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**Climate Change and the Impact on the Northwest Passage:
A Challenge to Canadian (Arctic) Sovereignty**

By/par
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Abstract

Canadians have long been fascinated with the Arctic. This fascination has increased since 1957 when three US flagged ships transited through the Northwest Passage; the first of four recent American challenges to Canadian sovereignty in the Arctic. Since 1957 Canadian politicians have expended a great deal of effort to resolve our Arctic sovereignty claim, particularly as it relates to our closest friend and ally, the United States.

One aspect of the Arctic sovereignty discussion is the impact that global warming will have, and how this warming trend will result in the reduced Arctic ice coverage that will lead to a major increase in maritime traffic through the Northwest Passage. There are very real concerns that this increased traffic will result in a major challenge to Canadian Arctic sovereignty.

This challenge to Arctic sovereignty is not a recent phenomena. This paper will discuss the historical, legal and political trends and issues that have framed the debate over sovereignty for the last fifty years, trends that will shape this debate for years to come. The paper will outline the important environmental challenges that Canadian politicians have responded to with internationally accepted legislation that established Canadian stewardship of the Arctic.

The major theme of this paper is that global warming trends, while allowing for increases to traffic through the Northwest Passage, will not cause serious problems for Canadian sovereignty in the Arctic. There will no doubt continue to be major challenges to our Arctic sovereignty but the reduction in ice thickness should be the least of our concerns.

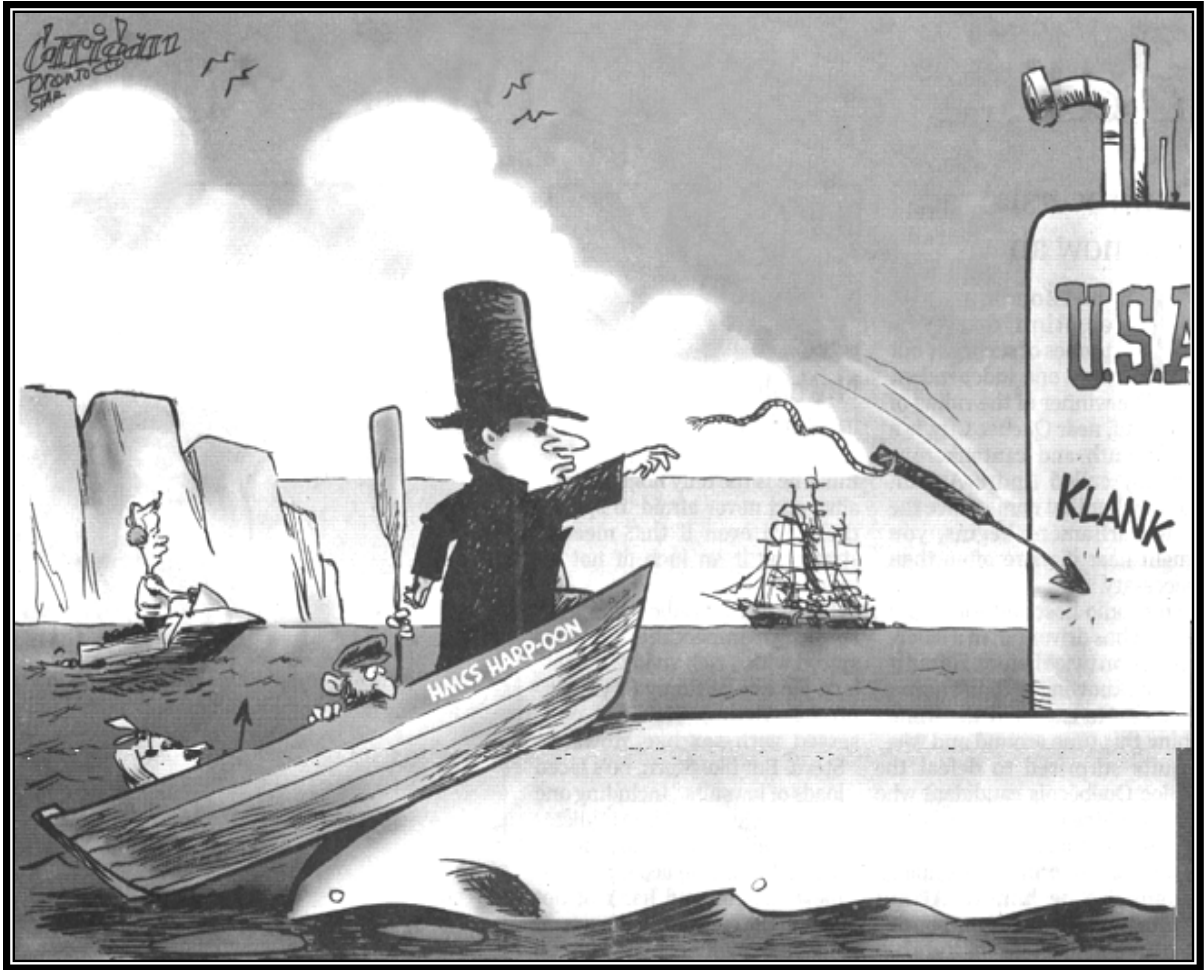


Figure 1 – Prime Minister Harper and the defence of Arctic Sovereignty
Source: Corrigan, *Toronto Star* 28 Jan 2006. Reprinted with the permission of Torstar syndication services.

Sovereignty and the Northwest Passage

Introduction

Many Canadians believe that climate change will have a dramatic impact on the Northwest Passage and on Canadian sovereignty in the Arctic, an impact that demands immediate and drastic action by the Canadian government, action that is typified in the cartoon printed in the *Toronto Star* 28 January 2006. ¹

¹ Patrick Corrigan, *Toronto Star*, Saturday 28 Jan 2006. Reprinted with the permission of the Torstar syndication services.

Dr. Rob Huebert began the debate in Canadian academic circles in 2001 with his article, *Climate Change and Canadian Sovereignty in the Northwest Passage*². The basic premise is that climate change, the result of global warming, is happening in the Canadian North at an unprecedented and alarming rate. This warming trend is melting the Arctic ice and opening up the Northwest Passage to an increasing flow of maritime traffic³. This activity will precipitate a serious challenge to Canadian sovereignty. As Huebert succinctly states in another article on the subject, entitled *Shipping News II*:

Climate change, and its impact on the arctic ice cover, does not, on its own, threaten Canadian sovereignty. Rather, it is the resulting increased access to the north that creates the problem. If decreased ice cover enables enough international vessels to enter the Northwest Passage without asking the Canadian Government for permission, it will become an international strait under international law.⁴

The original paper by Huebert prompted a great deal of discussion and comment in academic circles – not all of it positive. Noted Canadian scholar Dr. Franklyn Griffiths⁵ contradicted Huebert’s thesis and argued that there is no threat posed to Canadian sovereignty by climate change. To quote Griffiths, “the sovereignty-on-thinning-ice thesis is misguided.”⁶

² Dr Rob Huebert is an Associate Professor in the Department of Political Science and the Associate Director at the Centre for Military and Strategic Studies at the University of Calgary. The paper referred to here is: Rob Huebert, “Climate Change and Canadian Sovereignty in the Northwest Passage,” *Canadian Journal of Policy Research* 2, no. 4 (Winter 2001): 86-94.

³ The chart on the following page shows the five primary routes that are normally considered to make up the Northwest Passage. This chart is taken from Donat Pharand, *The Northwest Passage: Arctic Straits*. (Dordrecht, The Netherlands: Martinus Nijhoff Publishers, 1984) Note – Copyright is pending .

⁴ Rob Huebert, “The Shipping News Part II,” *International Journal* (Summer 2003): 300.

⁵ Dr Griffiths is Ignatieff Chair Emeritus of Peace and Conflict Studies at the University of Toronto. Dr Griffiths has at various times also worked for the Secretary of State for External Affairs, Visiting Professor at Stanford University and Visiting Scholar at the University of Cambridge.

⁶ Franklyn Griffiths, “The shipping news,” *International Journal* Vol 58 no. 2 (Spring 2003): 257.



Figure 2 – Main routes of the Northwest Passage.
 Source- Donat Pharand, *Northwest Passage: Arctic Straits*.

This research paper debates Huebert’s argument. Therefore, the hypothesis guiding this paper is:

Profound changes predicted for the global climate will result in changes to the Arctic waters that will cause renewed challenges to Canadian sovereignty. Canada is not prepared for these challenges, and will have great difficulty maintaining our claim of sovereignty over the Northwest Passage.

