett, March 9, 1982, NHH, Waldo K. Lyon Papers.

anomalies as targets, would be incapable of reliably hitting targets in the ice jungle.[714] The new Los Angeles, and even the old Sturgeon class vessels, were also deemed poor Arctic platforms. Even though the Sturgeons had long been the workhorse of the Navy's Arctic operations they lacked the ability to operate close to ice cover or to ascend quickly through it.[715]

Carrying out the roles required of them in the Maritime Strategy would therefore have been a tall order. The US SSN force was not optimized to conduct operations in the shallow waters of the East Siberian, Laptev, Kara and Chukchi Seas. Acoustic conditions in these areas were especially bad given their depth and ice conditions and American ice-avoidance sonars were highly susceptible to counter detection.[716] For these reasons the 1980s were to see a great deal more attention paid to the Arctic and to Arcticizing the Navy's SSN fleet. By 1982, talk had begun about ice-strengthening the fleet and, by 1985, a serious research program had been initiated to try and solve the myriad of under-ice vulnerabilities in the fleet's weapons and sensors. Most importantly, the decision was finally reached to modify the Los Angeles class and design the new Seawolf class to be Arctic capable.[717]

To gain the operational skills required for this new Arctic push, American activity in the region rose significantly during the decade, from 11 ship deployments in the 1970s to 37 in the 1980s.[718] Yet, this overall increase in transits did not translate into significant new deployments into Canadian waters. The US Navy's focus remained on operations in

[714] Memorandum for the Secretary of the Navy. 1 March 1982, NHH, Waldo K. Lyon Papers.
[715] Navy Actions to Counter the Soviet Arctic Threat, 1982, NHH, Waldo K. Lyon Papers.
[716] "Navy Actions to Counter the Soviet Arctic Threat," 1982, NARA, NHH, Waldo K. Lyon Papers.
[717] Because of the size and buoyancy requirements the Seawolfs were unlikely to be able to operate in the shallow Arctic seas; Waldo Lyon, "Warfighting in Ice Covered Seas Arctic Submarine Warfare Defence of North America Arctic Submarine Laboratory Situation Report,"1997, NHH, Waldo K. Lyon Papers.
[718] See Appendix 2.

the Polar Basin and in the Russian Arctic – areas where the Maritime Strategy foresaw future submarine combat taking place. In fact, from 1980 to 1986, only three of the 22 Arctic deployments involved operations in the Archipelago.[719]

Yet, the high profile of the Maritime Strategy, increasing public awareness of the new Soviet capabilities and of Arctic defence in general had convinced some in Canada that more was being done in Canadian waters than was actually the case. The fact that the details of American submarine operations were not normally public limited the inquiries, yet it was no secret that the United States was ramping up its operations and capabilities in the region. The Maritime Strategy was public knowledge and strategic studies papers were emerging in large numbers, pointing to the importance of the Arctic and its vulnerability to intrusion.

The *Manhattan* transiting the Northwest Passage had been one thing, it had had a Canadian observer aboard and had been publicly welcomed by the government; American submarines on the other hand might have been transiting not only without permission but also undetected. In response, many in Canada felt that a greater presence or at least new mechanisms for maintaining sovereignty might be required. In 1983 the Standing Senate Committee on Foreign Affairs reported a greater need for Canada to monitor what went on it its northern waters, though it also admitted that funding would have been a serious problem.[720]

In May 1986, however, much of this speculation appeared to have been confirmed when it was publicly announced that three American SSNs had surfaced at the North Pole. Specific information on their routes was not provided but the fact that two of these

[719] Submarine Cruises, (list compilation date unknown), NHH, Waldo K. Lyon Papers.
[720] Report of the Sub-Committee on National Defence of the Standing Senate Committee on Foreign Affairs, "Canada's Maritime Defence," May 1983, pp. 50-2.

boats had been deployed from the Atlantic led many to assume that they had travelled through Canadian waters.[721] The *Ottawa Citizen* summed up many fears when it warned that the Americans might be building a legal case against Canada by sending its submarines through the disputed waters without Ottawa's consent or knowledge.[722] These suspicions were hardly allayed when the *New York Times* quoted an American officer as saying that US submarines had navigated the Arctic Archipelago to get to the Arctic Ocean in the past, but would not say where or when. The officer cited a need to avoid informing the Soviets of American transit routes but he also noted the fact that the sovereignty of those waters remained in question.[723]

The next month a special multi-party parliamentary committee released a provocative report which stated that there was reason to believe that both American and Soviet submarines regularly travelled "submerged" through the Arctic.[724] The implication of course being that these passages were being made secretly and without Canadian permission. The committee had no evidence of this, but rested its assumption on the emerging strategic importance of the region.[725] Soon, opposition members in the House of Commons were demanding information from the government on what routes the two American boats had taken and what the government was doing to defend Canadian sovereignty from such intrusions. The Conservative government did its best to deflect most of the questions, citing security concerns to justify its stonewalling. Yet, the

---

[721] This operation (labeled SUBICEX 1-86), involved the USS *Hawksbill*, *Ray* and *Archerfish* and took place in the Beaufort Sea, the Arctic Basin and the Greenland Sea; NHH, Waldo K. Lyon Papers, *Submarine Cruises*, [list compilation date unknown]
[722] Peter Cowan, "Arctic Claims Hurt by Lack of Vigilance, Experts Say." *Ottawa Citizen*, December 26, 1986, pp. G17.
[723] Richard Halloran, "Navy Frontier: Submarine Rendezvous at North Pole," *New York Times*, 16 December 1986, pp. B15.
[724] Jeff Sallot, "Submarine Defence of Arctic Urged by All-Party Committee," *Globe and Mail*, June 27, 1986, pp. A5.
[725] Ibid.

assumption across the opposition and within the media was that the Mulroney government really had no idea what the Americans were doing in the Canadian North. NDP foreign affairs critic Pauline Jewett, suggested that Canada was in danger of becoming a "total patsy"[726] while Liberal MP Lloyd Axworthy insisted that "Canadians have a right to know what kind of change in our sovereignty has taken place as a result of arrangements with the Americans, and what kind of defence and security developments are taking place in the North."[727] The newspapers gave this debate plenty of coverage and speculation was rife that not only American but Soviet boats were transiting Canadian waters.[728]

Eventually, this public and political pressure forced the government into an ambiguous confession which at least implied some knowledge of American operations. Under questioning, the Prime Minister admitted that Canada was "acquainted with and aware of all movements" of American submarines, but "we do not discuss them for obvious reasons." When asked to elaborate, he merely stated that there were "provisions in place that allow us to know the information and to assert and protect our sovereignty and those provisions are respected."[729] Still, because of the lack of detail being offered, most opposition members, academics and the media were generally unimpressed.

Suspicion remained widespread that the United States was secretly and regularly deploying its boats into Canadian waters and that it had been doing so for decades. It was assumed that there was little the Canadian government could do to control or monitor these voyages and that Canadian sovereignty must be suffering accordingly. If Canada

[726] "Canada becoming 'Patsy' over Arctic Issue: Jewett" *The Gazette*, December 20, 1986, pp. E11.
[727] "Canada Conceding Arctic to US, Axworthy Says," *Windsor Star*, December 9, 1986, pp. C5.
[728] See for instance: Paul Korning's column in the *Edmonton Journal*, September 29, 1986 and "Under the Ice," *The Globe and Mail*, December 8, 1986 and Peter Cowan in the *Ottawa Citizen*, December 26, 1986.
[729] "Canada 'Aware' of U.S. Submarines in Arctic," *The Windsor Star*, December 6, 1986, pp. A8.

had a submarine detection capability it was certainly not public knowledge and the RCN had no SSNs of its own to intercept an intruder if one were discovered. In fact, the best defence the country had were the Canadian Rangers and they were hardly capable of ejecting a foreign boat if they found it. Standing orders for Rangers who spotted a conning tower was to call a 1-800 number to Ottawa. DND even seems to have felt it necessary to issue orders not to fire on foreign boats. This hold fire order was likely unnecessary since, in the words Earl Esau, a hunter from Sachs Harbour, "they've got bigger guns than we do, eh."[730]

How these transits were structured within Canadian-American defence arrangements remains largely unknown, however they appear to have been arranged on an ad hoc basis. Ironically it seems likely that the Canadian government did not even fully understand how cooperative the United States was being. Certain statements, for instance, seem to imply that the Canadian government was even unsure as to whether or not the United States was informing it before every voyage. During the *Polar Sea* crisis of 1985, the chairman of the Canadian section of the PJBD, Allan Lawrence, told the press that he was unsure if the government "really knows whether our sovereignty has been transgressed by either American or Soviet submarines."[731] That year the Associate Defence Minister, Paul Dick, was also asked if the Americans informed Canada when they dispatched submarines into Canadian Arctic waters, his response was simply: "we know they tell us sometimes."[732]

[730] Miro Cernetig, "Arctic Guard," *Globe and Mail*, August 7, 1991, pp. A1.
[731] Peter Cowan, "Tories Admit Foreign Subs Sometimes Intrude in Arctic," *The Ottawa Citizen*, December 10, 1986, pp. A3.
[732] Ibid.

Experts on the subject have traditionally fallen in line with the suspicions voiced by the opposition members and questioned how much knowledge Mulroney and past Canadian governments really had about American operations. In 1987 John Honderich wrote that "to expect the United States to routinely inform Canada every time one of its submarines traverses Canadian waters is to fail to understand how the U.S. military works."[733] In a book that same year, Franklyn Griffiths hypothesised that one day the United States might be able to bring the log books of secret submarine transits to the ICJ as evidence that the passage had long been used as an international waterway.[734] In 1998 Elizabeth Elliot-Meisel conjectured that Canada had no way of monitoring or stopping the transit of these boats.[735] In 1990 David Larson guessed that Canada might have been able to establish some form of secret agreement with the Americans, though he felt that it was just as likely that the transits were being made without Canadian permission.[736] And, in the most recent major work on the subject, Shelagh Grant argued in 2010 that the presence of these undetected submarines posed a danger to Canadian sovereignty, even if only a theoretical one.[737]

A proper and more complete understanding of the defence relationship from this period will have to await further documentation. However, the evidence available seems to suggest that the pattern of behaviour observed in the 1960s had continued into the 1980s. With the Canadian legal position on Arctic sovereignty still undeclared and with a genuine defence problem to manage, the Canadian government considered the American

[733] Honderich, pp. 96.
[734] Franklyn Griffiths ed, *Politics of the Northwest Passage* (Kingston: McGill-Queen's University Press, 1987), pp. 251.
[735] Elliot-Meisel, *Arctic Diplomacy*, pp. 151.
[736] Larsen, pp. 182.
[737] Grant, *Polar Imperative*, pp. 332.

presence to be a practical requirement and simply continued its functional working relationship.

This close cooperation seems to refute much of the fear and insecurity which characterized so many of the Canadian sovereignty debates of the time. It appears as through the defence of the region was undertaken in a fully cooperative spirit and it is difficult to perceive how such operations could have eroded Canadian sovereignty. Of the nine American submarines which entered the Arctic Archipelago between 1960 and 1986, seven of them appear to have done so with the full knowledge and consent of the Canadian government and six of them either had a Canadian representative aboard or involved the active participation of Canadian forces in war games or tracking system tests. The two passages for which there is no immediately available evidence of Canadian participation or concurrence are those of the USS *Spadefish* in 1984 and the USS *Pintado* in 1978, both of which were undertaking survey work.[738]

Documents on these expeditions are extremely limited. The vessel patrol reports are unavailable and the PJBD discussion from 1978 and 1984 are either classified or partially so. It is entirely possible then that these transits were known to the Canadian government but the records are simply lacking. A report written by Waldo K. Lyon in 1983 would seem to suggest this. In it, Lyon presented a proposal for forward deploying USCG icebreakers into the Archipelago for the purpose of resupplying American SSNs in wartime. This report's relevance lies in the fact that it included not only an admission that American submarines had, by that point, transited nearly all potential passages through the Canadian North but also a map very clearly showing the routes of those transits (Map: Arctic Transits). Citing Canadian political sensitivity, Lyon suggested that the report not

[738] Submarine Cruises, (list compilation date unknown), NHH, Waldo K. Lyon Papers.

be released too broadly and that its level of classification be set at either no foreign distribution or Canadian-American eyes only. Had any of these transits been kept secret from the Canadian government it would seem odd to classify a report of this nature in a way which might permit distribution to Canadian defence authorities.[739]

In fact, it seems likely that Canada was being informed when each of these passages took place. It would seem out of place for the US Navy to be so consistent and responsible in alerting and cooperating with the Canadian government and military in its other expeditions and choose to keep these two operations secret. Since the Canadian government also appears to have been so cooperative, such selective secrecy would seem unnecessary and potentially counterproductive. Canadian officials may not have been aware of the fact that the United States was informing them of every passage, yet that does not change the fact that they seemed to have been doing exactly that.

Working on the assumption that Canada knew about most, or perhaps all of these voyages, the obvious question to emerge is how this might have affected Canadian sovereignty. Some authors have suggested that such knowledge might actually have been damaging to the Canadian claim. Michael Byers, for instance, believes that Canada knew about at least some of these voyages and that a combination of this knowledge and acquiescence without permission might have ultimately served to weaken the country's legal and political position. To Byers, this inability or unwillingness to protest effectively would serve as evidence that "in the corridors of international diplomacy, where it really

[739] It is uncertain if this report was ever passed along to Canadian officials. M. Allan Beal and Waldo K. Lyon, "Proposal for Forward Logistic Support of Submarines in the Arctic," August 1, 1983, NHH, Waldo K. Lyon Papers.

matters – Canada has already surrendered its claim."[740] John Carrol and Kenneth Curtis have likewise suggested that the presence of American submarines in the area would have had a significant impact on the application of international maritime law.[741] The authors of *Arctic Front* have offered a similar interpretation, namely that these submerged transits might accomplish what the government had feared from the *Manhattan* and establish the precedent required to classify a strait as international.[742]

Yet, it seems unlikely that this would be the case. The Department of National Defence had certainly considered the issue and, as early as 1971, had concluded that a submerged transit could not establish a right of passage.[743] In order to be admissible to a court as evidence of a strait's usefulness to international traffic, these submarine voyages would have had to have been public knowledge. An examination of the records of the ICJ and similar bodies does not yield a single example of a state using a secret voyage as evidence and Rob Huebert has noted that international tribunals can only publish evidence that is publicly acknowledged. As state secrets, submarine voyages would have no such standing.[744] The *Corfu Channel* Case itself used only the records of British warships and the commercial vessels that had docked at Corfu harbour and submitted themselves to customs inspection.[745] The many vessels that transited without submitting themselves to customs in Corfu were not included in the court's calculation. As this case is the precedent upon which the relevant law is based, it seems highly unlikely that

[740] Byers, pp. 77.
[741] Kenneth Curtis and John Carrol, *Canadian-American Relations* (Lexington: Lexington Books, 1983), pp. 12.
[742] Ken Coates et. al., *Arctic Front: Defending Canadian Interests in the Far North* (Toronto: Thomas Allen & Son Ltd., 2008), pp. 153.
[743] Letter from Deputy Minister of National Defence, E.B. Armstrong, to the Minster of National Defence, February, 8, 1971, DHH, 85/333.069.080.
[744] Rob Huebert, "US Subs do not Threaten our Sovereignty," *National Post*, December 21, 2005, pp. A16.
[745] *Corfu Channel Case*, pp. 29.

unregistered and highly secret submarine passages could be considered a precedent for making the Northwest Passage an international strait.

If the fact that Canada knew about the transits could serve to remove the secret nature of the operations then a case would have to be made that they were being undertaken without Canadian consent and had been conducted with enough regularity to establish a certain route as a convenient international waterway. This would seem an impossible proposition. To begin with the transits appear to have normally taken different routes through the Archipelago, obviously to chart and explore as much of the region as possible. As such, there was no one route through the region which was travelled repeatedly – no one route which these boats were establishing as a useful strait for navigation. There also exists clear evidence to show that at least the majority of these voyages were being undertaken with Canadian concurrence and even cooperation. Canadian observers were aboard a number of voyages while Canadian forces were often involved in the transits in one way or another. These voyages were part of the decades long joint continental defence effort and were no more likely to establish a right of international navigation than the DEW Line resupply voyages of the 1950s.

Like those icebreaker missions, American submarine operations were also covered by pre-existing joint defence arrangements. In 1952 the PJBD had decided that a need existed to streamline and simplify the operations of Canadian and American warships engaged in continental defence. Vessels often travelled into the waters of the other state and constant diplomatic applications for clearance was considered both unnecessary and inefficient. As such, the PJBD established simpler rules for naval clearance in the form of Recommendation 52/1:

> In the interests of the security of the northern part of the Western Hemisphere, Canada and the United States should make provisions to ensure that public vessels of either country engaged in matters of concern to mutual defence should be able to visit ports or territorial waters of the other country, or its possessions, with a minimum of formality. [746]

To ensure that this was the case, the PJBD stipulated that, while diplomatic visits should continue to be coordinated through diplomatic channels, "informal or operational visits" would require only "advanced notification through service channels."[747] These new rules were approved by the Canadian government on May 19, 1952 and two days later by the Americans. Since American submarine transits were clearly engaged in matters of mutual defence and clearly operational and not diplomatic in nature, there was no need for a formal diplomatic request and no need for Ottawa to have granted any formal permission. All that was required was the notification of Canadian service authorities and this appears to have taken place.

Despite the fact that the joint defence relationship appears to have been so well managed and sovereignty so well protected, the Canadian government preferred to keep this relationship and these activities out of the public eye. Even basic information surrounding submarine activity was not declassified and when the US Navy released such information it excluded mention of activities in Canadian waters. In 1977 for instance, the USS *Flying Fish* conducted operations in both the Archipelago and the Arctic Ocean. The original Navy press communication instructions dictated that the route was to be classified however, that was eventually rethought in an effort to give more credibility to the Arctic submarine program. Yet, in the revised public release, only the "general route" was given from Norfolk to the central Arctic Basin via the Greenland Sea and "deep

[746] PJBD Recommendation 52/1, NARA, RG 59, General Records of the Department of State, PJBD Subject File 1940-59, box 6.
[747] Ibid.

water channels."[748] Secrecy within the Canadian government itself even appears to have been fairly secure. As late as 1982, while working on an important memorandum to Cabinet on Canadian sovereignty, External Affairs bureaucrats demonstrated a complete ignorance of all American submarine activity after 1962.[749] The motivation for such concealment likely stemmed from a desire to not upset the existing arrangements or cause domestic political difficulties.

Arctic sovereignty has historically been one of a very few subjects capable of evoking aggressive Canadian nationalism and the political implications of this public sentiment have never been pleasant for any government. In 1969, the public outcry over the *Manhattan* had forced the Trudeau government into an unwanted confrontation with the United States and this was to reoccur in 1985 when the *Polar Sea* ultimately forced the Mulroney government to negotiate with the US in an atmosphere of public hostility and intense political pressure.

[748] COMSUBLANT to USS *Flying Fish*, May 1977, NHH, Waldo K. Lyon Papers.
[749] Memorandum to Cabinet, Secretary of State for External Affairs to Cabinet, "Status of the Arctic Archipelagic Waters," June 1, 1982, LAC, RG 12, vol. 5561, file 8100-15-4-2, pt. 4.

Chapter 8

Lock, Stock and Icebergs
The Voyage of the *Polar Sea* and the Establishment of Straight Baselines

In 1976 the Canadian government had set aside the matter of Arctic sovereignty while it awaited the outcome of the UN Conference on the Law of the Sea. The conference took longer than expected and in the interim the Trudeau government, and for a short stint that of Joe Clark, were content to continue working with the United States on a purely functional basis. Yet, while action had been postponed it was for a short and defined period of time, very unlike the perpetual deferrals which had characterized past Canadian policy reviews. The question was taken up again in 1979 and the slow process of working out when, where and how Canada might finally push its claims resumed.

At that time the crucial issue for External Affairs was the increasing prospect of economic development. Going back to the *Manhattan*, the promise of northern development had created a paradox of sorts for Canada. On the one hand it was seen as highly desirable, both for the benefits it would bring to the region and to the government's coffers. On the other hand however, increased activity was considered a danger to the still unsettled question of sovereignty and jurisdiction. The *Manhattan* had raised the specter of turning the Northwest Passage into an international strait and it was only one ship – and a test voyage at that. Yet, by the end of the 1970s the Canadian government was predicting a massive influx of vessels to service the expected boom in the hydrocarbon and mineral industries.

The economic and regulatory environment of the time certainly seemed fertile grounds for this boom. Government tax incentives were flowing to regional projects,

estimates of hydrocarbon reserves across the Canadian North were being increased while oil in 1980 was trading for 11 times more than it had just a decade ago. Crude prices had begun to dip by 1981 but even during this slow decline they still remained high enough to justify the astronomical costs of Arctic operations.

These were heady times in the Arctic Archipelago and investment was coming quickly. A number of companies were actively involved in exploring the Beaufort Sea and the Arctic Islands, spending considerable sums on drilling rigs, infrastructure and resupply shipping. By 1980, over $800 million had already been spent in the Arctic Islands alone, from where it was assumed natural gas production would start as early as 1986 and increase seven-fold by 1995.[750] It was also presumed that oil would soon follow gas and that significant new mineral traffic would then follow the hydrocarbons. Zinc, iron, lead, cadmium, silver, copper, nickel and other vital minerals were expected to start coming from new and expanded mines at Strathcona Sound, Bathurst Inlet, Little Cornwallis Island and Deception Bay.

Many of these projects were already well advanced and could not be ignored. In 1982, after conducting a survey of the major business proposals, then pending for the Arctic, External Affairs found the following megaprojects on the drawing boards:

- The Arctic Pilot Project, sponsored by Petro-Canada, was expecting to move LNG from the Eastern High Arctic beginning in 1986. The company was going to use two class seven icebreakers and expected to make 60 transits annually.
- TransCanada Pipelines hoped to move gas through the eastern portion of the Northwest Passage from King Christian Island beginning after 1986 using three LNG carriers.

[750] Grant, *Polar Imperative*, pp. 376.

