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CANADIAN FORCES COLLEGE - COLLÈGE DES FORCES CANADIENNES
NSSP 9 - PESN 9

**Developing a Coherent Plan to deal with
Canada's Conundrum in the Northwest Passage**

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Abstract

Imagine the media storm surrounding a 10,000 gallon oil spill at the entrance to the Northwest Passage. The Canadian public would be incensed and would question what could have been done to prevent such a horrific environmental disaster. It is for this very reason that the time has come to develop a coherent and comprehensive strategy to both attain control over Canadian arctic waters and to put in place monitoring and enforcement capabilities that mitigate the increasing risk that such a disaster might ever occur.

Canada's federal government has put in place some controls to establish responsibility for the Arctic waters; however, the actions have been sporadic and typically in reaction to events such as the voyages of the *SS Manhattan*. There is mounting scientific evidence confirming the melting of the polar ice cap. Although, this trend does not mean that the arctic waters will be navigable this decade it is foreseen that they will be navigable by mid-century giving both cause and time to implement a comprehensive plan. Furthermore the geopolitical situation suggests the need for a coherent continental security plan and provides Canada with the opportunity to establish effective controls that also satisfies US requirements. What are the implications for government policy makers? The time is now right to develop and implement a comprehensive plan that builds upon our whole-of-government framework. Such a plan must recognize the legal context of Canada's sovereignty claim over these waters, the myriad of existing policy options and finally utilizing the whole-of-government approach to establish effectively conditions for *de facto* stewardship over the Arctic waters by developing regulations and conducting monitoring such that the regulations are enforced.

Introduction

Canada's north inspires conflicting visions. On the one hand, ice, snow, polar bears, endless nights denote a rather bleak and unwelcome place; on the other hand summer brings endless day, vibrant life on the tundra and as Canadians have come to understand less and less ice year over year. Global warming and climate change are impacting the north at a far greater rate than anywhere else in Canada. Predictions even hint at the opening up of the long sought after route from Asia to Europe, the fabled Northwest Passage. This route, should it open up to permit commercial shipping provides the opportunity to transit quickly between east and west. It could also conceivably see the length of voyages reduced by some 7000 kilometers. Shipping companies would then need to ask some vital questions: When will the passage be open? For how long will it be open every year? The risk averse might ask additional questions: Is it dangerous? Are there any engineering or design considerations for my ships? Are there any guarantees concerning safe navigation? Thus, climate change is a reality, as the ice recedes eventually providing for that day in the future when safe navigation via the Northwest Passage for container ships and the like is possible. However, long before the Northwest passage is safely navigable for trans-oceanic commerce, Canada's arctic waters will be a destination for a variety of interests such as fishing vessels, scientific research, tourism or cruise ships, resource exploration and exploitation platforms. Thus, there is an obvious need to act. The question is what sort of coherent approach is needed to satisfy all national and international stakeholders such that Canada's arctic waters and coastline are reasonably protected and secured from a variety of threats and happenstances that might occur.

The *status quo* of rhetoric, followed up by ineffective action has not conclusively demonstrated that Canada is serious in respect of its claims regarding the Northwest Passage. Clearly, Canada must devise a multi-faceted strategy that takes a page from the concepts of manoeuvre warfare such that it enables Canada to assert control over the Arctic waters in a manner that preserves those waters and associated shorelines for responsible use by all. In order to devise such a strategy the current context and the challenges with seemingly incoherent actions that are underway by the various federal players in the North are examined critically. The legal situation, the protagonists and the various arguments demonstrate that there is no clear cut decision for an international court to render. The policy and political imperatives both domestic and international are described suggesting a set of actions available to policy makers to gain greater influence over the northern waters. Finally the current whole-of-government approach does offer an opportunity to develop a coordinated strategy. A coherent strategy is essential for Canada to allocate resources and enable the key federal players to act in an orchestrated fashion and build an effective strategic solution to the dilemma of arctic sovereignty.

The Legal Issues with Canada's claim

Canada's claim for the Arctic Archipelago, save Hans Island is undisputed. Professor Rob Huebert, a frequent writer on Arctic issues states: "There is no question about the status of the land territory that comprises the Canadian Arctic Archipelago. All conflicting land claims were settled in the 1930's, with the sole exception of Hans Island. Denmark and Canada will find a way to resolve the Hans island situation, which lies

between Canada and Northern Greenland; it will take effort but a creative solution will be put in place. The only relevance of this claim is on the determination of the maritime boundary between Canada and Greenland.”¹

In fact where to draw the borders between Canada and Alaska is a point of contention with the US. The border disputes are unaffected by the melting ice conundrum that lies at the heart of the navigability of the Northwest Passage. The primary and most significant dispute lies with the waters of the Northwest Passage. Canada views the waters as internal waters and therefore, asserts a sovereign claim over them and has postulated continuously over the years that the Northwest Passage is indeed Canadian territorial waters. According to Huebert, Canada’s official position is that the Northwest Passage is historical internal waters; the importance of this claim is that Canada assumes full sovereignty over the waters and thereby asserts full control over all activity within them.²³ By claiming sovereignty over these waters Canadians in fact run contrary to other nation’s interests such as the US. In addition many European and Asian trading

¹ Huebert, Rob. “Climate Change and the Canadian Sovereignty in the Northwest Passage”. *ISUMA Canadian Journal of Policy Research*, Vol. 2, No. 4, Winter 2001; http://www.isuma.net/v02n04/huebert/huebert_e.html; Internet: accessed 30 January 2007. pg 3.

² Sovereignty is defined as: In international law terms, sovereignty denotes the international legal personality of a state. Only states are persons (legal actors) at international law; and the state's sovereignty, for these purposes, is projected in its legal control of territory, territorial waters and national air space, and its legal power to exclude other states from these domains; its legal power to represent and vindicate the claims and interests of its citizens with other states; and its own representation in international legal arenas such as the UNITED NATIONS and international diplomatic conferences, and before international tribunals such as the World Court. “*The Canadian Encyclopedia*” www.thecanadianencyclopedia.com accessed on 15 March 2007.

³ Huebert. “Climate Change...” pg 4.

nations view the waters as an international strait with a right to use the passage for navigable purposes. The US perspective is that the Northwest Passage is an international strait with the right of transit passage.⁴ It comes from the view that oceans and the bodies of water that connect them are part of the larger ocean's common, which once was the domain of the Royal Navy, but is now in reality the domain of the United States Navy (USN), the world's strongest maritime power. Therefore, it is in the interests of the United States to expect that the Northwest Passage be considered an international strait. The concern is that if the Northwest Passage were treated differently, other nations in similar circumstances might seek decisions from an International Court to define their straits as internal waters, thus in effect denying the USN the capability to project power abroad. Canada's claim has the potential to constrain US freedom of the seas, which as the dominant sea power can go where it wants. Thus, each nation pursues its claim for vastly different purposes, understanding each nation's perspective and centre of gravity is critical to finding a rational solution that satisfies the national constraints of each nation.

