

## Multilateralism and Arctic Sovereignty: Canada's Policy Options

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**Abstract:** This paper will examine Canada's policy options regarding Canadian sovereignty over the Arctic Ocean, and will recommend a policy of multilateral engagement. Canada claims full sovereignty over the Arctic Archipelago and its surrounding waters, as well as a more limited form of sovereignty in parts of the Arctic Ocean. There is significant strategic, environmental, and economic value to uncontested Canadian control of these waters. However, these claims are not recognized by other states and contravene accepted international rules laid out in the United Nations Convention on the Law of the Sea (UNCLOS). As Canada lacks the infrastructure and military power to effectively assert control of the region, as well as the diplomatic power to make other states recognize Canada's claim, Canada should abandon its unilateral stance and pursue its claim through existing multilateral options: the UNCLOS and the Arctic Council.

Canada's claim to sovereignty in the Arctic is a complex and often misunderstood issue. Canada claims full sovereignty over the Arctic Archipelago and its surrounding waters, as well as a more limited form of sovereignty in parts of the Arctic Ocean. Unlike what has often been stated in the media, no states are making any claims to sovereignty over any additional land in the Arctic. In fact, no state has contested Canadian sovereignty over the Arctic Archipelago since the 1930's<sup>1</sup>. Canada's claims to both the waters surrounding the Arctic Archipelago and in the High Arctic, however, are contested. While the claims to the High Arctic are awaiting scientific research to be submitted to a UN commission, Canada's claims to the waters of the Arctic Archipelago are unrecognized by other states, and contravene international law. While there is considerable value in having control over the Arctic Ocean, Canada's unilateral claim of sovereignty over Arctic maritime areas is legally untenable and should be dropped in favour of multilateral cooperation. This will not significantly affect Canada's control over those areas, yet will increase its goodwill and influence among the international community.

### Strategic Value of the Arctic

Prior to making any argument about the strategy Canada should pursue in regards to the Arctic, it is vital to first answer the question: why should Canada invest any effort in the Arctic at all? The Arctic is important to Canada for several, often interdependent reasons, all of which are caused or exacerbated by the changing climatic conditions found in the North. These reasons can be broadly categorized into three headings: security, environmental, and economic reasons.

The oldest of these three reasons is defence; Canadian policy towards the Arctic has been shaped by defence, starting in the Second World War, and accelerating during the Cold War. Canada's obligations to continental defence through NORAD and its NATO commitments to

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<sup>1</sup> Robert Dufresne, *Canada's Legal Claims Over Arctic Territory and Waters*. Parliamentary Information and Research Service (2007), 4

keeping the northern sea lanes open to Europe ensured the importance of Arctic security to not only Canada but the West in general<sup>2,3</sup>. Despite the importance of Arctic security, and the publishing of several white papers on defence that emphasised security of the Arctic, Canada did not allocate sufficient resources to the armed forces, and as a result lacked the capability to defend the Arctic. For this reason, Canada relied on the United States to “provide almost completely for North American Arctic security against the USSR”<sup>4</sup>. It can be argued that the fall of the USSR has made the development of Canadian policy on Arctic security more rather than less important, as after the fragmentation of the Soviet Union the United States has ignored the security of the North<sup>5</sup>. The nature of potential threats to Arctic security are at this time unclear, but the Canadian government, mainly through Operation Nanook in 2007 and 2008, has practised responses to counter-narcotics, maritime surveillance, and ship evacuations, as well as environmental spills<sup>6</sup>. Regardless of the nature of security concerns in the future, Canada can no longer rely on its allies to defend its sovereignty and control of the Arctic, and must develop a comprehensive Northern security policy if it wishes to do so for itself.

The environment of the Arctic is particularly fragile. There are four major environmental threats to the Arctic: persistent organic pollutants, heavy metals, ozone depletion, and climate change<sup>7</sup>. These affect not only flora and fauna, but also pose a danger to the Northern population of Canada and other states, through threats to health and livelihood. Already there have been significant declines in the populations of Peary caribou and walrus that are depended upon by some indigenous groups<sup>8</sup>. Of the environmental changes facing the Arctic, climate change is by far the most important, due to “many and inter-connected... legal, political, social, economic, and environmental” consequences<sup>9</sup>. Increased economic activity and human passage in the Arctic due to climate change makes the issue of local pollution more pressing. As the UN Convention on the Law of the Sea allows Arctic states to legislate to control pollution in its exclusive economic zone (see the section on Legal Background for further explanation of the UNCLOS), Canada must take an active stance in the Arctic in order to safeguard both the indigenous population and the unique Arctic ecology.

