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## INTERNATIONAL STRAIT IN THE ARCTIC: IMPLICATIONS FOR THE RCN

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## **INTERNATIONAL STRAIT IN THE ARCTIC: IMPLICATIONS FOR THE RCN**

### **AIM**

1. Many things shape Canada's Arctic presence, rights, and obligations. One of the key influencers on Canada's approach to increased governmental presence in the Arctic will be the increase of shipping in the north. Despite Canadian claims, this paper is based upon the opposing views that the North West Passage will be declared an international strait. Using that as an assumption, this service paper will strive to project what requirements will be the result of such a decision and the corresponding implications for the Royal Canadian Navy (RCN). This topic is germane due to the exceptionally long lead times to develop Arctic capabilities – the need for dedicated effort toward setting required actions in motion is now. Additionally, while many of these concerns are known to some across the Department of National Defence/Canadian Armed Forces (DND/CAF) they are perhaps not widespread enough to be included at all appropriate discussions.

### **INTRODUCTION**

2. The Arctic has a special place as a national symbol of Canada and the identity that accompanies it. Recently, the Arctic has been “the subject of very extensive public debate in the very varied contexts of the social sciences, ecology, political science, international and constitutional law, public policy, and military security.”<sup>1</sup> This will intensify as the world warms and navigation in northern waters becomes easier, safer, and more desirable for commercial shipping. It is a complex topic, which is why it is noted above for being discussed by so many disciplines.

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<sup>1</sup> Keith Battarbee & John Erik Fossum, *The Arctic Contested*, (Germany: P.I.E. Peter Lang, 2014), 14.

3. The Northwest Passage as an international strait would have implications for Canada as whole, from northern population and environmental concerns to many governmental agencies. However, it would be particularly felt in the RCN; therefore, to be prepared that position must be considered and action taken to the extent possible. The discussion will cover relevant topics and then recommendations are found as the final section.

## DISCUSSION

4. The term “North” brings with it ideas of isolation, cold, ice, the last frontier, but above all a sense of permanence. Even the term *permafrost* has part of the word in it; though in many areas that permanence is eroding with rising temperatures and ice melting. Thus, *change* may be more relevant today where “Arctic Sovereignty, global warming, and the Northwest Passage [have] emerged as critical issues. These topics – each related to Aboriginal and environmental issues – are now front and centre” and will influence many decisions related to them.<sup>2</sup> When those critical issues are discussed, the impact to the RCN should be assessed and integrated into strategic and operational plans.

5. Understanding the implications begins with a quick review of what international strait means. Despite its common use, the term “international strait” does not appear anywhere in the United Nations Convention on the Law of the Sea (UNCLOS). In Article 34 of UNCLOS it does state that:

The regime of passage through straits used for international navigation established in this Part shall not in other respects affect the legal status of the waters forming such straits or the exercise by the States bordering the

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<sup>2</sup> Robert M. Bone, *The Canadian North – Issues and Challenges*, 4<sup>th</sup> ed. (Don Mills, ON: Oxford University Press, 2012), 287.

straits of their sovereignty or jurisdiction over such waters and their air space, bed and subsoil.<sup>3</sup>

Article 38 continues “all ships and aircraft enjoy the right of transit passage, which shall not be impeded”.<sup>4</sup> As the Northwest Passage is still inside Canada’s Economic Exclusion Zone (EEZ) and mostly within it’s territorial seas, there would not be an implication in terms of international fishing access or seabed rights as a result of this designation.<sup>5</sup>

Additionally, despite the potential confusion in the term “international strait”, the waters are not actually international and there would therefore be no implication on jurisdictions arising from it. Royal Canadian Mounted Police (RCMP), Canada Border Service Agency (CBSA), Canadian Coast Guard (CCG), and RCN responsibilities would be similar to any other coastal area. However, what is different in the Arctic today is access to assets to perform those duties. For example, there “are no Canada Border Service Agency (CBSA) offices or officers in the Arctic.”<sup>6</sup> CBSA can request assistance from RCMP, but “RCMP marine policing is limited as the detachments are not equipped with small boats for patrols and for visits to small, outlying communities within their area of responsibility.”<sup>7</sup> The RCN must be prepared to participate.