The major factor of contention regarding the legal status of the Northwest Passage swings on whether or not it is deemed to be an international strait. If the passage is deemed to be internal waters Canada assumes the exclusive right to decide who may or may not enter it. However, if international courts made a determination that it is an international strait like Cape Horn or the Indonesian Archipelago free passage subject to

⁴ Elliot-Meisel, Elizabeth B. "Still unresolved after fifty years: the Northwest Passage in Canadian-American relations, 1946-1998". *The American review of Canadian Studies*, Washington Vol 29, Issue 3. Fall 1999 pg 3.

the considerations of the IMO then it is essentially an open shipping route.⁵ What then are the major arguments?

The US position relies on two legal precedents: the first is based on geography and the second is on usage. Geographically, if the waterway can be shown to join two areas of the high seas together then it must be an international strait. All seven channels of the Northwest Passage link Davis Strait and the Beaufort Sea together, although only five channels offer a route deep enough for large commercial vessels. The US has followed this argument in the past to demonstrate its resolve on the world stage, off the coast of Libya and again in the Black Sea during the Cold War; in neither case did the US government seek permission but rather it simply asserted the right of passage.⁶ The second argument hinges on use of the passage as an international strait, the International Court of Justice decision on the Corfu Channel (United Kingdom versus Albania) demonstrated that relatively small amounts of international traffic can constitute use as an international strait.⁷

The Canadian government has very carefully staked out its position over the Arctic Archipelago. Thus, there is little dispute over that. The extent of Canada's claim as to where to draw the national borders and how much sea floor that would encompass is at issue largely due to the belief that vast amount of accessible resources are available. Canada defines its coastline using straight baselines, thus including the Northwest Passage and hence defining it as internal waters as well. This claim is supported by an International Court of Justice decision ruling on the Fisheries Case (United Kingdom

⁵ Charron, Andrea. "The Northwest Passage in Context". *Canadian Military Journal*, Vol 6, No. 4, Winter 2005-2006. pg 42.

⁶ Charron, pg 45.

⁷ Charron, pg 45.

versus Norway) in 1951 reinforcing the concepts of coastal waters and the straight baseline method of measurement for territorial seas.⁸ This method for determining the extent of territorial seas has been further supported by the UN Law of the Sea Convention, although a caveat maintains that the waters could not be determined as international prior to a given Nation asserting its territorial seas through the straight baseline method.⁹ The Northwest Passage has been navigated, (HMCS LABRADOR in 1954) and at least for short periods every year it can be navigated; however, it has never truly been a convenient or safe route for mariners, hence the ongoing public debate.

Canada's legal claim asserting that the waters of the Northwest Passage are internal waters has never been formally argued before an international court. It has, however, been discussed in public by many renowned scholars. It is not clear what the legal status of our claim is or how a court might render a decision and resolve our claim to the Northwest Passage.¹⁰ Therefore, it is not a matter of rhetoric or will but rather to determine a pragmatic approach to satisfy mutual concerns and provide mutual benefits. Given Canada has much to lose, Canada should develop a coherent strategy that recognizes the vital interests of both the US and Canada. This consideration is important because the current geo-political situation and emphasis on US national security offers a unique opportunity for Canada to exercise its creative energies that exploit the commonalities between our nations and develop a scheme that is mutually beneficial yet satisfies our distinct national interests. It is clear that Canada would like to have the essence of control over the Northwest Passage; on the other hand, Canada knows the US wants unfettered access to the oceans of the world and the precedent of allowing Canada

⁸ Charron pg 43

⁹ Charron pg 44.

¹⁰ Charron, pg 3.

to exercise our claims is a risk the US government is not prepared to take. However, national security or in this case continental security may in fact trump this particular issue. Thus, Canada needs to pursue a strategy of providing reasonable access to the Northwest Passage to the US Navy all the while putting in place a framework of policies, regulation and enforcement capability that ultimately provides the US with confidence that the northern perimeter is secure. Until then no one government is in a hurry to present their case to an international court as governments have found that this ambiguity offers more room to manoeuvre and thus are in no rush to march off and do battle in the courts. Suffice to say that if Canada were to “win” that would not be the end of the debate. Prior court rulings on domestic trade issues like softwood lumber have not resolved those issues; they are only resolved by bilateral agreements. What Canada needs is a bilateral agreement in place between Canada and the US to address this matter appropriately; anything less will not be recognized by the Americans. The passage is also not suitable for safe navigation, at least not yet. Although many alarmist or sensational approaches have been undertaken by some pundits as a means to create awareness and generate a call to action, the issue is still many years away in practical terms.¹¹

Franklyn Griffiths, a notable arctic scholar suggests extremist statements have been uttered to “energize interest” and create a crisis that ultimately galvanizes action.¹² This technique is classic reengineering, when organizations are satisfied with the status quo there is no desire to change; thus, the champion for change must identify a crisis that

¹¹ Charron, Andrea. “The Northwest Passage Shipping Channel: Sovereignty First and Foremost and Sovereignty to the Side”. *Journal of Military and Strategic Studies*, Vol 7, Issue 4, Spring 2005 available from <http://www.jmss.org/2004/fall/index2.htm>; Internet; accessed 13 March 2007 pg 7.

¹² Griffiths, Franklyn. “*New Illusions of a Northwest Passage*”, University of Virginia. Center for Oceans Law and Policy. Conference 2004 : St. Petersburg, Russia). *International energy policy, the Arctic and the law of the sea*. Leiden ; Boston : Martinus Nijhoff, c2005 pg 305.

obviously requires the organization to evolve to meet the needs of the new world.

Assuming Griffiths has it right, that the extremists are choosing hyperbole over science to generate discussion, plans and ultimately action it would then follow that there is time to put in place provisions that enable a virtual claim of sovereignty if not an actual claim of sovereignty. In fact these provisions have been identified by others, such as Andrea Charron who has recommended the following preemptive steps: establishment of a pilotage programme to guide ships through the navigable channels of the Northwest passage; adopt a legislative framework with a focus on the effects of global warming; adopt a security framework for the continent's north coast respecting our continental defence responsibilities and catering to the US security considerations; ante up the resources within DND, Coast Guard, RCMP, Transport Canada and others to service the North; and enforce the laws and respond to all hazards in a responsible and timely fashion.¹³ Charron's suggestions make sense and largely follow the model the Russians have adopted for their northern waters. The Russians provide ice breaking and pilotage services for a fee and mandate the use of these services. This policy in effect reinforces the Russian's claims to these waters. Could the Canadian federal departments exercise their mandates in our Northern waters in this manner and quietly take control of our destiny?

