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UNITED STATES ARCTIC POLICY AND THE NORTHWEST PASSAGE

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AIM

1. This service paper is prepared for the Director General, Naval Force Development. The purpose of this service paper is to examine the United States (US) Arctic Policy and how it directly affects the US position that the Northwest Passage is an international strait vice Canadian territorial waters. Specifically, this paper will examine the foundational difference in the US and the Canadian positions on the Northwest Passage, in terms of law and geography, before moving into a wider examination of US priorities in the Arctic Region and how the current US position on the Northwest Passage could be an advantage or disadvantage to the US. This paper will conclude with an examination of the United States Navy's (USN) service level Arctic direction and how it may be leveraged by the RCN in preparing for future Arctic operations.

INTRODUCTION

2. The heart of the disagreement between the US and Canada on whether the Northwest Passage is territorial waters vs. an international strait is rooted in each country employing a different method to determine baseline and therefore adjacent territorial waters. Specifically, Canada employs the straight baseline method.¹ The definition of Canada's Arctic baseline is contained in the Government of Canada's Territorial Sea Geography Coordinates (Area 7) Order of 1986. From this baseline, Canada has asserted that the Northwest Passage, being that it is bound by Canadian land to the North and to the South, is territorial waters.

3. Counter to this the US instead uses the normal baseline method and therefore does not recognize Canada's right to enclose the Northwest Passage as territorial waters. Second, the US asserts that the Northwest Passage is an international strait based on geography as it is a body of water that connects high sea to high sea, with the Northwest Passage connecting the Davis Strait to the Beaufort Strait. Finally, the US has consistently defended its right of innocent passage in all international waters, including international straits throughout the world.²

DISCUSSION

4. Current US Arctic Policy has been updated over the past decade starting with the release of the National Security Presidential Directive 66/Homeland Security Presidential Directive (NSPD-66/HSPD-25). NSPD-66/HSPD-25 states that "[t]he [US] has broad and fundamental national security interests in the Arctic region and is prepared to operate either independently or

¹Department of Fisheries and Oceans Canada, "Baselines of the territorial sea," last modified 1 January 2018, last accessed 10 October 2018, <http://www.dfo-mpo.gc.ca/science/hydrography-hydrographie/canada-territorial-waters-eng.html>.

²Andrea Charron, "Canada, the United States, and the Northwest Passage: Sovereignty to the side," *Polar Geography* 29, no. 2: 144-145, <https://doi.org/10.1080/789610130>.

in conjunction with other states to safeguard these interests.”³ Within the context of national security and homeland defense, the directive goes on to state that “[t]he Arctic region is primarily a maritime domain...”⁴ and specifically highlights that “[f]reedom of the seas is a top national priority” and that “...the Northwest Passage is a strait used for international navigation...”⁵ In the broader context of the Arctic region, the US is concerned about the status of the Northwest Passage, the Northeast Sea Route, which is part of the Northeast Passage, and the Transpolar Route as these routes become more ice free.

5. While the Northwest Passage and Northeast Passage are currently impassable for the majority of the year, Rear-Admiral Jonathan White, Oceanographer and Navigator of the USN has asserted all three routes will be open in the coming decades for varying lengths of time as viable shipping routes with each successive year having a longer season.⁶ The fact that the Arctic ice is receding, thereby opening up the Northwest Passage to shipping for longer periods each year, directly links back to the US position that freedom of the seas is a national priority and any infringement on it is seen as a national security issue.

6. NSPD-66/HSPD-25 was then followed up by the National Security Strategy (NSS) of 2010 and 2015 and the National Strategy for the Arctic Region of 2013. Specifically, the US Arctic strategy focused US government effort into three lines:

- i. Advance United States Security Interests
- ii. Pursue Responsible Arctic Region Stewardship
- iii. Strengthen International Cooperation

7. This paper will discuss in greater detail each line of effort as it can be linked back to whether it is advantageous or disadvantageous for the US to consider the Northwest Passage an international strait vice Canadian territorial waters and potential implications on future RCN Arctic operations.