6. Another difference between passage through a territorial sea and one which is an international strait is the mode of transit allowed. Specifically, “[i]n the territorial sea,

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<sup>3</sup> *United Nations Convention on the Law of the Sea (UNCLOS)*, Montego Bay, 10 December 1982, Article 34 (1).

<sup>4</sup> *UNCLOS*, Article 38.

<sup>5</sup> *UNCLOS*, Article 58.

<sup>6</sup> Royal Canadian Navy, *RCN Arctic Operations Manual*, (Halifax: DND, 2017), 2-4/4.

<sup>7</sup> *RCN Arctic Operations Manual*, 5-6/16.

submarines and other underwater vehicles are required to navigate on the surface and to show their flag.”<sup>8</sup> But in an international strait:

Ships and aircraft, while exercising the right of transit passage, shall: (a) proceed without delay through or over the strait; (b) refrain from any threat or use of force against the sovereignty, territorial integrity or political independence of States bordering the strait, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations; (c) refrain from any activities other than those incident to their normal modes of continuous and expeditious transit unless rendered necessary by force majeure or by distress; (d) comply with other relevant provisions of this Part.

Submarines normally sail submerged, and designation as an international strait allows them to do so legally. This will be a concern primarily for the RCN as no other arm of government is capable in that arena. It will necessitate better underwater surveillance and hydrophone networks, a topic which may not be on the forefront of planners and policy makers without Anti-Submarine Warfare (ASW) backgrounds.

7. The desire to find a shorter shipping route and make it a “commercial Northwest Passage between the Atlantic and the Pacific... has been a dream for five hundred years; a goal that has eluded the ever-optimistic grasp of merchants.”<sup>9</sup> Designation of the Northwest Passage as an international strait will encourage this use and has implications beyond the initial relevance to shipping. Ships trying to avoid paying for passage and possible delays of Panama Canal, and vessels (including supertankers) too big to get through that Canal would find this route desirable. Many others will also see the benefit

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<sup>8</sup> UNCLOS. Article 20.

<sup>9</sup> William D. Smith, *Northwest Passage*, (New York: American Heritage Press, 1970), 1. This book was written for the New York Times during his voyage aboard the *Manhattan* through the Northwest Passage in 1969.

of saved time and fuel, but as usage increases it will mean greater potential for incidents in the Arctic to contend with.

8. The Northwest Passage, “or Passages, because there are seven routes from the Chukchi Sea to the Atlantic Ocean through Canada’s Arctic islands” includes up to 1200 nautical miles in the Canadian Arctic alone.<sup>10</sup> Assuming an average speed of 12-15 knots during the passage depending on conditions, these ships will be in Canadian waters for 80-100 hours. From a commercial perspective, that is time well spent saving many more miles by comparison with other routes. Monitoring Canadian coastlines for that distance will require massive investment of time and treasure. While large legitimate commercial vessels are unlikely to stop and doing so would be noticeable, smaller vessels or boats launched from larger ones would be difficult to track or observe. As the Senate Committee on Fisheries and Oceans noted, “[w]e need to know what ships are in our waters, force them to report to Canadian authorities, and track their passage.”<sup>11</sup>

9. One cannot talk about shipping travelling through the Northwest Passage without remembering the American flagged *Manhattan*, who’s “voyage of 1969 had broad implications for Canadian-American relations, and has since assumed mythic proportions.”<sup>12</sup> The “...Canadian Department of Transport was lending the expedition its largest and most dependable icebreaker, the *John A. Macdonald*.”<sup>13</sup> Without the *John A. Macdonald*, who “on more than a dozen occasions... charged through the ice that had

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<sup>10</sup> Ken Coates *et al*, *Arctic Front – Defending Canada in the Far North*, (Toronto: Thomas Allen Publishers, 2008), 81-82.

