

**Canada's Arctic Presence and  
the Northwest Passage**

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## Abstract

Canada faces many challenges in the Arctic. Climate change has opened up the North, and long-dormant boundary disputes in the region have resurfaced, as governments have taken up the rhetoric of defending their sovereignty. As the Arctic nations have been eager to lay claim to the resources that will become available as the ice melts away and the region becomes more accessible, they have increased their military capabilities in the region in an effort to show that they are serious in defending their territory.

In addition to government posturing in the Arctic, the receding ice has opened up northern waterways to increasing maritime traffic. In particular, the fabled Northwest Passage has become more accessible during the summer months, and the number of vessels operating in the region is expected to increase in the years ahead, though treacherous conditions through the Passage mean that the extent to which the region will become a shipping corridor is uncertain. Although Canada claims the Northwest Passage as internal waters, the international community, and the United States in particular, disagrees with Canada's claim, and sees the Passage as an international strait open to nearly-unrestricted movement.

This paper will first look at Canada's military presence in the Arctic. It compares Canada's efforts to those of the other Arctic nations, and examines the possibility of combat in the region. The paper then analyses the most likely challenges that the Canadian military will face in the Arctic, and determines whether the military is capable of meeting those challenges. The paper will then focus on the effects of an increase in traffic through Canadian Arctic waters.

In particular, it will examine the Northwest Passage, and concludes with a recommendation on how Canada should handle the disagreement over its status.

## Table of Contents

Introduction .....	4
The Growing Importance of the Arctic.....	5
Military Presence in the Arctic.....	9
The Future Arctic: Peace or Conflict?.....	17
Future Military Operations in the Arctic .....	21
Increased Use of the Northwest Passage.....	30
Monitoring Activity in the Canada’s Arctic.....	33
Legal Status of the Northwest Passage .....	35
The Canadian Position: The Northwest Passage as Internal Waters .....	38
The American Position: The Northwest Passage as an International Strait .....	44
A Compromise Position: The Northwest Passage as a Territorial Sea .....	46
Maintain the Status Quo? .....	47
Recommendation.....	49
Conclusion .....	50
Bibliography .....	54

## Introduction

Despite representing a large percentage of the nation's landmass, Canada's Arctic tends to be largely ignored by both policymakers and the general public. The region's inconceivable vastness and its distance from the majority of Canadians give it a mythological aura: images of the northern lights and the midnight sun, as well as the words of authors such as Robert Service, give an emotional attachment to the North and remind Canadians that Canada is a northern nation. Yet the Arctic is viewed largely as a symbol of the Canadian identity, instead of as an area where Canadians actually live. In recent years, however, there has been an increased spotlight on the Arctic and on northern issues. Climate change has made the region more accessible: waters which were previously ice-covered throughout the year now are becoming navigable during the increasingly-long summer. Widespread use of these waterways, however, is far from a foregone conclusion, as harsh weather conditions, the presence of drifting ice, and shallow channels all pose hazards to ships operating in the region. Notwithstanding these challenges, the greater focus on the Arctic has brought about both promise and concern. Increased maritime traffic within the Arctic could facilitate economic growth in the region, yet it also brings relevancy to previously-dormant territorial issues. Heated rhetoric about Arctic sovereignty has led to concerns about the potential for military conflict in the region. Furthermore, the increased activity throughout Arctic waters brings about questions over Canada's capability to control these waters. These issues are making the traditional Canadian complacency about northern matters untenable as the region gains more and more importance.

This paper contains two main themes, beginning with Canada's military presence in the Arctic before approaching the primary non-military issue that Canada faces in the region: increased activity through the Northwest Passage. By comparing the Canadian approach to Arctic issues with that of Canada's Arctic neighbours, this paper will examine the areas of its Arctic strategy in which Canada has been successful, and where there are areas for improvement.