After reading a great deal of the literature in support of the arguments by Griffiths and Huebert, and as a result of a lecture delivered to the National Security Studies Course (NSSC) 08 by Lieutenant General Fred Sutherland, I decided to approach the paper from a different perspective. The lecture by Sutherland suggested that in the NSSC programme a student should always attempt to “put issues in context,” to search for

trends that run through various national security issues. Furthermore, at the level of the NSSC, it is not a question of who won the argument but more importantly, “So what?”

This paper will proceed with the thesis and antithesis being argued; however, following this debate it will place the issue of Arctic sovereignty in a larger framework of historical, political and legal contexts. The aim is to examine the overall national security trends and therefore answer the question, “So what?” Context establishes the ground rules for the debate and defines its parameters.

Major themes continue to appear throughout the fifty years that this issue of Arctic sovereignty has been of concern to the Canadian government and public. Whether it was during the administration of the Liberal government of Prime Minister Trudeau in the 60s and 70s; the Conservative government of Mulroney in the 80s; the Chrétien’s Liberals in the 90s; and, most recently the newly elected Conservative government of Harper; certain trends and themes run as an undercurrent. Consistently, successive Canadian governments, regardless of party affiliation, have adopted similar approaches to Arctic sovereignty:

- A legal approach to solving the challenges to Northwest Passage sovereignty;
- An attempt to seek resolution in accordance with international law;
- An emphasis on the concept of environmental stewardship in the fragile Northern ecosystem;
- Maintaining an international dialogue and a culture of cooperation;
- Canada – US relations over the Northwest Passage and its pervasive impact on all Canadian economic matters; and,

- A small but growing importance attached to involving Canadian Arctic peoples in the resolution of this important matter.

The impact of climate change on Arctic sovereignty is important, but from the perspective of the NSSC student it is more important to understand how these broader themes reflect national values and interests. We need to understand how future problems may be approached, and how our future Canadian governments will expect to be advised on larger matters of national significance.

It is only with a thorough debate of the thesis and anti-thesis arguments, an understanding of the context, and an appreciation for the underlying themes that the student of national security studies can answer the most important question – So What?

The thesis statement

Profound changes predicted for the global climate will result in changes to the Arctic waters that will cause renewed challenges to Canadian sovereignty. Canada is not prepared for these challenges, and will have great difficulty maintaining our claim of sovereignty over the Northwest Passage.

The first order of business should be to establish what is meant by “profound changes predicted for the global climate will result in changes to the Arctic waters.” That is to say, if there were no global warming, then the thesis statement discussing the impact of global warming on the Northwest Passage would be an argument on “very thin ice.”

The Intergovernmental Panel on Climate Change (IPCC) 2001 report⁷ and the report of the Arctic Council, Impacts of a Warming Arctic – Arctic Climate Impact

⁷ The IPCC was established by the World Meteorological Organization and the United Nations Environmental Programme to assess and understand the impact of climate change. I found this report, Climate Change 2001: The Scientific Basis. A Report of Working Group 1 of the Intergovernmental Panel on Climate Change (2001), while reading Huebert’s paper Climate Change and Canadian Sovereignty in

Assessment (ACIA) 2004⁸, have been accepted by both the UN and the Canadian government. They provide sufficient evidence to gauge the veracity of Huebert's thesis.

The sections in the IPCC report entitled "Sea Ice Extent and Thickness" and, "Are the Retreat of Glaciers Sea Ice and Snow Cover Consistent with the Surface Temperature Trends" derive conclusions from "uniform monthly estimates of sea ice extent for both hemispheres." These monthly estimates lead to three conclusions:⁹

1. There has been a decrease of about 10 to 15 % extent of the sea ice since the 1950s;
2. There has been an increase in the length of the Arctic summer melting season by 5 days per decade; and,
3. The summer temperature increases have resulted in Arctic sea ice thickness and extent significantly decreasing.

The ACIA document has the advantage of more up to date data and analysis. The ACIA Executive Summary begins with a statement that sums up the situation, "Earth's climate is changing, with the global temperature now rising at a rate unprecedented in the experience of modern human society."¹⁰

The attached map taken from the ACIA report provides a graphical representation of what has happened and, more importantly, what is likely to happen with reduced Arctic ice coverage over the next thirty years¹¹

the Northwest Passage. The IPCC report can be found at <http://www.grid.no/climate/ipcc-tar/wg/005.htm> accessed 27 Jan 2006.

⁸ Arctic Council, *Impacts of a Warming Arctic Climate: Arctic Climate Impact Assessment*. (Cambridge: Cambridge University Press, 2004) Internet <http://www.acia.iaf.edu>.

⁹ IPCC, *Climate Change 2001*..., section 2.2.5 and 2.2.6, 124 - 129.

¹⁰ ACIA, ..., 8.

¹¹ ACIA, ..., 82.

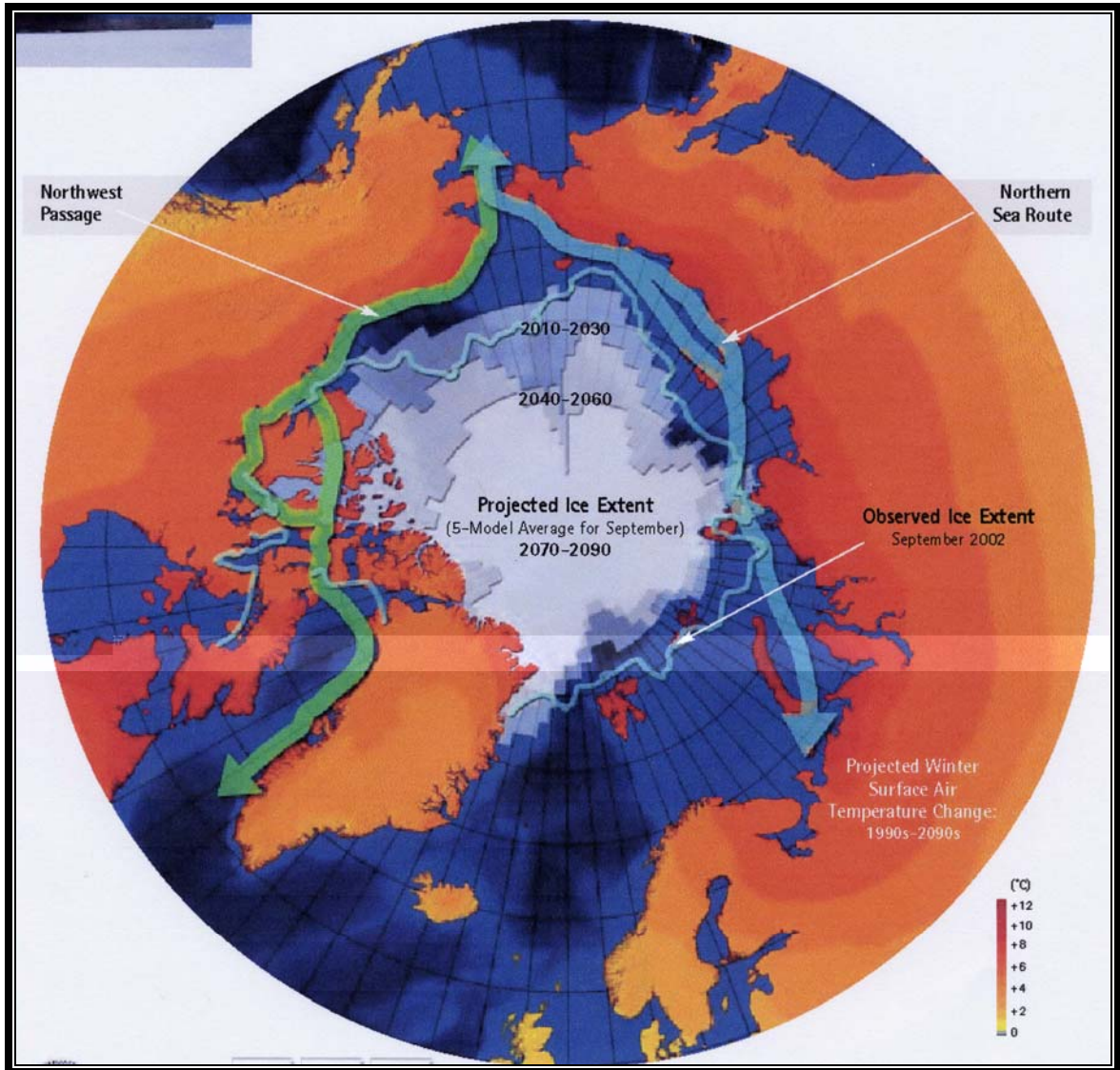


Figure 3 – Impact of Global Warming on Ice in the Northwest Passage
 Source: Arctic Council, *Impacts of a Warming Arctic Climate: Arctic Climate Impact Assessment*. (Cambridge: Cambridge University Press, 2004)

The ACIA report provides 10 key findings on the impact of climate change on the Arctic.