- Dome Petroleum was well into the planning stages for moving crude oil through the Northwest Passage from the Beaufort Sea to the Atlantic.
- Panarctic Oils was proposing to move oil from Bathurst Island in a 200,000 ton tanker which might make 30 transits per year.
- Cominco was proposing to make eight shiploads of lead and zinc from Cornwallis Island to Europe beginning as early as 1980.
- Seatrain was proposing to move oil through the Northwest Passage in three class eight icebreakers, adding up to 15 transits per year from the North Slope.
- Globtik Tankers was proposing to carry Alaskan oil to the American East Coast using six tankers, each carrying 2.5 million barrels of oil. Globtik had also hoped to carry LNG along this same route, likely in four class 10 icebreaking LNG carriers, resulting in 144-576 transits per year total.
- General Dynamics was proposing to ship LNG through Canadian waters in nuclear powered tankers from the North Slope to southern US markets. [751]

External Affairs knew that some of these proposals would never get off the ground but it was also assumed that many were viable; Cabinet was therefore warned that "it was impossible at this stage to discount the future viability of any of them."[752] To convey the gravity of the situation to Cabinet, External Affairs compiled a detailed estimate of Arctic shipping over the next 15 years. If these estimates had proven correct, by 1987 the Arctic waters would have been experiencing 390 annual transits, primarily by foreign oil, gas and resource carriers. By 1995 that number would have increased to an estimated 894 full or partial one way trips.

[751] Memorandum for Cabinet, "Status of Arctic Archipelagic Waters," June 1, 1982, LAC, vol. 5561, file 8100-15-4-2(s), pt. 4.
[752] Ibid.

Anticipated Activity in the Northwest Passage[753]

	1980	1985	1986	1987	1988	1990	1992	1993	1994	1995
Beaufort Sea (Oil)	-	-	-	24	48	72	96	120	144	168
Arctic Islands (Oil)	-	-	-	-	-	-	-	30	60	60
Labrador (Oil)	-	-	-	-	-	-	-	-	-	36
Arctic Islands (Gas)	-	-	30	60	60	90	120	150	180	210
Alaska (oil)	-	-	-	-	-	-	-	24	48	72

	1985	1990	1995
Grain	74	74	74
Minerals	56	72	69
Re-supply	176	188	208

In 1979 Joe Clark's new Conservative government had formed the Arctic Waters Panel. This was an interdepartmental committee which restarted the process of reviewing Canada's sovereignty options in the traditional manner, by creating a background paper and seeking input from interested government departments. The most important consideration for the panel, and the subject upon which most other departments commented, were those "dramatic increases of economic activity."[754] Immediately the problem presented itself: in the face of this activity, the unofficial status of the Canadian Arctic had become more dangerous than ever.

The anticipated influx of traffic posed a number of potential dangers. Even if it could be regulated, hundreds of annual transits would certainly establish the Northwest Passage as a useful route for international navigation, the crucial element in determining whether a passage constituted an international strait. In 1982 External Affairs even explicitly warned Cabinet that there was "no doubt that in the absence of action to submit

[753] "Forecast of Arctic Marine Traffic Levels: Number of One Way Ship Transits in Arctic Marine Service Policy," 14 October, 1980, LAC, RG 12, vol. 5561, file 8100-15-4-2(s), pt. 4.
[754] Memorandum for Ministers: "Status of the Canadian Archipelagic Waters," October 5, 1979LAC, RG 12, vol. 5561, file 8100-15-4-2, pt. 3.

shipping to real Canadian control, commercial use of the Northwest Passage by foreign ships will eventually turn it into an international strait."[755] And, despite the new authority granted by Article 234, Canada's power to regulate and control this traffic would still have been limited. Justice Department representatives on the Arctic Waters Panel also concluded that the absence of a clearly defined and legislated position might even lead to a Canadian court failing to recognize certain state jurisdiction in the Northwest Passage.[756]

In 1976 Cabinet had informed the various government departments that they should begin applying Canadian law and regulations to the northern waters. Yet, both the application and the legitimacy of this functional approach were spotty. It was reported that, under existing legislation, the country might have difficulty applying customs duties to drilling installations outside the country's 12 mile territorial limit since the *Customs Act* only applied within Canadian waters. The waters of the Arctic, while called Canadian by politicians, had never been given that status by any legislation.[757] The applicability of the Criminal Code was equally uncertain. Criminal law applied to internal waters but, lacking a more definite claim, it was not publicly known exactly where those internals waters might start and end. In the application of law, hazy definitions and imprecise delimitation of jurisdiction are troublesome to say the least. While there had been past examples of Canadian courts upholding state jurisdiction over the sea-ice (see for example *R. V. Tootalik*, 1971) the Justice Department doubted that a small number of isolated rulings would have been a convincing precedent if the issue had been pressed

[755] Memorandum to Cabinet, "Status of Arctic Archipelagic Waters," June 1, 1982, LAC, RG 12, vol. 5561, file 8100-15-4-2 (s), pt. 4.
[756] Panel on Arctic Waters meeting, June 17, 1979, LAC, RG 12 vol. 5561, file 8100-15-4-2, pt. 3.
[757] Memorandum to Cabinet, "Status of Arctic Archipelagic Waters," June 1, 1982, LAC, RG 12, vol. 5561, file 8100-15-4-2 (s), pt. 4.

again in a major court case.[758] For its part, External Affairs expressed an "ever-present fear" that a domestic court might one day refuse to accept the state's authority over waters which had never been made Canadian by law.[759]

Amending some of these Acts was considered and the possibility of asserting sovereignty through a continued functional approach remained a possibility right up until 1985. The creation of maritime parks was an option, as was new pollution control regulations and perhaps even transit fees for travel along the Northwest Passage. Yet, the reports coming back from the Coast Guard and other agencies were not encouraging. J.R.F. Hodgson, the Director of Marine Policy and Coordination at Transport Canada, arrived at the "somewhat disappointing conclusion" that "there does not appear to be any obvious alternative to the drawing of baselines."[760] That was the conclusion passed on to Cabinet by External Affairs as well. While some domestic legislative changes could have been made to clarify Canadian jurisdiction, it was doubtful that these changes, if not backed by a clear pronouncement on sovereignty, would have been adaptable to the rapidly changing circumstances in the region.[761]

Consensus on the subject had been reached by 1982 and, by that point, the interdepartmental review, spearheaded by External Affairs, had been formed into a lengthy and detailed memorandum to Cabinet. It had been prepared in consultation with

---

[758] Letter from S.L. Strayer to Mr. Copithorne, April 9, 1979, LAC, RG 12, vol. 5561, file 8100-15-4-2, pt. 3.

[759] This concern remained an important one throughout the review process, see for instance: "Status of Canadian Archipelagic Waters," October 5, 1979, LAC, vol. 5561, file 8100-15-4-2(s), pt. 4. & Memorandum for Cabinet, "Status of Arctic Archipelagic Waters," June 1, 1982, LAC, vol. 5561, file 8100-15-4-2(s), pt. 4.

[760] LAC, RG 12 Vol. 5561, file 8100-15-4-2 (s), Pt. 4. Letter to Peter McRae (Head Law of the Sea Division, External Affairs) from J.R.F Hodgson (Director Maritime Policy and Coordination), 17 February, 1984.

[761] Memorandum to Cabinet, "Status of Arctic Archipelagic Waters," June 1, 1982, LAC, RG 12, vol. 5561, file 8100-15-4-2 (s), pt. 4.

every other interested government department and agency and the conclusions were straightforward.[762] Going forwards, Canada only had two options, to carry on with the country's traditional functional approach or to draw straight baselines and define the extent of the state's sovereignty. For reasons already described, the functional approach was considered inadequate.[763] The recommendation was simple: a straightforward declaration of sovereignty had to be made. Only with this assertion of sovereignty could the country gain the authority needed to assert its complete control over the anticipated shipping boom, foreign military transits and any other surprises which northern development might bring with it.

This sort of recommendation was nothing entirely new. These reviews had been conducted periodically since the mid-1950s and in each of these the need for straight baselines and an overt declaration of ownership had been recognized. Yet despite this similarity, some progress was finally being made. In the 1950s and 1960s, when straight baselines were recommended neither the bureaucracy conducting the review nor the political body making the decisions were prepared to act on these recommendations or even to establish a timeline for their implementation. By 1982 the bureaucracy – which over the previous three decades had always cautioned the government to await more propitious circumstances – had changed its tune. External Affairs, and presumably all the other departments which had assisted with and concurred in its final review, was urging the government to act and to act quickly. In fact, Cabinet was given a very specific

[762] These being the Departments of Transport, Energy, Mines and Resources, Indian and Northern Affairs, Justice, Environment, National Revenue and National Defence and the RCMP.
[763] Memorandum for Cabinet: "Status of Arctic Archipelagic Waters," June 1, 1982, LAC, RG 12. Vol. 5561, file 8100-15-4-2 (s), pt. 4.

timeline. Sovereignty, the bureaucracy believed, should be claimed outright by the end of that year or perhaps as late as early 1983.[764]

This haste, which appears all the more ambitious in light of so many years of prevarication, was spurred by not only the Department's fear of international shipping but by the framework in which that shipping might take place. From a legal perspective, the winding down of the UN Conference on the Law of the Sea had created something of a ticking clock. Lawyers for External Affairs warned the government that it would be unwise to become a party to this treaty, into which it had already invested so much time and political capital, until baselines were drawn. To sign the convention before that point risked automatically creating a right of transit passage for foreign craft through the Arctic waters.

The maritime states had managed to include in UNCLOS III an article on transit passage which read very much like the 1958 Convention on Innocent Passage.[765] The final wording of Article 35 stated that the new regime of transit passage would not apply to: "…any areas of internal waters within a strait, except where the establishment of a straight baseline in accordance with the method set forth in Article 7 has the effect of enclosing as internal waters areas which *had not previously been considered as such* [italics added]."[766] Hence, if Canada were to enclose the waters of the Archipelago with baselines after ratifying the convention, the right of transit passage would automatically apply, regardless of whether or not the country was successful in defending the legitimacy of those baselines. If however, Canada could enclose the waters before

[764] LAC, RG 12, vol. 5561, file 8100-15-4-2 (s), pt. 4. Memorandum to Cabinet: "Status of Arctic Archipelagic Waters," June 1, 1982.
[765] Canada had never ratified UNCLOS II and therefore assumed that its provisions on innocent passage through regions which had previously been considered international or territorial waters did not apply.
[766] UNCLOS III, Part III, Section 1, Article 35.

ratifying the convention it could claim that transit passage did not apply since the Arctic waters had been considered internal before the treaty came into effect.

In part, Canada sought to prevent this emerging right of transit passage by reference to its historic claims. If the waters had always been Canadian, then obviously no new rights could arise. This reasoning is well illustrated in a 1983 External Affairs response to a letter written by a citizen interested in the application of this principle to the Arctic. In response External Affairs wrote:

> The Canadian position is that these waters have historically been internal waters and that the drawing of straight baselines would not change the status of these waters. Thus Article 8(2) of the LOS Convention does not apply to these waters, and the right of innocent passage does not apply to passage through the Arctic Archipelago.[767]

This interpretation certainly supported the Canadian position that no new rights could emerge, however it was based entirely on the country's historic waters claim which, as will be discussed later, was not unchallengeable. It therefore seemed advisable to ensure that baselines, as well as the claim to historic waters, were confirmed before the signing of UNCLOS III.

Under the UN convention, Canada would also have been subject to a compulsory dispute settlement mechanism which allowed one party to submit a dispute to third party arbitration if that party believed that another state had acted in contravention of the treaty. It was assumed that Canada could position itself better in preparation for such a challenge if it had clearly indicated before the treaty was ratified, and before regular traffic commenced, that the Arctic Archipelago had already been under complete Canadian

[767] Quoted from Rob, Huebert, *Steel, Ice and Decision-Making: The Voyage of the Polar Sea and its Aftermath: The Making of Canadian Northern Foreign Policy.* Ph.D. Dalhousie University, 1993, pp. 333.

control.[768] Timing was therefore critical. When External Affairs submitted these recommendations in June 1982 the final touches were then just being placed on the convention, which opened for signatures only six months later.

Deferral, long the hallmark of Canadian policy, had finally become a truly dangerous proposition while postponement was seen as leading only to the "gradual erosion" and perhaps even the abandonment of the Canadian claim.[769] It was recognized that pushing through so significant a claim would not have been easy but, if it was to be done, it was preferable to do it before UNCLOS III created these new legal complications.[770]

Despite this incentive, making such a claim was still something of a gamble. As had been the case in 1963 and 1969 the principle stumbling block was American acceptance – or lack thereof. The discourse on maritime issues had certainly become more amicable since the Pearson and Trudeau years, a fact represented by the American compromises at UNCLOS III which had clearly represented a softening of its position. Yet, while the matter had not been raised between the two countries since 1976 the American position had not shifted on the fundamentals.

In May 1983 the State Department sent a diplomatic note to Canada, reiterating its traditional position on the Arctic waters. Ostensibly, State was responding to the title of a Canadian map which used the term "Arctic Archipelago." The Americans felt the need to convey to Ottawa their country's position that this area was an archipelago only in the geographic sense and not in the legal sense defined by UNCLOS III – wherein mid-

[768] Memorandum for Cabinet, "Status of Arctic Archipelagic Waters," June 1, 1982, LAC, vol. 5561, file 8100-15-4-2(s), pt. 4.
[769] Ibid.
[770] Ibid.

oceanic archipelagic states were permitted to draw straight baselines around their outer islands.[771] This was almost certainly a pre-emptive move on the part of the United States to register its position before the Canadian government moved forward with straight baselines. It remains possible that the State Department simply felt the need to comment on this one chart, however, as the American note itself made clear, the US government did not normally comment upon the maps of foreign countries. This chart in particular appeared perfectly harmless, it was simply a very basic map of the Arctic islands, with no baselines or other marks of sovereignty or jurisdiction present.[772] The meaning of this note was not lost on External Affairs which took it as clear evidence that any Arctic claims would be met with resistance.[773]

Yet this resistance had long been accepted and even planned for in Ottawa. Indeed, in the months before this pre-emptive rebuke, External Affairs had advised Cabinet that an American protest had to be expected. Yet, since such a protest was likely to materialize whether Canada made its move in the next year or at any point in the distant future, the government might as well simply get on with it.[774] This reasoning could have been applied equally well to 1964 or even 1969. The fact that it only came out in 1982 was in part a result of changing legal circumstances partly due to an increased confidence within the Canadian government .

By the 1980s Canada's legal position in the Arctic had been fortified by the legitimization of Canadian jurisdiction stemming from Article 234, from an additional decade of Arctic activity and enforcement of the AWPPA and by the continued

[771] USA Note of May 2, 1983, LAC, vol. 5561, file 8100-15-4-2(s), pt. 4.
[772] Canada, *7000: Arctic Archipelago* [online] http://www.fedpubs.com/charts/arc_general.htm.
[773] Memorandum, May 18, 1983, LAC, vol. 5561, file 8100-15-4-2(s), pt. 4.
[774] Memorandum to Cabinet, "Status of Arctic Archipelagic Waters," June 1, 1982.LAC, RG 12 Vol. 5561, file 8100-15-4-2 (s), pt. 4.

application of straight baselines by other nations around the world. By 1982, 55 other countries around the world had drawn straight baselines or passed enabling legislation for the purpose of drawling such lines.[775] Of these, the United States had either officially protested or asserted its rights to transit in 13.[776] These lines had also been growing in length. By 1982, 40 states had drawn baselines in excess of 24 miles which, at the time, was the limit that the United States believed to be in compliance with international law. Just as importantly, 16 other states had also drawn baselines which ran longer than those needed to enclose the Arctic Archipelago.[777] While Canadian baselines might have appeared excessive in 1964 or even in 1969, by 1985 international practice had lent them a far greater degree of legitimacy.

This at least was the conclusion of External Affairs after conducting an extensive study of its legal options. By the time the Department was ready to submit its recommendations to Cabinet in 1982 it had decided that international law now favoured the Canadian position.[778] This study had relied, in part, on consulting work done by Donat Pharand, the foremost Canadian expert on the subject who had evaluated the country's legal position and offered an assessment.[779] The results of that study were somewhat mixed, but overall fairly positive. The most important conclusions were that a Canadian claim to historic waters would be "most difficult, if at all possible" to have

[775] This count does not include colonies or dependencies. For example, Great Britain drew straight baselines not only around some of its own water but along the coasts of the Turks & Caicos, the Falkland Islands and South Georgia and these are counted as only one country.
[776] In some cases protests were made after 1982 to lines drawn well before and these cases are not included. United States, Office of the Geographer, Bureau of Intelligence and Research. *Limits in the Seas: United States Responses to Excessive National Maritime Claims*, no. 112 (March, 1992), table 2.
[777] Memorandum for Cabinet, "Status of Arctic Archipelagic Waters," Annex III, June 1, 1982, LAC, vol. 5561, file 8100-15-4-2(s), pt. 4.
[778] Memorandum for Cabinet, "Status of Arctic Archipelagic Waters," June 1, 1982, LAC, vol. 5561, file 8100-15-4-2(s), pt. 4.
[779] Pharand's study was an extensive 300 page document. While the full document remains classified a six page abstract, summarizing the main conclusions, is available.

internationally accepted. Yet, Canada's baseline claim was excellent, with perhaps a 75% chance of success.[780] Pharand's recommendation was that the country could therefore rely on straight baselines backed by historical consolidation, an approach which would improve these odds further and was thought likely to succeed.[781]

Confident in its position, and with a fast approaching deadline, External Affairs appeared fully prepared in 1982 to move forward. The legal and international implications had been considered and accepted and a clear claim based on historic waters, delineated by straight baselines, was ready. The Department had even prepared a game plan of sorts for the practical requirements of communicating and managing the claim once it was made. In what was dubbed its 'communication plan,' External Affairs was prepared at the tactical level to convey its position as effectively as possible and to both minimize opposition and win support. The Department's target populations were the general Canadian public, the US government, the American media as well as the academic and business communities with interests in Arctic petroleum and transportation. Low-key speeches and seminars from local consuls were even contemplated for audiences in New York, Washington and perhaps other major cities to explain the Canadian position. Everything would be done to ensure that Canada could gain international popular support and that the process of claiming sovereignty would be as smooth and free of political controversy as possible.[782]

---

[780] Donat Pharand, "Conclusions on Canadian Jurisdiction over Arctic Waters," April 10, 1979, LAC, RG 12, vol. 5561, file 8100-15-4-2, pt. 3.

[781] These conclusions were the same as those reached by Pharand in his published works of the time. See for instance: Donat Pharand, Canada's Sovereignty over the Newly Enclosed Arctic Waters," *Canadian Yearbook of International Law* 25 (1987), pp.328 & Donat Pharand, "Canada's Sovereignty over the Northwest Passage," *Michigan journal of International Law* 10 (1989), pp. 675.

[782] Memorandum for Cabinet, "Status of Arctic Archipelagic Waters," Annex VI, June 1, 1982, LAC, vol. 5561, file 8100-15-4-2(s), pt. 4.

One of the factors which had made negotiation with the United States so difficult in 1969 and 1970 was the fact that the Trudeau government had been under close scrutiny and pressure from the opposition, the media and the general public. It was hoped that when Canada finally drew straight baselines it could be done differently. Indeed, one of the reasons External Affairs was recommending such quick action was the hope that sovereignty could be declared on Canada's terms, before the political and economic pressures surrounding resource shipping could force the government's hand.[783] It was hoped that it might be a low key announcement, avoiding the media circus and international attention which had accompanied the *Manhattan*.[784]

This was, however, an overly optimistic vision. While Canada had signed the UN Convention on the Law of the Sea in December, 1982 it had decided not to ratify it – a decision based on objections to the treaty's deep-seabed mining provisions.[785] This deferral had naturally relaxed the need for immediate action on sovereignty, since only after the ratification of the treaty would Canada have been bound by its provisions. Lacking that pressure, no decision was made in 1983 and discussions of sovereignty carried on into 1984. By 1985 however, the politicization of the issue which External Affairs had feared and sought to avoid was close at hand.

***

The passage of US Coast Guard icebreakers through the Arctic had been a concern during the early 1980s. The Canadian Coast Guard, in particular, had worried about what would happen politically if an American icebreaker were to transit the full

[783] Memorandum for Cabinet, "Status of Arctic Archipelagic Waters," June 1, 1982, LAC, vol. 5561, file 8100-15-4-2(s), pt. 4.
[784] Memorandum for Cabinet, "Status of Arctic Archipelagic Waters," Annex VI, June 1, 1982, LAC, vol. 5561, file 8100-15-4-2(s), pt. 4.
[785] Canada would finally ratify UNCLOS III only in 2003.

passage without Canadian permission.[786] This was not a strictly hypothetical question. In 1981 the Coast Guard had received word that the United States was planning to send the *Polar Star* through the Northwest Passage in the winter of 1983. This transit was planned as a *Manhattan* style test, undertaken jointly with 11 American oil companies, to determine the feasibility of moving hydrocarbons out of the region by sea. The operation was postponed until 1984 and then cancelled. The prospect of that voyage had raised some questions about what Canada might do to exercise its authority over such a transit, however it was never considered a very real threat to sovereignty.