## **The Growing Importance of the Arctic**

Canada's Arctic has always been the subject of fascination. For many European explorers, the dream of a Northwest Passage to Asia was met with the harsh reality of frigid temperatures, unpredictable weather, and impenetrable ice. The hostility of the Arctic environment meant that the region could be largely ignored, which it was, even by the federal government. Other than a few token RCMP officers, there were no government institutions, including schools or health care workers, on the Arctic islands until the 1940s<sup>1</sup>. The Cold War brought a new sense of importance to the Arctic, as it was the closest path between the United States and the Soviet Union, but after the collapse of the USSR, the region was again largely ignored<sup>2</sup>. In the past 15 years, however, climate change has brought new attention to the region. The effects of climate change have been more pronounced in the Arctic than in other areas of the globe, as summer sea ice levels in the Arctic Ocean have been receding in recent

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<sup>1</sup> Coates, Ken [et al]. *Arctic Front: Defending Canada in the Far North* (Toronto: Thomas Allen Publishers, 2008), p. 52

<sup>2</sup> Senate Standing Committee on National Security and Defence. *Sovereignty & Security in Canada's Arctic: Interim Report* (Ottawa: Canada Senate, 2011), p. v

years, resulting in more open water and a longer navigable season for maritime vessels<sup>3</sup>. As Arctic waters become more accessible, the region is likely to see increased maritime activity. The Arctic is thought to contain 13% of the world's undiscovered oil and 30% of its undiscovered gas<sup>4</sup>; the development of these resources along with the potential of the Northwest Passage turning into a viable shipping route mean that the region is gaining an importance that it has never before seen<sup>5</sup>.

The improved accessibility of the Arctic's waterways also brings about new importance to the region's unsettled boundary disputes. There are two areas in the Arctic where Canada has disagreements with its neighbours about its borders. In the east, Canada and Denmark are in the process of finalising an agreement on the status of Hans Island, a small island located in Nares Strait, between Ellesmere Island in Nunavut and Greenland. Though the disagreement in ownership of the island first came to light in the 1970s, it was not until the early 2000s that the issue was seen to be important, due mainly to the increased focus on the North as a result of climate change<sup>6</sup>. In the west, Canada and the United States disagree on the maritime boundary between the two countries in the Beaufort Sea. This is not an insignificant dispute, in that the area in question consists of 6,250 square nautical miles, and likely contains vast amounts of gas and oil underneath the seabed<sup>7</sup>.

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<sup>3</sup> Coates, p. 2

<sup>4</sup> Johnston, Peter. "Arctic Energy Resources: Security and Environmental Implications", *Journal of Strategic Security*, Volume 5, Issue 3 (2012), p. 13

<sup>5</sup> Ibid.

<sup>6</sup> Coates, p. 157

<sup>7</sup> Griffiths, Franklyn [et al]. *Canada and the Changing Arctic: Sovereignty, Security, and Stewardship* (Waterloo, Ontario: Wilfrid Laurier University Press, 2011), p. 125

In addition to these boundary disputes, Canada, along with the other nations that have claims to the Arctic seabed (Denmark, Norway, Russia, and the United States, collectively known as the Arctic Five), is currently surveying the ocean floor in order to extend its continental shelf under the framework of the United Nations Convention on the Law of the Sea (UNCLOS). Canada ratified the Convention in 2003, and had ten years to submit its claims. In December 2013, the federal government submitted its preliminary data, while providing notification that it intends to submit more complete data in the future (which is permitted under the Convention)<sup>8</sup>. Under international law, a country's continental shelf extends 200 nautical miles from its shore, but under UNCLOS, a country can make a larger claim, providing it can show that the continental shelf is a "geological extension of the continent"<sup>9</sup>. An extended continental shelf would give Canada the extraction rights to natural resources underneath the seabed (though not fishing rights)<sup>10</sup>. The importance of this increase in the continental shelf is significant to the affected countries: Canada's potential claim is larger than two prairie provinces, while Russia's submission claims an area the size of Europe<sup>11</sup>. In total, an estimated 83 billion barrels of oil and 44 trillion cubic metres of gas are thought to be found in the affected areas<sup>12</sup>.

Perhaps the most significant dispute that Canada has in the Arctic regards the status of the Northwest Passage. Canada considers the Passage to be internal waters, meaning that the

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<sup>8</sup> Foreign Affairs, Trade and Development Canada. "Canada Marks Major Milestone in Defining Its Continental Shelf", December 9, 2013. <http://www.international.gc.ca/media/aff/news-communiqués/2013/12/09a.aspx?lang=eng>

<sup>9</sup> Library of Parliament. *The Arctic: Canada's legal claims* (Ottawa: Parliamentary Information and Research Service, 2008), p. 2

<sup>10</sup> Ibid.