Canada has taken some steps to assert control in these arctic waters. The first significant piece of legislation, a rather creative and imaginative solution, was the Arctic Waters Pollution Prevention Act 1970. This act eventually was also adapted into the Law of the Sea agreements as well, in section 234 of UN Convention on the Law of the Sea (UNCLOS). It permits nations to pass environmental regulations in ice-covered areas.

¹³ Charron. "The Northwest Passage ...", pg 23 -24.

This legislation secured environmental protection for the passage without raising the sovereignty issue, and it all came about as Exxon readied the *SS MANHATTAN* for its second voyage through the Northwest Passage. It should be noted that although the *SS MANHATTAN* transited the passage in 1969 in ballast it did run into trouble and had to be extricated by Canadian and American ice breaker escorts. If it had been fully loaded a significant environmental spill would have occurred. In Spring 1970 off the east coast a significant spill did occur when the tanker *Arrow* ran aground off Chedabucto Bay, Nova Scotia. This event influenced the Prime Minister Pierre Trudeau to enact legislation that established control over these waters in a manner that is considered reasonable and prudent today, but was viewed as revolutionary in 1970.¹⁴ The strategy of writing legislation to protect our interest in the North is reasonable but more remains to be completed such as influencing the regulations that govern ship design and ship building methods suitable for vessels operating in the dangerous waters of the north.

As the number of vessels operating in the North increases, Canada must assert control through pre-emptive legislation and regulation. These small steps demonstrate willingness and an earnestness regarding our interests in the North. By enacting enforceable well-intentioned rules Canada's national will can be asserted in small but meaningful ways. It demonstrates resolve and establishes the conditions that effectively demonstrate sovereignty, albeit in a somewhat unilateral manner. These regulatory steps must be done before a right of way has been established; this could also happen if Canada were to abrogate a responsibility to take action to manage the shipping and vessels operating in the North. By not enacting and enforcing legislation in the north, vessels operating in the North will operate as they do now conforming to a set of standards that

¹⁴ Charron JMSS pg 13.

are not up to the exacting conditions of the North. As more and more vessels operate in the north, the risk of a catastrophe grows. Canada has established a regulatory framework for our coastal and inland waters which may be applicable for the North. Given the current focus on national security in both Canada and the US, enacting regulation becomes another vehicle to utilize so as to truly realize a national motto consistent with a three-ocean view '*A Mari ad Mare ad Mare*' loosely translated as from sea to sea to sea.

For instance Canada's other major maritime legislation, such as Transport Canada's Marine Transportation Security Act and the Canadian Coast Guard's vessel traffic reporting guidelines for Arctic waters (NORDREGs), need to be extended to apply in these waters to further assert national authority and jurisdiction. Currently, NORDREGs require vessels to register with the Canadian Coast Guard; the major issue with NORDREGs is that they are voluntary. If made mandatory, Canada would be able to track more efficiently and monitor all vessels operating in the North. As shipping increases additional resources, both electronic and personnel, will be required to track shipping whether or not it reports in so as to increase the effectiveness of the monitoring means now in place. There is a downside; in order to achieve an appropriate level of monitoring and enforcement, additional resources will be required; thus additional financial investment is also required. Once monitoring becomes a reality, enforcement or at least follow-up with non-reporting or other vessels of interest becomes the focus. Laws, to be, respected, must of course be 'enforceable'. Therefore with tracking rules and environmental protection laws in place, the next step is to influence the design and architecture of vessels suitable for navigation in the tricky waters of the North. Transport Canada (TC) has an influential role on the regulatory framework in the North.

With respect to Marine Transportation Security it is less a matter of extending the legislation but more a situation of ‘enforcing’ it in the north. TC needs the resources to enable it to monitor shipping in the north and to ensure all vessels and operators comply with these regulations. Importantly, this act is derived from the International Ship and Port Facility Security Code (ISPS) which is an amendment to the Safety of Lives at Sea Convention enacted by the International Maritime Organization(IMO).¹⁵ As Transport Canada is charged with the safety and security of all modes of transport, they are the lead agency with respect to regulating and certifying vessels that operate in these waters. Therefore the *status quo* remains a tolerable situation for now. Are there policy and political alternatives open to Canada to achieve our desired end-state?

Political Imperatives and Policy Options

Canada’s major political parties have each made major pronouncements about acting and being assertive about sovereignty claims for the North. Specifically, with respect to the Northwest Passage and most recently the Conservative Party’s campaign plan on which they were elected suggests an increase in capacity for the Canadian Forces to protect Canada’s Arctic sovereignty.¹⁶ Some thirty five years ago, in response to the maiden voyage of the *SS MANHATTAN*, Prime Minister Trudeau’s Liberal government enacted the Artic Waters Pollution Prevention Act as a mechanism to assert control over Canadian waters without getting into a sovereignty debate over the Northwest Passage with the Americans. In the intervening years, all political parties have initiated major initiatives to defend claims and interests in the North. But follow-through and

¹⁵ TC website. <http://www.tc.gc.ca/mediaroom/backgrounders/b04-m004e.htm> accessed 6 May 2007.

¹⁶ PC Party Campaign documents. www.conservative.ca/media/20060113-Platform.pdf accessed 30 March 2007.

implementation of concrete actions that would truly assert our claim has, quite simply, not happened.

For instance Prime Minister Mulroney in the 1980s put forward a programme to build a POLAR 8 Ice breaker, acquire nuclear powered submarines and install a network of surface and sub-surface sensors in the North. In the 1990s, Prime Minister Chrétien took action to get control of Canada's fiscal situation; the direct result was that these projects were cancelled. As a nation, the public expects governments to manage resources effectively. The consequence of getting the fiscal house in order was the loss of a number of important sovereignty assertion projects for the North. These projects should have been scaled back or tailored to balance the competing pressures of the fiscal situation and the need for a concrete expression of northern sovereignty. Such significant actions of resolve would have clearly demonstrated our national assertion of sovereignty over these waters. Decisions typically have outcomes; many times there are second and third order effects, which were unforeseen. The consequence of Canada's cancellation of so many good ideas has been that most nations do not expect Canada to follow-through and realize our promises. In his brief tenure as Prime Minister, Paul Martin worked through the Department of Indian and Northern Affairs (INAC) and the three territorial leaders to put in place a comprehensive Northern Strategy.¹⁷ This strategy was to deal with many issues of concern for northerners including: governance, economic development, the environment, community development, sovereignty, culture and scientific research. An important point to note is that INAC is identified as the lead federal department for this series of initiatives. Launched with great fanfare in December 2004, this initiative seems

¹⁷ INAC Arctic strategy http://www.northernstrategy.ca/index_e.html accessed 30 March 2007.

to have been overtaken by other priorities and concerns within INAC. The most current information on the website is dated May 2005, some 2 years ago.¹⁸

The current government was elected with a platform that advocated a stronger role for the Department of National Defence in defending Canadian Arctic sovereignty. Initiatives included the proposed establishment of an Arctic training centre for the Army, a northern deep water port, a naval base with graving dock, and the acquisition of armed ice breakers for the Navy. In the past two budgets none of these initiatives has received funding. Although these projects are important to the Minister of National Defence, they need to get beyond the concept phase before receiving budgetary approval. The reality is they are quite costly and there is a need for more debate and review in order to ascertain their feasibility. Certainly, it has been shown that politicians have advocated defending interests in the North. So why has concrete action been so limited?