The most important economic reasons for a Canadian Arctic strategy are international shipping and the exploitation of natural resources, primarily hydrocarbons. Changing ice conditions have allowed navigation of the Northwest Passage to be extended, with NASA data

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<sup>2</sup> Nathaniel French JR Cadwell, *Arctic Leverage: Canadian Sovereignty and Security*. (New York: Praeger Publishers, 1990), 36-44

<sup>3</sup> Natalie Mychajlyszyn, *The Arctic: Canadian Security and Defence*. Parliamentary Information and Research Service, (2008), 4

<sup>4</sup> Rob Huebert, “Canadian Arctic Security: preparing for a changing future” *Behind the Headlines* 65 no. 4 (July 2008), 16

<sup>5</sup> *Ibid.*, 16

<sup>6</sup> Mychajlyszyn, *The Arctic: Canadian Security and Defence*, 4

<sup>7</sup> David Vanderzwaag, Rob Heubert, and Stacey Ferrara. “The Arctic Environmental Protection Strategy, Arctic Council, and Multilateral Environmental Initiatives” *Denver Journal of International Law and Policy*. 30 no. 2 (2002), 134

<sup>8</sup> *Ibid.*, 141

<sup>9</sup> Louise Angelique de La Fayette, “Oceans Governance in the Arctic” *The International Journal of Marine and Coastal Law* 23 (2008), 531

predicting an ice free Arctic summer by 2013<sup>10</sup>. By taking the Northwest Passage, ships could decrease a trip from Europe to Asia by 2500 miles<sup>11</sup>. As shipping costs can run in the tens of thousands per day, this would represent significant savings<sup>12</sup>. The Russian Ministry of Natural Resources has stated that the Russian region of the Arctic contains about 80 billion tons of hydrocarbons<sup>13</sup>, while the U.S. Geological Survey estimates “the Arctic as a whole may contain as much as 90 billion barrels of undiscovered conventional oil and 1670 trillion cubic feet of gas”<sup>14</sup>. This represents approximately 7% and 27% of the world’s proven oil and natural gas supply respectively<sup>15</sup>. As well the Arctic has economically significant reserves of tin, manganese, gold, nickel, lead, platinum, diamonds, and fish<sup>16</sup>. Melting ice and longer navigational seasons are contributing to lower the cost to exploit these resources, and Canada can reap substantial economic benefit through control of shipping lanes and natural resources if an appropriate Arctic policy is undertaken.

## Legal Background

Before one can fully understand Canada’s international position, it is important to understand the concepts in international law that are relevant to maritime jurisdiction. State’s sovereignty over maritime areas is regulated by the United Nations Convention on the Law of the Sea (UNCLOS). There are several legal concepts that apply to Canada’s claim of sovereignty over Arctic waters. The UNCLOS defines four distinct claims that can be made upon maritime areas, which are made based upon distance from a baseline. Baselines are normally a nation’s coastline at low tide<sup>17</sup>, but in cases of an irregular coastline a straight baseline may be drawn across features such as mouths of rivers or bays. The first type of maritime zone is internal waters, which is defined as any waters landward of the baseline, which normally includes rivers and lakes, but can include other bodies of water inside of a straight baseline<sup>18</sup>. States maintain full sovereignty over internal waters. The second category, territorial waters, extends twelve miles seaward from a baseline. States maintain sovereignty over territorial waters except that peaceful foreign ships have the right to navigate through them<sup>19</sup>. The third category, the contiguous zone, extends a further twelve miles from the end of the territorial waters. In this zone, states maintain the right to prevent infringements of its laws in its territorial waters<sup>20</sup>. The last zone is the exclusive economic zone (EEZ), which extends 200 miles from a state’s baseline.

<sup>10</sup> Vsevolod Gunitskiy, “On Thin Ice: Water Rights and Resource Disputes in the Arctic Ocean” *Journal of International Affairs* 61 no. 2 (2008), 264

<sup>11</sup> *Ibid.*, 261

<sup>12</sup> Nordic American Tanker Shipping Ltd. *Annual Report 2007*, 29

<sup>13</sup> Gunitskiy, “On Thin Ice”, 266

<sup>14</sup> Benoit Beauchamp and Rob Huebert, “Canadian Sovereignty Linked to Energy Development in the Arctic” *Arctic* 61 no. 3 (September 2008), 342

<sup>15</sup> United States. Department of Energy. Energy Information Administration. *World Crude Oil and Natural Gas Reserves*. (January 2009). <http://www.eia.doe.gov/aer/txt/ptb1104.html>

<sup>16</sup> Gunitskiy, “On Thin Ice”, 263

<sup>17</sup> United Nations. Division for Ocean Affairs and the Law of the Sea. *United Nations Convention on the Law of the Sea* (10 December 1982), Article 5

<sup>18</sup> *Ibid.*, Article 22

<sup>19</sup> *Ibid.*, Articles 2-5, 17

<sup>20</sup> *Ibid.*, Article 33

As the name suggests, a state maintains exclusive rights to economic exploitation of resources in this zone, but no control over transit by foreign ships. The EEZ can also be extended if a state can prove that the continental shelf of its territory extends further than 200 miles<sup>21</sup>.