<sup>11</sup> Byers, Michael. *Who Owns the Arctic?: Understanding Sovereignty Disputes in the North* (Vancouver: Douglas & McIntyre, 2009), p. 92

<sup>12</sup> Ibid., p. 89

government can assert total control over all activities in these waters<sup>13</sup>. To the international community (and most importantly, the United States and Europe), the Northwest Passage is seen as a strait used for international navigation. If this is the case, Canada's only ability to limit movement through the Passage would be the capacity to enforce international rules and standards<sup>14</sup>. Furthermore, if the Northwest Passage were to be considered an international strait, the airspace above would be open to international aircraft, both civilian and military<sup>15</sup>.

As issues such as climate change affect the region as a whole, and not just a single country, the eight Arctic countries (the Arctic Five plus Finland, Iceland, and Sweden) work together under the framework of the Arctic Council, the main body of governance for the region<sup>16</sup>. Created in 1996, the Arctic Council is formed by representatives from the eight Arctic nations, as well as from six Aboriginal groups that represent northern indigenous communities within the member countries. In addition, twelve European and Asian countries have the status of permanent observer states to the Arctic Council, with the most recent expansion coming in 2013 with the addition of China and India, among others. The interest of non-Arctic countries in the Council shows that regional issues are of importance to more than just northern countries: the potential for development in the Arctic holds promise for much of the developed world<sup>17</sup>.

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<sup>13</sup> Griffiths, p. 46

<sup>14</sup> Ibid.

<sup>15</sup> Pigott, Peter. *From Far and Wide: A Complete History of Canada's Arctic Sovereignty* (Toronto: Dundurn Press, 2011), p. 243

<sup>16</sup> Geir, Hønneland. *International Cooperation and Arctic Governance: Regime Effectiveness and Northern Region Building* (London: Routledge, 2006), p. 3

<sup>17</sup> Ronson, Alison. "Political Climate Change: The Evolving Role of the Arctic Council", *The Northern Review*, 33 (Spring 2011), p. 103

This increased importance given to the Arctic in recent years has led the leaders of Arctic nations, including Canada, to publicly state the importance of their countries' Arctic sovereignty, and their need to defend their territory from possible threats<sup>18</sup>. Furthermore, after a post-Cold War reduction of Arctic military capabilities in the 1990s, the past decade has seen the Arctic Five nations all increase their northern military capacities<sup>19</sup>. The next section of this paper will look at Canada's military presence in the Arctic, and compare it to recent developments from the other Arctic states.

## **Military Presence in the Arctic**

Full Canadian stewardship of its Arctic land and waters began in 1880, when Prime Minister Macdonald accepted the transfer of the remaining British Arctic territories. In 1895, the Canadian government split its Arctic territories into the districts of Ungava, the Yukon, Mackenzie, and Franklin via the *Colonial Boundaries Act*. Since that time, Canada has used its armed forces to protect its sovereignty in the North. From sending troops to monitor the Klondike gold rush to establishing the DEW Line during the Cold War, the military has long maintained a presence in the Arctic to counter potential foreign threats. Since the early 2000s, Canada, along with most other Arctic nations, has used the idea of sovereignty to justify increased military expenditure in the region<sup>20</sup>. Though there have been previous prime ministers who placed importance on Canada's military and coast guard capabilities in the Arctic, notably Brian Mulroney, with his unrealised promises of nuclear submarines and a new

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<sup>18</sup> Huebert, Rob. *The Newly Emerging Arctic Security Environment* (Calgary: Canadian Defence and Foreign Affairs Institute, 2010), p. 4

<sup>19</sup> *Ibid.*, p. 4

<sup>20</sup> *Ibid.*, p. 2

icebreaker, none have emphasised the need for a Canadian military presence in the region as strongly as Stephen Harper has<sup>21</sup>.

Since first elected prime minister in 2006, Harper has focused much attention on the idea of Arctic sovereignty and the need to protect Canada's interests in the region<sup>22</sup>. Shortly after forming government, the Conservative Party released the *Canada First Northern Strategy*, which outlined the government's initial plans for the region. Among the focal points of the strategy were the procurement of three armed icebreakers to be stationed near Iqaluit along with a deep-water docking facility, a new Arctic army training centre, new search-and-rescue aircraft to be stationed in Yellowknife, and an increase in the number of Canadian Rangers, a largely-Aboriginal component of the Canadian Armed Forces Reserve that operates in northern communities<sup>23</sup>. Harper's oft-stated motivation for his increased focus on sovereignty in the North was that when it comes to the Arctic, Canada must "use it or lose it"<sup>24</sup>.