Two of these findings, taken directly from the Executive Summary of the ACIA, are directly relevant to this paper¹².

¹² ACIA, ..., 10 -11.

Key finding number 1 - Arctic climate is now warming rapidly and much larger changes are projected.

- Annual average arctic temperature has increased at almost twice the rate as that of the rest of the world over the past few decades, with some variations across the region.
- Increasing global concentrations of carbon dioxide and other greenhouse gases due to human activities, primarily fossil fuel burning, are projected to contribute to additional arctic warming of about 4-7 degrees C over the next 100 years.
- Unexpected and even larger shifts and fluctuations in climate are also possible.

Key Finding 6 – Reduced sea ice is very likely to increase marine transport and access to resources.

- The continuing reduction of sea ice is very likely to lengthen the navigation season and increase marine access to the Arctic's natural resources.
- Seasonal opening of the Northern Sea Route is likely to make trans-arctic shipping during summer feasible within several decades. Increasing ice movement in some channels of the Northwest Passage could initially make shipping more difficult.
- Reduced sea ice is likely to allow increased offshore extraction of oil and gas, although increasing ice movement could hinder some operations.
- Sovereignty, security, and safety issues, as well as social, cultural, and environmental concerns are likely to arise as marine access increases.

It is clear from the scientific evidence provided in the IPCC and ACIA reports that global warming is having a significant impact on the Arctic and in particular the sea ice that closes the Northwest Passage for almost 10 months of the year. It is also clear that over the next several decades global warming and the associated sea ice melting will result in longer ice clear periods when the Northwest Passage will be navigable.

Having established with a degree of scientific certainty that profound changes are taking place and will, in all probability continue, Huebert condenses the scientific reports down to three key points;

- The thickness of the sea ice covering the Arctic Archipelago is reducing;
- The extent or coverage of the Arctic by ice is reducing on an annual basis;
- and,
- The period of time in the summer months when the Northwest Passage is clear of ice is increasing every year.

Climate change means there is less ice in the Northwest Passage to disrupt shipping, the summer shipping season is getting longer every year, and ships can transit through the Passage with less risk of damage. Furthermore, the reduced thickness of the ice means that the most stringent requirements for icebreakers and strengthened hulls in the supertankers sent to the north can be reduced. This is a most significant factor when multi-national oil companies are calculating the costs of actually getting the oil from the north to the markets in the south.

Huebert's second argument flows from the first. It is not climate change that is the threat to Canadian sovereignty but rather the increase in traffic through the Northwest

Passage. Huebert argues that longer shipping seasons will encourage growing numbers of ships to use the Northwest Passage and will bring challenges to Canadian sovereignty.

Huebert makes a strong case to support his claim that melting ice will attract more ships. His argument is economic and based on the premise that, by passing through the Northwest Passage, a ship traveling from Asia to Europe or the US eastern seaboard could reduce the normal transit distance through the Panama Canal or around Cape Horn, thus eliminating 4000 to 8000 nautical miles.¹³ The willingness of shipping companies to plan this route assumes that accurate forecasts for an ice free transit of the Passage could be made, and that these forecasts would be sufficient for commercial shipping to make the route viable. Huebert cites several interesting examples, notably the voyage of a Russian dry dock from Vladivostok to Bermuda in 1999. The owners of the dry dock chose the Northern route as it was assumed to provide a safer and shorter transit than all the way around in the Pacific. Unfortunately for the owners, the dry dock survived the Northwest Passage only to be almost destroyed in a storm off Newfoundland.¹⁴

The original reason for the *Manhattan*'s 1969 voyage through the Passage – oil and natural gas – further substantiates the thesis. As Huebert notes, “it is expected that there will be an increase in activity associated with the development of oil and gas deposits in the region.”¹⁵ The *Manhattan* made the voyage so that EXXON and its subsidiary HUMBLE OIL could prove that it was possible and economically feasible for a 250,000-ton oil tanker to bring oil from the Alaska oil fields through to the east coast markets. The *Manhattan* voyage was a success and proved the concept could work. Today, with oil trading at \$67 US a barrel and the future reliability of Middle Eastern oil

¹³ Huebert, *The shipping news part II...*, 301.

¹⁴ Huebert, *Climate change ...*, 2.

¹⁵ *Ibid.*, 3.

in doubt, it is very attractive for oil companies to consider the extensive oil and natural gas reserves of the Arctic¹⁶. When scientists forecast longer ice-free and safer Northern transits, oil companies will do the cost-benefit analysis and realize that it is only a matter of time before it makes very good economic sense to develop Northern resources and ship them to market via the Northwest Passage.

To sum up the second argument in support of the thesis, with a longer shipping season for large container ships as well as increasing oil and gas prices it is only logical that there will be a larger number of vessels transiting the Northwest Passage.

The third argument flows logically from the first two. With an increased shipping season and ever-greater economic incentives for firms to use the Northwest Passage there will be greater threats and challenges to Canadian jurisdiction and sovereignty in the Arctic. Huebert outlines the Canadian government's official legal position, one that has not changed significantly over the last 50 years¹⁷. The Canadian position, stated most eloquently by the Right Honourable Joe Clark in the House of Commons on 10 September 1985, is that "the Northwest Passage is Canadian historical internal waters. This means that Canada assumes full sovereignty over the waters and thereby asserts complete control over all activity within them."¹⁸

Where Huebert sees the problem for Canada developing is that our legal arguments are weak and will not persuade the International Court of Justice (ICJ) that

Donat Pharand to support his argument. Core issues persist over historical internal waters versus internal waters, and the implications that this has on whether the Northwest Passage is an international strait. Pharand believes that, in accordance with the precedents set before the ICJ related to the introduction of straight baselines to delineate the Arctic Archipelago in January 1986, the Northwest Passage is a Canadian internal water way. The Northwest Passage should be treated exactly the same as a river or harbour, it is a route internal to Canada and therefore belongs to Canada. In other words, Pharand argues that the Northwest Passage is not an international strait but falls completely under Canadian jurisdiction.

Huebert points out that there is a Catch-22 in the matter of Canada's sovereignty over the Northwest Passage. (Notwithstanding the very significant problem associated with the American assertion that the Northwest Passage is an international strait.) The Catch-22 is that for a country to claim sovereignty it must exercise control over the territory. It is not simple enough to say, as Mr. Clark did in his September 1985 speech, that this has been our land since time immemorial, and therefore it will always be Canadian territory. Canada must demonstrate a presence; Canada must demonstrate that it has de facto and not just de jure control of the Northwest Passage. If Canada is unable to demonstrate control of the Passage, and a country was to challenge our jurisdiction, then in Huebert and Pharand's opinion, Canada would lose the case before the ICJ.

This is the essence of the thesis. If global warming melts the ice, and this increases the feasibility and commercial attractiveness for both shipping and oil exploration companies to use the Northwest Passage, then it is inevitable that a country will challenge the Canadian position. As Huebert writes, "As long as ice conditions

remained hazardous to commercial shipping, there was little incentive for any country, the United States included, to challenge the Canadian position. However, if ice conditions become less hazardous, then this situation changes drastically.”¹⁹ In Huebert’s view the probability of the situation changing drastically is increasing significantly.

The Antithesis

Franklyn Griffiths completely disagrees with Rob Huebert. In two papers published in the *International Journal*, entitled “The shipping news” (Spring 2003) and “Pathetic Fallacy” (Spring 2004), he makes a very strong argument that Huebert’s “sovereignty on thinning ice thesis is misguided.” The main thrust behind Griffiths’ argument is that there is in fact no ominous threat to Canadian sovereignty in the Arctic caused by climate change and the subsequent melting of the Arctic ice. Griffiths does not discount that the climate is changing and the ice is melting; he does not believe that this melting will result in a massive increase in maritime traffic that will significantly challenge Canadian sovereignty in the Arctic. Griffiths argues that the “crisis” argument is largely the result of southern Canadians who have an irrational fear that a threat exists in the North; “sovereignty is the first language of southern Canadians as they consider Arctic affairs. Say Arctic and sovereignty, and an entire field of meaning is accessed without effort.”²⁰

¹⁹ Huebert, *Climate change*,..., 6.

²⁰ Franklyn Griffiths, “Pathetic Fallacy: That Canada’s Arctic sovereignty is on thinning ice”, *Canadian Foreign Policy* Vol.11, No. 3 (Spring 2004): 13.