Advance United States Security Interests – North American Perimeter Security

8. A principle tenet of national security for the US is the need to ensure the freedom of navigation and to ensure that no country infringes on the unrestricted movement of shipping. It is a country that uses its economic and military power to project influence around the globe in support of national interests. The assertion that the Northwest Passage is an international strait is just a small part of US national security policy.

9. Counter to the US position that the Northwest Passage is an international strait; it can be argued that the US has a vested interest in supporting Canada’s claim to the Northwest Passage.

³Office of the President of the United States, *National Security Presidential Directive 66/Homeland Security Presidential Directive 25 - Arctic Region Policy* (Washington, DC: US Government Printing Office, 9 January 2009), 2.

⁴*Ibid.*

⁵*Ibid.*, 3.

⁶Rear-Admiral Jonathan White, “US Navy Arctic Roadmap Update,” dated 15 July 2015, last accessed 9 October 2018, <https://www.hsdl.org/?view&did=811544>.

By supporting Canada's claim, it strengthens a common approach to Arctic security and therefore secures a major threat axis in continental security. If the goal is a security perimeter around North America, then it makes no sense for the US to insist that an international strait run through the heart of the Canadian Arctic. Rather, by supporting Canada's claim, the US will directly benefit from Canada's ability to conduct law enforcement to the full breadth of Canadian Law in the Northwest Passage thereby securing a potential major entry point to North America.⁷

Advance United States Security Interests – Support to North American Aerospace Defense Command (NORAD)

10. Another national security aspect on whether the Northwest Passage is territorial waters or an international strait is its effect on maritime warning under the NORAD Agreement. In the latest renewal of the Agreement in May 2006, NORAD's mission was expanded to include maritime warning.⁸ As with all territorial waters, Canada would have the right to demand information from all those transiting the Northwest Passage. This information could in turn feed into the NORAD maritime warning system thereby expanding the information available to military and law enforcement agencies in both countries. If the Northwest Passage is an international strait, then Canada, and therefore the US, would be denied access to a wealth of potential information on those transiting the Northwest Passage.

Advance United States Security Interests – Competing Territorial Water Claims

11. However, outright recognition of the Northwest Passage as Canadian territorial waters, poses some issues for the US as to how it responds to other countries' territorial water claims. Therefore, while it might be considered advantageous for the US to support Canada's claim that the Northwest Passage is territorial waters, this could set a precedent when dealing with other Arctic nations'⁹ claims. Specifically, Canada and Russia employ straight baselines in their Arctic waters and therefore each claim the Northwest Passage and North Sea Route, respectively, as territorial waters. The US views these territorial water claims as having the potential to curtail US strategic options when dealing with issues of national interest, such as military action, commerce, humanitarian relief, etc.

Pursue Responsible Arctic Region Stewardship – Environmental Protection

12. Canada has been commended for its passing and enforcement of the Arctic Water Pollution Prevention Act (AWPPA) of 1970 which "...enabled Canada to exercise functional jurisdiction over shipping in the Passage in order to protect the Arctic marine environment...."¹⁰ Canada took the approach that as the country adjacent to the Northwest Passage, it is appropriate to exercise custodianship and to ensure appropriate environmental protections are in place for the

⁷Franklyn Griffiths, "The Shipping News: Canada's Arctic Sovereignty Not on Thinning Ice," *International Journal* 58, no. 2 (Spring, 2003): 257-282, <https://search.proquest.com/docview/220857663?accountid=9867>.

⁸Canada and the United States, *Agreement between the Government of Canada and the Government of the United States of America on the North American Aerospace Defense Command* (Ottawa, 28 April 2006), Article I.

⁹As defined by Arctic Council membership the eight Arctic nations are: Canada, Denmark, Finland, Iceland, Norway, Russia, United States, Sweden.

¹⁰Charron, *Canada, the United States, and the Northwest Passage...*, 148.

safe and continued use of the Northwest Passage.¹¹ Since its passing in 1970, the United States has raised no objection to Canada's enforcement of the AWPPA, therefore, it is reasonable to infer that in the case of environmental stewardship, Canada and the United States fundamentally agree on the dangers of unregulated activity in the Arctic and the need for appropriate regulation and control.