Over the course of his time as prime minister, Harper has faced a great deal of criticism over the failure to deliver on many of his Arctic promises<sup>25</sup>. The promise of three armed icebreakers has been downgraded to between six and eight Arctic/Offshore Patrol Vessels (AOPS) which will only be able to operate in the Arctic during the late summer and early fall seasons, plus one unarmed icebreaker to be operated by the coast guard<sup>26</sup>. The deep-water docking facility, changed from Iqaluit to Nanisivik on the northern coast of Baffin Island, has

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<sup>21</sup> Coates, p. 194

<sup>22</sup> Ibid., pg. 172

<sup>23</sup> Pigott, p. 256

<sup>24</sup> Coates, p. 169

<sup>25</sup> Wells, Paul. "The cold truth: Why Harper's tough talk on the Arctic is empty", *Maclean's*, September 9, 2009, p. 17

<sup>26</sup> Byers, Michael & Webb, Stewart. *Titanic Blunder: Arctic/Offshore Patrol Ships on Course for Disaster* (Ottawa: Canadian Centre for Policy Alternatives, 2013), p. 18

seen the project downgraded from a full naval facility to a seasonal refuelling station, and is at least three years behind schedule<sup>27</sup>. Finally, the one announced new icebreaker, to be named the *CGGS John G. Diefenbaker*, was originally expected to be completed by 2017, but a conflicting ship-building schedule has pushed back the completion date to the early 2020s<sup>28</sup>.

Despite these delays and downgrades, the current government has followed through on some of its Arctic promises. Every year since 2007, the Canadian Armed Forces have participated in three annual exercises in the Arctic, known as Operations Nanook, Nunaliut, and Nunakput, which have the aim of increasing Canada's military presence in the Arctic and to show sovereignty in the region<sup>29</sup>. In 2008, the first conventional army reserve unit north of the 60<sup>th</sup> parallel was opened in Yellowknife<sup>30</sup>, while in 2013, a year-round Arctic training facility was opened in Resolute Bay, Nunavut<sup>31</sup>.

An important aspect of Canada's military presence in the Arctic is the existence of the Canadian Rangers program. The Canadian Rangers are present in 57 of 71 communities in the North and conduct surveillance, assist in search-and-rescue operations, and perform patrols in the region on the behalf of the military<sup>32</sup>. One of the major functions of the Canadian Rangers is to conduct sovereignty patrols, where they report unusual activity and "show the flag" on

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<sup>27</sup> Byers & Webb (2013), p. 28

<sup>28</sup> CBC News. "Arctic icebreaker delayed as Tories prioritize supply ships", October 12, 2013. <http://www.cbc.ca/news/politics/arctic-icebreaker-delayed-as-tories-prioritize-supply-ships-1.1991522>

<sup>29</sup> National Defence and the Canadian Armed Forces. "Recurring Operations". <http://www.forces.gc.ca/en/operations-canada-north-america-recurring/index.page?>

<sup>30</sup> National Defence and the Canadian Armed Forces, "Support Units – 440 Transport Squadron". <http://www.forces.gc.ca/en/operations-regional-jtf-north/support-units.page>

<sup>31</sup> National Defence and the Canadian Armed Forces, "New Arctic Training Centre boosts Army's presence in the North", August 15, 2013. <http://www.army-armee.forces.gc.ca/en/news-publications/national-news-details-no-menu.page?doc=new-arctic-training-centre-boosts-army-s-presence-in-the-north/hkdontpd>

<sup>32</sup> Senate Standing Committee on National Security and Defence, p. 6

behalf of Canada<sup>33</sup>. In recent years, the government has increased the number of Canadian Rangers, bringing the number of Rangers to 1,900 in the North (with a nationwide total of 5,000)<sup>34</sup>. In addition, the program is going through a modernisation phase, during which the military is looking to replace the dated, but effective, Lee Enfield rifles used by the Rangers, as well as providing the units with new equipment such as watercraft and upgraded snowmobiles<sup>35</sup>.

A major reason for the government's recent focus on strengthening Canada's military capabilities in the North is that the Arctic is a region where the military is currently unable to deploy and operate at more than a basic survival level<sup>36</sup>. This is seen as worrisome, as Canada's Arctic neighbours have been expanding their military capabilities in the region<sup>37</sup>.