What had been a vague concern was, however, to become a very real problem in the summer of 1985 when the US Coast Guard informed its Canadian counterpart that the icebreaker *Polar Sea* would be making a similar transit. As had been the case with the *Manhattan*, few in the Canadian government initially felt that this operation would present much of a problem, and this was not necessarily an outrageous conclusion. The transit was purely operational in nature and had never been intended as a challenge to Canadian sovereignty. The need for the passage had arisen only when the declining capability of the American icebreaker fleet forced the *Polar Sea* to take on unexpected duties. In 1985 the North Carolina based *Northwind* was responsible for resupplying the American military base at Thule, Greenland. The *Northwind* was however past its prime. Already 40 years old, the ship had less than four years of service remaining and, in the spring of 1985, she was in dock undergoing unanticipated repairs. The US Coast Guard's other icebreakers were also unavailable. The *Glacier* and the *Polar Star* were already committed to a voyage to Antarctica for operation *Deep Freeze* while the *Westwind* was

[786] Memorandum to Cabinet, "Status of Arctic Archipelagic Waters," June 1, 1982 & Letter from RA Quail, November 10, 1981, LAC, RG 12, vol. 5561, file 8100-15-4-2 (s), pt. 4.

committed to operations on the Great Lakes. The only available vessel was therefore the *Polar* Sea, which itself had summer duties in the Beaufort. In order to make the resupply run and be back into the Western Arctic in time for its mission, it was decided that the *Polar Sea* would transit the Northwest Passage, saving 30 days of travel time and a not insubstantial $500,000 in fuel.[787]

This decision appears to have been made in April 1985 and discussions began with the Canadian Coast Guard later that same month.[788] The initial work was done by Canadian Coast Guard official J.Y. Clarke who travelled to Washington to work out a cooperative plan to cover the transit which was to include the use of Canadian helicopters as well as assistance from the Canadian weather and ice forecasting services. The order was written with relative ease and was signed by both coast guards shortly thereafter.[789] This work was all carried out on the operational level and few high ranking members of either External Affairs or the State Department knew that it was even taking place. In fact, these officials only became involved well after the initial preparations had already been completed.[790]

From the beginning, the transit was organized in a perfectly friendly and cooperative atmosphere. In an attempt to assuage Canadian concerns, the United States had involved Canadian planners and agreed with Canada that the voyage would take place without prejudice to either state's legal position.[791] The official note sent to Canada

[787] McDorman, Ted, "In the Wake of the *Polar Sea*: Canadian Jurisdiction and the Northwest Passage." *Les Cahiers de Droit* 27:3 (September, 1986), pp. 243.
[788] Huebert, *Steel, Ice and Decision Making*, pp. 211.
[789] Ibid, pp, 212.
[790] Ibid, pp. 225.
[791] McDorman, "In the Wake of the *Polar Sea*," pp. 250-251.

in May, 1985 could hardly have been seen as anything but a proposal for a friendly and inoffensive operation:

> The United States believes that it is in the mutual interests of Canada and the United States that this unique opportunity for cooperation not be lost because of a possible disagreement over the relevant judicial regime… The United States believes that the two countries should agree to disagree on the legal issues and concentrate on practical matters.[792]

The legal question surrounding the passage therefor appears to have been adequately dealt with. The issue of public sensitivity remained a concern and it was even raised in the American Interagency Arctic Policy Group, however it was supposed that since the *Polar Sea* was only undertaking an operational voyage which was not intended as a challenge to Canadian sovereignty, it would be seen as far less threatening than something as dramatic as the voyage of the *Manhattan*, and likely to attract less public attention.[793]

Unfortunately for the Canadian government, this assessment could not have been more wrong. Like the voyage of the *Manhattan* before it, the proposed passage of the *Polar Sea* quickly produced an outpouring of Canadian indignation and anger. The nation's sovereignty was being intentionally challenged and violated by the United States, or at least that was the popular perception. This assessment was not grounded in reality but such considerations are not always required for outrage. Indeed, in the words of Thomas Pullen, the Canadian public was "more agitated than informed."[794]

In the House of Commons, the Liberals and the NDP took advantage of the government's embarrassment and pressed it ceaselessly on the issue. In the case of the Liberal Party a convenient form of collective amnesia even appears to have purged the

[792] Huebert, *Steel, Ice and Decision Making*, pp. 214.
[793] Note reproduced in: Huebert, *Steel, Ice and Decision Making*, pp. 213.
[794] Elliot-Meisel, *Arctic Diplomacy*, pp. 148.

memory of its own past unwillingness to declare sovereignty in the Arctic – a history which stretched over four Prime Ministers and 32 years in power. That July Jean Chrétien, the most vocal member of the Liberal Party on this issue, proclaimed that allowing the *Polar Sea* through Canadian waters without its having first sought permission was "part of the cronyism between Brian Mulroney and the Americans." Chrétien went on to say of Mulroney: "[h]e goes on his knees all the time" – clearly a reference to some sort of religious devotion.[795] The NDP offered its own criticism; in one of the House's more preposterous statements, MP Jim Fulton likened the voyage to "psychological rape."[796]

The media paid the voyage a great deal of attention as well and was rarely very complimentary to the government's handling of the perceived crisis. The *Montreal Gazette*, for instance, called the Conservative's cooperation "a major flop by a spineless government"[797] and a "servile wimpy response … enough to enrage even a lukewarm Canadian nationalist."[798] Some of this attention was due to a genuine, if transitory, public interest in Arctic sovereignty though Rob Huebert has made a case that some of the attention at least could be attributed to the voyage taking place during an abnormally slow news season.[799]

The force of the media's attention was magnified by the contribution of several academics to the debate. Much of this attention began when Franklyn Griffiths, a political scientist at the University of Toronto, wrote an opinion piece in the *Globe and Mail*

---

[795] Elaine Carey, "Trip by U.S. Ship called Threat to *Arctic Sovereignty*," *Toronto Star*, July 23, 1985, pp. A15.
[796] Canada, House of Commons, *Debates*, September 10, 1985, 5: 6467.
[797] Christopher Young, "We've Flopped on Polar Sea," *Montreal Gazette*, August 14, 1985, pp. B3.
[798] Don Braid, "Polar Sea a Turning Point for Mulroney," *Montreal Gazette*, August 14, 1986, pp. B3.
[799] Huebert, *Steel, Ice and Decision Making*, pp. 255.

warning that the transit posed a real danger to Canadian sovereignty.[800] Griffiths even implied that the transit was a purposeful attempt on the part of the US government to undermine that sovereignty, writing: "we appear to be faced with a carefully calibrated move, not with an attempt to undo the Canadian position in a single act."[801] The implication naturally being that there would be further, similar, acts in the future.

This view was supported by Professor Gerald Morris who was quoted by *Macleans* as saying: "[it] is obviously the opening move in a large campaign by the USA to challenge Canada's Arctic claims."[802] Even two years later this conspiratorial view still held some prominence. In his 1987 book *Arctic Imperative*, John Honderich claimed that, for the United States the voyage was "more than a prod at the Canadian flank; it was yet another in a series of carefully calculated moves to show the flag and reassert the U.S. view that the right of innocent passage must be guaranteed through international waters."[803] The view that the United States was intentionally seeking to undermine Canadian sovereignty was patently false, yet it was the sort of accusation capable of generating a great deal of public interest.[804]

Even for many of those experts who did not necessarily subscribe to this theory, the government's policy was still seen as too weak. Legal expert Robert Macdonald pressed the government to "adopt a policy that will lead to a stronger presence in the Arctic"[805] while Donat Pharand was quoted in the *Montreal Gazette* as saying that

---

[800] Franklyn Griffiths, "Arctic Authority at Stake," *Globe and Mail*, June 13, 1985.
[801] Ibid.
[802] Quoted in: McDorman, "In the Wake of the *Polar Sea*:" pp. 253.
[803] Honderich, pp.41.
[804] This has been thoroughly disproven by Rob Huebert in his Ph.D. dissertation: *Steel Ice and Decision Making*.
[805] Miro Cernetig, "Experts Press for Arctic Boundaries," *The Globe and Mail*, August 17, 1985, pp. 8.

"Canada should take the bull by the horns, draw the lines on the map and say to the world that those waters are internal waters of Canada.[806]

Northern residents themselves made headlines when the Inuit Tapirisat, the major organizing body for the Canadian Inuit, issued a bluntly worded press statement saying that, if Canada failed to defend its sovereignty in the Arctic waters the Inuit would be left with no choice but to protect their environmental and economic concerns outside of Canada at the international level."[807] These attacks and intense public pressure soon forced the government's hand and, what had begun as a simple operational deployment with no legal ramifications, had become the litmus test for Canadian sovereignty and the Conservative government's willingness to stand up for Canadian national interests. Indeed, the government's response was far more a reaction to the vocal outrage it had encountered than to the voyage of the *Polar Sea* itself.[808]

By July the public pressure had forced a re-evaluation of the Canadian approach. That month Allan Gotlieb, the Canadian ambassador in Washington, met with American officials and began to push them for an official request to transit. The ambassador failed and, on the 31st, the Canadian government issued a démarche to the United States noting "with deep regret" that the American government was still unwilling to ask permission. That being said, the note reiterated Canada's sovereignty position: "in the exercise of Canadian sovereignty over the Northwest Passage" the Canadian government was

[806] Margaret Munro, "US Arctic Voyage Stirs Debate; Canadian Sovereignty Undermined, Critics Say," *The Montreal Gazette*, July 17, 1985, pp. A8.
[807] Inuit Tapirisat of Canada, "Inuit Call on Federal Government to Take Stand on Canadian Arctic Sovereignty," News Release, July 2, 1985, pp.2, quoted in Huebert, *Steel, Ice and Decision Making*, pp. 248.
[808] Huebert, *Steel, Ice and Decision Making*, pp. 293.

"pleased to consent to the proposed transit."[809] As had been the case with the *Manhattan*, the simple fact that permission was not being requested was no reason not to offer it.

The American refusal to request this Canadian permission was hardly unexpected and was based on the same principles which had necessitated such refusals in the past. The American government was unwilling to recognize Canadian sovereignty for fear of setting a damaging precedent and encouraging other states to do likewise. Cancelling the voyage would have been the easiest solution and it was even considered, yet to have done so at that juncture would have implied that Canadian protests had forced Washington to back down. This was an unacceptable choice since public opinion in a foreign country could not be seen as determining the activities of American ships in international straits.

For that reason the voyage went ahead, with both governments forced back into their traditional roles and neither particularly happy with the way events had unfolded. By August 1, 1985 the *Polar Sea* had finished resupplying the Thule Air Force base and proceeded west to Lancaster Sound where it met up with the *John A. Macdonald*. As had been agreed upon, the American icebreaker took on three Canadian representatives, including Coast Guard captains Eugene Barry and David Johns. The *Macdonald* sailed with the *Polar Sea* as far as Byam Martin Island as a show of sovereignty, yet there it had to depart for other escort duties. Arriving at Resolute on August 3, the American icebreaker took on three more Canadian observers from Indian and Northern Affairs as well as Intera Inc., a Calgary company working on ice formations. From Resolute the *Polar Sea* proceeded through the Prince of Wales Strait and into the Beaufort Sea, where the Canadians were all disembarked at Tuktoyaktuk on August 10.

[809] Canadian Embassy to Department of State, Diplomatic Note 433, July 31, 1985, in Jockel, "Security to the North," pp. 30.

During its time in the Northwest Passage, the Canadian Forces had kept the ship under heavy surveillance, with patrol aircraft overhead for a full quarter of the route.[810] As had been the case with most of the Canadian Force's Arctic patrols, these aircraft accomplished little of material significance but did manage to assert a degree of control and provide the government with something useful to cite when asked what measures it was taking. In fact, most of the practical measures taken by Canada were largely in support of the *Polar Sea.* Some of these patrol craft, once they were finished showing the flag, provided updates on ice conditions ahead while the Coast Guard and the Department of the Environment provided the ship with continuous routing advice.

Unfortunately for the Mulroney government, the end of the operation did not herald an end to the popular demand for action. Many were claiming that Canadian sovereignty had been violated and the opposition and media, supported by a number of prominent experts, were warning that it could happen again. That the voyage had been conducted without prejudice to Canada's legal position and with the help of Canadian agencies was seen as irrelevant. For the Conservative government anything short of decisive action would have been politically impossible.

The most obvious route to resolving the status of the Northwest Passage was a submission to the International Court. Past Canadian governments had always shied away from such action, insecure in the strength of their claim and frightened by the consequences of defeat. By 1985 however this option seemed somewhat more appealing. To begin with, changes in law and the proliferation of similar claims around the world meant that Canadian baselines would have been more acceptable to a court in 1985 than they had been in 1969 or earlier. The American relationship with the court had had also

[810] Huebert, *Steel, Ice and Decision Making,* pp. 365.

soured considerably. In 1985 the United States was engaged in a serious dispute with the ICJ over the court's jurisdiction regarding American actions against the Sandinista government in Nicaragua. In 1984 the Nicaraguan government had accused the US of mining its harbours and had brought the case to the ICJ. The Americans denied any wrongdoing but refused to recognize the court's right to hear the case.[811] The ICJ ruled in favour of Nicaragua all the same and awarded compensation. The Americans, however, managed to block enforcement of the judgment by the United Nations Security Council, thereby preventing the Nicaraguan government from collecting its award.

For obvious reasons the United States was reluctant to use the ICJ for its own ends in 1985 and the court may not even have been willing to hear a case brought by the US government. The possibility was therefore open to Canada to proceed with international adjudication and the government openly stated that it was considering exactly that.[812] In private conversations with the Americans, Canadian diplomats even used this angle to try and win some concessions.[813]

It is hard to judge how effective this approach was but it is certain that few in the American government relished the prospect of going to the ICJ. Their ongoing spat with the court aside, there was really no way for the United States to win. If the ICJ ruled against Canada the Northwest Passage would become an international strait and, while this would have been a useful precedent for the US Navy, it might have created some serious practical problems. Aside from the obvious damage such a verdict would have done to Canadian-American relations, an international Northwest Passage would have

[811] Huebert, *Steel, Ice and Decision Making*, pp. 388.
[812] See for instance: Joe Clark's statement on: CTV, *Canada AM*, August 12, 1985.
[813] See for example: Memorandum for the Secretary of State for External Affairs, January 22, 1986, LAC, vol. 5561, file 8100-15-4-2(s), pt. 4.

officially opened the Canadian Arctic to Soviet submarine activity which was becoming an increasingly serious concern for both states.[814] As damaging as winning might have been, losing would naturally have been even worse. A defeat at the ICJ would have meant setting a new precedent in customary international law and a serious defeat for the American effort to keep global baseline claims under control. A ruling in favour of Canada would have caused untold problems, legitimizing previously unaccepted claims and normalizing baselines stretching hundreds of miles.

Yet, despite Canada's improved chances at the court, there was still no guarantee that the ICJ would rule in its favour. Losing was considered unacceptable and few in Ottawa wanted to roll the dice. Joe Clark, the Secretary of State for External Affairs, laid out the dangers in an interview with CTV: "there's a risk in that you go to the Court you may lose. You lose and that's it."[815] By the end of August, only two weeks after the *Polar Sea's* voyage, Clark had clarified Canada's position. The government would take up any court challenge but it would not initiate one.[816] Since it was clear that the United States was not going to initiate that challenge, this seemed a safe way to save face, express confidence in the country's position, while still ensuring that Canada's Arctic sovereignty was not gambled away. With the ICJ ruled out as a desirable option, the Canadian government decided to proceed as it had been planning to over the past few years. It would unilaterally declare straight baselines and work with the United States to win some form of American acceptance.

---

[814] While there was nothing stopping the USSR from operating in the Northwest Passage, doing so might have posed a political problem while the question of Canada's sovereignty remained on the table. Since the USSR was seeking to claim much of its own Arctic waters as historic and internal it had traditionally supported the Canadian claim. Thus, being caught operating in waters it recognized as Canadian would have created political problems for Moscow and perhaps even damaged its own Arctic claims.
[815] CTV, *Canada AM*, August 12, 1985.
[816] "Sovereignty Issues won't go to World Court, Clark Says," *Globe and Mail*, August 23, 1985.

On September 10, 1985 Joe Clark announced a series of new (and some rehashed) policies to the House of Commons in its official response to the *Polar Sea*:

1) The immediate adoption of an order-in-council establishing straight baselines around the Arctic Archipelago, effective January 1, 1986.

2) Immediate adoption of a Canadian *Offshore Application Act*.

3) Immediate talks with the US on cooperation in Arctic waters on the basis of full respect for Canadian sovereignty.

4) An immediate increase in surveillance overflights for the Arctic waters by the Canadian Forces, and immediate planning for Canadian naval activity in the Eastern Arctic in 1986.

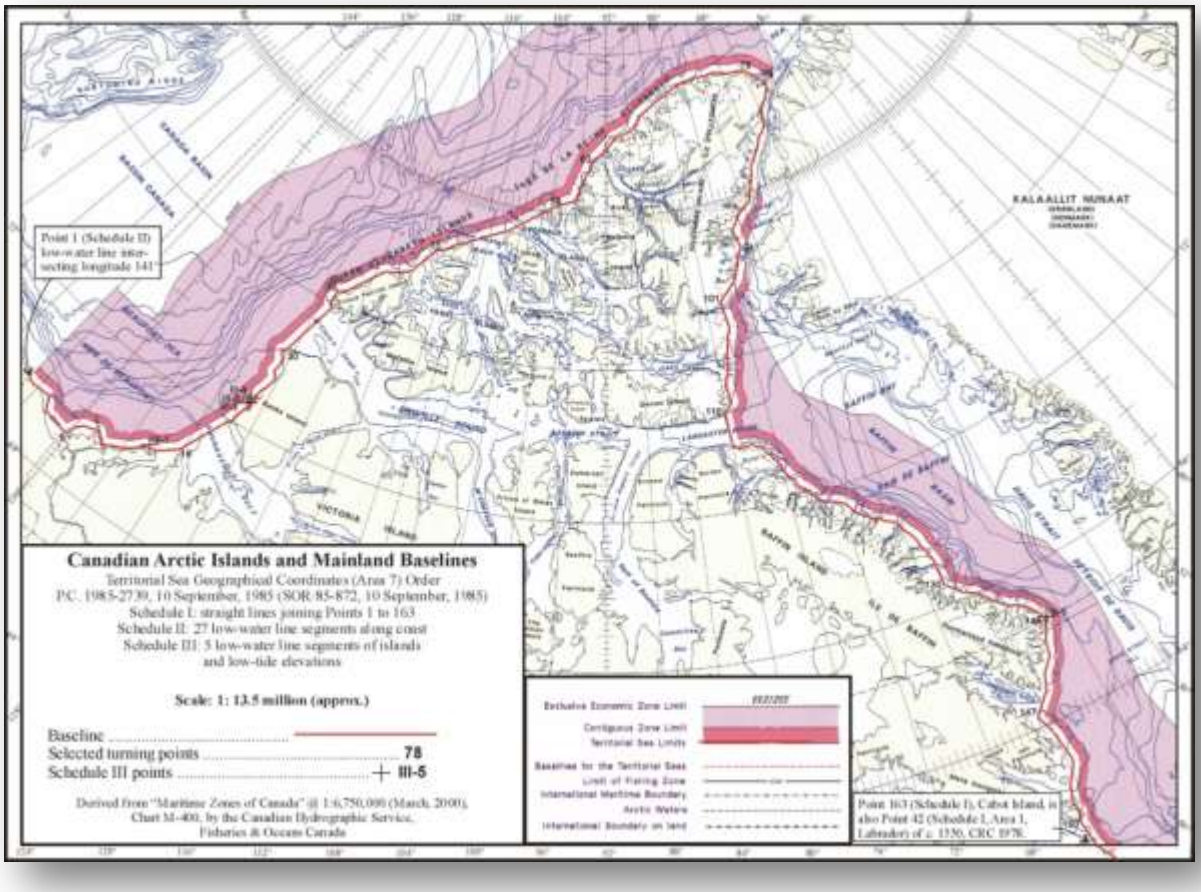
5) An immediate withdrawal of the 1970 reservation to Canada's acceptance of the compulsory jurisdiction of the International Court of Justice.

6) Construction of a Polar Class 8 icebreaker and an urgent consideration of other means of exercising more effective authority over the waters.[817]

Of this list, by far the most important policy initiative was the decision to draw straight baselines. Since 1956 Canadian politicians, diplomats and bureaucrats had discussed and studied the possibility of doing so. For nearly three decades successive Canadian governments had deferred their claims or backed down in the face of opposition. To have finally taken the step to officially draw lines around the Arctic Archipelago, to define and delimit exactly what it was that Canada claimed sovereignty over and upon what basis it did so was no inconsequential move. The claim was provoked by the uproar created by the *Polar Sea* but the icebreaker's voyage was merely the catalyst for the decision rather than an underlying causal factor. The direct roots of the 1985 decision can be traced back to between 1973 and 1976, when the Canadian government finally defined the nature of its sovereignty in the Arctic and resolved to

[817] Canada, External Affairs, "Policy on Canadian Sovereignty," *Statements and Speeches*, no. 85/7, Statement by the Right Honourable Joe Clark in House of Commons, Ottawa, September 10, 1985.

claim it. The process begun in 1976 continued on into the 1980s and, by the time of the *Polar Sea*, Canada appeared fully prepared, if hesitant, to take that final step. Despite that preparation, as had normally been the case in Arctic politics, the country simply needed an external event to kick-start the process.



Canadian Straight Baselines and Jurisdiction, 1986 (Fisheries & Oceans Canada)

As had been planned since 1973, Canada drew baselines not to claim sovereignty but to define "the outer limits of Canada's historic internal waters."[818] Since the Arctic waters were being considered historic, the baselines would not constitute a claim *per se* but

[818] Joe Clark speaking in: Canada, House of Commons, *Debates*, 10 September, 1985, 33rd Parliament, 1st session.

rather the definition of what Canada was now saying had always belonged to it.[819] Ottawa was prepared to discuss this matter with the United States, however it was no longer 1964 and such discussions were to be on the basis of full respect for Canadian sovereignty.

The policy initiatives brought out to surround the new claim and give added weight to the government's pronouncement were, in Rob Huebert's words, largely "filler."[820] The increase in overflights had little meaning since they had been taking place with some regularity since the voyage of the *Manhattan*. In fact, it was not until 1987 that there was a noticeable increase in their frequency.[821] Similarly, the NORPLOY exercises had become irregular after 1979 and the only vessels to travel north in the years following the announcement were the HMCS *Cormorant* and the HMCS *Quest* which deployed in 1988 and 1989 respectively.

The decision to lift the ICJ reservation on the AWPPA was equally insubstantial. Ever since Article 234 had become part of international law, Canadian pollution prevention legislation had become perfectly defensible. In fact, that reservation could have been lifted at any point after the signing of UNCLOS III. The *Canadian Offshore Application Act*, which had been under consideration since the early 1980s, was designed to provide a legal framework for extending Canadian jurisdiction beyond the 12 mile limit. It was considered essential for policing offshore platforms outside of existing Canadian jurisdiction though it was not particularly relevant to the question of sovereignty. Within its newly enclosed waters, Canada could now clearly exercise jurisdiction on the basis that those waters were internal. Outside of the new baselines – in

[819] Contemporary Foreign Affairs documents state that these have been internal Canadian waters since 1880. See statement by M. Gaillard, Legal Affairs Bureau, Department of Foreign Affairs and International Trade, "Canada's Sovereignty in Changing Arctic Waters," March 19, 2001, Whitehorse, Yukon.
[820] Huebert, *Steel, Ice and Decision Making*, pp. 369.
[821] Ibid.

the Beaufort Sea for instance – any extension of jurisdiction would mean nothing for sovereignty within the Archipelago.