From an interests and values perspective, Canadians have an emotional attachment to the North. The majority of Canadians live within 100 kilometres of the US, and live in an urban setting. Canadians do, however, look to Canada's wilderness as a source of pride and reserve a sentimental place for the North in our hearts. Its rugged and austere conditions are keen elements that define who Canadians are. Any engagements over the north with the Americans are generally values driven and thus the ensuing debate regarding sovereignty over the Northwest Passage typically results in strong and assertive responses from Ottawa. For example, PM Harper made strong comments to the US Ambassador upon taking office in 2006.¹⁹ Core national interests with the respect to the United States are important given they are our largest and most significant trading

¹⁸ INAC Arctic Strategy. www.northernstrategy.ca/index_e.html accessed 30 March 2007.

¹⁹ Harper, Stephen. "Harper Stands Up for Arctic Sovereignty." (2005).

partner. Some eighty-five per cent of Canada's exports flow to or through the United States. Maintaining cordial relations and an open border is essential to Canada's economic livelihood and quality of life. For the politician, gaining support with the electorate while not antagonizing the Americans is a delicate balancing act. American national interests with respect to transit and international waters compel them to argue for the Northwest Passage to be recognized as international waters. The passage of the Arctic Waters Pollution Prevention Act resulted in the US reducing its demand for Alberta Oil by twenty per cent in the 1970s.²⁰ Given today's supply considerations and the greater reliance on Canadian oil and gas in the US, this tactic may no longer be relevant. No doubt they could employ other economic levers with a direct impact on the manufacturing industries of Ontario and Quebec. After all, Canada has a minority government in parliament and typically in order to form a majority a party needs to secure sufficient seats in Ontario and Quebec. Prime Minister Harper needs to increase support in these provinces and can ill-afford to take chances with how they may vote if their economic livelihood is at stake. Given this conundrum what policy alternatives are available to Canada to affect a solution that balances everyone's diverse needs?

If the Northwest Passage is recognized internationally as internal waters Canada gains the authority to put in place enforceable legislation to provide for the security of these waters. Security is an all encompassing concept including environmental protection, authority over who may or may not transit in those waters, and authority over vessels in those waters. If the waters are not recognized as internal waters it is in our interest and would be valued by Canadians if regulations or legislation either, domestic or international, were in place that achieved Canada's security requirements. Canada's

²⁰ Charron, "Canada, the United States and the Northwest Passage: Sovereignty to the side". Pg 3.

policy options must achieve at least this much to give us the control over the Northwest Passage. What policy options should and can be pursued?

International regulations for vessels are generally mandated through the International Maritime Organization (IMO). Over time this organization has put in place a regulatory framework to enhance the design of merchant ships. Significantly, these regulations do not as of yet recognize the hazardous nature of operating in the north.²¹ As the Northwest Passage becomes navigable and the shipping season increases it must be noted that for the foreseeable future the waters will not be entirely ice-free and will require constant attention by ship's crews and demand superior ship handling skills to get through these waters safely. A mistake means a collision with ice, possibly super hard multi-year ice, which will have catastrophic effects.²² Transport Canada working with Coast Guard and Foreign Affairs has the lead to influence the IMO in this regard.

The International Maritime Organization is the United Nations Organization responsible to develop and maintain a comprehensive regulatory framework for shipping and its mandate today includes safety, environmental concerns, legal matters, technical co-operation, maritime security and the efficiency of shipping.²³ Since the organization puts in place the design and build standards for ships and vessels, Canada should lobby for and influence the design requirements of vessels permitted to navigate within arctic waters. The consequence of a significant oil spill has the potential to be catastrophic, because the oil spill response in the north is fundamentally different from open water situations. The arctic eco-system is particularly sensitive to pollution. The extreme cold has an incredible effect as well. Response must be immediate, and on scene commanders

²¹ IMO website : <http://www.imo.org/> accessed 15 March 2007.

²² NOAA Arctic Background, http://www.arctic.noaa.gov/essay_wadhams.html accessed 6 May 2007.

²³ IMO website : <http://www.imo.org/> accessed 15 March 2007.

must have the authority to act. Oil behaves differently in ice; it may pool on melt-water ponds; it can migrate up brine channels in sea ice; it can become encapsulated in ice over the winter; it can also be trapped and pool under the ice; and it can be absorbed by snow.²⁴ Thus, in the high arctic, a recovery action may not be complete when winter closes in with disastrous impacts for next spring. New technology to cope with a spill in these waters will need to be developed so that recovery operations can be quick and effective. Options exist but the single most limiting factor is having enough people available in a timely fashion to contain and commence recovery operations.

Will an oil spill occur in the future? These waters are most certainly dangerous. Multi-year ice is hard and will do extreme damage to ship's hull regardless of the protection measures taken. Internationally, the worldwide numbers reflect that on average there are 2.3 spills per month, with at least 10,000 gallons of oil being spilled. In US waters, the US Coast Guard expects just over two per month, overall not that much different from the international statistic.²⁵ Granted these statistics come from busy waters where collision with other vessels is a major factor and an ever present risk. Nonetheless, one can expect that there will be a sizable spill at some point. Since preparedness and risk mitigation prior to the event are options available now, it is best to recognize the inevitable and prepare for it. Preparations are not limited to spill reaction teams, and pre-positioning of kits but also taking steps to reduce the possibility of incidents by managing the ships in the passage and influencing their designs to ensure when an incident occurs the ship is capable of mitigating the impact and the resulting spill can be effectively cleaned up quickly.

²⁴ Newton, "*Coming to the Arctic*" pg 332.

²⁵ Newton, *Coming to the Arctic* pg 327.