The country that has been the focus of the most media attention when it comes to the militarisation of the Arctic is Russia. Since its state-sponsored expedition to the North Pole in 2007, where explorers aboard a submarine planted a Russian flag at the pole, Russia is seen by many as a provocateur in the Arctic<sup>38</sup>. This act brought a strong reaction from world leaders, who decried the activity as meaningless yet confrontational<sup>39</sup>. Additionally, Russia resumed long-range patrols in military bomber aircraft in 2007, which fly up to the edge of Canadian and American airspace, without prior notification of the Canadian or American governments<sup>40</sup>.

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<sup>33</sup> Senate Standing Committee on National Security and Defence, p. 7

<sup>34</sup> Ibid.

<sup>35</sup> Ibid., p. 7-8

<sup>36</sup> Ibid., p. 5

<sup>37</sup> Huebert, p. 22

<sup>38</sup> Baev, Pavel. "Sovereignty is the Key to Russia's Arctic Policy". *Strategic Analysis*, 33(4), 2013, p. 489

<sup>39</sup> Coates, p. 162

<sup>40</sup> Huebert, p. 17

Though this does not violate international law, it has provoked a war of words between the Canadian and Russian governments, using language reminiscent of the Cold War<sup>41</sup>.

Russian president Vladimir Putin has made the rebuilding of the country's armed forces, which had deteriorated drastically after the collapse of the Soviet Union, one of his major priorities<sup>42</sup>. Due to the country's geographic position, any strengthening of its military will result in an improvement in its Arctic capabilities<sup>43</sup>. This is especially true with regards to Russia's navy. Post-Soviet Union, Russia was left with ports in the Arctic and in the country's Far East. As its Arctic ports are more significant than those in the East, any naval capability gained by the Russians will necessarily be an Arctic capability<sup>44</sup>.

Russia has not shied away from using its naval power in the region. In a number of instances between 2004 and 2007, it sent warships into waters that were the focus of a border dispute with Norway under the pretense of protecting Russian fishermen in the area<sup>45</sup>. In 2009, a group of Russian submarines, equipped with nuclear weapons, were sent to the waters of the High Arctic to test-launch their missiles, in order to show their capability of navigating in and engaging in combat in ice-covered waters<sup>46</sup>. Russia is the country with the most active military

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<sup>41</sup> Coates, p. 185

<sup>42</sup> Baev, p. 490

<sup>43</sup> Huebert, p. 16

<sup>44</sup> Ibid.

<sup>45</sup> Piskunova, Ekaterina. "Russia in the Arctic: What's lurking behind the flag?", *International Journal*, 65.4 (2010), p. 851

<sup>46</sup> Huebert, p. 18

presence in the Arctic's waters<sup>47</sup>, and this presence is often depicted as a threat to the other countries in the region<sup>48</sup>.

As a result of its ongoing military rearmament, Russia currently has more combat vessels and soldiers stationed in the North than the other Arctic nations have combined<sup>49</sup>. However, recent domestic issues, such as the 2011 protests against the Putin government, as well as a focus on the Far East in an Asia-Pacific context, have made the Arctic less of a priority for the Russian government<sup>50</sup>. While Russia does not want to show weakness to the other regional powers, it is likely that its Arctic military manoeuvres have already reached a climax for the time being<sup>51</sup>.

Though Russia's status as the only non-NATO member of the Arctic Five means that its military presence in the Arctic may be the most concerning for Canada, it is also important to examine the Arctic capabilities of Canada's NATO allies in the region.

The proximity of the United States has always been the single most important factor in Canada's defence policy. Though it does not often think of itself as an Arctic nation<sup>52</sup>, the Arctic was a major focus of the American military during the Cold War, and the United States stands to benefit from improved access to natural resources off the coast of Alaska<sup>53</sup>. Even after the collapse of the Soviet Union, the United States kept significant forces in Alaska, and the state's

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<sup>47</sup> Charron, Andrea [et al]. "The Russian Arctic hegemon: Foreign policy implications for Canada", *Canadian Foreign Policy Journal*, Vol. 18, No. 1 (March 2012), p. 38