<sup>11</sup> Senate, “Controlling Canada’s Arctic Waters: Role of the Canadian Coast Guard,” in *Report of the Standing Senate Committee on Fisheries and Oceans*, (2d sess., 40th Parliament, December 2009), viii.

<sup>12</sup> Coates *et al*, *Arctic Front – Defending Canada in the Far North*, 94.

<sup>13</sup> Smith, *Northwest Passage*, 48.



stopped the *Manhattan* and freed the tanker”, the voyage would probably not have been successful.<sup>14</sup> Today, the CCG remains responsible for assistance<sup>15</sup>. But what if the RCN has the only ship in the area? These questions have already been recognized and must be addressed early to avoid confusion, frustration, or unnecessary inter-agency competition.

10. Perhaps the most important coordination document to date is *The Canadian Coast Guard and Royal Canadian Navy Joint Arctic Concept of Operations* which was jointly released in May 2018 by the Commander RCN and Commissioner of the CCG. They note that the RCN and CCG “are two sides of the same coin; indivisible in looking after the safety, security and defence of our great nation.”<sup>16</sup> This highlights the need for interoperability and ongoing coordination.

11. The RCN ships operating in the north as a primary function will be the Arctic Offshore Patrol Vessels (AOPV). Potential missions for the AOPVs include force generation (FG), sea trials, fisheries patrols, SAR Zone Coverage, community relations, HVA escort, maritime security patrols, domestic and international ops (in a permissive environment).<sup>17</sup> During any patrol a warship is doing and preparing for many activities; however, sailing in the north must recognize that external support is limited or non-existent. While “[w]ithin the Arctic, RCN ships must contribute to surveillance, presence

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<sup>14</sup> Smith, *Northwest Passage*, 163.

<sup>15</sup> “The Canadian Coast Guard (CCG) is responsible for the maritime component of the federal Search and Rescue (SAR) system which accounts for 85% of SAR incidents in Canada. Services involve searching for, and providing assistance to, people, ships or other craft that are, or are believed to be, in imminent danger.” Department of Fisheries and Oceans Canada, *Canadian Coast Guard Search and Rescue and Canadian Coast Guard Auxiliary Evaluation Report*, February 2012, section 2.1.1. <https://www.dfo-mpo.gc.ca/ae-ve/evaluations/11-12/SAR-CCGA-eng.htm>

<sup>16</sup> Royal Canadian Navy and Canadian Coast Guard, *The Canadian Coast Guard and Royal Canadian Navy Joint Arctic Concept of Operations*, (Ottawa: DND, 2018), ii.

<sup>17</sup> Department of National Defence, B-GN-005-RCN/RQ-001, *CFCD 129 – Royal Canadian Navy Readiness and Sustainment Policy* (Halifax: DND Canada, 2018), 70-75.

and control patrols providing security and environmental protection to indigenous and northern residents.”<sup>18</sup>

12. Environmental concerns are primary in the north, but difficult to enforce and even more difficult to clean up.<sup>19</sup> Whether it is events resulting from exploration, pollution in general, or a ship running aground and spilling into the environment, “the incidents serve as a reminder that ultimate responsibility for cleanup of an oil spill rests with the country claiming sovereign authority over the region.”<sup>20</sup> Despite that authority, even with better access and planning, given the vastness of the area and sparse population it would be uncertain “that Canada has either the equipment or the manpower to deal with a major oil spill.”<sup>21</sup> The RCN must consider how to improve this in all Arctic endeavours.

13. Search and Rescue (SAR) is a role which the RCN will be engaged while in the north. “In 2009, Canada’s then-Chief of the Defence Staff, General Walter Natynczyk, said: ‘If someone were to invade the Canadian Arctic, my first task would be to rescue them.’”<sup>22</sup> Joking aside, there are numerous responses to SAR and medical evacuations each year. In the Arctic, this task is one of specific significance because of the vast distances not only between units and bases, but the sparsity of medical services themselves. Normally the RCAF is charged with air SAR and the CCG is maritime.