In the “Shipping News” Griffiths asks the fundamental question, “Why should Canadians expect a challenge?”²¹ to their sovereignty. Griffiths then goes on to attack the basis of Huebert’s thesis, which Griffiths asserts is based on three premises; “ice conditions, the likely calculations of shippers, and the Canada- US relationship.”²²

Concerning the first issue of climate change and the impact on ice conditions, Griffiths accepts that wide spread climate changes are indeed taking place and will have a significant impact on the ice. The real question is how significant and how fast will these changes take place. Furthermore, even if the extent of the ice is reduced over the next three decades, increases in the length of the shipping season in the Passage will not be great:

Even if the rate of ice-cover reduction over the past three decades were to persist into the 2030s, we would still be held to a shipping season of relatively unimpeded access for only eight weeks out of 52 in a given year. It seemed to me, Canadians would be well advised to go on guard whenever they heard talk of an ice-free Northwest Passage.²³

This is not the only problem that Griffiths has with Huebert’s argument about ice conditions and increased traffic. Although the shipping season will increase to 8 weeks duration, it might not be consecutive days, and it would very difficult for shippers to forecast in advance what the weather will be like in this 56-day period. The shippers would need a period of very good weather in the Passage to coincide with a period of ice-free conditions. Griffiths argues this is the first major hole in Huebert’s thesis. “What

²¹ Griffiths, *The shipping news*, 259.

²² Griffiths, *The shipping news*, 260.

²³ Griffiths, *Pathetic Fallacy*, 3.

global warming has thus far brought to the Northwest Passage is unpredictability rather than conditions favourable to navigation.”²⁴

Griffiths’ solid economic analysis destroys Huebert’s argument that the lengthened shipping season would result in increased commercial container traffic. Griffiths compares a Northwest Passage transit versus the Suez and Panama routes for a 35,000-ton container ship carrying 2500 containers from Japan to the Netherlands. Griffiths calculates that the Northwest Passage route would trim off 3500 to 4500 nautical miles from the voyage thus generating large cost savings²⁵. Therefore the Northwest Passage route could result in a saving of approximately \$400,000 per trip; however the risks are great, and poor weather or unforecast ice flows would quickly increase the duration of the voyage and thus increase costs. In addition, using the Arctic route in accordance with the Canadian Arctic Waters Pollution Prevention Act would require ships to have very expensive hull strengthening work done prior to using the Passage. Add to these costs the very expensive insurance costs which Griffiths cites as \$100,000 per trip and it quickly becomes a very risky commercial venture. Griffiths concludes that, “there is no good business reason for a reputable firm to mount the single-ship challenge that Huebert is telling us to expect.”²⁶

Griffiths also attacks Huebert’s premise that climate change and melting ice will result in growing tensions and problems with Canada-US relations, should a US flagged ship attempt to transit the Northwest Passage. Griffiths provides a very logical argument that in a post 9/11 world obsessed with North American security, Washington is unlikely to support any commercial efforts that might pose a security challenge to Canadian

²⁴ Griffiths, *The Shipping news*, 262.

²⁵ Griffiths, *Pathetic Fallacy*, 10.

²⁶ *Ibid.*, 11.

sovereignty. Why would the US risk provoking or alienating her Northern security partner for the sake of marginal returns from increased shipping? The down side risk would be greater than the benefits, Griffiths explains:

Washington should not find it difficult to see that any forcible action by US state or commercial vessels to affirm the status of the Northwest Passage as an international strait would run counter to the new priority of protecting the homeland against terrorist attack....The effects on continental security co-operation, especially on oil and gas supply to the US market, would be detrimental and, being foreseeable to Washington, avoidable.²⁷

Griffiths' argument concerning the impact of climate change on Canada – US relations over the Northwest Passage is logical and powerful. It makes sense in the context of 2006, where we are often told that “security trumps trade”, and that the US wants to maintain as strong an alliance partner as possible to guard her northern border. Why make an issue of the Northwest Passage as an international strait when it is not in the greater US interest for international shipping to transit so close to the US in relatively unprotected or unguarded waters? Griffiths argues it does not make sense! Indeed, “The very idea of the Passage as an international strait is being overtaken by altered US security requirements.”²⁸

In conclusion, Griffiths rebuts Huebert's thesis that climate change and the associated opening up of the Northwest Passage will result in challenges to Canada's Arctic sovereignty. However, Griffiths does see some future sovereignty problems for Canada in the North. Griffiths argues convincingly that a major problem Canada must address is associated with foreign ownership of all of the vessels that will be used for the movement of Canadian oil and natural gas that are shipped from the Arctic. Although

²⁷ Griffiths, *The Shipping news*, 270.

²⁸ *Ibid.*, 270.

these vessels would be required to adhere to Canadian laws, they would not be owned or controlled by Canadians. Griffiths argues that Canada must take steps to remedy this situation, “to the extent it is agreed that Arctic sovereignty in the legal sense is well in hand, political sovereignty and capacity building for choice are the real challenges of the coming years.”²⁹

The thesis concluded

There are several arguments to consider in this thesis versus antithesis conclusion. First of all, it would seem obvious that “profound changes predicted for the global climate will result in changes to the Arctic waters.” The Arctic Council’s ACIA and the IPCC are thorough scientific analyses that strongly support Huebert’s thesis that the depth of sea ice is reducing, the extent of Arctic ice coverage is shrinking, and the length of the shipping season is increasing.

The merit of Huebert’s argument that this reduced ice coverage and increased shipping season will result in a significant increase in commercial traffic is not clear. Shippers will naturally be interested in charting new routes that can reduce the transit time and costs from Asia to Europe and the US eastern seaboard. The Northwest Passage is clearly an attractive option in this case. However, I would agree absolutely with Griffiths that the shortness of the season, the unpredictability of when there will be an ice free period during this season; and, finally, is there a period of ice free conditions with a period of good weather and good visibility to allow the ships to clear the Passage smartly. If there is any delay in the transit, the savings to be realized by the shorter distance are more than offset by the increased transit time as a result of slower speeds. Griffiths’ cost

²⁹ Griffiths, *Pathetic Fallacy*, 14.

benefit analysis of the costs associated with hull strengthening and insurance, and loss of time as a result of ice and poor weather, are accurate and clearly outweigh Huebert's assumption that reduced ice and a longer shipping season will result in a major challenge to Canadian sovereignty. Griffiths' analysis makes clear that the international maritime shipping industry will not rush to the Northwest Passage as a result of reduced ice coverage. The economic analysis simply does not support this speculative argument.

The third aspect of the debate centers on the delicate issue of Canada- US relations. Although it remains in the US national interest to maintain the legality of international straits, this has more to do with freedom of navigation through the straits of southern Asia than through the Northwest Passage. Times have changed since the days of the *Manhattan* and the *Polar Sea*; there are other more serious concerns and national interests, concerns that have arisen since 9/11. I would agree with Huebert that 9/11 has altered the American view of the Northwest Passage, but more importantly I would side with Griffiths that this change in attitude would favour and not diminish our Northern sovereignty. As Griffiths wrote "An attack on the Canadian interest now necessarily became an attack on the American interest."³⁰ Griffiths' deduction is that it is in the American national interest to maintain a strong and vigilant northern neighbour with tight border security, it would make little sense for the US to challenge our Arctic sovereignty for the marginal economic gains to be had for a few commercial shipping firms attempting to run the Northwest Passage. Again, Griffiths' argument is more logical than Huebert's.

To sum up the thesis versus antithesis conclusion, it would appear that the arguments put forward by Griffiths carry the day: climate change and the melting ice are

³⁰ *Ibid.*, 6.

not creating a serious challenge to Arctic sovereignty. However, there are two final important points that must be made. Huebert and Griffiths are of the opinion that, unless the Canadian government takes clear and positive action in the near future, then Arctic sovereignty will be challenged regardless of how fast the ice melts. The greatest threat perceived by Griffiths has to do with the loss of Canadian control over our northern oil and gas exploration because we will have no ownership of the ships and exploration platforms. Both Huebert and Griffiths believe that immediate action is imperative; as Griffiths states, “To the extent that Arctic sovereignty in the legal sense is well in hand, political sovereignty and capacity building for choice are the real challenges of the coming years.”³¹

Griffiths believes that Canada needs to adopt an approach as custodian or keeper of the North, responsible for protecting the environment, “One way of starting towards a vision may be to think of Canada as keeper of the Northwest Passage – keeper as distinct from loser, but also keeper in the sense of taking care of.”³² This concept of “keeper ” is a variation on the concept of custodianship that Trudeau established by in the early 1970s. This concept of environmental stewardship is one of the trends or themes that will be examined in the next few pages and will take us to the final “So what?”