<sup>48</sup> *Ibid.*, p. 47

<sup>49</sup> Baev, p. 490

<sup>50</sup> *Ibid.*, p. 492

<sup>51</sup> *Ibid.*, p. 493

<sup>52</sup> Huebert, p. 19

<sup>53</sup> *Ibid.*

geographical position continues to be strategically important, as evidenced by the installation of a missile defence system in Alaska to respond to the possible future threat of North Korean missiles<sup>54</sup>. Furthermore, the United States government intends to station 36 F-22 aircraft (representing 20% of its entire fleet) in Alaska and has recently strengthened at least a portion of its submarine fleet in order to operate in ice-covered waters<sup>55</sup>. However, the United States has seen a decrease in its icebreaking ability, as it currently only has three icebreakers, two of which are reaching the end of their lifespans, with one of the two unlikely to leave reserve status<sup>56</sup>. Additionally, the focus of the American military and coast guard is largely in the southern, subarctic region of the Alaska, with a lack of permanent infrastructure in the northern part of the state<sup>57</sup>.

The United States has given mixed signals concerning its military capabilities in the Arctic, and the government has been criticized for not being as proactive as the other regional powers, especially Russia<sup>58</sup>. In May 2013, the United States government released its *National Strategy for the Arctic Region*, a document which outlines the future initiatives that the government plans to take in the region. On the subject of defence, however, the plan only gives vague descriptions of “[protecting] the American people, [their] sovereign territory and rights, and the natural resources and other interests of the United States”<sup>59</sup>.

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<sup>54</sup> States News Service. “Begich applauds Hagel decision to strengthen Alaska missile defense in response to North Korea”, March 18, 2013.

<http://go.galegroup.com/ps/i.do?&id=GALE|A322803521&v=2.1&u=otta77973&it=r&p=AONE&sw=w>

<sup>55</sup> Huebert, p. 20

<sup>56</sup> Ibid., p. 21

<sup>57</sup> Conley, Heather [et al]. *The New Foreign Policy Frontier: U.S. Interests and Actors in the Arctic* (Washington: Center for Strategic and International Studies, 2013), p. 9

<sup>58</sup> Ibid., p. 2

<sup>59</sup> Government of the United States of America. *National Strategy for the Arctic Region*, May 2013, p. 6

Although Russia and the United States are the largest military powers in the region, Canada's other Arctic neighbours have also increased their military capabilities in recent years.

In 2011, Denmark, which is an Arctic nation through its possession of Greenland and the Faroe Islands, released its updated Arctic Strategy, which includes a stronger focus on the Arctic by its armed forces<sup>60</sup>. To accomplish this, the Danish government is creating a joint-service Arctic command, which will streamline its Arctic military forces, increase its surveillance capacity in the region, and examine the possibility of expanding its primary air force base in Greenland<sup>61</sup>. Additionally, the Danish air force is considering deploying a portion of its F-16 fleet to Greenland, which it has not previously done<sup>62</sup>. Furthermore, the Danish navy has acquired patrol vessels that are strengthened for operation in icy waters, and these ships are able to be armed with numerous weapons, including anti-aircraft missiles and anti-submarine torpedoes<sup>63</sup>.

The final Arctic littoral state, Norway, has also expanded its Arctic military capabilities in recent years, mainly due to fears that its relationship with Russia could deteriorate in the future<sup>64</sup>. The Norwegian navy has purchased highly-advanced frigates and patrol vessels, as well as armed coast guard vessels<sup>65</sup>. In 2006, Norway resumed large-scale military training

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<sup>60</sup> Kingdom of Denmark. *Strategy for the Arctic 2011-2020*, August 2011, p. 20

<sup>61</sup> Ibid.

<sup>62</sup> Huebert, p. 10

<sup>63</sup> Ibid.

<sup>64</sup> Kraska, James [et al]. *Arctic Security in an Age of Climate Change* (Cambridge: Cambridge University Press, 2011), p. 56

<sup>65</sup> Huebert, p. 14

exercises in the northern regions of the country, which, unlike Canadian and American Arctic training exercises, take place in winter, in order to train in severe conditions<sup>66</sup>.

While all five of the Arctic coastal nations have increased their Arctic capabilities, Canada is alone in that its new Arctic presence is designed for mainly constabulary forces, such as search-and-rescue and surveillance, with the other countries all having acquired new materiel with offensive weapons systems designed for warfare<sup>67</sup>. In order to know if Canada is making the correct decision in the type of military equipment to procure for the Arctic, the probability of conflict in the region must be examined. The next section of this paper will look at if peace will prevail in the Arctic, or whether the apparent military buildup in the region will bring the possibility of armed conflict.