Perhaps the only other significant announcement was the decision to proceed with the construction of a Polar Class 8 icebreaker.[822] At the time the Canadian icebreaking fleet was aging and consisted of only three heavy icebreakers: the *Louis S. St. Laurent*, the *Terry Fox* and the *John A. Macdonald*. The *Macdonald* had been commissioned in 1960 while the *St. Laurent* first set sail in 1969. The *Terry Fox* was the only new heavy icebreaker in service, having just been launched in 1983. These three craft were also considerably weaker than the fleets of Canada's Arctic neighbours. They were class 3 and 4 icebreakers, only half as powerful as the American Polar class vessels and weaker than six of the icebreakers in the Soviet fleet, three of which were nuclear powered behemoths.

The new Polar 8 was meant to give Canada a tool of equivalent strength and the ability to send its people anywhere in its northern waters at any time during the year. To the Conservatives, there was no greater way of demonstrating control and effective occupation. When Joe Clark announced the government's new initiatives that September, he lamented that, during the *Polar Sea's* transit, "when we looked for ways to exercise our sovereignty we found that the Canadian cupboard was bare."[823] In part a not so subtle dig at the Liberal Party, which had left the cupboard in that condition, the Mulroney government intended the Polar 8 to put some muscle behind its declaration.

[822] A Polar Class is defined by a ship's icebreaking capability. A Polar 8 in 1985 was equivalent to what in 2012 would be categorized as Polar class 1, meaning it possessed a year-round icebreaking capability in all Polar waters.
[823] Canada, House of Commons, *Debates*, September 10, 1985, 33rd Parliament, 1st session, pp. 6462-64.

While icebreakers and more surveillance flights made for good sound bites the true test of Canada's new claim would come in the planned negotiations with Washington. As had always been the case, American acceptance would be decisive in securing Canadian sovereignty while a forceful rejection might seriously damage it. The Canadian goal was therefore similar to what it had sought the last time the issue was directly discussed with the Americans in 1964. Canada would seek American recognition, or if that was not possible, then at least some sort of new *modus vivendi* which would keep the United States from openly challenging the newly drawn baselines.

External Affairs had been reminded of the American position by the State Department's short note of 1983 and, in 1985, the Americans again made it clear that they were unhappy with the Canadian move. Legally, the American government felt that any straight baseline which exceeded 24 miles could not be considered acceptable under international law. It also felt that the Arctic Archipelago failed the geographic test laid down in UNCLOS III, that an archipelago must consist of a "fringe of islands along the coast in its immediate vicinity."[824] In the Americans' view the Perry Channel divided the Archipelago into two and provided a clear passage between the Queen Elizabeth Islands in the north and the island groups to the south.[825] From a global perspective, all of the same arguments surrounding the creation of a precedent which might damage America's economic and strategic mobility remained as present in 1985 as they had been in the 1960s and 1970s.

Yet 1985 was a very different time and the men in power had a very different relationship than their predecessors. Brian Mulroney was perhaps the friendliest

[824] UNCLOS III, Article 7.
[825] Elliot-Meisel, *Arctic Diplomacy*, pp. 149.

Canadian Prime Minister the Americans had had in some time. While hardly the lackey the Liberals accused him of being, Mulroney chose to abstain from the traditional anti-Americanism, which so many Canadian Prime Ministers had found a convenient vote winner, and to support the American government on the international scene whenever he could. On a personal level, Mulroney had also developed a friendly rapport with US President Ronald Reagan and this relationship was to do as much as anything else to contribute to the positive atmosphere in which the two nations worked to find a way around their disagreements.

This personal friendship, and the helpful high-level intervention which flowed from it, had been decisively lacking in years past. Richard Nixon and Pierre Trudeau, for instance, had despised one another. On his private tapes, Nixon was heard calling Trudeau "an asshole," "a son of a bitch" and a "pompous egghead." When these tapes were made public, Trudeau's response was simply: "I've been called worse things by better people."[826] Lester Pearson had enjoyed a similarly hostile relationship with President Lyndon Johnson. In 1965, at the time of the Canadian-American law of the sea negotiations, Pearson met with Johnson in the White House after delivering a scathing speech about the Vietnam War. The President reportedly grabbed Pearson by the shirt collar, lifted the Prime Minister off the floor and shouted "you pissed on my rug!"[827]

It is not hard to understand why these men were unwilling to go out of their way to accommodate their counterparts. Mulroney and Reagan however offered a stark contrast. The two were on a first name basis and, the month before the *Polar Sea's* transit, they had even made headlines by singing a duet of 'When Irish Eyes are Smiling'

[826] Lee-Anne Goodman, "Nixon Tapes Include Testy Trudeau Chat." *The Star*.com, December 8, 2008. [online] http://www.thestar.com.
[827] CBC News, *Prime Ministers and Presidents*, July 7, 2006 [online] http://www.cbc.ca.

during the President's visit to Canada.[828] In his diaries, Allan Gotlieb credits this relationship with keeping the two sides talking and, ultimately, with the success they achieved.[829]

The results of this relationship, and of the more cordial atmosphere between the two governments generally, was readily apparent in the aftermath of the *Polar Sea*. The two sides actively worked to minimize political drama while much of the posturing that had characterized past crises was replaced with genuine cooperation and respect. In 1986 for instance, for obvious political reasons, Canada hoped to prevent any further American activity in or near its Arctic waters. When the Americans decided to send the USCG *Northwind* into the Nares Strait for research, Canada cited political sensitivities and asked the United States to cancel the voyage.

Nares Strait, which sits between Greenland and Ellesmere Island, was an internationally recognized strait and Canada had no right to deny the operation. In compensation therefore, Canada offered its own icebreaker the CCG *Franklin* to conduct the work as part of a Canadian program. The United States, not looking to embarrass the Mulroney government, agreed.[830] In a similar offer, Canada volunteered to resupply the Thule base if that would eliminate any need to send an American vessel back through the passage and again the Americans accepted.[831] On a practical level it was easy to see why the United States was happy to accept these offers, their own fleet was overtaxed and the *Franklin* was a far more capable vessel than the *Northwind.* However, if Washington's goal had been to assert its rights of passage through the Canadian Arctic, as Griffiths,

---

[828] Ibid.
[829] Allan Gotlieb, *I'll be with you in a Minute Mr. Ambassador: The Education of a Canadian Diplomat in Washington* (Toronto: University of Toronto Press, 1991), pp. 115.
[830] Huebert, *Steel, Ice and Decision Making,* pp. 539.
[831] Ramsey Withers to J.M. Taylor, March 26, 1986, LAC, RG 12, vol. 5561, file 8100-15-4-2 (s) pt. 4.

Honderich and others had suggested, then abstaining from these voyages would have made little sense. Rather, the intention was to calm a sensitive political issue and give the negotiators enough time and space to reach a mutually acceptable agreement.

In a similar vein, American and Canadian diplomats had managed to work out a compromise which kept the United States from publicly protesting Canadian sovereignty. While the Americans had no desire to publicly attack the Canadian claim, it was understood that to remain silent would be interpreted by the world, and by law, as an acceptance of the Canadian claim. In a clever manoeuver, Leonard Legault, one of Canada's chief negotiators, suggested that the American government simply issue a reservation of its position rather than an explicit protest. That way there would be no protest on the record if the two states were able to settle the matter bilaterally while also maintaining the American right to protest later.

In effect it was a creative way to postpone and perhaps even avoid the protest which Canadian governments had long feared. The Americans, looking to be accommodating, agreed and communicated to the other maritime powers with whom they discussed law of the sea matters that they would not be protesting Canada's claims quite yet.[832] For Canada this American flexibility bought a few months of negotiations and held off protests from the other maritime powers as well, all of whom were waiting to see what action the United States would take.[833]

The negotiations which Clark had promised began that September with a view to securing a complete American recognition of Canadian sovereignty. In the beginning, the

[832] These powers being primarily Japan, the UK and France; memorandum for the Secretary of State for External Affairs, January 22, 1986, LAC, vol. 5561, file 8100-15-4-2(s), pt. 4.
[833] Memorandum for the Secretary of State for External Affairs, January 22, 1986, LAC, vol. 5561, file 8100-15-4-2(s), pt. 4.

principal negotiators were Leonard Legault, and Barry Mawhinney of External Affairs and David Colson and Richard Smith of the State Department. These initial talks were somewhat informal and dedicated as much to discovery as to serious negotiations. They also provided some encouraging signs for the Canadians. The External Affairs representatives had hoped that the United States could be brought around to recognizing Canadian sovereignty in exchange for transit rights for American icebreakers, warships and other public vessels.[834] Leonard Legault even suggested a system similar to that governing the St. Lawrence Seaway.[835]

Initially this approach even seemed to have won some acceptance as Canadian diplomats reported back tentative support from certain State Department officials who believed that it might be possible for the US to recognize the Canadian Arctic as an exceptional and unique case without damaging America's global position. Brian Hoyle, the State Department's Director of Ocean Law and Policy, who had been critical of the AWPPA, said over lunch with the Canadians that he thought there was a growing consensus on the American side that a solution could be found which both countries would be happy with.[836] Hoyle suggested that if Canada's claims could somehow be separated from the principle of straight baselines and worked into some kind of "Lex Arctici" (law of the Arctic), then the United States could probably live with it, since the precedent would not apply outside of the Arctic.[837] Reporting back to Ottawa, Leonard

[834] Memorandum for the Secretary of State for External Affairs, September, 6 1985, LAC, vol. 5561, file 8100-15-4-2(s), pt. 4.
[835] Ibid.
[836] Telegram from Washington DC to External Affairs, September 27, 1985, LAC, vol. 5561, file 8100-15-4-2(s), pt. 4.
[837] Ibid.

Legault wrote that "never before have we had such a clear sign of flexibility from the United States on the question of Arctic navigation."[838]

These were very encouraging comments to say the least, especially since they had come from a department which had always proven so immovable in its opposition to Canadian claims. Yet the proposed trade of sovereignty for transit rights soon hit a wall as many in Washington worried about surrendering internationally guaranteed rights for Canadian goodwill. As Richard Smith put it, even in friendly countries there were risks that a new government might, at some point in the future, renege on a guarantee. He admitted that this might be farfetched in Canada's case, but concerns remained all the same.[839]

The prospect of Canadian baselines gaining acceptance had also raised concerns across the US military and political establishments. The dangers inherent in setting an international precedent were simply too grave. In an interview after the fact David Colson recounted that he had made it clear to the Canadians that:

> … there was no chance that this was going to be a recognition situation … We wanted to work it out in political terms… If there was nothing else going on [i.e. the Philippines, Indonesia], sure we might be quite happy to give Canada their position, but we couldn't do that because that's not the way the world works, and we couldn't be seen doing something for our good friend and neighbor that we would not be prepared to do elsewhere in the world."[840]

By January this refusal had frustrated Canadian negotiators into switching tactics. They took Richard Hoyle's suggestion and tried to remove baselines from the equation. It was suggested that perhaps the United States could recognize Canadian sovereignty while

[838] Memorandum for the Secretary of State for External Affairs, September 6, 1985, LAC, vol. 5561, file 8100-15-4-2(s), pt. 4.
[839] Ibid.
[840] David Colson quoted in Kirkey, "Smoothing Troubled Waters: the 1988 Canada-United States Arctic Co-operation Agreement." *International Journal* (Spring 1995), pp. 409-410.

specifically refusing to accept Canadian baselines. Since Canada's was a historic waters claim, with baselines only serving as delineation, this could have been possible.[841] The wording suggested by Legault was as follows: "Nevertheless, in view of the unique circumstances pertaining to these waters, the government of the United States of America recognizes Canada's sovereignty over them, independently of and without reference to the straight baseline system."[842] This approach was however unacceptable for the Americans.

As they had done in 1964, the Canadians also brought out the local strategic argument. As international waters the Northwest Passage would be open to Soviet warships. By accepting Canadian sovereignty, the United States would be working to enhance North American security. Hopeful Canadian negotiators reported back that this argument seemed at least to have impressed the US Navy representative, Admiral Poindexer.[843] Yet, as had been the case in the 1960s, this argument failed on the grounds that the local strategic situation in the Arctic was still less important to the United States than its global rights of passage.

By the end of January it had become clear that, despite the cordial nature of the talks and the genuine desire on the part of the Americans to work with Canada, the difference of opinion on the law of the sea issue was simply too much to overcome. The Americans had made it clear that recognition was out of the question and what they wanted instead was a functional agreement that would not prejudice either state's

[841] Memorandum for the Secretary of State for External Affairs, January 22, 1986, LAC, vol. 5561, file 8100-15-4-2(s), pt. 4.
[842] Ibid.
[843] Ibid.

position.[844] The Canadian team had also begun to realize that an agreement of this sort might be all that it could hope for.

Such an agreement might still have been a victory for Canada. If the negotiators could come to a compromise which accepted Canadian authority over shipping and commercial aviation it would represent a major achievement. If such an agreement looked like the US was accepting *de facto* Canadian sovereignty, did not make a distinct separation between sovereignty and jurisdiction and prevented the United States and others from protesting the baselines then, it was felt, such an agreement could be considered.[845] If that sort of a functional approach proved unacceptable then the only other alternative then available seemed to be either an application to the ICJ, which neither country desired, or a new appeal at the presidential level. By the end of January, External Affairs was still uncertain which fork in the path it would choose.[846]

As negotiations continued to be bogged down that winter the Canadians chose to try and accelerate the process with a direct appeal from the Prime Minister to the President. The best opportunity came in March 1986 at a summit meeting in Washington. There, Mulroney conveyed to Reagan the importance of the Arctic to Canadians generally and to his political fortunes in particular. For Canadians, Mulroney insisted, this issue went beyond questions of Arctic navigation. It was an emotional matter powerful enough to derail the ongoing free trade negotiations and damage the bilateral relationship which the two leaders had worked so hard to improve. It therefore had to be resolved quickly.

---

[844] Ibid.
[845] Ibid.
[846] Ibid.

In Reagan, Mulroney found a sympathetic ear and the President made what the Canadians felt to be a ground-breaking promise. Reagan said that it would be best if the two nations simply let the sovereignty issue "lie where it is" and that "anything we do in [Canadian Arctic waters] will be with your permission."[847] The previous day the President had also promised that the United States would not "challenge" Canadian sovereignty. Taken together, it seemed as though Reagan had come just short of explicitly accepting the Canadian claims. This was a far cry from the adversarial approach taken by Nixon some 16 years earlier.

These heartening signs injected new life into the negotiations and it was agreed that both nations would appoint special negotiators to expedite the process. The Under-Secretary of Science and Technology, Edward Derwinski, was given this post for the United States and Derek Burney, Mulroney's Chief of Staff, for Canada. Derwinski recalled that his instructions from Reagan were simple and straightforward, the President had called and said: "Ed, I understand you're going to handle this and I wish you well … get this nailed down."[848]

Burney and Derwinski had actually worked together in the past and, like their bosses, had developed a good working relationship. They immediately began meeting informally in an attempt to break away from the formal adversarial approach which had characterized so many past negotiations on the subject. Some progress was made but the crucial sticking point remained the question of recognizing Canadian sovereignty or any phrasing which seemed to imply it.

[847] Brian Mulroney, *Memoirs 1939-1993* (McClelland & Stewart, 2007), pp. 431.
[848] Interview with Derwinski in Kirkey, "Smoothing Troubled Waters," pp. 411.

For the next year the negotiators worked on a constructive way around this legal impasse. Regardless of what Reagan may have implied, any hope of winning outright American recognition had long since disappeared. Instead, the Canadians hoped to win some sort of functional arrangement which clearly implied American acceptance of Canadian sovereignty. For instance, the Canadian negotiators suggested that the United States recognize Canada's sovereignty over the waters but that this recognition be without prejudice to either country's position on the rights of passage in those waters. Yet the separation of the rights of passage from the question of sovereignty, like the separation of baselines from sovereignty, was simply not enough.[849] Meanwhile, the Americans tried to satisfy the Canadians with recognition of more jurisdictional rights, however the clear separation of jurisdiction from sovereignty remained a non-starter for the Canadians however.

Canadian negotiators were upset by what they saw as backtracking by the Americans from Reagan's March 1986 summit promise but the reality was that the President could realistically only do so much to push a policy which so many in his government rejected. The fact of the matter was that the issue was being closely followed by a myriad of powerful American departments and agencies. The Navy, the Coast Guard, the Department of Transport, the Chiefs of Staff, the policy side of the Pentagon, the State Department and others all had a position and an opinion and most of them were not in favour of the President's desire to assist the Canadians. In his memoirs, Allan Gotlieb recounts going to what he thought was supposed to be an informal 'one-on-one' meeting with Derwinski: "never will I forget the enormous crowd of officials in the room

[849] Memorandum for the Secretary of State for External Affairs, June 6, 1986, LAC, RG 12, vol. 5561, file 8100-15-4-2(s), pt.5.

– some two dozen or so – most of them agitating for a hard line against the Canadian claim."[850]

By March 1987, Reagan had to write to Mulroney to convey his frustration with the process: "Brain this vexing issue has proven to be more difficult for us to resolve than I thought when we discussed it … I have to say in all candor that we cannot agree to an agreement that obliges us to seek permission for our vessels to navigate through the Northwest Passage. To do so would adversely affect our legitimate rights to freely transit other important areas globally."[851]

A year after the Prime Minister and President had discussed the matter in Washington they met again for a new summit in Ottawa. That April Mulroney again tried to impress upon Reagan the importance of the issue and the validity of the Canadian claims. Again, the Prime Minister seemed to win the sympathy of the President. Mulroney had asked Derek Burney to show Reagan a nineteenth century globe which showed the Northwest Passage in its natural ice-covered state. Burney explained the exceptional nature of the passage and described how the ice had been used by the Inuit for millennia for transportation, hunting and fishing. Mulroney said frankly to the President "Ron that's ours. We own it lock, stock, and icebergs."[852]

This appeal seems to have shifted the President's view even further towards the Canadian position. Burney said afterwards that, upon seeing the globe, Reagan commented that it "looks a little different than the maps they showed me on the plane coming into Ottawa."[853] Afterwards he reportedly became increasingly annoyed with his

[850] Gotlieb, *I'll be with you in a Minute Mr. Ambassador,* pp. 113.
[851] Mulroney, pp. 495.
[852] Mulroney, pp. 497.
[853] Kirkey, "Smoothing Troubled Waters," pp. 412.

advisors seeking to hold off the Canadians. That afternoon Reagan told Ambassador Carlucci, "I think we should do something for Brian." Carlucci replied, "Mr. President, we're doing well holding our positions on acid rain, the free trade agreement, and the Northwest Passage." To that Reagan lost his temper somewhat and countered "no, no, no, we ought to do something." Carlucci went right from the meeting to find Derek Burney and asked him to reiterate Canada's positions on acid rain, trade and the Arctic. When Burney asked why, Carlucci responded "because they're our positions now."[854]

This may have been something of an exaggeration but, in addressing the House of Commons that day, Reagan announced that he had "had a full discussion of the Arctic waters issue, and he and I [Reagan and Mulroney] agreed to inject new impetus to the discussions already underway. We are determined to find a solution based on mutual respect for sovereignty and our common security and other interests.[855] A month later the President was asked at a press conference about the American position on Arctic sovereignty, he noted that the choke points were a concern but that the Arctic was "different" because of the ice. When the reporter commented: "you seem to be saying that Canada had some legitimate claim to sovereignty for that" Regan replied: "yes, I think that is a difficult situation there. And I am hopeful that ... we can find an answer."[856]

The President had gone on record describing the Arctic waters as an exceptional case because of their ice cover and had promised the Canadian Prime Minster that the United States would show respect for Canadian sovereignty. Reagan had overcome a great deal of internal opposition to deliver this vital political support and it served to both

[854] Mulroney, pp. 498.
[855] United States, State Department, "President's Visit to Canada," *Bulletin*, June 1, 1987, pp. 7.
[856] Huebert, *Steel, Ice and Decision Making*, pp. 161-2.

keep the negotiations moving and to relax the overall American position. After the summit, the negotiating teams went back to work and began to revise their approach. The lengthy, multi-article, agreements which they had been working on were found to be too complex. What was needed was something simpler and, like the informal arrangements from the 1950s, more open to interpretation.

Reagan had said that the United States would only operate in the Arctic with Canadian consent and this was what the Canadian negotiators had been pushing for. For the Americans however consent went too far towards implying recognition of sovereignty. The solution was reached by David Colson who came upon the ingenious idea of linking the question of consent to scientific research. UNCLOS III Article 245 clearly states that, in the territorial sea and on the continental shelf, maritime research "shall be conducted only with the express consent of and under the conditions set forth by the coastal state."[857] If the United States requested consent to transit, while conducting scientific research, then both nations could secure that which was most important to them. Canada would have its political victory since Mulroney could legitimately claim that the Americans were now requesting Canadian permission to transit. Meanwhile, the Americans would be able to say that such permission did not represent recognition of Canadian sovereignty since conducting research along the way necessitated such a request under accepted international law.[858] As had been the case with American clearance during the 1950s, the two countries were free to interpret these requests as they saw fit.

[857] UNCLOS III, Part XIII, Section 3 Articles 245.
[858] Huebert, *Steel, Ice and Decision Making*, pp. 483-4.

The Canadian interpretation was made clear by Joe Clark who, in a speech to the House of Commons in January 1988, said: "as a result of that agreement, the United States now acknowledges and has a legal obligation to seek Canada's permission before there is a transit through the Northwest Passage."[859] Clark did not say that the Americans had an obligation to request permission before conducting research, only before transiting. The Americans naturally preferred to put emphasis on the research element. In Colson's words:

> Canada got us to use the word consent, which was a word we did not wish to use but we felt that in the context in which we were dealing – where we had decided to use the icebreaker operations to do scientific research on every voyage through the Northwest Passage – that research was something that we didn't have to do, that we would do on our own volition. By conducting scientific research we were bringing ourselves within Canadian jurisdiction as we would recognize it and so it was appropriate to use the word consent.[860]

The result was the *Arctic Waters Cooperation Agreement*. Signed by Joe Clark and George Schultz on January 11, 1988, the two governments pledged to cooperate in the Arctic and to not adversely affect the unique environment of the region and the well-being of the local inhabitants. More importantly, it required that the United States notify Canada whenever it sent an icebreaker through the Northwest Passage. The relevant passage reads as follows: "the government of the United States pledges that all navigation by US icebreakers within waters claimed by Canada to be internal will be undertaken with the consent of the government of Canada."[861] In order to ensure that the agreement had no negative effects on either side's legal position, it included an Article which read:

> Nothing in this agreement of cooperative endeavor between Arctic neighbours and friends nor any practice thereunder affects the respective positions of the

[859] Canada, House of Commons, *Debates*, January 18, 1988, 33rd Parliament, 2nd session, pp. 1999.
[860] Interview with Colson in Kirkey, "Smoothing Troubled Waters," pp. 415.
[861] "Agreement Between the Government of Canada and the Government of the United States of America on Arctic Cooperation, 11 January, 1988, *Canada Treaty Series*, no. 29 (1988).