Developing a comprehensive mitigation plan is an all important policy step. The mitigation plan needs to tackle the major risks in a comprehensive manner that is consistent with proper stewardship of any waterway not just the Northwest Passage. Design and construction of ships for the arctic is not a unique Canadian requirement. Nations surrounding and in close proximity to both poles have similar needs. Managing the traffic in these waters is a responsible thing to do and if nothing else provides those in the search and rescue business with a last known position from which to start the search. Furthermore, establishment of a pilotage authority and vessel management system would enable the government to affect control over the vessels in these waters. These concrete vessel management actions should be done as a matter of course to reduce risk of collision and subsequent environmental damage. Currently, in the spring when the passage becomes navigable, the shallow shore side channels open up first, as the ice along shore melts first, thus exacerbating the navigation challenge when transiting through the Northwest Passage. Furthermore, given the fragile nature of the ecosystem the clean-up of any environmental damage will be a monumental undertaking. The Canadian Coast Guard has already taken steps as the lead agency in this area to be prepared.²⁶ If an oil spill, however minor, occurs towards the end of the shipping season, in all likelihood it would not get cleaned up prior to the onset of winter. Therefore, additional regulations protecting the environment are needed.

Environmental regulations governing the North are enabled through the UNCLOS and existing national legislation. The ability to monitor and enforce these regulations requires a robust surveillance and response capability for the North. The Conservative political platform did have firm plans for the North. In order to monitor activity in the

²⁶ Lick & Redican interview 22 Feb 2007.

North a robust surveillance capability needs to be present. A comprehensive package of fixed wing, UAV and surface/ subsurface sensors must be deployed. The more northern latitudes of the North are not reached by our telecommunication satellites that are in geosynchronous orbits above the equator, hence rendering deployment to the far North of sensors and UAVs without the supporting ground repeater stations pointless. Satellite coverage from RADARSAT 2 and fixed wing aircraft would provide this enhanced capability. Fixed wing aircraft further enable the deployment of enforcement or inspection teams if required. Surveillance is an important aspect of the northern strategy. Situational awareness means little if one is not able to respond with an appropriate capability. To that end, trained troops are required as well as a lift capability to bring them to the scene of action.

In order to develop trained troops, the Arctic training centre is needed and this is supported by the army as a great vehicle to establish a stronger presence in the North. The centre would be staffed by Regular Force personnel who would develop a more comprehensive training programme for both the Canadian Rangers, and military units stationed in the south.²⁷ The centre would also enable aboriginal people of the North a career option in the Canadian Army. The development of a well-trained cadre of troops in the north would offer a significant support capability to the various departments responsible for enforcing Canadian laws and regulations. On the other hand ice breakers for the Navy have met with considerable push-back from a variety of sources including the Standing Senate Committee on National Security and Defence (SCONSAD), the Navy, and Canada's Coast Guard.²⁸ The primary argument against armed ice breakers

²⁷ CLS Brief to NSSP IX, 21 March 2007.

²⁸ Managing Turmoil p 94.

for the navy as articulated by SCONSAD is: there is no military threat; and icebreaking is a core competence of the Coast Guard.²⁹

The Navy has recognized the need for an enhanced naval presence in the North during the “ice-free” shipping season and has stepped up its exercise regimen deploying both its reserve manned coastal patrol vessels and patrol frigates to the north over the past few years. Currently, the navy’s vision would involve developing an Arctic Patrol Ship with a limited capability for operating in ice infested waters, but more than is in place today but still considerably less than an ice-breaker. The APS platform is potentially a successor platform to the MCDV which may have yet some seven to 10 years of operational life remaining; only time will tell. Of course, the APS would need to be announced within the next two years, so as to come into service as the current coastal patrol vessels are retired. For the Navy its aging destroyers and frigates are in dire need of both replacement and life-extension strategy respectively. Therefore, the funding of these projects are of a higher priority to the Navy, as these ships offer Canada the ability to project sea power and defend our maritime interests abroad. The Navy’s perspective is at odds with the Conservative election platform which included ice-breakers for the Navy, clearly a role performed by the Canadian Coast Guard. There has been much discussion in Ottawa to advocate a compromise solution, which builds ice breakers for the coast guard and an arctic patrol ship capability for the Navy. This compromise solution builds upon the respective competencies of the two services. Most significantly, the APS stands third in line after navy ships and the coast guard’s needs. The Navy continues to advocate for frigate renewal and destroyer replacement while putting off the replacement of the coast patrol capability as the MCDV remains a viable platform,

²⁹ Managing Turmoil, p 89 – 90.

despite having limited range and capability.³⁰ Since the current coastal patrol vessel the MCDV, is manned and operated by the Naval Reserve and arctic navigation and ice breaking is the purview of the coast guard it is recommended that the navy should begin seconding watch-keepers and navigating officers to the coast guard to build up their arctic experiences. Until the government makes a formal announcement the Department of National Defence is left with election campaign promises and internal navy plans. The significant challenge here is that although these projects are highly desirable, they have yet to receive cabinet approval. On the other hand the Coast Guard operates in the North annually and has received money for ship replacement projects in the last federal budget. Who better than the Canadian Coast Guard to assist the Navy in growing its northern water ice navigation competencies?

The Coast Guard is truly Canada's ice breaking service. It has the experience and competence, and operates in the North with some six to seven ice breakers of varying size and capability.³¹ The Coast Guard fleet is in serious need of recapitalization and needs an investment plan immediately. Although the recent federal budget provided relief for mid-shore patrol and offshore science vessels, Canada's aging ice breaking capability was not provided for. One other aspect of ice breaking that cannot be lost sight of is the human dimension. The development of a skilled and competent master for an ice beaker currently takes a minimum of 10 years with the norm being 15 years. It must be said that any investment in ice-breaking capability for the Coast Guard, bodes well for the North. Finally, the policy options to the government must also recognize the global context and ever-present yet undefined asymmetric threat to our continent. Our American neighbours

³⁰ VAdm Robertson, CMS presentation to NSSP IX on 19 Mar 07.

³¹ Interview with Mr G Lick & Mr J Redican Canadian Coast Guard

have adopted a comprehensive framework to provide for better security of their perimeter. This fact may actually give us the opportunity to put forward a security plan for the Northwest Passage that equates to sovereignty over the passage without such a controversial label and does not preclude further negotiation with respect to border disputes. By recognizing the Northwest Passage as internal waters to the North American Continent and making adequate provisions to that end, Canada will implement a security regimen for these waters. This step would enable Canada to put in place a comprehensive framework that provides for continental security interests and domestic environmental and economic security. What else is required for a security framework for the Northwest Passage be achieved given Canada's situation?