³¹ *Ibid.*, 14.

³² *Ibid.*,14.

Underlying Trends and Themes – The Historical and Political Context

It is an irony that the challenge to Canada's control over its Arctic waters comes from the government and the people with whom Canadians have the most in common.³³

In discussing Canadian Arctic sovereignty, and in particular the Northwest Passage historical context, the most important point to consider is that our closest military ally and neighbour, the United States, has always posed the greatest threat to Canadian interests in the North.

When placing Northwest Passage sovereignty in historical context, over the thirty-year period from 1957 to 1989, there were four transits by US flagged vessels that challenged Canadian sovereignty.³⁴ The first challenge was in April 1957 when three American ships transited east through Bellot Strait. This prompted Canadian Prime Minister Louis St. Laurent to state, "the Canadian Government considers that these are Canadian territorial waters."³⁵ This challenge was followed by the transit of the S/T *Manhattan* in the summer of 1969, the second *Manhattan* voyage in 1970 and the transit by the American icebreaker *Polar Sea* in the spring of 1985.

Ron Purver provides historical background in his chapter *The Arctic in Canadian Security Policy, 1945 to the Present*. This period covers the voyage of the S/T *Manhattan* in 1969; the landmark speech made by Right Honourable Joe Clark in the House of Commons 10 September 1985; the June 1987 White Paper that promised increased military spending in response to Mr. Clark's speech; and, finally the April 1989

³³ Franklyn Griffiths, "Beyond the Arctic Sublime" Chapter 12 in *Politics of the Northwest Passage*, Ed. Franklyn Griffiths, 241-273 (Kingston: McGill-Queen's University Press 1987), 241.

³⁴ This section of the paper will attempt to place these events in perspective and will postpone discussion of the technical legal arguments until the next section of the paper – Legal Context.

³⁵ Donat Pharand, "Canada's Sovereignty over the Newly Enclosed Arctic Waters," *The Canadian Yearbook of International Law*. (Vancouver: UBC Press Vol XXV 1987), 325.

budget that cut all the previous government's commitments to increased military spending in order to protect our Northern interests.³⁶ Purver's work helps us to understand the situation today.

Prime Minister Trudeau first gave indication of his government's intention to focus greater attention on the North with a public policy statement in April 1969. Further attention to the question of Arctic sovereignty was indicated in the Government's Defence White Paper of 1971; and for very good reason, the precedent setting voyage of the US supertanker *Manhattan* had taken place in August and September of 1969 and the Liberal government was determined to take bold and decisive action.³⁷

The voyages of the *Manhattan* had a profound impact on how Canadians saw the issue of the Northwest Passage and Canadian sovereignty. A common theme that runs from August 1969 until 2006 is American economic interests in the North and the cost of oil; and more specifically the prospect of turning oil rich reserves in the North into cash in the South. In 1968 the price of oil was on the rise and large reserves had been found in the Alaskan waters of Prudoe Bay. The question facing EXXON, who had a huge stake in the Alaskan oil, was how the oil could be brought to the continental US. In response to the problem Humble Oil, an EXXON subsidiary, decided to send an ice strengthened supertanker of some 250,000 tons, S/T *Manhattan*, from the eastern seaboard up through the Northwest Passage in the summer of 1969. It was tasked to deliver the oil, to

³⁶ Ron Purver, "The Arctic in Canadian Security Policy, 1945 to the Present," Chapter 4 in *Canada's International Security Policy*, ed. David B. Dewitt and David Leyton-Brown, 81-110 (Scarborough: Prentice-Hall Inc., 1995). Purver covers the period 1945 until 1995. However, the first period from 1945 until the late 60s deals mostly with questions of the Cold War, protection of North America and the development of the DEW line. While important issues, without question, to frame the context for this paper I have focused on the period from the 1969 until 1987.

³⁷ *Ibid* 94-95. Purver discusses the 1987 White Paper declaration "...the Canadian navy must be able to determine what is happening under the ice in the Canadian Arctic, and to deter hostile or potentially hostile intrusions." This led to a plan to purchase an additional 6 long-range patrol aircraft and the amazing concept of acquiring a fleet of 10-12 nuclear powered submarines.

determine the feasibility of such a voyage and, more importantly, to determine future possible political hurdles to transiting the Passage.³⁸

The *Manhattan* voyage presented the Canadian government with a major problem. If the *Manhattan* voyage were successful then increased tanker traffic through the NW Passage would follow, “thereby enhancing its (the Northwest Passage) status in law as an international strait (as the US government argued it was), and increasing the chance of oil spills in the vulnerable Arctic environment.”³⁹ Canadian officials in various government departments saw this voyage as just the beginning. As the price of oil rose and the world geopolitical situation in the oil rich Middle East became more unstable, it seemed likely that the US would attempt to establish the Northwest Passage as both a commercially viable route and, equally important, to assert that the route was an international strait.

As Munton and Kirton discuss in their case study, the *Manhattan* transit posed a difficult problem for many reasons; impacting the government’s decision-making process were issues of Northern development, oil exports and possible American import restrictions, balance of payments, environmental concerns, Canada – US relations, land claims, and also the difficult legal aspects of Canadian legislation that could be defended in various international forums. The heart of the growing dispute with Washington was the simple fact that Canada wanted the Northwest Passage declared internal waters and therefore entirely subject to Canadian sovereignty while the US wanted the Passage declared an international strait. The American position was designed largely to preclude

³⁸ John Kirton and Don Munton, “ Canadian Arctic: The *Manhattan* Voyages, 1969-1970,” in *Canadian Foreign Policy- Selected Cases* (Scarborough: Prentice – Hall Canada Inc., 1992) 212. Why choose to go by tanker as opposed to the pipeline? On completion of the *Manhattan* voyage the Humble Oil Company estimated that the cost in 1970 dollars would be sixty cents per barrel cheaper by tanker.

³⁹ *Ibid.*, 207.

an unfavourable precedent that would inhibit US access to other international straits, particularly Southeast Asia.

The first two transits by the *Manhattan* ultimately led the Liberal government to enact the Arctic Waters Pollution Prevention Act (AWPAA) and the Territorial Sea and Fishing Zones Act. With this legislation, introduced into the House of Commons 8 April 1970, the Canadian government created a 100-mile control zone around the Arctic Archipelago over which the government would exercise pollution control regulations. This 100-mile limit followed international regulations that were already in existence concerning oil tankers and pollution. The Territorial Sea and Fishing Zones Act extended Canadian territorial waters from 3 miles out to 12 miles, effectively increasing the size of Canadian territory by a full 1/8. This Act was also in keeping with international law insofar as 56 countries already claimed the 12-mile limit.⁴⁰

More importantly, these two Acts served notice of how Canada intended to solve this difficult legal problem with our closest friend and ally, the United States. Two important themes surfaced in the wake of the *Manhattan* voyages. The first theme emerged in the Throne Speech 23 October 1969 when Prime Minister Trudeau indicated that the basic government approach was to be “national jurisdiction reinforced by international co-operation”. This speech was followed up with a meeting with UN Secretary General U Thant 11 November 1969, where Trudeau discussed his idea for an “international regime to protect the Arctic’s natural environment and to call for a co-ordinated, urgent effort to develop international control for the non-Canadian portion of the Arctic.”⁴¹ A second very important theme was Prime Minister Trudeau’s strongly

⁴⁰ *Ibid.*, 220.

⁴¹ *Ibid.*, 213.

held believe that “the concern with pollution was not a transitory, fashionable theme, nor a simple response to environmental pressure. Rather it was a direct commitment of the Prime Minister and his closest associates to the integrity and legitimate interests of dispossessed communities.”⁴² The Trudeau government was very clever in adopting this unique approach; connecting the need to assert Canadian jurisdiction over the Arctic with the requirement to ensure proper standards of navigation, ship safety and pollution control were enforced. In other words sovereignty was linked with the idea of custodianship of the Arctic environment⁴³. This idea led eventually to Article 234 in the 1982 United Nations Convention on the Law of the Sea which allowed nations, i.e. Canada, to introduce laws for the protection of ice covered Arctic areas for the purpose of reduction and control of marine pollution. As Andrea Charron explains in her article “thus Canada has managed to enact legislation to protect the environment without having to address the sovereignty issue. This form of creative thinking needs to be encouraged in the future.”⁴⁴ This form of creative thinking that Charron advocates, linking environmental concerns and stewardship to legislation that supports Canadian sovereignty, is an approach that Canada may adopt in the future as large international oil companies expand their oil exploration and development in the Arctic.