Three exceptions to the rules of the UNCLOS are important in understanding Canada's position. The first is historical title, which enables a state to extend its internal waters irrespective of geography. Historical title is based upon the exclusive exercise of state sovereignty over a lengthy period of time with the acquiescence of foreign states<sup>22</sup>. The second exception is Article 234 of the UNCLOS, which allows states "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"<sup>23</sup>. The last exception is the International Court of Justice's decision in the Corfu Channel case, which established that an international strait is a water corridor which links two bodies of water and is used for international maritime traffic. If a body of water is classified as an international strait, then all nations enjoy a right of transit<sup>24</sup>.

### Canada's Position

Canada maintains two separate claims under the UNCLOS, the first being an assertion that Canada's continental shelf (and therefore EEZ) extends beyond the 200 mile limit, and the second being that the Northwest Passage (the waters between Canada's Arctic islands) are internal waters, and are fully subject to Canadian sovereignty.

Canada ratified the UNCLOS in 2003, and therefore has until 2013 to submit a claim for an extended EEZ in the Arctic. Canada's claim, like those of Russia, Denmark, and Norway, are based upon the assumption that the continental shelf of their respective territories extend further than the 200 mile EEZ limit. As research is currently in progress to determine which continental shelves extend into the High Arctic, it is difficult to comment on the strength of Canada's claim. It is important to note though that in this area Canada is fully cooperating with the international community, and is pursuing its claims through a recognised multilateral body, the UN Commission on the Limits of the Continental Shelf. This body currently can only issue non-binding recommendations<sup>25</sup>, and it is likely that settlement of claims among Arctic powers will involve further multilateral negotiation in which Canada's ability to utilize its soft power will be important.

Canada's other position, that the Northwest Passage is Canadian internal waters is based on much weaker legal ground. No other state recognises the waters surrounding the Arctic Archipelago as Canadian internal waters<sup>26</sup>. Canada claims the Northwest Passage as internal waters on two grounds. The first, historical title, is regarded as weak by the Canadian

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<sup>21</sup> *Ibid.*, Article 55-57, 76

<sup>22</sup> Dufresne, *Canada's Legal Claim*, 11

<sup>23</sup> United Nations, *United Nations Convention on the Law of the Sea*, Article 234

<sup>24</sup> Dufresne, *Canada's Legal Claim*, 11

<sup>25</sup> Gunitskiy, "On Thin Ice", 265

<sup>26</sup> Mark A Smith and Keir Giles. "Looking North" *Russia and the Arctic: The Last Dash North*. (Shrivenham Defence Academy of the United Kingdom Sept 2007), 6

Parliamentary Information and Research Service<sup>27</sup>. The second is by virtue of the straight baselines drawn around the Arctic Archipelago by the Mulroney government in 1985. While UNCLOS allows archipelagic states to enclose archipelagos in straight baselines, Canada, being a coastal state, “met none of the conditions for drawing baselines around the Arctic Archipelago but did so anyway”<sup>28</sup>. The baselines are not recognised as valid by many countries, of which the United States and the European Union are the most prominent. These states argue that not only are the waters not internal Canadian waters, but that the water surrounding the Arctic Archipelago constitute an international strait<sup>29,30</sup>.

## Canada’s Policy Options

Having established both why Canada needs a clearly defined Arctic policy, and the state of Canada’s international legal position regarding the North, the policy options that should be adopted by the Canadian government can now be examined. The Canadian government must choose between two conflicting policy options: either continue to unilaterally assert that the Arctic waters are Canadian internal waters, or abandon this claim and instead commit to multilateral solutions to Canadian claims. Canada lacks the infrastructure, military capability, and diplomatic power to effectively assert its unilateral claims to the Arctic, and therefore should abandon its claim to internal waters and shift its policy to one of multilateral cooperation with other polar states.

Canada controls vast territories in the Arctic, but they are relatively undeveloped and Canada lacks the capability to project power in the region. The 2006 census records the population of the three northern territories as 101,310<sup>31</sup>. Alaska has more than six times this population, while the Russian arctic city of Murmansk alone has more than three times the population of the Canadian Arctic<sup>32,33</sup>. Canada’s north also suffers from underdeveloped infrastructure. Though some have suggested that Churchill, Manitoba could become a Canadian Murmansk (possessing as it does a vital rail link to southern Canada and the United States), Churchill has a population of 1,000 and its main industry is polar bear tourism. In contrast, Murmansk has a population of 325,000 and is a hub for oil development, fishing, and is the base of the Russian Northern Fleet<sup>34</sup>.