The Whole of Government Approach

Canada's system of government and legislative framework must be taken into account in defining a sovereignty strategy for the Arctic. The role of the military as affirmed in the 2005 Defence Policy Statement (DPS) is protecting Canadians, defending North America in cooperation with the United States, and contributing to international peace and security.³² It must be noted that with the change of Government, DPS 2005 has been archived from the DND website; although a valid reference document it is not the policy of the current government. The emphasis is on military capabilities in support of security initiatives at home and abroad; although much can be read into these messages the reality is that here in Canada, the CF operates in support of other government departments who enforce national laws and only when the threat is military would the CF

³² Defence Policy Statement, http://www.forces.gc.ca/site/reports/dps/main/toc_e.asp Accessed 3 May, 2007.

take on a lead role. In the late 1980's the defence plan spoke to similar themes. Yet, it included nuclear submarines and a sensor package to track other nation's submarines. In the 1990's these programmes were cancelled. Canada has in the past introduced grandiose and expensive investment strategies for asserting our sovereignty interests in the North. A coherent strategy that builds on existing activities, departmental mandates and interests will be more successful and financially feasible. By engaging the various departments in the plan, each can move forward at a pace that is consistent with departmental capabilities and capacity. This progress also implies that much more will be done and a more effective comprehensive long-term solution will be provided in the North; in other words, it will have staying power and be more effective at demonstrating national will regarding Canada's position on the North. By incrementally adding to a department's mandate and leveraging their core competencies a deeper and more comprehensive solution will be put in place. Leveraging existing capacity and mandates is a far more effective and efficient use of resources. If the goal is sovereignty; erecting Fortress Igloo, operated and staffed by the Canadian Forces personnel, over Northwest Passage is not the way to achieve this objective. A more feasible approach is to aim for *de facto* sovereignty which can be achieved with presence, that is on-site or remote but remains persistent, and above all it must have the capacity to respond to incidents proactively and reactively. Using the common framework of social, environmental and economic pillars Canada can create a multifaceted layered strategy that provides stewardship and achieves Canada's national interests.

The social, environmental and economic pillars form the core elements of a coherent strategy for the Arctic in general. Typically, the departments utilize these pillars

as their analytical framework to ensure that their plans and actions deliver value for Canadians. As noted above the whole of government network of departments and regulations provides the fabric that delivers service and represents government policy to the North. These initiatives are not sufficient on their own to satisfy all legal considerations and perspectives on the Northwest Passage; the ability to monitor and respond to situations in a direct manner are the complementary elements that truly make the case that Canada is firmly in control. Broadly speaking, to effect surveillance over the greater Arctic region, the lead agency is necessarily the Department of National Defence.

The social element recognizes the unique aspects of living in the north. It also reflects the cultural dimension as well as the emotional relationship the people of southern Canada have with the North. As the vast majority of Canadians live within 100 kilometres of the US Border and most have their economic livelihood tied to exports to the US, it is likely that many Canadians do not fully appreciate the importance of the Canadian-US relationship to our standard of living. Despite the orientation to the south various federal departments are fully engaged in operating in the North and focused on the people. These departments include but are not limited to Indian and Northern Affairs Canada, Environment Canada (EC) RCMP, Health and Welfare Canada, Industry Canada and DND. These departments operate with the territorial governments to bring government services to the North and ensure that Aboriginal and Inuit culture and practices are preserved. A renewed area of focus is scientific research, in this International Polar Year.³³ Canada is playing an important global leadership role by supporting multi-national research collaborations focused on scientific research on issues of consequence for the North. By bringing this focus to the North, greater understanding

³³ www.ipy-api.gc.ca/index_e.html accessed on 3 April 2007.

of what is happening to the environment as a direct result of climate change.

Furthermore, many of the significant steps that need to be undertaken in order to both mitigate and alleviate these effects on the people and their environment will be identified.

The environmental theme acknowledges the challenging environment and consequences for mismanagement of the region. The capacity to respond to environmental disasters must be flexible and reactive so as to mitigate and recover from an event quickly. The regulations governing ships in transit and resource exploitation operations must demand responsible actions so that these activities are undertaken with as much risk mitigation effort beforehand to reduce the possibility of an incident as well keeping any operation from becoming cost prohibitive.

Developing an understanding of climate change and its impact on the environment of the North is important. The current arctic environment faces meteorological challenges that make it an extremely inhospitable environment for both man and machine. The navigability of the Northwest Passage, which if pundits prove correct will be somewhat navigable for a significant shipping season within this century and presents Canada with both a risk and an opportunity. The risk is that an environmental disaster could happen before checks and balances are in place. On the other hand, the opportunity is at hand to plan and begin executing against that plan putting in place the necessary regulations and response capabilities to manage the Arctic waters. Understanding and managing climate change science is within the prerogative of EC.

EC's mandate is broad yet particularly relevant as it is responsible for conservation of renewable resources including water, forecasting the weather and

environmental change, and coordinating environmental policies and programs. The Canadian Ice Service (CIS), an EC entity provides ice and iceberg information and is a global authority on ice especially the ice in Canada's navigable waters and the surrounding regions such as north of Alaska. CIS publications report that the current, tidal stream and wind are all conspiring to ensure the Northwest Passage is clogged with bergy bits and ice floes in the open waters of the passages.³⁴ Thus, CIS plays an important role in monitoring ice conditions and providing imagery of relevance that contributes to Canada's situational awareness for the region. EC's many other divisions are also involved in the North with responsibilities for scientific research and environmental protection legislation. By operating in and analyzing events on the Northern environment, Canada continues to demonstrate stewardship over the land and waterways of the North. As the North opens up for greater economic development, it is important to recognize that this environment reacts differently than other regions of the world to exploitation techniques and pollution.

A prime consideration to keep in mind with respect to development in the North is financial. Salary and operating costs are greater, and exploitation and risk mitigation techniques to access the natural resources are very expensive. These factors have stalled development in the North in the past. However, as access to the region improves, it has become an accessible destination and the conduct of business is becoming financially feasible. For instance, diamond mining is well underway. The search for accessible oil and gas wells is ongoing. Tourism and fisheries also continue to provide viable employment options for many. Therefore, this region is now a viable destination. This reality has implications for many federal organizations; as they must be able to enforce

³⁴ Interview Mr D Bancroft, Director CIS, December 20th 2006.

the many regulations and laws that are applicable in the North. The natural resource exploitation that has commenced suggests that this region of the world has vast amounts of resources that will become highly sought-after commodities. As development increases the need for monitoring and enforcement will grow. Canada must have in place the capacity to respond quickly and effectively to protect the environment but also the people of the North and their economic prosperity.