Prime Minister Trudeau’s grave concerns over possible Arctic oil pollution were reinforced in February 1970 when a Liberian oil tanker, the *Arrow*, ran aground off Nova Scotia and spilled over one million barrels of oil. This catastrophe nearly coincided with Humble Oil’s formally notifying Canada of the intention to send the *Manhattan* through

⁴² *Ibid.*, 224.

⁴³ *Ibid.*, 224.

⁴⁴ Andrea Charron, “The Northwest Passage in Context” *Canadian Military Journal*, Vol 6 No 4 (Winter 2005) 10.

the Passage for a second trial in August 1970. In anticipation of Canadian issues with respect to this transit, President Nixon directed his officials to negotiate an agreement with Canada over oil exploration and delivery that would require US access to the Northwest Passage, with the proviso that until these negotiations were complete that US imports of Canadian oil would be cut back to 615,000 barrels a day.⁴⁵ In any event, the Liberal government, mindful of the *Arrow* incident, but maintaining an appreciation of the importance of our oil exports to the US, acted in a true Canadian compromise fashion for the second *Manhattan* voyage. The *Manhattan* was granted permission, if indeed permission was ever sought; subject to numerous safety requirements, most notably agreement to carry a Canadian government agent onboard *Manhattan* in addition to an escort by a Canadian icebreaker whose captain would have the final veto over the transit.⁴⁶

These two pieces of legislation, the AWPAA and the Territorial Seas and Fishing Zones Act, that were precipitated by the *Manhattan* voyage, laid the groundwork for future Liberal and Conservative government legislation to protect Canadian Arctic sovereignty.

It was the 1985 voyage by the *Polar Sea*, an American icebreaker that was the straw that broke the proverbial camel's back. The *Polar Sea* again forced the issue: did Canada own the Arctic waters, was the Northwest Passage sovereign Canadian territory, and if so how did Canada exercise that sovereignty? The *Polar Sea* voyage resulted in Joe Clark's impressive and memorable speech in the House of Commons on 10 September 1985. This speech led to the eventual introduction of the straight base line

⁴⁵ Kirton and Munton, 216.

⁴⁶ *Ibid.*, 216.

legislation that became law on 1 January 1986. As Donald McRae discusses in his article, *Arctic Sovereignty: Loss by Dereliction*, there were two distinct responses intended to demonstrate Canadian resolve to protect our sovereignty. The first response, which had long term implications, was the introduction of the straight baseline legislation that in effect turned the Arctic waters into internal waters over which Canada would have full and absolute sovereignty. The second response was the announcement of the building of Polar 8 icebreakers and the increase in military surveillance of the Arctic. Regrettably, the proposal to build these icebreakers and increase surveillance flights never materialized.⁴⁷ (That is until the 23 January 2006 election of Prime Minister Harper who has resurrected the idea of building a number of new icebreakers, size equipment and function to be determined.)

As Purver explained, the June 1987 Defence White Paper provided significant direction and resources to the Canadian Forces to step up patrols and surveillance of the Canadian North, largely a result of American challenges to our sovereignty typified by the *Polar Sea*. This White Paper emphasized “the three-ocean nature of Canada... the Canadian Navy must be able to deter hostile or potentially hostile intrusions.”⁴⁸ This document proposed the fleet of 10-12 nuclear powered submarines, as well as more long-range patrol aircraft and a fixed sonar system to detect submarines. These additions to the Canadian Navy would have been useful, but the cost was far too steep. This dream ended in the April 1989 budget when almost all of this additional capability was cut, leaving only the hope for the Polar 8 icebreaker. In the next year’s budget, the Polar 8 project was chopped.

⁴⁷ Donald M McMcrae, “Arctic Sovereignty: Loss by Dereliction?” *Northern Perspectives*, Vol 22, Number 4 (Winter 1994-95): 6.

⁴⁸ Purver, *The Arctic in Canadian Security Policy*, 94.

There was another outcome of the *Polar Sea* transit. In 1988 the US and Canada signed an Arctic Cooperation Agreement stating that in future all US icebreakers navigating “in waters claimed by Canada to be internal would be undertaken with the consent of the Canadian government.”⁴⁹ This is an important consideration because it is impossible to imagine any large US vessel (in particular an oil tanker) transiting without a US icebreaker escort. This agreement was signed with the understanding by both sides that it would in no way prejudice any future legal claims. The significance of this agreement is that once again the government chose to act in a manner that was reached by consensus, and in accordance with international law – again a typical Canadian approach to problem solving.

There is a final note to the issue of historical context. In 1996 Canada was a leader in the formation of the Arctic Council, an intergovernmental group made up of circumpolar countries and committed to working together for the sustainable development of the Arctic. The Arctic Council consists of Canada, Denmark (including Greenland and the Faeroe Islands), Finland, Iceland, Norway, the Russian Federation, Sweden and the United States. The Arctic Council has produced an Arctic Environmental Protection Strategy that plans “to share scientific information to support the promotion and protection of the environment and an indigenous way of life.”⁵⁰ .

In summary, when placing the issue of Canadian Arctic sovereignty in historical context the most important points to remember are: the overall impact of Canada-US relations; the continued focus of Canadian governments on environmental stewardship;

⁴⁹ McRae, *Arctic Sovereignty: Loss by Dereliction?* 6.

⁵⁰ Charron, *The Northwest Passage in Context*, 11.

and, the Canadian reliance on approaching the problem in accordance with international law.

Underlying Trends and Themes –Legal Context

As Canada's Northwest Passage is not used for international navigation and since Arctic Waters are considered by Canada as being internal waters, the regime of transit passage does not apply to the Arctic.⁵¹

Secretary of State for External Affairs, Allan MacEachern, made this statement when testifying before the Standing Committee for External Affairs and National Defence in 1975. This very succinctly outlined Canada's legal policy with respect to the Northwest Passage at the time, and the policy has not changed to this day. However further explanation is required, to frame the legal context for the paper. Professor Donat Pharand, a noted legal scholar from the University of Ottawa, has written extensively on the Northwest Passage. It would be possible to get bogged down in the technical legal issues and nuances of this issue, however to avoid this hazard I will attempt to briefly outline several key points as follows:

- An explanation of sovereignty,
- Historic waters,
- Internal waters,
- Straight baseline theory,
- International straits.⁵²

⁵¹ Donat Pharand, *Canada's Arctic Waters in international law*. (Cambridge: Cambridge University Press, 1988), 215.

⁵² These legal issues can become very technical and a reader wishing a complete and thorough understanding must refer to Pharand's books, *Canada's Arctic Waters in International Law* and *The Northwest Passage: Arctic Straits*.

The term sovereignty is often used but seldom explained. Law Professor Donald McRae notes, sovereignty is about authority and it is about territory; elements of both are required. Concerning authority, a state must have full and complete jurisdiction over a certain piece of land or territory. The real litmus test is whether the country seeking to demonstrate its sovereignty is occupying the land and continues to demonstrate control. In the case of the Canadian Arctic there are no disputes or claims that Canada does not have sovereignty over the lands of the Canadian Arctic Archipelago.⁵³ The question relates to “Sovereignty over the waters between the islands of the Archipelago, by contrast, this is more complex, since historically the principle of freedom of the seas has meant the jurisdiction of a state ends at its coast. The seas have been free and open to all.”⁵⁴

The pressing question is how Canada establishes sovereignty over the waters of the Northwest Passage, if as McRae correctly points out, “The seas have been free and open to all.” This has been the legal issue and problem for Canada since the first American icebreaker sailed through the Passage in 1957: how to assert sovereignty over a passage of water in a manner that will satisfy international law?

Over the last fifty years Canada has asserted a number of legal justifications. One legal argument is that the waters of the Arctic are historic internal waters. This was the thrust of Clark’s speech in September 1985. Clark made this argument in response to the *Polar Sea* transit and as a means of introducing the straight baseline legislation that

⁵³ One important exception is the dispute with Denmark over the ownership of Hans Islands. This is a unique situation that deals with the ownership of one particular island and not the general issue of the Northwest Passage and therefore I will not deal with the matter here.