Historically, defence of the Arctic has been provided by the United States. Unfortunately, this enabled the Canadian government to “avoid the costly challenge of building defences” in the Arctic, and therefore had not been “forced to develop the instruments and policies needed to properly protect Canadian interests”<sup>35</sup>. Successive Canadian governments have promised to establish a maritime force capable of controlling the Arctic, either through armed ice-breakers or

<sup>27</sup> Dufresne, *Canada’s Legal Claim*, 15

<sup>28</sup> Cadwell, *Arctic Leverage*, 58

<sup>29</sup> Dufresne, *Canada’s Legal Claim*, 16

<sup>30</sup> Beauchamp, “Canadian Sovereignty”, 342

<sup>31</sup> Canada, Statistics Canada. *2006 Census*

<sup>32</sup> United States. U.S. Census Bureau. “Quick Facts”

<sup>33</sup> Russian Federation. Russian Federal Service of State Statistics. *Russian Census of 2002*.

<sup>34</sup> Smith, “Looking North”, 11

<sup>35</sup> Huebert, “Canadian Arctic Security”, 16

nuclear submarines. These have without exception been cancelled due to budgetary concerns. Examples of this include commitments to build nuclear submarines in the 1964 and 1987 White Papers, the Polar 8 icebreaker promised by the Mulroney government, and the Arctic patrol ships promised by the Harper government in 2007<sup>36,37</sup>. Despite the Canadian government's recognition of their lack of capability in the Arctic, successive governments remain unwilling to commit the needed resources to ensure effective control over the Arctic.

Throughout its history, Canada has lacked the diplomatic power to unilaterally enforce its claims of sovereignty over the Arctic maritime. Canada's attempts to achieve recognition of its claims to internal water status over the Northwest Passage have to date been a complete failure; no nation has recognized those waters as Canadian internal waters, and the United States has crossed through without seeking Canadian permission on two notable occasions. In 1969, the *Manhattan*, an experimental American oil tanker crossed through the Northwest Passage with Canadian and American escorts. Prime Minister Trudeau asked for, and was denied, a formal request by the American government for passage<sup>38</sup>. A similar incident occurred in 1985 with the *USCGC Polar Sea*, which also crossed without requesting Canadian permission. The then External Affairs Minister Joe Clark expressed the government's policy options as: "When we looked for ways to exercise our sovereignty, we found that the Canadian cupboard was bare"<sup>39</sup>.

## Policy Recommendation and Conclusions

As shown above, Canada's claim to internal waters is based on a legally unsound interpretation of the UNCLOS, and is not recognized by other states. Canada's argument of straight baselines around the Arctic is not allowed by international law, and is generally ignored by other nations. It also provides no appreciable benefit for Canada, as Article 234 of the UNCLOS and the Canadian EEZ would allow Canada to maintain both economic control over the region, and the ability to regulate traffic in order to comply with Canadian environmental legislation. The only right it would give up is that of restricting foreign traffic completely, which is already ignored by other nations as demonstrated by the Manhattan and Polar Sea incidents. The renunciation of this claim by the Canadian government would not appreciatively damage Canadian interests in the Arctic, but would most likely gain goodwill of the international community.

Therefore, the recommended policy course is to abandon Canada's claim to internal water status in the Canadian Arctic and instead commit to multilateral solutions to Canadian Arctic sovereignty. Multilateral solutions exist in the form of the UNCLOS, as well as the Arctic Council, a multilateral forum of polar countries designed to promote broad cooperation on economic, aboriginal, environmental, and security issues, that was actually established as a Canadian initiative<sup>40</sup>. Canada has a reputation for cooperation in international matters, which is

<sup>36</sup> Cadwell, *Arctic Leverage*, 62

<sup>37</sup> Smith, "Looking North", 4

<sup>38</sup> Cadwell, *Arctic Leverage*, 45

<sup>39</sup> *Ibid.*, 56

<sup>40</sup> Pharand, Donald. "Draft Arctic Treaty: an Arctic Regional Council." *The Arctic Environment and Canada's International Relations*. (Ottawa: Canadian Arctic Resources Committee, 1991), A1-A10

blemished by Canada's refusal to revise its position on the Arctic Archipelago. Canada should commit to international law in regards to the status of the waters in the Arctic Archipelago, and attempt to settle any outstanding issues through the Arctic Council and the UN. This will increase Canada's influence in an area that is vital to Canadian interests without appreciable loss to Canada's control over those waters. The goodwill generated by this policy action can likely be translated into an advantage to Canada in other negotiations, such as those to settle continental shelf limits, which would significantly benefit Canada. This policy course is politically feasible, as the public generally does not understand the distinction between internal waters and the powers granted to an Arctic state by the UNCLOS. In other words, no significant announcement to the public would have to be made, as Canada's de-facto control over the waters of the Arctic would not change.

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