> Governments of the United States and of Canada on the Law of the Sea in this or other maritime areas or their respective positions regarding third parties.[862]

In practice the agreement seemed to work very well. The first request to transit was made by the *Polar Star* in 1988. In keeping with its promise, the United States sent the Canadian government a note requesting consent for a passage: "… the government of the United States hereby requests the consent of the government of Canada … to navigate within waters covered by the Agreement, to conduct maritime scientific research during such navigation."[863] It is important to note the prominence give to the *Polar Star's* plans to conduct research while in Canadian waters. The icebreaker was actually damaged and making an emergency transit at the time and it seems unlikely that the ship was really looking to conduct much maritime research; however mention had to be made of the fact in order to maintain the American position.

In the years that followed, the US Coast Guard made a number of additional voyages, all of which were arranged through the agreement and all of which proceeded smoothly and without incident. The Canadian government hailed it as a triumph and, while it had not won American acceptance of its claims, it had indeed taken a significant step forward. Responding to criticism that the Conservatives had not won sufficient concessions from the US, Joe Clark reasoned that while "we would have preferred naturally, to have the Americans accept the legal concept of sovereignty. What we are trying to do here, is assert a step that will close another hole in the claims of Canada to control of our North."[864] And it did close a significant hole. While it is unlikely that the American requests for permission to transit would strengthen the Canadian claim, by

---

[862] Ibid.
[863] Text of U.S.note no. 425, October 10, 1988, *International Legal Material* 9 (1990), pp. 144.
[864] Iain Hunter, Arctic Claims not at Risk, Government says," *Ottawa Citizen*, December 7, 1987.

regulating them and subjecting them to the provisions of the *Arctic Waters Cooperation Agreement,* Canada was removing an avenue of protest which the Americans might have someday chosen to use. American icebreaker transits would not set a precedent of foreign protest and Canadian governments could avoid a repetition of the political circus that the *Polar Sea* had provoked.

***

As the negotiations progressed, the Canadian government was simultaneously engaged in the planning phases for two of the most ambitious Arctic projects it had ever conceived. In September 1985 Joe Clark had announced that the Conservative government would be building a Polar Class 8 icebreaker and, by 1987, the Department of National Defence had announced plans for the construction of 10 to 12 SSNs. Both of these projects were intended to operate in the disputed waters of the Arctic Archipelago, asserting Canadian control over the region and enabling the country to operate in all parts of the Arctic at any time of the year.

The Polar 8 was not a new initiative. Its origins stretched back to the mid-1970s when Cabinet had first approved funding for the design phase of a Polar Class 7 vessel.[865] Yet, it had been decided that construction would not start until circumstances warranted it. This meant year round shipping which might require government assistance in the thick winter ice.[866] Since that shipping had never materialized the project moved slowly and only in July 1984 had the decision been made on some basic design elements. The *Polar Sea* had naturally sped up the process. By October 1985 three bids had been

[865] Kim Richard Nossel, "Polar Icebreakers: The politics of Inertia," *Politics of the Northwest Passage*, ed. Franklyn Griffiths (Kingston: McGill-Queen's University press, 1987), pp. 278
[866] John Langford, "Marine Science, Technology and the Arctic," *The Arctic In Question*, ed. E.J. Dosman (Toronto: Oxford University Press, 1976), pp. 166.

received to build what was then expected to be a Polar Class 8 and, by January 1987, a contract had been awarded to Vancouver's Versatile shipyard.[867]

As the Polar 8 was working its way through the design stage the Department of National Defence was undertaking a major review of Canadian defence policy and requirements, a process which was to culminate in the 1987 Defence White Paper. Entitled *Challenge and Commitment*, the White Paper was the long awaited fulfillment of a review process which had started when the Conservatives had taken power in 1984. In it, Defence Minister Perrin Beatty laid out a broad and comprehensive plan to revitalize the Canadian Forces and reverse the equipment 'rust out' which had resulted from years of neglect. The proposed hardware acquisitions, quickly dubbed a 'shopping list' by journalists, included billions of dollars in equipment upgrades for the three services.

As had been the case with Trudeau's 1971 White Paper, the crisis had also refocused the government's attention on the Arctic. In addition to tanks and fighters, *Challenge and Commitment* included plans to acquire new patrol aircraft, an under-ice surveillance system, a fleet of Arctic vehicles, new northern airbases and training facilities, upgrades to the Rangers and, of course, the Polar 8.[868] Yet, the most expensive and ambitious item on the list was the SSNs. These boats, which were expected to cost $8 billion (an estimate which many experts still thought was far too low) were the keystone in the government's broader attempt to dramatically enhance the country's presence and control in the Arctic.[869]

---

[867] Canada, House of Commons, *Debates*, March 2, 1987, 33rd Parliament, 2nd session, pp. 3723.
[868] It was also at this time the DEW Line was being taken over by Canadian forces and refurbished to create the Northern Warning System; Canada, Department of National Defence, *Defence Update 1988-89* (Ottawa: Minister of Supply and Services Canada, 1988), 10-13; S. Allan, "Words at War: Canadian Press Coverage of the End of the Cold War," *British Journal of Canadian Studies* 2:1 (1996), pp. 236.
[869] "1987 – Submarine Acquisition Project," *Global Security.org* [online] www.globalsecurity.org.

Together, these defence initiatives were the second leg in the Canadian approach to sovereignty after the *Polar Sea*. While negotiating the legal and political issues with the United States, the Mulroney government was simultaneously seeking to assert a presence in the region which could both strengthen its new claims and assure the domestic public and the world that it was indeed prepared to exercise the kind of authority which one would normally expect over internal waters. In the summer of 1987, while writing the White Paper, Perrin Beatty published an article in the *Canadian Defence Quarterly*. In it Beatty clearly stated that, while SSNs were no golden ticket to international recognition of the country's legal position, they would prove useful tools to have in the cupboard:

> In addition to deterrence and defence, the new thrust of exploration of the sea-bed and competition for resources that may be found in the Arctic could lead to disputes about sovereignty over maritime supremacy and rights of passage. While these are unlikely to be settled by gunboat diplomacy, Canada would be in a much stronger position to press her claims if she possessed adequate capabilities to establish surveillance and presence in the contested waters.[870]

This presence was also focused on the security threats to the region – in stark contrast to the approach taken a decade earlier by the Trudeau Liberals. In part this was because the Soviets seemed to present an increasingly serious threat to the Arctic but it was also because the economic development, which had appeared so promising in the early 1980s, had not materialized. Dome Petroleum, the most dramatic example of the failure of northern development, had essentially gone bankrupt in 1987 and was taken over by Amoco. Low oil and metal prices had effectively scuttled the dreams of an Arctic bonanza and, by the late 1980s, there had been a widespread evacuation of the region by the oil, gas and mining industries.

[870] Perrin Beatty, "A Defence Policy for Canada," *Canadian Defence Quarterly* 17:1 (Summer, 1987), pp. 8.

In redirecting the focus from the environmental and commercial to more traditional security threats, the concepts of sovereignty and security were brought together in the White Paper in a new way. Unlike the approach taken by *Defence in the '70s*, the Conservative government saw the two concepts as being intimately connected. The program laid out in the White Paper was meant, not to simply ensure that Canada was secure from Soviet missile firing submarines in the Arctic or any such military threat *per se*, but rather to make sure that it was Canada and not the United States which was doing the securing. Neither the Polar 8 nor the SSNs could have evicted American ships from Canadian waters, nor were they intended to. Rather, they were meant to ensure that Canada had at least an equal hand in the region's defence.

The Department of National Defence's *'88 Defence Update* made that point explicitly. In the Department's view "to be a truly independent nation we must shoulder the responsibilities that come with independence by contributing more fully to our own defence. If we are to be truly sovereign, we cannot 'contract out' the defence of Canada."[871] Indeed, concern over 'contracting out' Canada's defence had been an issue addressed in the 1986 report of the Special Joint Committee on Canada's International Relations. The committee had worried that, should Canada have needed to take action against an intruder in the North, it would have no choice but to call on American submarines for assistance. While Canada had worked well with the US Navy on its submarine operations for decades, the fact that Canada had so little to contribute to the defence of its own waters was an uncomfortable position to be in. In June 1987, Allan Gotlieb told American Secretary of Defence Casper Weinberger that, while the Canadian

[871] Canada, Department of National Defence, *Defence Update 1988-89* (Ottawa: Minister of Supply and Services Canada, 1988), pp. 1.

SSN program was not directly connected to Canada's Arctic claims it was "ridiculous to have territory if you can't even participate in its defence."[872]

During the course of the debate over the acquisition of the SSNs a number of alternatives were proposed which were intended to offer Canada the ability to monitor or guard its Arctic waters without the excessive cost of nuclear submarines. The idea of an underwater sonar network was presented as such an alternative, as was the idea of defending the North by mining the Arctic passageways in wartime.[873] Yet the idea of a SOSUS style sonar system was dismissed as offering monitoring without enforcement. The idea of mines was rejected both because they would likely prove expensive and unworkable but also because they, like the underwater sonar system, would not provide Canada with what it needed most, a physical presence exercising authority over its internal waters.[874]

For the United States this Canadian initiative was received with a combination of suspicion and derision; Allan Gotlieb described it as having provoked more American interest than any Canadian defence initiative since Trudeau's 'peace proposal.'[875] For the United States the existing informal arrangements in the Arctic were perfectly adequate. The US Navy had always sought to include the Canadian military in its activities and it had never encountered any political meddling in its operations. The presence of a new fleet of Canadian SSNs operating in the region threatened to upset that comfortable arrangement.

---

[872] Allan Gotlieb, *The Washington Diaries 1981-1989*. (Toronto: McClelland & Stewart, 2006), pp. 465.
[873] The White Paper did plan an underwater listening system; however it was designed to operate in tandem with the SSNs rather than independent of them.
[874] Canada, House of Commons, *Minutes of Proceedings and Evidence of the Standing Committee on National Defence and Veterans Affairs*, evidence provided by Mr. Blackburn, pp. 25:33.
[875] Gotlieb, *The Washington Diaries*, pp. 470.

In 1986, the Department of National Defence had two submarines to choose from, the British Trafalgar and the French Rubis class.[876] In order to purchase the Trafalgars however Canada needed Washington's approval to secure the transfer of American nuclear technology from Britain to Canada, as was required by the 1958 *US Arms Control Export Act*. During a 1987 trip to Washington to accomplish this, Perrin Beatty and his associates were told in no uncertain terms by the US Defence Department and submarine service officials that Canada was incapable of managing a nuclear powered submarine project and that the US Navy did not consider Canadian assistance in the Arctic as either necessary or desirable.[877] In part this reaction was also due to the American fear that the SSN program would drain funds from Canada's military and, ironically, detract from the country's ability to contribute to joint defence.[878] Colin Powell worried that the program would pull Canada into a "financial morass," a prediction echoed by Frank Carlucci.[879]

How this high-level impasse and the political fallout surrounding the *Polar Sea* affected joint defence operations remains largely classified. Information on American submarine expeditions from 1986 onwards is unavailable and the Canadian records on the subject are largely closed. From the evidence available it appears at least that the two countries still managed to maintain their functional working relationship behind the scenes. By 1985 records indicate that the two militaries were actively engaged in working through the PJBD to establish an official joint Arctic defence, research and infrastructure

[876] American submarines were judged both too big and too expensive for Canada.
[877] Julie H. Ferguson, *Through a Canadian Periscope* (Toronto: Dundurn Press, 1995), pp. 315.
[878] Gotlieb, *The Washington Diaries*, pp. 550.
[879] Ibid, pp. 484 & 475.

sharing strategy.[880] In June, something known as the Arctic "Strawman Strategy," initiated in 1984 by Canadian Vice-Admiral Wood and American Admiral Watkins, was submitted to the PJBD for review. Fred Crickard, then Deputy Commander of the Navy, indicated that this strategy foresaw the US Navy assuming complete responsibility for the Arctic Basin with Canadian efforts directed at the Archipelago. It assumed the two countries would work together to keep the channels of the Archipelago free for American passage and even included plans for mining the choke points.[881]

By December of that year the American section of the PJBD had even offered a revised draft strategy to the board for review. This draft remains classified but that same meeting also saw mention of an Arctic maritime NORAD. This proposal was suggested unofficially yet received widespread approval from both the Canadian and American sections.[882] Allan Lawrence, still head of the Canadian section of the PJBD, strongly indicated his approval to Mulroney for such a solution, stating: "there are political and emotional arguments against such a scheme, just as there are logical arguments in its favour."[883] By 1987 these discussions continued, with both sides working on developing a joint defence strategy, despite the as yet uncertain results of the bilateral negotiations on sovereignty and the growing disagreement over Canada's SSN program.[884]

The fate of these discussions remains unknown, however it is instructive to note again the resilience of the bilateral defence relationship to broader political concerns. Few American officials looked kindly on Canada's SSN program yet there seems to have

[880] PJBD, *Journal of Discussions*: 172nd Meeting, November 25-27, 1985, DHH, 82/196.
[881] Fred Crickard, "A Tale of Two navies: Australian and Canadian Naval Policy and the American Alliance in the Cold War," MA thesis, Dalhousie University, pp. 142.
[882] Allan Lawrence to Brian Mulroney, December 13, 1985, DHH, 82/196.
[883] Ibid.
[884] PJBD, *Journal of Discussions*: 178th PJBD Meeting, October 28, 1987, DHH, 92/196.

been no decisive break at the operational level over the issue. And, while there was little desire to see the Canadian Navy operating independently in the Arctic, the Reagan administration did agree to the technology transfer necessary to purchase the British Trafalgar class SSNs.[885]

Ultimately however the Canadian program was never brought to completion. While Arctic sovereignty may have been an important issue to the Canadian public it wilted in the face of financial and strategic reality. The White Paper had been based on the assumption that the Soviet Union was an "ideological, political, and economic adversary whose explicit long-tern aim [was] to mold the world in its own image."[886] This fear had been swept away by the events of 1989-1990. After the collapse of the Soviet empire in Eastern Europe and the disintegration of the USSR itself, the rationale for spending $10 billion on SSNs appeared to have gone. The decline in public support for the acquisition paralleled the decline in East-West tensions. In June 1987, 50% of Canadians backed the purchase with 37% opposed.[887] A little more than a year later, opposition had increased to 60%.[888] By 1989, 71% were against the purchase and most Canadians polled expressed a belief that a Soviet attack was highly unlikely.[889]

Domestically, the Conservative government also had a substantial deficit to battle and was forced to make a number of very painful cuts to popular social programs. With these programs on the block, support for nuclear submarines became a political liability. Instead of acting on their defence 'shopping list' after re-election in 1988, the Tories

[885] Reagan was under pressure to do so by both the Canadians as well as British Prime Minister Margaret Thatcher, who hoped that a Canadian purchase would provide a welcome boost to the British economy.
[886] Canada, Department of National Defence. *Challenge and Commitment: A Defence Policy for Canada* (Ottawa: Minister of Supply and Services Canada, 1987), pp. 5.
[887] *Ottawa Citizen*, "50% Back Subs," June 22, 1987, pp. A4.
[888] John Manthorpe, "Poll says no to Nuclear-Powered Subs," *Ottawa Citizen*, May 26, 1988, pp. A4.
[889] *Toronto Star*, "Torpedo the Subs for Budget Fairness," April 25, 1989, pp. A18. & Doug Ward, "Canadians Disbelieve Soviet Threat Poll Finds," *Vancouver Sun*, April 22, 1988, pp. A8.

slashed the military's budget.[890] By January 1989, Perrin Beatty was removed from National Defence and replaced by Bill McKnight and by May 1988, when Cabinet failed to meet to discuss the SSN contract, the plan was essentially, if not officially, dead.[891]

Sovereignty concerns, without the threat provided by the USSR, and in the face of a budget crunch, were simply not enough to motivate Canadians to part with tax dollars. By 1989, only two years after the White Paper was first presented, Defence Minister McKnight stated that the task of under ice sovereignty would be left to United States and Great Britain respectively. "There [were] better ways of defending northern sovereignty" the Minister explained, "but unfortunately we cannot afford those ways."[892]

The Polar 8 project died a similar death only one year later. Soon after the contract had been signed for its construction, costs began to mount. The original quote given to the government of $350 million had risen to over $500 million by 1989.[893] To make matters worse, the Versatile shipyard had been chosen for largely political reasons and the company had been in financial straits from the beginning. By December 1988 the shipyard itself had been put up for sale by its owners. On February 19, 1990 the project was officially cancelled. In his budget speech the government's Minister of Finance, Michael Wilson, cited the vessel's cost which, by that point, had climbed to $680 million or nearly twice the original estimate.[894]

Whether or not the strength of the Canadian claim truly suffered from the implosion of these programs is difficult to say. The collapse of northern economic

---

[890] Canada. Department of National Defence, *Defence '87, '88, '89, '90* (Ottawa: Minister of Supply and Services Canada, 1987).
[891] The plan was officially killed in April, 1989.
[892] *Vancouver Sun*, "Canada to Turn to U.S. after Subs Sunk," April 28, 1989, A9.
[893] Paul Koring, "Bouchard Delays Plans for Polar 8 as Cost Rises," *Globe and Mail*, May 8, 1989.
[894] Ken MacQueen, "Ottawa's Paper Ship: A Massive Waste of Time, Talent and Money," *Montreal Gazette*, February 22, 1990.

activity in the mid-to-late 1980s limited the need for the Polar 8, a vessel originally designed to assist all year commercial traffic. Likewise, the fact that by the early 1990s the once mighty Soviet submarine fleet was literally rusting away in port along the Kola Peninsula meant that a program as expensive and ambitious as the SSN acquisition was likely uncalled for. These vessels would certainly have augmented Canadian capability in the North and perhaps even strengthened its legal position, however the effect would not likely have been decisive.

The real accomplishments of the 1980s were therefore in the diplomatic realm. Through a series of friendly and constructive negotiations the Canadian government was able to win a greater degree of American recognition than had ever been possible before. While this recognition was far from absolute, no Canadian government over the past 40 years had ever really expected to achieve complete recognition. Instead the Mulroney government managed to win exactly what the Pearson government had hoped for in vain in 1963-4: a quiet and relatively inoffensive protest for the record. The United States did not launch economic or political sanctions as had been threatened and executed in 1969-70, nor did it send vessels into the disputed waters as had been threatened during negotiations over the special bodies of water in the 1960s.

In stark contrast to the confrontational attitude of past negotiations, the United States almost seemed embarrassed by its need to protest the Canadian moves. In January 1986, when informing their Canadian counterparts that a protest of some sort was necessary to register their position, the American negotiators noted that "… if a diplomatic note creates political difficulties for Canada which will inhibit negotiations of

an overall solution, we are prepared to use a different vehicle."[895] When the inevitable protest was made, it was done as discreetly and inoffensively as possible and only a low key démarche was issued.[896]

This difference in tone and structure was due to a number of important factors. For one, the law of the sea was far more settled in the late 1980s than it had been for decades, somewhat limiting American concerns over the freedom of the seas.[897] The Arctic itself had seen a degree of differentiation from other maritime regions around the world over the decade and, with the passing of Article 234 and the solidification of Canadian jurisdiction over the Arctic waters, the issue of Canadian control had become far less sensitive. The increased Soviet presence in the region was also a powerful motivator for the Americans to avoid any action which might enable increased Soviet activity in North American waters. This tactic had borne little fruit in 1964 since at the time both the Canadian and American navies were lowering their threat assessment in the region, yet it made more of an impact in the mid-1980s and it was hammered home repeatedly to American negotiators and even to President Reagan himself.

Most importantly, however, was the genuine desire on the part of the American government to assist the Canadians, if this could be done without harming vital American interests. Ty Cobb, the State Department's National Security Council representative for Canadian Affairs, explained that "everyone wanted to make an exception for the

[895] Memorandum to Secretary of State for External Affairs, January 30, 1986, LAC, RG 12, vol. 5561, file 8100-15-4-2 (s) pt. 4.
[896] Huebert, *Steel, Ice and Decision Making*, pp. 329.
[897] The major concern had long been the application of straight baselines to large oceanic archipelagoes such as the Philippines and Indonesia. After UNCLOS III, these states had been granted the right to draw baselines around their islands subject to a right of innocent passage. This sovereignty was however less complete than that being sought by Canada for its archipelago.

Canadian case, if a rationale could be found."[898] This connection was strongest at the top where Prime Minister Mulroney and President Reagan enjoyed a genuinely friendly relationship. On a number of occasions Reagan made statements in favour of the Canadian position which might have given his advisors heart palpitations, made promises which neither the Navy or State Departments wanted to make and forced concession when his bureaucracy and military would have preferred to hold the line. This was not necessarily a failure to understand the issue on Regan's part but rather, in Leonard Legault's words, "the President understood a political problem when he saw one, and he knew that his friend Brian had a political problem."[899]

[898] Kirkey, "Smoothing Troubled Waters," pp. 408.
[899] Ibid, 452.

Conclusion

In 1904 W.F. King, working for the Canadian Ministry of the Interior, published an internal report on Canada's title to its northern regions. Provoked by a worrying American inquiry into the status of Hudson Strait, the King Report laid out in detail the basis, strength and extent of Canadian sovereignty in the High Arctic. It naturally focused on the government's claim to the islands of the Arctic Archipelago but also marked the first time that the status of the waters in between was raised as an issue. In the preceding centuries of British exploration the question of sovereignty had always been limited to acquiring title over new lands. Likewise, the early Canadian expeditions under men like Bernier and Low had raised the flag and proclaimed Canadian dominion over the Arctic islands, with little regard to the ice that separated them. King's conclusion then, that the waters of the Archipelago should be considered "inland seas" was something fundamentally new.[900]

No government action followed this recommendation but Canadian behaviour in the Arctic over the proceeding decades certainly seemed to imply that there was something exceptional about those waters. Without ever making a formal claim or even having a formal discussion on the subject, successive governments chose to act as though King's conclusions were correct and the maritime realm constituted Canadian territory. Fishing and whaling licences were collected well outside of Canada's recognized three mile territorial sea in Hudson Bay, Hudson Strait and Lancaster Sound. The RCMP and Canadian courts consistently exercised their jurisdiction outside that limit as well. Whether this was official government policy is unclear but unlikely. It seems as though

[900] W.F. King, "Report on the Title of Canada to the Islands North of the Mainland of Canada" (Ottawa, 1905), pp. 26.

these agencies chose to exercise Canadian control as a matter of course, largely because the waters in question were unique. Covered in ice for much of the year, the local Inuit often treated them as land, hunting, travelling and even living on the sea-ice. It therefore made little sense to enforce criminal jurisdiction or Canadian game laws on the islands while ignoring violations which took place on an extension of sea-ice indistinguishable from the land it was connected to.