Strengthen International Cooperation – Shipping/Commerce

13. In the US National Strategy for the Arctic Region of 2013, under the line of effort Strengthen International Cooperation, the US aspires "...[to] protect US rights, freedoms, and uses of the sea and airspace... [including] freedom of navigation and over flight through the Northwest Passage..."¹² Therefore, it can be reasoned, that the US considered freedom of movement to be more than a national security issue. Rather, it is a foundational issue that is intertwined throughout multiple lines of effort as the US seeks to ensure that it is well positioned to support the movement of shipping and reap the economic benefits of an open Northwest Passage.

14. Canada has pledged that it has no intention of shutting the Northwest Passage to shipping. Rather, Canada has continued to express a need to properly develop the Northwest Passage to support shipping.¹³ From an economic perspective for both countries, a viable shipping route can only aid the exploration and exploitation of Arctic national resources which are estimated to be worth in the trillions of dollars.¹⁴

15. The USN predicts that it will be approximately 2030 before the Northwest Passage has an ice free shipping season of about five to eleven weeks,¹⁵ meaning we are still many years away from the Northwest Passage being considered a viable shipping route. In the meantime, Canada needs to invest sufficient resources into preparing for that day through the installation of needed infrastructure and development of support services. While not exhaustive, this will require such things as a credible Search and Rescue (SAR) capability, vessel traffic management, navigation route survey and aids to navigation installation, pollution control, ice breaking, etc. If Canada demonstrates that it is a credible manager of the Northwest Passage capable of exercising control, it "... may convince the... US, to desist in their calls for the Passage to be designated a strait."¹⁶ However, all of the services needed for Canada to make the Northwest Passage a safe and viable shipping route will take years to develop and comes at a significant cost. The US has the potential to position themselves as a key and well-funded ally to Canada in the development of the infrastructure of the Northwest Passage. When tied back to US national security, the US may be well served by supporting Canada's development of the Northwest Passage; Canada and

¹¹*Ibid.*, 149.

¹²Office of the President of the United States, *National Strategy for the Arctic Region* (Washington, DC: US Government Printing Office, 2013), 9.

¹³Prime Minister of Canada. "United States-Canada Joint Arctic Leaders' Statement." Last accessed 11 October 2018. <https://pm.gc.ca/eng/news/2016/12/20/united-states-canada-joint-arctic-leaders-statement>.

¹⁴Chief of Naval Operations, *U.S. Navy Arctic Roadmap 2014-2030*, (Washington, DC: Department of the Navy, 2014), 7.

¹⁵*Ibid.*, 11.

¹⁶Charron, *Canada, the United States, and the Northwest Passage...*, 152.

the US only need to look to the infrastructure and services offered by Russia in the Northern Sea Route as a demonstration of how proper investment can lead to a stronger sovereignty claim.¹⁷

Implications for the RCN

16. The examination of whether the Northwest Passage is territorial waters or an international strait has implications far beyond the RCN. However the RCN is well positioned to play a substantial supporting role to the Government of Canada's whole-of-government approach to implementation of their Arctic Policy in the Canadian Arctic. In *Leadmark 2050* the RCN recognizes:

The challenges of operating in the Arctic will draw [the Arctic nations together] to cooperate strategically in regulating the Arctic, particularly as climate change gradually opens the region to commercially viable maritime activities. This will create opportunities to further enhance the RCN's engagement in the Arctic.¹⁸

17. Additionally, *Leadmark 2050* states that the RCN future fleet will provide Canada with "...a navy that can act with independence to defend Canada's sovereign territory, but that is highly interoperable with the U.S. to help defend North America"¹⁹ including a navy that is "arctic capable and "able to conduct sustained operations in each of Canada's three oceans, including the High Arctic."²⁰ In working to establish, strengthen and focus strategic partnerships, the RCN needs to look no further than the USN, given that the US considers the Arctic primarily a maritime domain, as stated in NSPD-66/HSPD-25.