⁵⁴ McRae, *Arctic Sovereignty: Loss by Dereliction*, 4.

would become law on 1 January 1986. Clark claimed essentially that the water and ice joined the Arctic Archipelago islands into one large landmass:

These islands are joined, and not divided, by the waters between them. They are bridged for most of the year by ice. From time immemorial Canada's Inuit people have used and occupied the ice as they have used and occupied the land.⁵⁵

The key phrase "from time immemorial" is used to give support to the argument that these are historic internal waters. Huebert cites another example of Canadian government officials using

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If the waters of the Northwest Passage cannot be legally claimed as historic internal waters, what alternative arguments does Canada have? It is important to understand that the argument can still be made before the ICJ that they are in fact Canadian internal waters; seemingly a small or semantic difference, internal waters vice historic internal waters, but before the ICJ this constitutes a very important difference. Pharand explains that internal waters might be those waters found in a lake, a canal, a harbour, river or a bay along the coast. A country has full and complete authority over these waters. In contrast, the waters along the ocean coast out to a distance of 12 nautical miles are territorial sea, and states are generally considered to have authority or sovereignty over these waters. There is one very important difference between internal waters and territorial waters, Donat explains:

The status of internal waters means that the sovereignty of the coastal state is complete. Those waters have the same status as “inland waters” and generally refer to lakes, canals, rivers, ports and harbours. As emphasized by Professor Gidel, the coastal State is no longer obliged to recognize the innocent passage of foreign ships in internal waters. The coastal State may, if it wishes, permit such innocent passage, but is under no legal obligation to do so. If it does, the foreign ship is then exercising the privilege granted by the coastal State, rather than a right recognized by the international community.⁵⁸

What does this mean for Canada? First of all, lake or river waters are internal to the state, similar in law to the status of land; and the state has complete control over these internal waters and anything that might move on them. If the waters are along the coastline out to 12 miles, then a country has complete sovereignty providing that the country allows vessels to transit through these territorial waters as a right of innocent passage. However, if a country has some legal mechanism for extending the classification of internal waters to include those waters of a bay or narrow entrance to the

⁵⁸ *Ibid.*, 93.

sea, then that country, in this case Canada, has no international legal requirement to allow innocent passage of these waters. Therefore that country has full and complete control, or sovereignty, over those waters. The Canadian argument holds that the waters of the Northwest Passage are in fact Canadian internal waters. This is important because Canada can control the vessels that transit the Northwest Passage – the Passage would not be an international strait but rather is the internal waters of Canada.

The difficulty comes in justifying a mechanism to allow these waters to be classified as internal. Canada has adopted straight baselines extended north from the east and west coasts of Canada to enclose the waters of the Arctic Archipelago into a large bay that make these waters internal.⁵⁹ The establishment of straight baselines is not a new concept thought up by clever Canadian lawyers but is a well-established legal argument that has as an important precedent a Norwegian fishery dispute argued before the ICJ in 1951. In that case Norway argued that its internal waters should include the waters of the many fiords and should be measured from the seaward-most extremities of the land in a straight baseline across the mouth of the fiords.⁶⁰

The icebreaker *Polar Sea's* transit in 1985 prompted the Canadian government to adopt the straight baseline approach to the Northwest Passage sovereignty. Legislation came into law on 1 January 1986. Pharand studied this argument and has come to the following conclusion:

The possibility of enclosing the Canadian Arctic Archipelago with straight baselines has been discussed by a number of writers since the Fisheries Case of 1951, particularly after the *Manhattan* crossing of the NW Passage in 1969. Their writings have already been reviewed by the present writer and suffice to recall

⁵⁹ Ibid., 156-157. The attached chart is taken from Pharand's book *Canada's Arctic Waters* in international law. Straight Baselines of Canadian Arctic Archipelago compiler: John Cooper. Copyright. Government and Public Works Canada. Reprinted with permission.

⁶⁰ McRae, *Arctic Sovereignty: Loss by Dereliction*, 5.

here that, subject to a few nuances they all arrived at the conclusion that those waters could be enclosed in a way similar to those of the Norwegian Archipelago.⁶¹

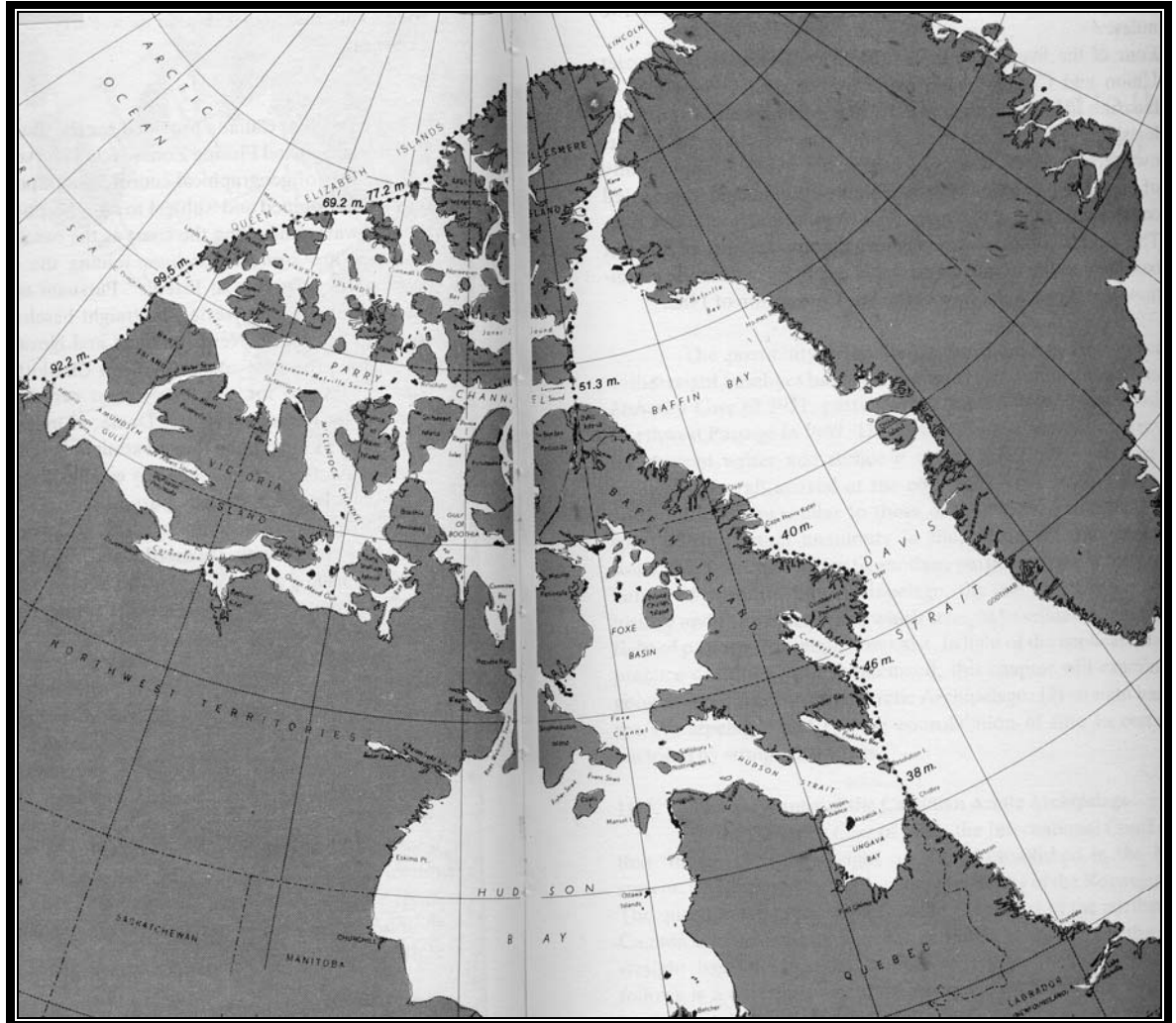


Figure 4 – The Arctic Archipelago Straight Baselines.
Source: Donat Pharand, *Canada's Arctic waters in international law*.

The conclusion is that the Canadian government's approach to enclosing the waters of the Canadian Arctic Archipelago, including the Northwest Passage, is a valid international legal argument. This means that under international law Canada may claim

⁶¹ Pharand, *Canada's Arctic Waters in International Law*, 158.

these waters as internal waters completely under Canadian control and authority.

Another legal argument concerns the US position that the waters of the Northwest Passage constitute an international strait. The US does not dispute that the landmass of the Arctic is Canadian territory but they will not concede that a strait joining two bodies of water, in this case the Northwest Passage, constitutes internal waters. The reason for this is that the US does not wish to set an international legal precedent that could preclude free movement of US vessels through important international straits such as the Straits of Malacca.