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<sup>18</sup> RCN and CCG, ... *Joint Arctic Concept of Operations*, 5.

<sup>19</sup> Many legal tools have entrenched these requirements including UNCLOS and the documents produced by International Maritime Organization (IMO), as well as Canadian Law and policies including the Arctic Environmental Protection Strategy (AEPS) 1999 and the Arctic Waters Pollution Prevention Act.

<sup>20</sup> Shelagh D. Grant, *Polar Imperative – A History of Arctic Sovereignty in North America*, (Toronto: D&M Publishers Inc., 2010), 381.

<sup>21</sup> Grant, *Polar Imperative – A History of Arctic Sovereignty in North America*, 415.

<sup>22</sup> Pierre-Henry Deshayes, “Arctic Threats and Challenges from Climate Change,” in *Agence France-Presse*, 6 December 2009, quoted in Michael Byers, “Does Canada Need Submarines?” *Canadian Military Journal* 14, No. 3 (Summer 2014): 8, <http://www.journal.forces.gc.ca/vol14/no3/page7-eng.asp>.

However, rescue is something which the RCN must be prepared to undertake due to the lack of available ships and the usefulness of helicopters. Additionally, civilian ships must be prepared to truly embrace the requirement in UNCLOS to assist other mariners in distress.<sup>23</sup>

14. The lack of infrastructure, incomplete charting, and general inaccessibility makes presence in the north difficult. It also means that immediate response to vessels which break down will be challenging. “With an ice-free Arctic Ocean, the Northwest Passage would become a commercial waterway and Canada would have to monitor such shipping and enforce environmental violations.”<sup>24</sup> The number of vessels coming through will increase with the international strait designation and further melting of the northern ice. As that occurs, the RCN will need to work with CCG to improve and complete charting and surveys in areas where shipping may find itself.

15. The requirement for the RCN to operate for prolonged periods in the north will require greater integration with the local governments and peoples. The Government of Northwest Territories (GNWT) in the early 1990s indicated there were views ranging from “those who oppose military power altogether to those who want an expanded military presence in the North.”<sup>25</sup> Further efforts are required to continue to improve and clarify that relationship. Among other things, the GNWT “recommended that DND personnel stationed in the North undergo cross-culture orientation in an effort to more

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<sup>23</sup> UNCLOS, Article 98.

<sup>24</sup> Bone, *The Canadian North – Issues and Challenges*, 299.

<sup>25</sup> Government of the Northwest Territories, *Military Activity in the North and the Establishment of a Circumpolar Zone of Peace and Security*, (Yellowknife, NWT: November 1990): 34, quoted in Barry Scott Zellen, *On Thin Ice : The Inuit, The State, and the Challenge of Arctic Sovereignty* (USA: Lexington Books, 2009), 58.

smoothly operate in the Arctic.”<sup>26</sup> This consideration must be taken to heart to ensure that during the short and limited meetings with peoples in the north a strengthening of Canada is achieved rather than anger or embarrassment.

16. With the cooling of tensions at the end of the 20<sup>th</sup> century, “... potentially more dangerous than an air attack would be a terrorist attack by ship or submarine.”<sup>27</sup>

Furthermore, “[t]o the degree that security threats exist in the Arctic today, they concern non-state actors such as drug smugglers and illegal immigrants.”<sup>28</sup> Further, a lack of surveillance and growing ability to travel by road into the Canadian North is creating additional risks for illegal arrival of goods and people. The RCN must be engaged with all appropriate partners to control this risk. Work must be robust and start early.

17. The Russians are also coming to grips with similar issues for their side of the Arctic and demonstrating that as the ice melts they will be expanding their use of the north. Ten years ago, the Russians posed a state policy on the Arctic where the “primary focus was on the need for expanded military surveillance within Russia’s own maritime boundaries, considered necessary because of an anticipated increase in shipping and competition for offshore resources” in the near future.<sup>29</sup> Therefore, we must acknowledge that a by-product of that intent will be a very powerful navy operating in the north which is not the RCN. Due to the “overwhelming expense to try to militarize this area, Canada

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<sup>26</sup> *Ibid*, 59.