18. The latest version of the US NSS (2017) makes only one direct reference to the Arctic, however it reinforces previous policy and does not alter the core of US thinking; that the US will "...protect American sovereignty and advance American interests and values.... Free access to the seas remains a central principle of national security and economic prosperity, and... provides opportunities for commercial gain..."²¹ To support US Arctic policy the USN has issued the USN's principal Arctic document is the USN Arctic Roadmap 2014-2030. In its introductory letter the USN's Chief of Naval Operations makes special reference to the "...history of maritime homeland security and ... defense concerns in the Arctic region along with a longstanding... security partnership with Canada."²² In approaching maritime operation in the Arctic the USN has four strategic objectives. They are:

- i. Ensure United States Arctic sovereignty and provide homeland defense;
- ii. Provide ready naval forces to respond to crisis and contingencies;
- iii. Preserve freedom of the seas; and

¹⁷*Ibid.*

¹⁸Department of National Defence, *Canada in the New Maritime World: Leadmark 2050* (Ottawa: DND Canada, 2016), 50.

¹⁹Department of National Defence, *Canada in the New Maritime World: Leadmark 2050...*, v.

²⁰*Ibid.*, vi.

²¹Office of the President of the United States, *National Security Strategy of the United States of America* (Washington, DC: US Government Printing Office, 2017), 40.

²²Chief of Naval Operations, *U.S. Navy Arctic Roadmap 2014-2030...*, ii.

- iv. Promote partnerships within the United States Government and with international allies and partners.²³

19. These strategic objectives lead into the USN's key functions and missions in the Arctic, which are: Maritime Security, Sea Control, Power Projection, Freedom of Navigation, SAR and Disaster Response/Defense Support of Civil Authorities.²⁴ The USN recognizes that more investment is required in areas such as cold-weather training, environmentally sustainable practices, increased knowledge of the physical environment, improved communications architecture and logistical support, with the USN highlighting fuel delivery as a particular issue that needs to be resolved.²⁵ When aligning RCN and USN service level direction the common goals and challenges becomes clear, even if there are differences at the Government level. Fundamentally, the USN and RCN face the same challenges as both services build their respective Arctic capability over the coming decades.

CONCLUSION

20. As eloquently stated by Captain Thomas Pullen, RCN Officer and former Commanding Officer of HMCS *Labrador*, he opined "...that Canada's Arctic sovereignty and American security are inseparable issues..."²⁶ and therefore, the status of the Northwest Passage is just a small part of a much larger discussion. The only constant is that the permanent Arctic ice area is getting smaller with each passing year and the Arctic will undergo dramatic changes in the coming decades.

21. At the service level, current US Arctic policy and the question of the status of the Northwest Passage will not have a dramatic effect on how the RCN develops its Arctic capability, as it will not change the overarching need for the RCN to be able to conduct sustained operations in the Arctic region. The coming decades will challenge both the USN and RCN in the management of resources, to support current national defense priorities, while ensuring sufficient resources are allocated to the development of future capabilities to meet the yet to be determined demands of the Arctic region. The RCN and USN relationship is already so close that some of the respective service level policy documents make reference to the other in the context of partnership, defense cooperation, mutual security interests in North America and specifically, the Arctic.

RECOMMENDATION

22. It is recommended that the RCN leverage its already close relationship with the USN to pursue areas of common goals and challenges. By doing this the RCN has the opportunity to actively engage the USN in Arctic related issues and potentially reap the reward of economy of scale as both services share some of the cost burden of arctic capability development. By doing

²³Chief of Naval Operations, *U.S. Navy Arctic Roadmap 2014-2030...*, 15.

²⁴*Ibid.*, 17-18.

²⁵*Ibid.*, 16.

²⁶Tom Pullen, *US Naval Institute Proceedings*, vol. 113, *What Price Canadian Sovereignty?* (n.p., September 1987); p. 66, quoted in Elizabeth B. Elliott-Meisel, *Arctic Diplomacy: Canada and the United States in the Northwest Passage* (New York: Peter Lang Publishing Inc, 1998), p. 165.

this the RCN will continue to position itself as a key participant in the Government of Canada's whole-of-government approach to Arctic Policy.

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