In large measure this exercise of authority was also connected to the Canadian position in those frozen and distant islands. Canadian authority over much of its Arctic was shaky at best, exercised by a handful of RCMP posts scattered across an area the size of Western Europe. Vast areas in the North were unpopulated or undefended and Canada's legal claim to the land was correspondingly weak. These concerns manifested most dramatically in the early 1920s as fears grew that the Danes might be seeking to assert their own sovereignty over Ellesmere Island and, in 1925, as Americans Donald MacMillan and Richard Byrd began aerial exploration in search of undiscovered islands. Nothing came of these ventures but Ottawa was shocked into devoting more resources to buttressing its northern presence. Some of these resources, like the Eastern Arctic Patrol, which ran from 1922 into the 1940s, went into the maritime realm. Yet the emphasis on all of this effort was undeniably territorial, not maritime sovereignty.

In the early twentieth century there was simply no pressing reason or accepted vehicle for asserting a claim to the Arctic waters. With Canadian sovereignty over some of the Arctic islands itself still insecure, a focus on the waters would have seemed a misplaced emphasis. International law recognized only a three mile territorial sea and there was little legal justification to the conclusion that the Arctic’s ice-cover made the

area unique or that any claims based on this notion could stand up to international scrutiny. How any claim could have been successfully asserted is therefore difficult to imagine. The pseudo-legal theory most commonly invoked to claim control of the Arctic waters was the sector principle. Made popular by Senator Pascal Poirier in 1907, the sector claimed sovereignty over the vast wedge of territory extending from a state's eastern and western extremes to the Pole. It held little validity in international law but had a great deal of enduring support in Canada. It enjoyed such support in large measure because it was simple and because it provided a means of claiming sovereignty over those vast stretches of the Arctic which could hardly be claimed on the basis of effective occupation. Normally applied only to land, the sector was occasionally and unofficially extended to encompass the Arctic waters as well.[901] Despite its popularity, this principle was never actually turned into official Canadian policy for the simple reason that it remained completely insupportable in law. Yet, despite its unofficial status, the sector remained a popular and commonly cited basis for Canadian sovereignty throughout the first half of the twentieth century. What this meant for the Arctic waters was never given much real consideration. Whether or not they were lumped into the sector with the land varied between official statements and, while governments continued to act as though those waters were Canadian, no serious consideration was ever given to the basis of that authority.

This lack of concern was, in large measure, due to the fact that there was little in the Arctic demanding anything more than a passing concern. While the activities of the Danes, Norwegians and Americans had occasionally spurred some government action

[901] For example see the statements elaborated upon in Chapter two by Charles Stewart in 1936, T.A. Crerar in 1938 and Louis St. Laurent in 1958.

and attention, the region was normally devoid of foreign activity. The waters were virtually impassable to most ships, and the *status quo* was proving to be a very comfortable situation. Only the Second World War shook the Arctic out of its splendid isolation. Suddenly the region had become an important waypoint between the North American democracies and the beleaguered Allied powers in Europe. Over the course of the war, thousands of American and Canadian aircraft were shuttled across the North Atlantic to Britain or across the Bering Strait into the Soviet Union using airbases spread out across the North. In support of these operations, military bases and air stations sprung up at Frobisher Bay (Iqaluit), Churchill, Fort Chimo and Coral Harbour in the Eastern Arctic and along the Mackenzie River and the newly constructed Alaska Highway in the West.

Over the course of the war the question of sovereignty was largely set aside as alliance cooperation and the task of defeating Nazi Germany remained the overriding concerns. After the war however the American presence in the Canadian North did not simply disappear as many in Ottawa had hoped. The developing Cold War had created entirely new security needs and necessitated a continued American presence. From a sovereignty perspective this presented the Canadian government with an uncomfortable dilemma. On land, the Americans were establishing new weather, navigation and radar stations in areas which had historically seen little Canadian activity. In the waters between the islands, American naval exercises, hydrographic surveys and re-supply missions were increasing in support of these new defence projects. This activity was hardly a hostile intrusion and was always undertaken with Canadian permission or as a joint Canadian-American exercise. Yet, the fact that the United States had never officially

recognized Canadian sovereignty over much of the Arctic Archipelago – and had certainly never recognized any Canadian rights to the waters outside of its three mile limit – meant that Ottawa was forced into an uncomfortable position.

On the one hand, the reality of the Cold War meant that American resources were needed to secure the continent from Soviet attack. On the other, Ottawa knew that these projects would have to be managed in such a way as to ensure that its claim to the region was not undermined by the American military exercising *de facto* control over large areas of the Canadian North. Of most importance to the question of maritime sovereignty was the influx of American vessels supporting these projects. Whether or not the United States would be required to request permission to operate in these waters was an even more sensitive subject than the question of Canadian ownership of the islands. Canada could, and did, assert its sovereignty in the Arctic Islands on the basis of discovery as well as occupation. That occupation may have been minimal, but under international law, the standard for effective occupation was set far lower in isolated regions like the High Arctic.[902] In the waters, Canada lacked even this foundation for its claims.

With nothing but the sector theory to rely upon, the Canadian government naturally preferred to avoid the awkward issue. Still, it could not abandon it completely, lest an uncontrolled American presence set a damaging precedent of free navigation throughout the channels of the Arctic Archipelago. What emerged in the early 1950s was an informal diplomatic framework, designed to simultaneously handle and avoid the issue. It was successful in its goals and was one which Canada would rely upon for most of the early Cold War. To maintain its position, Canada required the United States to request permission or clearance to enter Canada's 'territorial waters' when carrying out

[902] This precedent had been set by the ICJ in the *Eastern Greenland Case*, 1933.

joint defence work. No mention was made of sovereignty, while the basis and extent of Canada's claims were never explicitly stated. What exactly Canada's 'territorial waters' were in the Arctic was a matter up for individual interpretation.

For Canada this meant everything within the Arctic Archipelago and, when the United States requested permission to enter, the Canadian government took this as a *de facto* American recognition of its control. For the United States, Canadian waters extended three miles offshore, as was the case everywhere else in the world. When Washington requested permission to enter 'Canadian waters,' it thought only of those areas within internationally recognized limits. Likewise, when the American Navy applied for waivers from the *Canadian Shipping Act* to re-supply the DEW Line it did so under the understanding that such waivers related only to Canadian cabotage laws and had nothing to do with sovereignty. The Canadian government naturally took a different interpretation in the House of Commons in 1957, when Prime Minister St. Laurent stated that he was not entirely sure that the American request for a waiver represented recognition of Canadian sovereignty but, "if they were not territorial waters there would be no point in asking for a waiver."[903]

This system of differing interpretations was not due to any fundamental misunderstanding or failure to communicate, but was rather a very practical way of accommodating both states' positions. External Affairs was fully aware that the Americans were not requesting waivers as a recognition of Canadian sovereignty. Likewise the State Department continued to request those waivers even when the shipping situation did not necessarily require them. This dance continued because it worked for both partners. For Canada, American requests seemed to strengthen its claim.

[903] House of Commons, *Debates*, April 6, 1957, 22nd Parliament, 5th session, pp. 3186.

Washington meanwhile was able to maintain its long-held position on the freedom of the seas without becoming embroiled in a political dispute with its closest ally and continental defence partner. Canada did not explicitly ask for American acceptance of its sovereignty and the United States was therefore never forced into an explicit rejection. Likewise, the United States never asked Canada what exactly it claimed and Canada was therefore able to avoid the uncomfortable position of having to define its position. By working within this framework the two allies not only ensured the preservation of their positions but the smooth operation of their joint defence projects as well.

While Canada was happy to continue this state of purposeful ambiguity, the increased importance of the region and the growing presence of American maritime activity forced the first serious questions about the nature of that sovereignty. Throughout the late 1950s the Department of External Affairs and the Advisory Committee on Northern Development refined Canada's legal and political position from an informal reliance on the sector theory to one based on more supportable international law. By 1956 the St. Laurent government had settled upon the application of straight baselines to define the Canadian claim. This decision marked a decisive turning point when, for the first time, a Canadian government defined what it was claiming and how exactly it would go about doing so.

Yet this policy remained for internal guidance only. In the late 1950s Canada was not confident enough to risk a confrontation with the United States, nor did it feel pressed to act. The situation, as it existed, worked well enough. The United States was cooperating and that cooperation seemed to be building a precedent of recognition and steadily strengthening the Canadian claim. It was widely assumed by both politicians and

the bureaucracy that by merely waiting and avoiding confrontation, the mere passage of time would gradually impart a degree of legitimacy on the country's ill-defined position. In a sense this was an understandable presumption. The Americans seemed to be offering Canada a degree of *de facto* recognition, and Canadian control over the area was increasing as new assets, such as HMCS *Labrador*, increased the country's reach and control in the region.

From a legal standpoint however, the gains to be had from 'gradual acquisition' were likely chimerical. While the ambiguity of the Canadian position prevented any political confrontation and kept the United States (or any other power) from explicitly rejecting Canadian sovereignty, it is hard to see how it could have truly strengthened the Canadian claim. The concept of straight baselines had been codified in customary international law by the ICJ in the Anglo-Norwegian *Fisheries Case* and, while the geographic criteria of the case seemed to apply to the Arctic Archipelago, the history of the Norwegian claim did not. In large measure, the court had ruled in favour of Norway because of that country's long and clear record of claiming the waters in question. Norway's had not been an ambiguous claim. It had been defined, publicised and legislated and this information had been known to the international community at large. Canada could make no similar claim. Indeed, the fact that the United States did not know what exactly, if anything, Canada claimed of the Arctic waters, meant that their requests for clearance counted for little. A strong claim to sovereignty must be precise and Canada's was anything but.

Yet, the belief that time was gradually strengthening the Canadian claim coupled with the fear of an American rejection meant that, throughout the 1950s, no Canadian

government asserted a clearly defined position. Behind the scenes the bureaucracy was working to refine this policy and, by the mid-late 1950s, it had even reached a state of some definition. Yet the more refined, rational policy being recommended by External Affairs at the time never manifested in the governments' public addresses. Throughout the decade, and into the 1960s, successive Canadian governments failed to establish a coherent and unified policy line for both domestic and foreign consumption. Conservative and Liberal governments approached sovereignty differently, ministers offered varying interpretations while support for the sector principle remained in a state of constant flux. A poor understanding of international maritime law led to a series of exaggerated statements and, occasionally, Canadian policy even seemed to change within the span of individual governments. Looking back at the matter in 1969, Ivan Head commented that "the confusion would be ludicrous if it were not so serious a matter."[904] This failure to adopt a clear bipartisan approach cannot be entirely attributed to the government's reluctance to make a definitive sovereignty claim. In fact, there was no shortage of unofficial claims made in the House of Commons or in public – claims which were not backed up by legislation. These claims were simply not the result of any coherent policy and, as such, were often inconsistent or even contradictory.

This inability to form a clear and consistent policy line was also an indication of the weight which successive Canadian governments placed on the issue. In fact, the question of Arctic sovereignty did not exist in a vacuum. It was merely one of the many questions of maritime jurisdiction which the country grappled with throughout the 1950s and 1960s and it was far from the most important. In fact, when ordering its priorities, the government consistently placed the Arctic dead last. This was an understandable position,

[904] Ivan Head to the Prime Minister, February 28, 1969, LAC, R12259, file 26.

Ottawa had only so much time and political capital to spend and Canadian jurisdiction over extended fishing zones and its sovereignty in the Gulf of St. Lawrence, the Bay of Fundy, Dixon Entrance and Queen Charlotte Sound were far more pressing matters. In the Atlantic and Pacific provinces there were thousands of fishermen whose livelihoods depended on fishing in those 'special waters' while in the Arctic there was no commercial fishing, no significant economic activity and even fewer votes to be had. In this context the Arctic was considered expendable and, in law of the sea negotiations with the United States, the issue was either ignored or used as a bargaining chip in an attempt to secure gains elsewhere.

The result of all this was the development of a curious duality in Canada's approach to the Arctic. On the one hand it was a subject of great importance in public addresses. Canadians have long had an emotional connection to the region; it has inspired Canadian art and literature, influenced the development of Canadian culture and helped to define Canadian nationalism. In 1986, in the negotiations following the voyage of the *Polar Sea*, Leonard Legault told his American counterparts that "the Arctic is for Canada what the Alamo is for Texas."[905] In public therefore, for a politician to have expressed anything but complete confidence in Canada's right to control and govern its Arctic would have been political suicide. Yet, away from the glare of the electorate, Canadian governments demonstrated anything but that unshakable confidence. In fact, Canadian policy throughout the 1940s, 1950s and 1960s was defined by a profound sense of insecurity and uncertainty. And, while lofty political statements would suggest that the region was of the utmost importance to Ottawa, the country's diplomats were

[905] Memorandum for the Secretary of State for External Affairs, January 22, 1986, LAC, vol. 5561, file 8100-15-4-2(s), pt. 4.

simultaneously either ignoring it or looking for ways to safely defer any real action on the matter.

The manner in which successive governments dealt with foreign activity in the Arctic waters – and often the lands for that matter – showed a similar disconnect. When concerns over sovereignty threatened to interfere with the practical requirements of joint defence the politics they were normally put aside. Regardless of the rhetoric favoured by so many governments, proclaiming to the Canadian people that Ottawa would not compromise on Canadian sovereignty, such compromise was normally the order of the day. The ambiguous framework in which the Americans operated in the Arctic waters throughout the 1950s was certainly an example of that, as was the active Canadian participation in American surface and under-ice naval operations over the course of the Cold War. Pierre Trudeau could preach Canadian sovereignty and push Canadian jurisdiction far beyond what was permitted in international law while at the same time the Department of National Defence was actively working with American agencies to develop an underwater listening system in those same disputed waters. Likewise, both Trudeau and Brian Mulroney could speak harshly of the American unwillingness to request transit permission for the SS *Manhattan* or the *Polar Sea* while simultaneously not only allowing American SSNs that same access without complaint, but working with those submarines to enhance Canada's defences.

Throughout the Cold War this duality existed, between the practical and the political. While politicians and External Affairs worried about the legal and political ramifications of American actions in the North, those actually tasked with undertaking those operations thought mainly of carrying out their duties as smoothly and effectively

as possible. To many of these practitioners, the government's concern with precedent and sovereignty was an unnecessary distraction. For the Canadians working with their American colleagues on the Beaufort Sea Expeditions, Ottawa's unwillingness to allow the United States to transit the Northwest Passage was an embarrassment. In the PJBD thirty years later, both Canadian and American members appear to have struggled to cut through the politics of the day when working out a joint Arctic defence strategy. Of course these roles are easy to understand. External Affairs should have been more concerned with the international implications of American activity while the politicians can be excused for focusing on the political optics. When far away from the corridors of Parliament and working alongside American colleagues in the hazardous and challenging Arctic environment, the pragmatic and cooperative approach more commonly taken by Canadian defence officials and scientists can likewise be understood.

Much of this divide existed however because the Canadian government was never able to explain the basis for its requirements. Why it did not want American icebreakers sailing through the Northwest Passage in the 1950s and why it required a say in the publicity surrounding American SSN voyages and naval operations in the region could not be elaborated upon. Its policy of ambiguity created an uncomfortable position for External Affairs officials who were forced to tip-toe around the question, seeking some element of control in those waters without being able to explain to the Americans why Canada was entitled to that control.

In the long term this system was not sustainable. It survived only so long as the United States was willing to offer Canada the indirect recognition it sought, so long as the Americans avoided any outright challenge and so long as the region remained relatively

isolated. By the late 1960s much of that equation had shifted. It was the discovery of oil in the Arctic which, more than anything else, began the transformation of the region and forced a fundamental rethink of Canadian policy. An ambiguous and informal claim could survive if it was not tested and, if it faced only a handful of benign American re-supply expeditions each year, then such a test was unlikely to arise. In the face of sustained and significant commercial shipping however, serious questions began to arise.

When a collection of American oil companies sent the retrofitted SS *Manhattan* through the Northwest Passage in 1969 the status of the waters was cast under a bright and very uncomfortable spotlight. Decades of inaction and deferral had left the government unprepared. A coherent and defensible position based on straight baselines had been worked out within the bureaucracy and had even been approved by Cabinet 13 years earlier and reinforced by a substantial External Affairs study in 1958. Yet, none of that groundwork appears to have been assimilated into a workable policy line. The result was confusion. The Trudeau Liberals searched the records of past governments, looking for evidence of Canadian policy. They found little more than conflicting statements and ambiguous and often exaggerated claims based more upon nationalism than sound legal justification. When asked what Canadian sovereignty consisted of, upon what law it was based and how the state could enforce it, the Prime Minister could offer nothing of substance.

Yet, the combined shock of the public uproar surrounding the *Manhattan* incident and the seemingly imminent Arctic development boom, forced a fundamental revaluation of the government's approach to the question. After the *Manhattan*, the government's traditional approach to the Arctic waters, defined by calculated ambiguity and inaction

had to change. The American refusal to request Canadian permission for the *Manhattan* or its accompanying icebreaker, the *Northwind*, demonstrated in dramatic fashion how insecure that position was and how outdated was the assumption that time served as a Canadian ally. After the *Manhattan*, the Arctic waters were vaulted to the top of the government's maritime agenda and a concerted effort was made to finally define not only what it was that Canada claimed but upon what basis it made that claim and how the government would go about advancing it.

The initial reaction to the *Manhattan* was the Arctic Waters Pollution Prevention Act. The AWPPA was something of a stopgap measure, designed not to secure Canadian sovereignty *per se* but to enhance the state's ability to exercise many of the powers associated with sovereignty. At the same time, it was meant to meet the immediate challenge of pollution control and to satisfy a Canadian public then demanding aggressive action. Yet, more important than this dramatic assertion of Canadian control was the quiet evolution of Canadian policy then taking place behind the scenes. At some point between 1970 and 1973 the government had officially decided to begin asserting a historic waters claim defined by straight baselines. Claims to the vast polar sector were never officially dropped, most likely for reasons of political optics, yet they were shunted further aside and effectively excluded from the public discourse from that point onwards. In so doing, Canada had coordinated its policy line and, from 1973 onwards, the confusion and ambiguity which had long haunted the sovereignty debate were dispensed with. In a decisive break with the past, Canadian governments now spoke with one voice and annunciated a clear, intelligible, practical and legally defensible Arctic policy.

Rather than simply deferring the matter indefinitely, a sensible plan of action had also been worked out with the long term goal of securing the Canadian claim. While the Trudeau government did not choose to officially assert this claim through legislation, it was at least made crystal clear to the United States – as the most interested foreign party – that this was indeed a claim that Canada intended to push forward. Throughout the 1970s Canadian diplomats and officials worked diligently to legitimize the country's jurisdiction in the Arctic in international law and to lay the legal groundwork upon which a claim could more comfortably rest. Throughout the Third UN Conference on the Law of the Sea, which stretched from 1973 to 1982, the Canadian negotiating team managed to secure many of these objectives. The AWPPA was legitimized by the adoption of Article 234 while the legitimacy of straight baselines was further confirmed.[906]

While pushing these diplomatic initiatives the country was simultaneously seeking to enhance its functional control and physical presence in the region. Naval activity, Army deployments and aerial surveillance were all radically increased to develop the skills needed to function in the harsh northern environment while demonstrating more of the control required to confirm a historic waters claim and even eventually to manage the anticipated boom in Arctic shipping and offshore activity. While the immediate effectiveness and utility of much of this activity can certainly be questioned, it remained an important element in the government's new push to assert itself and to strengthen its overall position in the region.

By the end of the 1970s, as the UN Conference on the Law of the Sea was completing its work, the government began a scheduled re-examination of its position. With the Canadian position judged stronger than ever before and with northern

[906] UNCLOS III, Section II, Article 7 & Section VIII, Article 234.

development seemingly imminent the Department of External Affairs recommended immediate action. Quick action has however, never been a government forté. Moving at the speed of bureaucracy, the federal government continued to assess both its position and the international situation, yet the conclusions reached by 1982 had not changed. The position, which by that point had been standardized within government and to the public, must be made official. For legal, economic and political reasons, prevarication was judged counterproductive and ever more dangerous.

Yet, as had been the case so often in the past, it took an outside catalyst to force the government machine into action. The voyage of the USCG *Polar Sea*, like that of the *Manhattan* before it, raised the ire of the Canadian public and created the necessary pressure. However, the effects of the *Polar Sea* differed from that of the *Manhattan* incident 15 years previously. While the government was still caught somewhat off-guard by the intensity of the public's reaction, the groundwork undertaken over the previous decade had equipped the Mulroney government with a coherent and defensible policy which External Affairs was prepared to assert and defend. Coupled with a more favourable international situation, a far better political relationship with the United States and an increasingly serious security threat to the region, the Mulroney government was able to assert the claim which its predecessors had prepared.

On January 1, 1986 Canada officially enclosed the waters of the Arctic Archipelago with straight baselines, thereby delineating an area which the government had always considered, to one extent or another, to be its historic internal waters. The validity of this claim was never tested by international arbitration and, as expected, the Americans issued their official disapproval – though this was done as discreetly as

possible. In the decades following the *Polar Sea* the issue has enjoyed the comfortable lull of the accepted *status quo*. While that claim has remained contentious, it has never been directly challenged. American icebreakers pass through under the terms of the 1988 *Arctic Cooperation Agreement* while US Navy submarines have always operated within the parameters of the same sort of friendly and cooperative, if somewhat less formal, defence arrangements.