Enforcement capability is driven by many factors which include monitoring of operations ongoing in the North, confirming that those operations comply with the rules and regulations and enforcing sanctions on those whose operations are not. In order to discharge effectively these responsibilities one must be able to certify operators and monitor their activities to ensure compliance. Gathering evidence and enforcing the rules requires a substantive policing capability in the North with a reaction capability that allows them to get to the scene of action in a timely fashion. The RCMP enforces much of Canada's legislation on behalf of many departments. Thus, as the North opens up the RCMP must be ready to expand their presence to react effectively to situations as they develop. This expansion is paramount to ensure economic security in the North. The expansion of coverage will be expensive but must be undertaken so as to demonstrate continued stewardship of this region as well as recognition that what goes on in this region is of great importance and of consequence in Ottawa. Achieving an effective enforcement capability is reliant on surveillance and monitoring capability that truly and effectively monitors the area.

Surveillance of the North can be described in three facets, air, land, and maritime. The air domain is monitored jointly by NORAD, who continues to monitor North

the crisis and draws upon support from other departments as necessary to contain, respond and resolve the crisis. Although there is a means to coordinate a response, the surveillance network to monitor the arctic waters needs additional investment.

The Conservative Party of Canada, in its last election campaign advocated for a sensor network at various chokepoints in the Arctic Archipelago to monitor both surface and sub-surface traffic. In conjunction with this action, the mandating of AIS responders in all ships operating in the North will allow Canada to collect the positional information about shipping activity, thereby improving the overall maritime domain awareness in our Northern waters.³⁷ The network of sensors, complemented with aerial and space-based observation platforms, will provide a comprehensive picture of what is happening in the North. Therefore, when an event occurs, it will be recognized and an appropriate response action initiated.

The final element in a layered strategy is establishing a capability to respond to security or environmental incidents. The response must be consistent with the size and scope of event. National security events would typically involve both RCMP and DND, whereas environmental events would see Coast Guard, Environment and Transport responding. What truly is important here is that the various federal agencies must have the capacity to respond. Therefore, they must have in place resources and capabilities that enable a relevant response. Urban centres are few, small and dispersed across the North. Therefore, there must be an air lift capability to move personnel quickly to any site. A maritime response capability needs consideration for the 'summer' period, and can be a

³⁷ AIS is a shipboard broadcast system that acts like a transponder, operating in the VHF maritime band, that is capable of handling well over 4,500 reports per minute and updates as often as every two seconds. It uses Self-Organizing Time Division Multiple Access (SOTDMA) technology to meet this high broadcast rate and ensure reliable ship-to-ship operation.

combination of ice breakers, arctic patrol ships as well as rigid hull inflatable boats suitable for boarding parties. The land-based response is in place already and consists of the Canadian Rangers. They are permanently resident in the coastal and remote communities.

The proposed Arctic Warfare Centre also contributes to increasing the Canadian military footprint in the North by adding to the existing Ranger stations, effectively mini-armouries, as does Joint Task Force North located in Yellowknife, Northwest Territories. The increased knowledge and capacity to act will be by-products of this centre thereby giving the regional military authorities greater confidence and capacity to support lead government departments in their enforcement mandates.

Canada's system of government relies on federal departments to operate within their mandates, as situations develop lead agencies will step forward and will coordinate the response. In order to respond effectively a comprehensive arctic domain awareness picture needs to be created and monitored. Although the pieces exist, NORAD for the air and the MSOC managing the maritime view, a true Arctic picture has yet to be compiled. This element is key because it facilitates the development of an efficient response network enabling the capacity to respond to developing situations. Given the economic and environmental realities present in the Arctic, and considering what the future may hold for the region, let alone the Northwest Passage, Canada should formulate its strategy and put in place the missing components while enhancing those components already in place. Ultimately, the social pillar must be tied into the development of the strategy for the North. It is with and for those people that national actions will benefit. Resource

exploitation will occur regardless. Therefore, Canada must act and put in place the rules and regulations that ensure development of the North occurs without incident.

A Coherent Strategy for Arctic Sovereignty

Any coherent plan for Arctic sovereignty must recognize that the problem is complicated and it will be a series of small, but substantive actions, which will achieve the necessary effect. There are events outside of Canada, such as IMO regulations that must be influenced and there are actions that must be taken here at home, such as surveillance in order to achieve the desired end state. When taking action with respect to establishing the conditions that provide for sovereignty, Canada must recognize the concerns of those who have interests at stake, namely the US, appeasing their interests will undoubtedly assure a successful outcome for these initiatives. American concerns will serve as the litmus test to the plan; if the plan satisfies their needs then it is foreseeable that the plan will be effective. What then are the major American requirements that must be satisfied?

Overall, the US has the same needs as Canada for environmental protection in these waters. Fortunately, the state of Alaska makes the US an Arctic nation and therefore the consequences of environmental damage are a shared concern. The impact of climate change in Alaska has already reduced the number of oil exploration days from over 200 in 1970 to just over 100 in 2002.³⁸ Explorers take advantage of the frozen terrain to minimize the damage to the arctic tundra. National and continental security is a greater concern and therefore situational awareness for the Arctic Waters is a necessity. With situational awareness comes the requirement to respond to threats. Lastly, the US wants

³⁸ <http://www.worldviewofglobalwarming.org/pages/alaska2.html> accessed on 2 May 2007.

the ability to traverse through the Northwest Passage in a manner consistent with International straits. This desire is somewhat at odds with the national security requirement for control within continental waters, but it can be achieved. It must be recognized that the US is a major trading partner and the major insurer of Canada's national security. These criteria are major for which Canada's actions on the international stage and domestic front must be satisfied in order to achieve sovereignty all the while protecting trade and security interests with the US. What then is the plan?

A plan to achieve *de facto* Arctic Sovereignty requires actions on the world stage as well as a coherent exercise of the whole of government approach within the North. On the world stage Canada must work with the IMO to establish the design, build and safety standards for ships that will operate in Arctic and Antarctic waters. Furthermore, Canada needs to become a leader in the science and technology for the containment, recovery and clean-up of environmental accidents in the North. Although, it can be anticipated that the investment in these types of technology will be gin in earnest after an actual spill. These actions will enable Canada to provide leadership in setting the environmental agenda for the North. By working with the other circumpolar nations and cooperating with nations like Australia and New Zealand who also have a vested interest given their proximity to Antarctica, recognition for the standards and regulations that need to be imposed on vessels and commercial operations wanting to carry out business within Canadian territory be that on land or at sea. Parallel activities need to take place on the domestic front.

Canada's actions internally must be coherent and demonstrate concerted resolve to achieve the desired goal. Political commitments must then be followed up by actual

deeds; therefore, it is important to note that all actions must be realistic, achievable, and fiscally prudent. A coherent domestic plan needs to satisfy the following elements: surveillance, presence, persistence and response supported by the appropriate mix of regulation and legislation.