<sup>27</sup> Grant, *Polar Imperative – A History of Arctic Sovereignty in North America*, 459.

<sup>28</sup> Michael Byers, “Does Canada Need Submarines?” *Canadian Military Journal* 14, no. 3 (Summer 2014): 8, <http://www.journal.forces.gc.ca/vol14/no3/page7-eng.asp>.

<sup>29</sup> Grant, *Polar Imperative – A History of Arctic Sovereignty in North America*, 445.

is truly unable to effectively control this waterway.”<sup>30</sup> Canada should expect to see an increase in foreign navy transits of the Northwest Passage, which the RCN must be aware of and prepared to interact with.

18. Crewing is a topic the RCN will find different in the North. The expectation is maximized effort and time on station during the navigable months. To achieve that, the RCN will need to consider crew swaps in order to reduce transit time. Long patrols in the north can be hard on crews, especially members who are accustomed to instant communications. The RCN will need to watch carefully for implications around morale and welfare as these will be harder to maintain in the north. There are limited opportunities for shore leave or port visits that their southern counterparts enjoy. The solitude of the north which some find appealing could be devastating for others. However, solving that problem may increase maintenance concerns and other logistical issues.

## **CONCLUSION**

19. The Arctic offers fantastic opportunities but also incredible risks for the RCN. Its unique and inhospitable environment are austere and vulnerable. A lack of facilities and infrastructure heightens the risk of travel and sustainment in that region, as well as decreases response time in the event of any emergency – medical or environmental.

20. As a result of the increased traffic and limited vessels Canada has to deploy in response, the RCN will be called upon to become a major player in the north and must be

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<sup>30</sup> John Kennair, “A Canadian Dire Strait – The Northwest Passage from a Legalist Perspective,” in *The Arctic Contested*, ed Keith Battarbee & John Erik Fossum (Germany: P.I.E. Peter Lang, 2014), 96.

prepared to do so. The operating area, jurisdictions, and ramifications are unlike other areas the RCN operates and must be included in planning. However, the RCN cannot do so unilaterally as the inter-agency implications and policy are above the L1 level. These implications and opportunities must be understood and included at L0 planning and influence the whole of government approach which Canada will require.

## **RECOMMENDATIONS**

21. The watchword in the north is *preparation*. To that end, the following are recommended:

- a. The RCN finalize and promulgate its own Arctic Policy as a future looking document for planners at all levels to draw on.
- b. Surveillance improvements and RADAR satellite upgrades are ongoing but require more investment. The RCN should be active in determining these requirements as well as partnering with CCG and others in the installation, maintenance, and use of the systems.
- c. The Navy does not normally have jurisdiction in internal waters, but has had specific officers granted status temporarily in some instances (e.g. fisheries patrols). This lack of jurisdiction should be reconsidered and appropriate training and qualifications administered if possible. Else, those agencies who have the necessary powers must be sought out and prepared to support RCN deployments.
- d. Access to fuel is always a concern in the north. The Navy requires another fuelling facility in the western Arctic to avoid AOPVs being trapped in the

Eastern Arctic for fuel and having to relocate at the end of the season via Panama Canal.

e. Further to the fuel point above, the RCN should investigate the use of nuclear-powered vessels for the north in conjunction with the CCG.

f. In the north, sovereignty is synonymous with food. The RCN will need assistance for efficient and timely delivery of foods and spare parts to not put strain or burden on the peoples in the north through RCN activities.

g. The RCN should continue to refine and plan its crewing models, crew swapping, maintenance necessities, and understanding of risks in order to maximize patrol time when navigation in the north is possible.

h. Training for specific northern activities and environmental duties overall needs to be better included throughout officer development of all Naval Officers.

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