The collapse of economic activity in the 1980s and the disintegration of the Soviet Empire and military shortly thereafter ushered in a new decade of splendid isolation. Throughout the 1990s there were no great Arctic controversies, little prospect for renewed activity and even less concern about traditional security threats. In the twenty first century however many of these old concerns appear set to re-emerge. As was the case in the 1970s, high oil prices are driving multinationals to reinvest billions of dollars in the offshore areas. Yet, this new wave of exploration had also been assisted by the steadily receding Arctic ice-cover, dramatic advances in drilling technology and an increasing level of instability in many of the world's traditional oil producing regions.

Traditional security concerns appear to be remerging as well, albeit on a greatly reduced scale from that posed by the Soviet Navy. Arctic powers, Canada included, have begun to build or re-establish a northern operations capability for their militaries. Whether prompted by the prospect of resource development or the potential for ice-free shipping lanes, Canadians have once again started to pay attention to their Far North. While the long struggle to define and claim its sovereignty may have been accomplished, Canada still faces the constant task of defending and strengthening that claim in the face of a sea of international opposition. Until such time as climate or circumstances imbue

the Arctic waters with a new importance that opposition will likely remain as muted as it has been over the past twenty years. However, as past Canadian governments have learned, occasionally to their surprise and embarrassment, Arctic sovereignty has never remained an issue frozen for long.

Bibliography

Laws, Treaties, Maps and Other Government Publications

Agreement Between the Government of the United States of America and the Government of Canada on Arctic Cooperation. Ottawa, 1988. Entered into force: January 11, 1988

Canada. *Arctic Waters Pollution Prevention Act.* R.S., c. 2 (1st Supp.), s. 1.

Canada. Advisory Committee on Northern Development. *Government Activities in the North.* Ottawa: Department of Northern Affairs and National Resources, 1968-1985)

-----. Map: *7000: Arctic Archipelago* [Online] http://www.fedpubs.com/charts/arc_general.htm.

-----. Department of Energy, Mines and Resources. *An Energy Strategy for Canada*. Ottawa, 1976).

-----. Department of External Affairs. "Policy on Canadian Sovereignty." *Statements and Speeches*, No. 85/7, Statement by the Right Honourable Joe Clark in House of Commons. Ottawa, September 10, 1985.

-----. *Documents on Canadian External Relations*. Ottawa: Queen's Printer: Department of Foreign Affairs and International Trade.

-----. Department of Mines and Technical Surveys. *Boundaries of Canada, its Provinces and Territories.* Ottawa: Queen's Printer, 1954.

-----. Department of National Defence. *Challenge and Commitment: A Defence Policy for Canada*. Ottawa: Minister of Supply and Services Canada, 1987.

-----. *Defence '86*. Ottawa: Minister of Supply and Services Canada, 1987.

-----. *Defence '87*. Ottawa: Minister of Supply and Services Canada, 1987.

-----. *Defence '88*. Ottawa: Minister of Supply and Services Canada, 1987.

-----. *Defence '89*. Ottawa: Minister of Supply and Services Canada, 1987.

-----. *Defence '90*. Ottawa: Minister of Supply and Services Canada, 1987.

-----. *Defence in the 70's*. Ottawa: Queen's Printers, 1971.

-----. *Defence Update 1988-90*. Ottawa: Minister of Supply and Services Canada, 1988.

-----. *The Canadian Submarine Acquisition Project: A Report on the Standing Committee on National Defence,* Second Report, Issue 41.

-----. *White Paper on Defence*. Ottawa: Queen's Printers, 1964.

Canada. Department of Indian and Northern Affairs Canada. Advisory Committee on Northern Development. *Annual Northern Expenditure Plan 1976-1977*.

Canada. House of Commons. *Debates*.

-----. *Independence and Internationalism: Report of the Special Joint Committee of the Senate and the House of Commons on Canada's International Relations*. Ottawa: Government Publishing Centre, 1986.

-----, *Minutes of Proceedings and Evidence of the Standing Committee on National Defence and Veterans Affairs*. 1987.

-----. *Minutes of Proceedings and Evidence of the Standing Committee on National Defence*. 1988.

-----. *Special Committee on Estimates Minutes of Proceedings, and Evidence*. March 23, 1955.

-----. Standing Committee on Mines, Forests, and Waters. *Minutes of Proceedings and Evidence*. June 10, 1958, No. 3-6.

Canada. Library of Parliament, Political and Social Affairs Division. *Canadian Defence Policy Backgrounder*. Ottawa: Minister of Supply and Services Canada, 1988.

Canada. Senate Special Committee on National Defence. *Territorial Air Defence*. 33rd Parliament 1st Session, 1985.

Canada. Senate. *Debates*.

Canada. Statistics Canada, *Historical Statistics of Canada,* Table Q19-25, [Online]: http://www.statcan.gc.ca.

Canada, *Statutes of Canada*, 1906, 5 Edw. VII, c. 13.

Gaillard, M. Department of Foreign Affairs and International Trade, Legal Affairs Bureau. "Canada's Sovereignty in Changing Arctic Waters." March 19, 2001, Whitehorse, Yukon.

Royal Northwest Mounted Police, *Report, 1908.*

United States. "Text of U.S. Note No. 425, October 10, 1988, *International Legal Material* 9 (1990).

-----. Department of State. *Foreign Relations of the United States*. Washington DC: United States Government Printing Office.

-----. "President's Visit to Canada." *Bulletin*. June 1, 1987.

United States. Office of the Geographer, Bureau of Intelligence and Research. *Limits in the Seas: United States Responses to Excessive National Maritime Claims*, No. 112. March, 1992.

United States Navy. *Naval Arctic Operations Handbook: Part I General Information.* Washington, DC: Office of the Chief of Naval Operations, 1949.

-----. *Naval Arctic Operations Handbook: Part II Operational Notes*. Washington, DC: Office of the Chief of Naval Operations, 1949.

United States. Speech to Philadelphia Bar Association and the Philadelphia World Affairs Council, February 18, 1970; Press Release 49, *Department of Sate Bulletin*, 62. March 16, 1970.

Monographs, Edited Volumes and Dissertations

Amundsen, Kirsten. *Soviet Strategic Interests in the North*. New York: St. Martin's Press, 1990.

Anand, R.P. *Origin and Development of the Law of the Sea*. London: Martinun Nijhoff Publishers, 1983.

Anderson, William R. *Nautilus 90-North*. New York: World, 1959.

Anderson, William R. and Don Keith. *The Ice Diaries: The Untold Story of the Cold War's Most Daring Mission*. Nashville: Thomas Nelson, 2008.

Archer, Clive and David Scrivener Ed. *Northern Waters: Security and Resource Issues*. London: Croom Helm, 1986.

Archer, Clive Ed. *The Soviet Union and Northern Waters*. London: Routledge, 1988.

Bernier, J.E. *Master Mariner and Arctic Explorer*. Ottawa: LeDroit, 1939.

Bland, Douglas. *Chiefs of Defence: Government and the Unified Command of the Canadian Armed Forces.* Toronto: The Canadian Institute of Strategic Studies, 1995.

Bourquin, Maurice. *Les Baies Historiques*. Melatiges Georges Sauser-Hall, 1952.

Boutilier, James Ed. *The RCN in Retrospect*. Vancouver: The University of Vancouver Press, 1982.

Byers, Michael. *Who Owns the Arctic? Understanding Sovereignty Disputes in the North*. Vancouver: Douglas & McIntyre, 2010.

Cavell, Janice and Jeff Noakes. *Acts of Occupation*. Vancouver: UBC Press, 2010.

Calvert, James. *Surface at the Pole: The Extraordinary Voyages of the USS Skate*. New York: McGraw, 1960.

Clark, Karin et al. *Breaking Ice with Finesse: Oil and Gas Exploration in the Canadian Arctic.* Calgary: The Arctic Institute of North America, 1997.

Coates, Ken et. al. *Arctic Front: Defending Canadian Interests in the Far North*. Toronto: Thomas Allen & Son Ltd., 2008.

Conat, Melvin. *The Long Polar Watch*. New York: Harper & Brothers, 1962.

Crickard, Fred. "A Tale of Two Navies: Australian and Canadian Naval Policy and the American Alliance in the Cold War." MA Thesis, Dalhousie University.

Dosman, Edgar Ed. *The Arctic in Question*. Toronto: Oxford University Press, 1976.

Dosman, Edgar. *The National Interest*: *The Politics of Northern Development 1968-75*. Toronto: McClelland and Stewart Ltd., 1975.

Donaghy, Gregg and Michael Carroll Ed. *Serving the National Interest: Canada's Department of Foreign Affairs and International Trade, 1909-2009*. Calgary: University of Calgary Press, 2011.

Elferink, Alex G. and Donald R. Rothwell Ed. *The Law of the Sea and Polar Maritime Delimitation and Jurisdiction.* The Hague: Martinus Nijhoff Publishers, 2001.

Elliot-Meisel, Elizabeth B. *Arctic Diplomacy: Canada and the United States in the Northwest Passage*. New York: Peter Lang Publishing Ltd., 1998.

Eyre, Kenneth C. *Custos Borealis: The Military in the Canadian North*. Ph.D. University of London King's College, 1981.

Ferguson, Julie H. *Through a Canadian Periscope*. Toronto: Dundurn Press, 1995.

German, Tony. *The Sea is at our Gates: The History of the Canadian Navy*. Toronto: McClellend and Stewarts, 1990.

Grace, Sherrill E. *Canada and the Idea of North*. Montreal: McGill-Queens, 2001.

Gotlieb, Allan. *I'll be with you in a Minute Mr. Ambassador: The Education of a Canadian Diplomat in Washington*. Toronto: University of Toronto Press, 1991.

-----. *The Washington Diaries 1981-1989*. Toronto: McClelland & Stewart, 2006.

Grant, Shelagh. *Polar Imperative*. Toronto: Douglas & McIntyre, 2010.

-----. *Sovereignty or Security?* Vancouver: University of British Columbia, 1988.

Griffiths, Franklyn. *A Northern Foreign Policy.* Toronto: Canadian Institute of International Affairs, 1979.

Griffiths, Franklyn, Ed. *Politics of the Northwest Passage*. Kingston: McGill-Queen's University press, 1987.

Haywood Hackworth, Green. *Digest of International Law* Vol. 1. 1940.

Head, Ivan and Pierre Trudeau. *The Canadian Way: Shaping Canada's Foreign Policy, 1968-1984.* Toronto: McClelland and Stewart, 1995.

Hollick, Ann L. *U.S. Foreign Policy and the Law of the Sea*. Princeton: Princeton University Press, 1981.

Honderich, John. *Arctic Imperative: Is Canada Losing the North?* Toronto: University of Toronto Press, 1987.

Horensma, Pier. *The Soviet Arctic*. New York: Routledge, 1991.

Huebert Rob. *Steel, Ice and Decision-Making: The Voyage of the Polar Sea and its Aftermath: The Making of Canadian Northern Foreign Policy.* Ph.D. Dalhousie University, 1993.

Hume, Howard. *Toward a Canadian Arctic Policy. Kingston:* University of Rhode Island, 1977.

Jervell, Sverre and Kara Nyblom, *The Military Buildup in the High North*. Lanham: University Press of America, 1986.

Jockel, Joseph T. *No Boundaries Upstairs*. Vancouver: University of British Columbia Press, 1987.

-----. *Security to the North: Canada-US Defence Relations in the 1990s*. East Lansing: Michigan State University Press, 1991.

Johnson, Barbra and Mark W. Zacher Ed. *Canadian Foreign Policy and the Law of the Sea*, (Vancouver: University of British Columbia Press, 1977).

Lackenbauer, Whitney Ed. *Arctic Sovereignty and Security: Historical Perspectives*, Calgary: University of Calgary Press, 2011.

Lackenbauer, Whitney and Peter Kikkert Ed. *The Canadian Forces & Arctic Sovereignty: Debating Roles, Interests and Requirements, 1968-1974*. Waterloo: Wilfred Laurier press, 2010.

Lassa Oppenheim, *International Law: A Treatise*, Vol. 1. London: Longmans, Green, 1920.

Leary, William M. *Under Ice: Waldo Lyon and the Development of the Arctic Submarine*. College Station: Texas A&M University Press, 1999.

Logan, R.M. *Canada, the United States and the Third Law of the Sea Conference*. C.D. Howe Research Institute and the National Planning Association, 1974.

Lyon, Jim. *Dome: The Rise and Fall of the House that Jack Built*. Toronto: Macmillan of Canada, 1983.

Macdonald, R. St. J., Ed., *The Arctic Frontier*. Toronto: University of Toronto Press, 1966.

McDorman, Ted. *Salt Water Neighbors International Ocean Law Relations Between the United States and Canada*. USA: Oxford University Press, 2009.

McGwire, Michael and John McDonnell Ed. *Soviet Naval Influence, Domestic and Foreign Dimensions*. New York: Praeger Special Studies in International Politics and Government, 1977.

McGwire, Michael, Ken Booth and John McDonnell. *Soviet Naval Policy: Objectives and Constraints*. New York: Praeger, 1975.

McLaren, Alfred S. *Unknown Waters: A First-Hand Account of the Historic Under-ice Survey of the Siberian Continental Shelf by USS Queenfish (SSN-651).* University of Alabama Press, 2008.

McLin, Jon. *Canada's Changing Defence Policy, 1957-1963*. Baltimore: The John Hopkins Press, 1967.

McRae, Donald and Gordon Munro. *Canadian Oceans Policy: National Strategies and the New Law of the Sea*. Vancouver: University of British Columbia Press, 1989.

McVicar, Donald M. *Distant Early Warning*. Dorval: Ad Astra Books, 1993.

Milner, Marc. *Canada's Navy: The First Century* 2nd Edition. Toronto: University of Toronto Press, 1999.

Morenus, Richard. *DEW Line*. New York: Rand McNally and Company, 1957.

Morrison, William R. *Showing the Flag: The Mounted Police and Canadian Sovereignty in the North, 1894-1925.* Vancouver: University of British Columbia Press, 1985.

Mulroney, Brian. *Memoirs 1939-1993*. McClelland & Stewart, 2007.

Nordquiest, Myron et al. Ed*. Changes in the Arctic Environment and the Law of the Sea*. Leiden: Martinus Nijhoff Publishers, 2010.

Østreng, Willy Ed. *The Arctic: Choices for Peace and Security*. Seattle: Gordon Soules Book Publishers Ltd., 1998.

Østreng, Willy. *The Soviet Union in Arctic Waters*. The Law of the Sea Institute Occasional Paper No. 36. Tr. Eric Hansen. Honolulu: William R Richardson School of Law, University of Hawaii, 1987.

Pharand, Donat. *Canada's Arctic Waters in International Law*. Cambridge: Cambridge University Press, 1988.

-----. *The Law of the Sea of the Arctic with Special Reference to Canada*. Ottawa: University of Ottawa Press, 1973.

-----. *The Northwest Passage: Arctic Straits*. Martinus Nijhoff Publishers, 1984.

Pimlott, Douglas et. al. *Oil Under the Ice*. Ottawa: Canadian Arctic Resources Committee, 1976.

Polmar, Norman. *The Naval Institute Guide to the Soviet Navy*. Annapolis: US Naval Institute, 1986.

Porter, Gerald. *In Retreat: The Canadian Forces in the Trudeau Years*. Canada: Deneau and Greenberg, 1978.

Rhomer, Richard. *Arctic Imperative*. Toronto: McClelland and Stewart Ltd., 1973.

Saint-Pierre, Marjolaine. *Joseph-Elzéar Bernier: Champion of Canadian Arctic Sovereignty, 1852-1934*. Montreal: Baraka Books, 2009.

Sanger, Clyde. *Ordering the Oceans: The Making of the Law of the Sea*. Toronto: University of Toronto Press.

Sebenius, James K. *Negotiating the Law of the Sea*. Cambridge: Harvard University Press, 1984.

Seeley, J.R. *The Expansion of England*. London: Macmillan and Co., 1891.

Smedal, Gustav. *Acquisition of Sovereignty over Polar Areas*. Oslo: I Kommisjon Hos Jacob Dybwad, 1931.

Smith, Gordon. *Territorial Sovereignty in the Canadian North: A Historical Outline of the Problem*. Ottawa: Department of Northern Affairs and Natural Resources, 1963.

Steele, George P. *Seadragon: Northwest under the Ice*. New York: E.P. Dutton & Co., 1962.

Taracouzio, Timothy A. *Soviets in the Arctic: A Historical, Economic and Political Study of the Soviet Advance into the Arctic.* New York: The Macmillan Co., 1938.

Theutenberg, Johanson, *The Evolution of the Law of the Sea*: *A Study of Resources and Strategy with Special Regard to the Polar Areas*. Dublin: Tycooly Intl. Publishing Ltd., 1984.

Williams, Marion D. *Submarines under Ice*. Annapolis: Naval Institute Press, 1998.

Zaslow, Morris. *The Northward Expansion of Canada: 1914-1967*. Toronto: McClelland and Stewart, 1988.

Reports and Studies

Bland, Douglas L. "Parliament, Defence Policy and the Canadian Armed Forces: Kingston: School of Policy Studies, Queen's University in cooperation with Université Laval, 1999.

Brandt, Robert J. *Defeating the Next Generation SSBN Threat in the Arctic*. Newport: Naval War College, 1983.

Dome Petroleum, *Beaufort Sea/Mackenzie Delta Development Plan* (November, 1980).

Haydon, Peter. *The Strategic Importance of the Arctic: Understanding the Military Issues. Ottawa: Department of National Defence*, Directorate of Strategic Policy Planning, Strategic Issues Paper 1/87 (March, 1987).

King, W.F. *Report on the Title of Canada to the Islands North of the Mainland of Canada*. Ottawa, 1905.

Lyon, Waldo K. *The Polar Submarine and Navigation of the Arctic Ocean*. San Diego: U.S. Naval Electronics Laboratory, 1959.

National Energy Technology Laboratory. *Alaska North Slope Oil and Gas A Promising Future or an Area in Decline?* Addendum Report DOE/NETL-2009/1385 (April 2009).

Pharand, Donat. "Sovereignty and the Canadian North." *Report of the Royal Commission on the Economic Union and Development Prospects for Canada*. Ottawa: The Commission (1985).

Rowley, Graham. *The Role of the Advisory Committee on Northern Development in the Development of Policy and the Coordination of Federal Government Activities in Northern Canada*. Indian and Northern Affairs Canada: March, 1992.

Gordon Smith, *Ice Islands in Arctic Waters*. Ottawa: Department of Indian and Northern Affairs, 1980.

Rauf, Tariq and Peter Gizewski. *Aurora Papers 14: Naval Arms Control: Implications for the Arctic Region of Limits on Attack Submarines and Cruise Missiles*. Ottawa: Canadian Center for Disarmament, 1992.

Royal Northwest Mounted Police, *Report*, 1908, K Division.

Nixon, Richard. Report to Congress, *US Foreign Policy for the 1970s* (February, 1970).

Articles

Allan, S. "Words at War: Canadian Press Coverage of the End of the Cold War." *British Journal of Canadian Studies* 2:1 (1996).

Balch, T.W. "Les Regions Arctiques et Antarctiques et le Droit International." *Revue de Droit*
Internationale et de Legislation Compare 2:11 (1910).

Banks, N.D. "Forty Years of Canadian Sovereignty Assertion in the Arctic, 1947-87." *Arctic* 40:4 (December, 1987).

David Bercuson, "Continental Defense and Arctic Sovereignty, 1945-50: Solving the Canadian
Dilemma," *The Cold War and Defense*. Keith Neilson and Ronald G. Haycock Eds. New York: Praeger Publishers, 1990.

Breitfuss, Leonid. "The Territorial Division of the Arctic into Sectors in Connection with the Anticipated Transarctic Air Traffic." *Geographischer Anetalt* 74:1-2 (January, 1928).

-----. “Territorial Division of the Arctic,” Tr. M.B.A. and R.M. Anderson. *The Dalhousie Law Review* 8:4 (January, 1929).

Bilder, Richard. “The Canadian Arctic Waters Pollution Prevention Act: New Stresses on the Law of the Sea.” *Michigan Law Review* 69:1 (November, 1970).

Beatty, Perrin. “A Defence Policy for Canada.” *Canadian Defence Quarterly* 17:1 (Summer, 1987).

Bland, Douglas L. and John D. Young. “Trends in Canadian Security Policy.” *Armed Forces and Society* 15:1 (Fall, 1988).

Byers, R.B. “An Independent Maritime Strategy for Canada.” *Canadian Defence Quarterly* 18:1 (Summer, 1988).

Caldwell, Nathaniel. “La Souvveraineté du Canada et le Programme de Sous-Marines Nucléaires.” *Defence Nationale* 47 (1991).

Charron, Andrea. “The Northwest Passage Shipping Channel: Is Canada’s Sovereignty Really Floating Away?” CDAI-CDFAI, 7th Annual Graduate Student Symposium, RMC, October 29-30 2004.

-----. “The Northwest Passage.” *International Journal* 60:3 (Summer, 2005).

-----. “The Northwest Passage in Context.” *Canadian Military Journal* 6:4 (2005).

Conat, Melvin. “The Long Polar Watch: An American Perspective on Canada's Defence of its Arctic.” *American Review of Canadian Studies* 18:3 (1988).

Crickard, F.W. “An Anti-Submarine Warfare Capability in the Arctic a National Requirement.” *Canadian Defence Quarterly* 24 (April, 1987).

-----. “Nuclear-Fueled Submarines: The Strategic Rationale.” *Canadian Defence Quarterly* 17:2 (Winter, 1987).

Critchley, Harriet. “Polar Deployment of Soviet Submarines.” *International Journal* 34 (Autumn, 1984).

Davis, Matwin S. “Le Mieux est L’Ennemi du Bien.” *Canadian Defence Quarterly* 18:2 (Fall, 1988).

-----. “It has all Happened Before: The RCN, Nuclear Propulsion in Submarines – 1958-68” *Canadian Defence Quarterly* 17:2 (Fall, 1987).

Delaney, Jason and Michael Whitby. “The Very Image of a Man of the Arctic: Commodore O.C.S. Robertson.” *Canadian Naval Review* 4:4 (Winter 2009).

Dollot, René. “Le Droit International des Espaces Polaires.” *Recueil des Cours* 75 (1949).

Elliot-Meisel, Elizabeth. “Still Unresolved after Fifty Years: The Northwest Passage in Canadian-American Relations, 1946-1998.” *The American Review of Canadian Studies* 29:3 (Fall, 1999).