Referring again to the work of Pharand, two essential requirements under international maritime law must be satisfied before a strait is considered international, thus affording all countries the right of innocent passage. Based on the ICJ ruling in the Corfu case in 1949, the two requirements are geographic and customary use. The strait must join two bodies of water and the strait must be normally and frequently used for international transit. Pharand quotes the work of another eminent jurist, Professor O'Connell, in his authoritative work *The International Law of the Sea* (1982), "that not all straits linking two parts of the high seas are international straits, but only those which are important as communication links."⁶² In other words, if the Northwest Passage is normally used for international commercial transit then it is considered an international strait and nations have the right to transit at their discretion. Pharand conducted a very extensive review of the history of the Northwest Passage to determine if the Passage met the functional criteria established by the ICJ in the Corfu case:

When this criterion is applied to the Northwest Passage, it becomes readily evident that it fails to be met since, in its 80-year history of exploratory

⁶² *Ibid.*, 220.

navigation, the Passage has seen only 45 complete transits and of these, 29 were Canadian.⁶³

The Northwest Passage is not an international strait based on the ICJ judgment in the precedent setting Corfu case, because it is not customarily used for international commercial traffic.

In summary of the legal context, McRae pointed out that for a country to exercise sovereignty there must be territory and there must be an exercise of authority.

Furthermore, Canada has been consistent in its claim to the Arctic and the Northwest Passage. While legal support for the claim that these lands are Canadian by virtue of being “historic internal waters” may be weak, there is a strong international legal case to be made that they are Canadian “internal waters”. The strength for this argument comes from the precedent of the Norwegian fishery dispute and the 1982 UNCLOS agreement, which recognized that countries might legally use an extension of straight baselines to define their internal waters. Canada has put forward a very strong case, based on law and the Corfu precedent, that as the Northwest Passage is an internal waterway and is not customarily used for commercial traffic, then in fact as well as in law that the Passage is not an international strait. The conclusion reached by successive Canadian governments since the transit of the first US icebreaker in 1957 is that the waters of the Northwest Passage are sovereign Canadian territory.

A very important caveat is attached to this argument. For a country to claim sovereignty over territory it must demonstrate, through a variety of means, that it does in fact exercise control over that territory. If a country is unwilling or unable to exercise control or authority it risks losing sovereignty. As Pharand explains

⁶³ *Ibid.*, 224.

“It must be remembered that, although the enclosure of those waters has resulted in sovereignty for Canada, which is as complete as over the islands, such sovereignty must be maintained and this can only be done by the exercise of effective control.”⁶⁴

The point here is that Canada must either **use it or lose it!**

Finally, it must be pointed out that Canada has consistently attempted to stake its claim on the Northwest Passage not in a belligerent or aggressive fashion but instead through redress to international law: the ICJ and the 1982 UNCLOS agreement. Canada is adamant that the Canadian government will exercise sovereignty over the Northwest Passage but this does not mean that Canada intends to exclude all other countries from the use of this important water route. Rather Canada intends to ensure that proper environmental concerns are respected and that in all aspects the fragile and sensitive Northern environment is considered over purely commercial interests. Prime Minister Trudeau made this point most strongly in 1969 when he stated after the *Manhattan* voyage “to close off those waters and to deny passage to all foreign vessels in the name of Canadian sovereignty...would be as senseless as placing barriers across the entrance of Halifax and Vancouver harbours.”⁶⁵

So What?

What can the student of national security studies learn from this issue? This paper began as a study of the impact that climate change will have on the Northwest Passage and on Canadian sovereignty in the Arctic. Common underlying trends and themes ran through the entire period from the late 1950s through the most recent policy statements of

⁶⁴ *Ibid.*, 230.

⁶⁵ *Ibid.*, 234.

the new Conservative government of Prime Minister Harper. These underlying trends and themes are most important for students at the strategic level; without understanding the legal, historical and political contexts of past events it is impossible to appreciate how future problems will be solved.

The first trend or theme observed in this paper is that Canada – US relations have been central to every major policy decision related to the Northwest Passage over the last 50 years. As Griffiths eloquently stated, “It is an irony that the challenge to Canada’s control over the Arctic waters comes from the government and the people with whom Canadians have the most in common.”⁶⁶ It is a fact of life in Canada that virtually every international policy and many domestic issues must take into account Canada – US relations. To ignore this fact is to misunderstand the reality of Canadian political life.

The second underlying theme is the emphasis that Canada has placed on achieving international consensus to resolve Arctic sovereignty problems. Prime Minister Trudeau stated in the Throne Speech 23 October 1969 that the basic government approach was to be “national jurisdiction reinforced by international co-operation.”⁶⁷ The importance that Canada attached to international dialogue and a culture of cooperation in the past with respect to the Northwest Passage is typical of how Canada, as a respected middle power, a member of NATO and the G7, consistently approaches problem solving. Given a choice Canada will usually seek to gain consensus and work multilaterally to solve problems. The Honourable Pierre Pettigrew, former Minister of Foreign Affairs, stressed this intention to seek and gain international consensus in a speech given 22 March 2005; “Foreign Affairs Canada has a vital role to play, within

⁶⁶ Griffiths, *Beyond the Arctic Sublime*, 241.

⁶⁷ Munton and Kirton, *Canadian Arctic: The Manhattan Voyages, 1969-1970*, 213

and beyond the Arctic Council, to promote a culture of cooperation among the circumpolar states and peoples.”⁶⁸

The third trend has been the Canadian government’s efforts to pursue a legal and reasonable response to the challenge of Canada’s Arctic sovereignty. As Prime Minister Trudeau said in a major speech on 15 May 1969, differences over the waters’ status “should not be settled in an arbitrary way but in scrupulous respect of the established principles of international law.”⁶⁹ The adopting of the Arctic Waters Pollution Prevention Act in 1970 by the Liberal government reinforced this logic. The Straight Baseline legislation adopted by the Conservative government in 1986 was another instance of Canada acting in accordance with precedents established before the International Court of Justice. Throughout the past 50 years Canada has consistently introduced legislation that is acceptable within the international community.

The fourth theme that runs through this study is the emphasis on environmental stewardship or custodianship that began with Prime Minister Trudeau in 1969. The first major piece of Liberal government legislation dealing with the problem arising from the *Manhattan* voyage was the Arctic Waters Pollution Prevention Act, intended to enforce marine shipping standards as a means of preventing Arctic pollution and damage to the fragile environment of the North. This was not simple a means of enforcing sovereignty or preventing American super tanker transits through the Northwest Passage but indicated the very real concerns of the Liberal government to protect Canada’s Arctic. Similar

⁶⁸ The speech by Mr Pettigrew may be found at http://w01.international.gc.ca/minpub/Publication.asp?publication_id=382497 found 02/17/2006.

⁶⁹ Munton and Kirton, *Canadian Arctic: The Manhattan Voyages, 1969-1970*, 209. The government’s determination to follow international law was again stated 18 Sep 69 just after the *Manhattan* completed her voyage when Mitchell Sharp stated in the *Globe and Mail*, “Canada’s sovereignty over Arctic waters is being steadily strengthened by developing concepts of international law and our own activities.” Munton and Kirton, *Canadian Arctic: The Manhattan Voyages, 1969-1970*, 210.

concern for the fragile Northern environment was evident in the Conservative government's introduction of Straight baseline legislation. This theme of custodianship was carried through to the recent Liberal government. Mr Pettigrew stating March 2005; "As a matter of policy, Canada is not opposed to allowing international navigation in the Northwest Passage, so long as conditions and controls established by Canadians to protect the security, environmental and economic interests of our northerners are met."

I will close with two thoughts. First, Griffiths stresses that if Canada intends to ensure that Arctic sovereignty is not threatened in the future, it is high time that a macro or collective approach to the problem is adopted. All of the major players and concerned groups must be brought together and forced to focus on the future problems associated with issues such as a lack of Canadian shipping capacity to move our resources to market.

As Griffiths notes⁷⁰,

We should build a stronger capacity for collective choice in the Canadian Arctic. This we could do by establishing a new Arctic consultative process which allows all the principal players – federal government departments, territorial governments, above all that of Nunavut, and interested private sector and civil-society actors – to thrash out a consensus on the priorities for action with little or no new money any time soon. Call it a consultative committee on the future of the Archipelago.

The last word is one of cautious optimism. When I began this paper with a reading of Huebert's paper, "Climate Change and Canadian Sovereignty in the Northwest Passage," I was extremely concerned about the future of the Arctic and Canada's ability to exercise sovereignty. Now that I have spent time and effort studying the matter I am confident that things are not as grim as I had first feared. The reason for this change of heart was a realization that Canada does indeed have a good record in dealing with this type of problem; the trends and themes I have just recorded are surely testament to the

⁷⁰ Griffiths, *Pathetic Fallacy*, 15.

sensible approach to international problem solving that I believe is typical of Canadian governments, both the Liberals and the Conservatives, over the last 50 years. Finally, I am convinced Canadians will step forward with the “form of creative thinking [that] needs to be encouraged in the future”,⁷¹ just as it did in response to the significant Northern challenges of the past.

⁷¹ Charron, *The Northwest Passage in Context*, 10.

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