The surveillance plan has multiple components and includes observation and monitoring. The observation capabilities include satellite, sensors, aircraft and UAVs. Through the satellites in place today and with the pending launch of RADARSAT 2 later this year the capacity to observe will be greatly improved. This capability will need to be augmented by AIS receivers and sensors at various choke points to ensure adequate coverage of the Northern waters and enable vessel traffic monitoring agents to track vessels and ice conditions. There is additional need for aerial observation in the form of aircraft and UAVs, although currently UAVs are limited in how far north they can operate. This capability allows for close-in review of any situation and extends NORAD's surveillance capabilities in support of the overall national security mandate. In order to follow up on observed anomalies some amount of presence is required.

Establishing presence in the North is well underway. The Canadian Rangers are being increased and with the addition of an arctic warfare training centre a greater army capacity to operate in the North will be generated. The navy is reviewing options for moving forward with an Arctic deep-water port and Arctic Patrol ships to support the RCMP, Coast Guard and Fisheries and Oceans in their mandates. The Coast Guard already operates one heavy and five medium ice breakers in the region; although an ice-breaker fleet renewal program is needed they are at least present during the summer shipping season. Other departments will need to increase presence in the North to

facilitate monitoring and enforcement activities. These activities would include Transport Canada's marine safety and security inspectors as well as environmental officers from Environment Canada. Given the vast distances and the remoteness of the communities in the North the challenge will be to establish sufficient presence to demonstrate resolve. A token presence will not be effective, the capacity to respond must be dispersed to sufficient sites to ensure a timely and effective response to the situation. Scenarios will need to be developed to validate the capability and capacity to meet reasonable response targets.

An important consideration for asserting national will in the North is the establishment of resources in key locations that enable a response effort, but also provides an appropriate *persistence* factor. During the off or winter season fewer resources will be required, and remote monitoring will enable the tracking of activity. What will be of prime importance is to grow the resource footprint over time as demand for services grows. As noted, the North will be for the foreseeable future a destination whether that is for tourism or resource exploitation. Those businesses will need certifying and monitoring to ensure they are operating in accordance with regulations and with due concern for the environment. With a persistent presence, the capacity to respond and deal with issues will exist.

The response effort demonstrates resolve and commitment to the North and the people who call this region home. As activity increases, the number of operators seeking quick fortunes will likely increase. Typically, these operators cut corners in order to reduce costs and maximize their profits. The consequences of the North becoming a free for all will be catastrophic environmental damage. Therefore, all federal agencies

operating in the North must have sufficient capacity to respond or at least draw upon the services of other departments to enforce their relevant regulations. This capacity is equivalent to the role played by the North West Mounted Police, during the Klondike gold rush days of 1897, by asserting federal government authority and control. The Coast Guard has provisioned for the capability to respond to oil spills in the North. This capability will need to be increased as the volume of marine traffic grows. As in other regions, the Coast Guard will need to identify certified oil spill response partners. The major enabler for any of the response effort will be ensuring that legislation and regulation effectively covers the Arctic.

Canada's regulatory framework of applicable regulations applicable to the North needs review to ensure that they provide for adequate coverage and are enforceable in the Arctic region. Courts may toss out cases simply because the relevant agency did not have the requisite authority to enforce its mandate in the Arctic Region. It is clear that regulations and rules for the North must be consistent with the statutory authorities and departmental prerogatives. Additional and more stringent rules may need to be put forward to recognize the unique environmental conditions in the North. Ensuring vessels operating in the North are designed and built for the hazardous conditions and utilize pilotage services will be a core aspect of managing shipping in the Northwest Passage. The consequences for offenders must be severe and actionable so as to mitigate any risk to the environment and national security. The review of legislation, rules and regulations cannot wait; this component of the campaign plan is important to manage the destiny of the Northwest Passage for Canadians, particularly for those Canadians who live in the North.

Conclusion

In order to achieve a Canadian solution to the question of sovereignty of the Northwest Passage Canada should take steps to assert its national claim. In the past Canada has implemented the Arctic Waters Pollution Prevention Act as well as taken a number of other steps to assert our claim. Unfortunately, the grand plans that in the past that caught the public eye were inevitably cancelled while still on the drawing board creating an effect of empty rhetoric. As for seeking redress before the international courts, it is clear that neither Canada nor the US has a *bone fide* case. If there was a clear winner the matter would have already been decided legally. And should Canada win, the Americans would continue to launch court challenges and ignore the decision until they had their way. There is *prima facie* evidence that this method of operation forces a bilateral agreement rather than a court decision. Since it is known what the US is after and why the US wants free transit of the passage, Canada must then recognize the US needs and factor these into the plan. The US is concerned with national security issues and the potential to route commercial shipping through the passage. Bilateral agreements are in place with respect to national security. It is up to Canada to employ a model in the north, a sophisticated and nuanced Canadian approach that satisfies this constraint while ensuring control is retained over who transits through Canadian waters. In regard to commercial interests, no one gains if there is an accident and the passage becomes blocked or closed. Therefore it is in the interests of all circumpolar nations to push for arctic maritime standards in ship construction, design and on board safety equipment. The

role for the federal government lies in the whole of government approach which is the most pragmatic.

Given the legislative mandates of the various federal departments, no one department can be singled out as the lead department for everything. They each have a significant role to play to ensure the social, environmental and economic stewardship of this complex region is executed responsibly. However, all departments will need to ensure their appropriate rules and regulations are enforceable in the Arctic. Furthermore, by incrementally bringing more resources to the region, increasing the overall surveillance capabilities and developing effective and appropriate response mechanisms, Canada will be in control of its destiny. Therefore, by increasing the presence, provision of the appropriate tools whether they are legal or technological a viable monitoring and response capacity can be created. The net achievement of these actions will be to provide for the security of the continent along Canada's northern coast, the third ocean. In effect Canada must allocate the right mix of resources to provide a persistent and capable presence. By incrementally growing the federal commitment in the North and ensuring that the regulations and rules for the North are consistent and applied with the same rigour and vigour as they are in the south the world will be convinced that Canada is prepared to back up its claims. This long term plan is credible for success, but it does require leadership and a singleness of purpose to bring it about. There are many distinct actions to be done by departments. There is also a need for well orchestrated multi-department actions which require clear coordination and guidance. If there is one flaw in the plan it is that whole of government approach does not lend itself to multi-agency

operations where a lead department is identified with the authority to direct many departments to achieving a given goal.

Goal attainment on this scale requires the leadership and guidance from the Prime Minister. Achieving a strategic outcome in the North requires the Arctic to become among Canada's top priorities. Given the realities of a minority government and the competing priorities for any Prime Minister's time is this possible? Only when the reality of a crisis in the North looms will concerted effort begin to occur; in the meantime, individual organizations and departments will develop effective implementation strategies and achieve small victories. Sadly, the more impressive concerted actions will likely have to wait another day. The time has come for Canada to take serious action in the North and assert its authority over the Northwest Passage.

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