-----. “Arctic Focus: The Royal Canadian Navy in Arctic Waters, 1946-1949.” *The Northern Mariner* 9:2 (April, 1999).

-----. “Politics, Pride and Precedent: The United States and Canada in the Northwest Passage.” *Ocean Development & International Law* 40:2 (2009).

Eyre, Kenneth. “Forty Years of Military Activity in the Canadian North, 1947-87.” *Arctic* 40:4 (December, 1987).

Fletcher, Roy J. “Military Radar Defence Lines of North America: A Historical Geography.” *Polar Record* 26:159 (1990).

Green, L.C. “Canada and Arctic Sovereignty.” *The Canadian Bar Review* 48 (1970).

Griffiths, Franklyn. “The Northwest Passage in Transit.” *International Journal* 54:2 (Spring, 1999).

Hallioday, Hugh A. “Exercise Muskox: Asserting Sovereignty North of 60.” *Canadian Military History* 7:4 (Autumn, 1998).

Harbron, John D. “Canada’s Independence at Sea.” *US Naval Proceedings* 114 (March, 1988).

-----. “Yankee Sub, Go Home.” *US Naval Proceedings* 114, (August, 1988).

Haydon, Peter T. “The Future of the Canadian Navy.” *Canadian Defence Quarterly* 20:3 (Winter, 1990).

-----. “The Strategic Importance of the Arctic.” *Canadian Defence Quarterly* 17:4 (Spring, 1988).

Hobson, Sharon. “Canada Calls for Nuclear Fleet.” *Jane’s Defence Weekly* 17:13 (April, 1987).

Horn, Bernd. “Gateway to Invasion or the Curse of Geography. The Canadian Arctic and the Question of Security, 1939-1999.” *Forging a Nation: Perspectives on the Canadian Military Experience*, Ed. Bernd Horn. St. Catherines: Vanwell, 2002.

Head, Ivan L. “Canadian Claims to Territorial Sovereignty in the Arctic Regions,” *McGill Law School Journal* 9:3 (1962-63).

Huebert, Rob. “Submarines, Oil Tankers, and Icebreakers: Trying to Understand Canadian Arctic Sovereignty and Security.” *International Journal* 46:4 (Autumn, 2011).

Johnson, Bruce. “Three Ocean Strategy: Right for Canada, Right for NATO.” *Canadian Defence Quarterly* 17:1 (Winter, 1988).

Johnston, V. Kenneth. “Canada’s Title to Hudson Bay and Hudson Strait.” *The British Yearbook of International Law* 15 (1934).

Killaby, Guy. “Great Game in a Cold Climate: Canada’s Arctic Sovereignty In Question.” *Canadian Military Journal* 6:4 (2005).

Kirkey, Christopher. “Smoothing Troubled Waters: The 1988 Canada-United States Arctic Co-operation Agreement.” *International Journal* (Spring 1995).

-----. “The Arctic Waters Pollution Prevention Initiatives: Canada's Response to an American Challenge.” *International Journal of Canadian Studies* 13 (Spring, 1996).

Lackenbauer, P. Whitney and Peter Kikkert. “Setting an Arctic Course: Task Force 80 and Canadian Control in the Arctic, 1948. *Northern Mariner* 21:4 (2011).

Lajeunesse, Adam. “Sovereignty, Security and the Canadian Nuclear Submarine Program.” *The Canadian Military Journal* 8:4 (Winter, 2008).

Larsen, David L. “United States Interests in the Arctic Region.” *Ocean Development & International Law* 21:2 (1990).

Lakhtine, W. “Rights over the Arctic.” *The American Journal of International Law* 24:4 (October, 1930).

Lyon, Waldo K. “Submarine Combat in the Ice," *U.S. Naval Institute Proceedings* 118:2 (February, 1992).

Maloney, Sean M. “The Mobile Striking Force and Continental Defence, 1948-1955.” *Canadian Military History* 2:2 (Autumn, 1993).

McDorman, Ted. “In the Wake of the Polar Sea: Canadian Jurisdiction and the Northwest Passage.” *Les Cahiers de Droit* 27:3 (1986).

Mcgee, John E. “Call to the Arctic.” *US Naval Proceedings* 114 (March, 1988).

McRae, D.M. “Arctic Waters and Canadian Sovereignty.” *International Journal* 38:3 (Summer, 1983).

McKitterick, T.E.M. “The Validity of Territorial and Other Claims in Polar Regions.” *Journal of Comparative Legislation and International Law* 21:1, 3rd Series, (1939).

Mouton, M.W. “The International Regime of the Polar Regions,” *Recueil des Cours* 107:111 (1962).

Naval Submarine League. “Arctic Submarine Warfare.” *The Submarine Review* (July, 1983).

-----. “Arctic Submarine Warfare.” *The Submarine Review* (October, 1989).

-----. “Factors in Arctic Submarine Operations.” *The Submarine Review* (July, 1987).

-----. “Under Ice Operations.” *The Submarine Review* (July, 1985).

Pearson, L. B. “Canada Looks Down North.” *Foreign Affairs* 24:4 (July, 1946).

Pharand, Donat. “The Arctic Waters and the Northwest Passage: A Final Revisit.” *Ocean Development and International Law* 38:1 (2007).

-----. “Soviet Union Warns United States against Use of Northeast Passage.” *The American Journal of International Law* 62:4 (October, 1968).

-----. “Historic Waters in International Law with Special Reference to the Arctic.” *University of Toronto Law Journal* 21 (1971).

-----. “The Waters of the Canadian Arctic Islands.” *Ottawa Law Review* 3 (1969).

-----. “The Legal Status of Ice Shelves and Ice Islands in the Arctic.” *Les Cahiers de Droit* 10:3 (1969).

-----. “Canada's Sovereignty over the Northwest Passage.” *Michigan Journal of International Law* 9:3 (1989).

-----. “Innocent Passage in the Arctic.” *Canadian Yearbook of International Law* 6 (1968)

-----. “Canada's Arctic Jurisdiction in International Law.” *Dalhousie Law Journal* 7:3 (1983).

Pharand. “Canada's Sovereignty over the Newly Enclosed Arctic Waters.” *Canadian Yearbook of International Law* 25 (1987).

-----. “The Northwest Passage in International Law.” *Canadian Yearbook of International Law* 17 (1979).

-----. “Freedom of the Seas in the Ocean.” *University of Toronto Law Journal* 19 (1969).

Price, Thomas. “Canada’s Nuclear Fleet: Who Will Pay?” *Canadian Defence Quarterly* 18:2 (Fall, 1988).

Pullen, T.C. “What Price Canadian Sovereignty?” *US Naval Institute Proceedings* 113 (September, 1987).

Reid, Robert S. “The Canadian Claim to Sovereignty over the Waters of the Arctic.” *Canadian Yearbook of International Law* 111 (1974).

Rothwell, Donald R. “Polar Lessons for an Arctic Regime.” *Cooperation and Conflict* 29:55 (1994).

-----. “The Northwest Passage Dispute: A Reassessment.” *Cornell International Law Journal* 26 (1993).

Storris, A.H.G. and T.C. Pullen. “S.S. Manhattan in Arctic Waters.” *Canadian Geographic Journal* 80:5 (1970).

Svarlien, Oscar. “The Legal Status of the Arctic.” *American Society of International Law Proceedings* 52 (1958).

Taggart, Peggy. “Closing the Gap.” *US Naval Proceedings*. 114 (March, 1988).

Tynan, Thomas. “Canadian-American Relations in the Arctic: The Effect of Environmental Influences upon Territorial Claims.” *The Review of Politics* 41:3 (July, 1979).

Vallaux, C. “Droit et Prétentions Politiques sue les Régions Polaires,” *Affaires Etrangères* 14:33 (1932).

Waldock, C.H.M. “Disputed Sovereignty in the Falkland Island Dependencies.” *The British Year Book of International Law* 25 (1948).

Waultrin, R. “Le Problème de la Soverainté des Pôles.” *Revue Générale de Droit International Public* 16 (1909).

Young, E.J.M. “Submarines for the Canadian Maritime Forces.” *Canadian Defence Quarterly* 16:1 (Summer, 1986).

Newspapers & Magazines

“50% Back Submarines.” *Ottawa Citizen* (June 22, 1987).

Braid, Don. “Polar Sea a Turning Point for Mulroney.” *Montreal Gazette* (August 14, 1986).

“Canada 'Aware' of U.S. Submarines in Arctic.” *The Windsor Star* (December 6, 1986).

“Canada Becoming ‘Patsy’ over Arctic Issue: Jewett.” *The Gazette* (December 20, 1986).

“Canada Conceding Arctic to US, Axworthy Says.” *Windsor Star* (December 9, 1986).

“Canada to Turn to U.S. after Subs Sunk.” *Vancouver Sun* (April 28, 1989).

CBC News. *Prime Ministers and Presidents* (July 7, 2006) [Online] http://www.cbc.ca.

Carey, Elaine. “Trip by U.S. Ship called Threat to *Arctic Sovereignty*.” *Toronto Star* (July 23, 1985).

Cernetig, Miro. “Arctic Guard.” *Globe and Mail* (August 7, 1991).

-----. “Experts Press for Arctic Boundaries.” *The Globe and Mail* (August 17, 1985).

Chandler, Graham. “Stranded Gas.” *Up Here Business* (June, 2008).

“Claim Waters Now, MPs of all Parties Urge.” *Globe and Mail* (December 17, 1969).

Cowan, Peter. “Arctic Claims Hurt by Lack of Vigilance, Experts Say.” *Ottawa Citizen* (December 26, 1986).

-----. “Tories Admit Foreign Subs Sometimes Intrude in Arctic.” *The Ottawa Citizen* (December 10, 1986).

CTV, *Canada AM* (August 12, 1985).

“Detection System in Arctic Revealed.” *Halifax Chronicle Herald* (August 21, 1985).

Goodman, Lee-Anne. “Nixon Tapes Include Testy Trudeau Chat.” *The Star*.com (December 8, 2008). [Online] http://www.thestar.com.

Griffiths, Franklyn. “Arctic Authority at Stake. *Globe and Mail* (June 13, 1985).

Halloran, Richard. “Navy Frontier: Submarine Rendezvous at North Pole.” *New York Times* (December 16, 1986).

Huebert, Rob. “US Subs do not threaten our Sovereignty.” *National Post* (December 21, 2005).

Hunter, Ian. “Arctic Claims not at Risk, Government says.” *Ottawa Citizen* (December 7, 1987).

Koring, Paul. “Bouchard Delays Plans for Polar 8 as Cost Rises.” *Globe and Mail* (May 8, 1989).

MacQueen, Ken. “Ottawa’s Paper Ship: A Massive Waste of Time, Talent and Money.” *Montreal Gazette* (February 22, 1990).

MacQueen, Ken. “Patrolling the Arctic.” *Maclean’s* (August 18, 1986).

Manthorpe, John. “Poll says no to Nuclear-Powered Subs.” *Ottawa Citizen* (May 26, 1988).

McIntosh, Dave. “Canada will ask UN for 12-mile limits.” *Globe and Mail* (August 17, 1956).

Munro, Margaret. “US Arctic Voyage Stirs Debate; Canadian Sovereignty Undermined, Critics Say.” *The Montreal Gazette* (July 17, 1985).

“Oil Concerns seek a Northwest Passage to Unlock the Arctic.” *The Wall Street Journal* (December 17, 1968).

“Ottawa Scotches US Plan to Man Weather Bases in Canadian Artic.” *Financial Post* (July 20, 1946).

Sharp, Mitchell. “A Ship and Sovereignty in the North.” *The Globe and Mail* (September 18, 1969).

Sallot, Jeff. “Submarine Defence of Arctic Urged by All-Pary Committee.” *Globe and Mail* (June 27, 1986).

“Sovereignty Issues Won’t go to World Court, Clark Says.” *Globe and Mail* (August 23, 1985).

“Torpedo the Subs for Budget Fairness.” *Toronto Star* (April 25, 1989).

“Under the Ice.” *The Globe and Mail* (December 8, 1986).

Ward, Doug. “Canadians Disbelieve Soviet Threat Poll Finds.” *Vancouver Sun* (April 22, 1988).

Young, Christopher. “We’ve Flopped on Polar Sea.” *Montreal Gazette* (August 14, 1985).

Internet Sources

"1987 – Submarine Acquisition Project," *Global Security.org* [Online] www.globalsecurity.org.

"Prudhoe Bay Production," *ANWR.org*, [Online] http://www.anwr.org/features/land/prudhoe-production.htm.

Canada, Statistics Canada, "2005 Census" [Online] www.statscan.gc.ca.

Lynden T Harris. *The DEW Line Chronicles* [Online] http://www.lswilson.ca/dewhist-a.htm.

King, Mackenzie. *King Diaries.* [Online] http://king.collectionscanada.ca.

Philpott, Dan. "Sovereignty," *Stanford Encyclopedia of Philosophy*, [Online] http://plato.stanford.edu/entries/sovereignty/#1.

Western Electric, *The DEW Line Story,* [Online] http://www.bellsystemmemorial.com/dewline.html.

O'Hara, Christie A. and Jon M. Collis. "Underwater Acoustics in Arctic Environments." *ASA Language Papers*, 162nd Acoustical Society of American Meeting (November 1, 2011) [Online] http://www.acoustics.org

Toronto City Archives, [Online] www.Toronto.ca/archives.

U.S. Energy Information Administration. "Total Energy: Petroleum and Other Liquids Overview, 1949-2010," [Online] www.eia.gov.

International Treaties, Documents and Court Cases

American Society of International Law. *International Legal Materials* 9:3 (May, 1970).

International Court of Justice. *Anglo-Norwegian Fisheries Case* (United Kingdom v. Norway). *Jurisdiction of the Court, Judgment, I.C.J. Reports,* 1951.

-----. *Corfu Channel Case* (United Kingdom v. Albania). *Jurisdiction of the Court, Judgment, I.C.J. Reports,* 1949.

-----. *Eastern Greenland Case* (Denmark v. Norway). *Jurisdiction of the Court, Judgment, I.C.J. Reports,* 1933.

Lexium, Canado-American Treaties: Exchange of Notes between Canada and the United States of America Governing the Establishment of a Distant Early Warning System in Canadian Territory (May 5, 1955) [Online] www.lexium.com.

Permanent Court of Arbitration (Netherlands v. USA). *Island of Palmas Case, Award of the Tribunal*, 1928.

Stevenson, John. *UNCLOS III, Official Records* 1. Second Session, 38th Plenary Meeting (July 11, 1974).

United Nations General Assembly. *Third United Nations Conference on the Law of the Sea* (14 December 1983), A/RES/38/59.

United Nations General Assembly. *1958 Convention on the Territorial Sea and the Contiguous Zone* (April 29, 1958), 15 UST 1606/516 UNTS 205.

United Nations Secretariat, "Juridical Regime of Historic Waters Including Historic Bays" A/CN.4/143 Extract from the *Yearbook of the International Law Commission* 2, 1962.

Appendix 1

Northwest Passage Transits: 1900 – 1985

Year	Ship	Registry	Ship Type	Nature of Voyage
1903-60	*Gjoa*	Norway	Herring Boat	Exploration
1940-42	*St. Roch*	Canada	Schooner	Patrol & exploration
1944	*St. Roch*	Canada	Schooner	Patrol & exploration
1954	HMCS *Labrador*	Canada	Icebreaker	Sovereignty & survey
1957	USCGS *Storis*	U.S.	Icebreaker	Hydrographic survey in Bellot Strait with Canadian icebreaker *Labrador*
1957	USCGS *Bramble*	U.S.	Icebreaker	
1957	USCGS *Spar*	U.S.	Icebreaker	
1960	USS *Seadragon*	U.S.	SSN	Exploration/transit of Northwest Passage with Canadian observer and assistance
1962	USS *Skate*	U.S.	SSN	Exploration/transit of Northwest Passage within joint defence arrangements
1967	CCGS *John A. Macdonald*	Canada	Icebreaker	Assist CCGS *Camsell* in MacKenzie Bay and USCGS *Northwind* n. of Pt. Barrow
1969	S/T *Manhattan*	U.S.	Tanker	Test passage for crude carriers through Northwest Passage with Cdn assistance
1969	CCGS *John A. Macdonald*	Canada	Icebreaker	Escort for *Manhattan*
1969	S/T *Manhattan*	U.S.	Tanker	Return Voyage
1969	USCGS *Northwind*	U.S.	Icebreaker	Support *Manhattan*
1969	CCGS *John A. Macdonald*	Canada	Icebreaker	Support *Manhattan*
1969	USCGS *Staten Island*	U.S.	Icebreaker	Support *Manhattan*
1969	USCGS *Northwind*	U.S.	Icebreaker	Return to Seattle
1970	CSS *Baffin*	Canada	Survey ship	Survey
1970	CSS *Hudson*	Canada	Survey ship	Survey, first circumnavigation of the Americas
1975	CCGS *Skidegate*	Canada	Icebreaker	Redeployment to the East Coast
1975	CCGS *John A. Macdonald*	Canada	Icebreaker	Assist CCGS *Camsell* & *Beaver Mackenzie* in the Beaufort Sea
1975	CCGS *John A. Macdonald*	Canada	Icebreaker	Return to the East Coast
1975	MV *Pandora II*	Canada	Survey ship	Survey
1975	MV *Theta*	Canada	Survey ship	Survey
1976	*Canmar Explorer II*	Canada	Drill Ship	Drilling for Dome in the Beaufort Sea
1976	CCGS *J.E. Bernier*	Canada	Icebreaker	Redeployment to the East Coast
1977	*Williwaw*	Netherlands	Yacht	Adventure
1977	USS *Flying Fish*	U.S.	SSN	Tests with CF in Robeson Channel
1977-78	*J.E. Bernier II*	Canada	Yacht	Adventure

1978	USS *Pintado*	U.S.	SSN	Survey Work
1978	CCGS *Pierre Radisson*	Canada	Icebreaker	Redeployment to the East Coast
1978	CCGS *John A. Macdonald*	Canada	Icebreaker	Chartered to Dome Petroleum in the Beaufort Sea
1979	CCGS *John A. Macdonald*	Canada	Icebreaker	Return voyage from the Beaufort Sea
1979	MV *Kigoriak*	Canada	Icebreaker	Support for Dome in the Beaufort Sea.
1979	CCGS *Louis St. Laurent*	Canada	Icebreaker	Assist the CCGS *Franklin* in Viscount Melville Sound
1979	USS *Archerfish*	U.S.	SSN	A joint CDN-UK-US exercise, CF aircraft and HMCS *Ojibwa* opposed northbound transit in Labrador Sea and Davis Strait.
1980	CCGS *J.E. Bernier*	Canada	Icebreaker	Returning to Quebec from the Beaufort Sea
1980	MV *Pandora II*	Canada	Survey	Redeploying to the East Coast
1981	CSS *Hudson*	Canada	Survey	Redeploying to the East Coast
1981	USS *Silversides*	U.S.	SSN	Joint Canada-US-UK exercise, provided tracking services to Canadian listening arrays in the Northwest Passage
1981	*Morgan Stanley*	Canada	Boston Whaler	Adventure
1979-82	*Mermaid*	Japan	Yacht	Adventure
1983	*Arctic Shiko*	Canada	Tug	Supply
1983	*Polar Circle*	Canada	Survey ship	Survey
1983	USS *L. Mendel Rivers*	U.S.	SSN	Tested magnetic sensors in Barrow Strait and acoustic sensors in Nares Strait.
1984	M/S *Linblad Explorer*	Bahamanian	Cruise ship	Cruise, St. Johns-Yokohama, permission requested
1984	USS *Spadefish*	U.S.	SSN	Classified
1985	M/S *World Discoverer*	Liberian	Cruise Ship	Cruise, Nome-Halifax, permission requested
1985	USCGS *Polar Sea*	U.S.	Icebreaker	Redeployment from Thule to Chukchi Sea.
1985	CCGS *Johan A. Macdonald*	Canada	Icebreaker	Assist CCGS *Camsell* in the Beaufort Sea
1985	CCGS *Johan A. Macdonald*	Canada	Icebreaker	Return to East Coast

Information for much of this chart was taken from Donat Pharand's "Canada's Sovereignty over the Newly Enclosed Arctic Waters," *Canadian Yearbook of International Law* 25 (1987), pp. 338-341, itself based on a list compiled by T.C. Pullen. Additional material was compiled from the Waldo K. Lyon Papers, Naval History and Heritage Centre, Washington D.C.

Appendix 2

American Submarines in Canadian Arctic Waters, 1960-1986

Date	Boat	Route	Available Evidence of Canadian Participation or Concurrence
1960	USS *Seadragon*	East – West transit of Parry Channel.	Sought Canadian concurrence. Commodore O.C. Robertson on board. Stopped in Resolute where a Canadian delegation came aboard.
1960	USS *Archerfish* (SS-311)	Hudson Bay, Ungava Bay, Hudson Strait, Foxe Basin, Frobisher Bay and Cumberland Sound.	Conducted experiments in partnership with Canadian agencies. Canadian technicians aboard.
1960	USS *Sargo*	Entered McClure Strait briefly on route to North Pole.	Commodore O.C. Robertson was aboard briefly.
1962	USS *Skate*	West – East transit of Perry Channel.	Notified Canadian authorities.
1977	USS *Flying Fish*	Transit to Arctic Ocean via Prince Gustaf Adolf Sea, Byam Martin and Austin Channels.	Tests with CF in Robeson Channel. Provided service to Canadian research personnel.
1978	USS *Pintado*	Unknown	None available
1979	USS *Archerfish* (SSN-678)	East – West transit of Perry Channel by way of Crozier Channel, Fitzwilliam Strait, Hazen Strait and Prince Gustaf Adolf Sea.	A joint Cdn-UK-US exercise. CF aircraft and HMCS *Ojibwa* opposed northbound transit in Labrador Sea and Davis Strait.
1981	USS *Silversides*	Transited Eureka Sound, Nansen Sound, Hassel Sound, Wellington Channel and Parry Channel.	A joint Canada-US-UK exercise. Provided tracking services to Canadian listening arrays in the Northwest Passage.
1983	USS *L. Mendel Rivers*	Likely operated in Jones Sound, M'Clintock Channel and Norwegian Bay	Tested magnetic sensors in Barrow Strait and acoustic sensors in Nares Strait.
1984	USS *Spadefish*	Prince of Wales Strait, Fitzwilliam Strait and Ballantyne Strait	None available