## **The Future Arctic: Peace or Conflict?**

Though Prime Minister Harper has often referred to sovereignty as “forces on the ground” and “ships in the sea”<sup>68</sup>, the reality is that there is no conventional military threat to Canada in the Arctic<sup>69</sup>. Despite the recent military buildup of the Arctic nations, in 2008 these same countries signed the Illulissat Declaration, where they reaffirmed their commitment to resolving any sovereignty disputes in a peaceful manner consistent with international law<sup>70</sup>. Moreover, it would be nearly inconceivable for NATO allies to use military action against each other in the Arctic (or elsewhere, for that matter). Even Russia, the country most likely to pose

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<sup>66</sup> Huebert, p. 14

<sup>67</sup> Ibid.

<sup>68</sup> Griffiths, p. 93

<sup>69</sup> Ibid., p. 94

<sup>70</sup> Byers, p. 125

a geopolitical threat to Canada in the region (due to its non-NATO status), is not building warships capable of penetrating thick multi-year ice. While it is building icebreakers with this capability, these are not warships<sup>71</sup>.

Even before the Illulissat Declaration, Arctic nations have favoured diplomatic resolutions to military confrontation in the region. In the case of Hans Island, both Canada and Denmark have periodically sent politicians accompanied by the military to the island, though these flag-planting exercises are not considered aggressive, as evidenced by the fact that these visits are good-humoured: the Danes leaving behind bottles of schnapps and the Canadians leaving whisky<sup>72</sup>. Though politicians and the media have often exaggerated the threat to sovereignty that this dispute entails, diplomats from both nations have been quietly working on a mutually-acceptable agreement on the island's status<sup>73</sup>. In 2012, a proposal emerged that would create a border on the island, with half belonging to Canada and half to Denmark<sup>74</sup>. Though not yet finalised, the proposal shows that this situation will almost certainly be resolved peacefully. Also in 2012, Canada and Denmark reached a tentative agreement concerning a long-held dispute involving two contested maritime areas in the Lincoln Sea, north of Ellesmere Island and Greenland<sup>75</sup>.

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<sup>71</sup> Pigott, p. 283

<sup>72</sup> Byers, p. 27

<sup>73</sup> Ibid., p. 29

<sup>74</sup> Humphreys, Adrian. "New proposal would see Hans Island split equally between Canada and Denmark", National Post, April 11, 2012. <http://news.nationalpost.com/2012/04/11/new-proposal-would-see-hans-island-split-equally-between-canada-and-denmark/>

<sup>75</sup> Foreign Affairs, Trade and Development Canada. "Canada and Kingdom of Denmark Reach Tentative Agreement on Lincoln Sea Boundary", November 28, 2012. <http://www.international.gc.ca/media/aff/news-communiques/2012/11/28a.aspx?lang=eng&view=d>

Other Arctic countries have also resolved their regional boundary disputes in a peaceful manner. In 2010, Russia and Norway reached a resolution on a 40-year-old disagreement regarding the maritime boundary between the two nations in the Barents Sea<sup>76</sup>. This dispute led to the aforementioned use of Russian warships in the area, so the agreement proves that even areas that are the focal point of military shows of force are capable of being resolved peacefully.

Lastly, peaceful resolutions in the region are not only recent developments. In the 1980s, the United States and the Soviet Union disputed a maritime area in the Bering Strait, off the coast of Alaska. Though neither country wanted to cede any of the contested area, an agreement was eventually reached through diplomatic means<sup>77</sup>. The fact that the United States and the Soviet Union were able to peacefully reach a compromise and settle a boundary dispute during the Cold War makes it seem highly unlikely that similar disputes will provoke military action in a period of lesser hostilities.

The remaining maritime boundary disputes in the region will likely be settled as the Arctic states submit their continental shelf claims to the United Nations Commission on the Limits of the Continental Shelf, which will judge the claims according to their merit<sup>78</sup>. Though the Commission will not pass judgement on disputed areas, it will recommend that they be settled either by negotiations or through international courts or tribunals<sup>79</sup>. Though the Arctic countries have competing claims in some cases, they are cooperating in the mapping of the

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<sup>76</sup> Griffiths, p. 238

<sup>77</sup> Byers, p. 100

<sup>78</sup> Carpenter, Brent. "Warm is the new cold: global warming, oil, UNCLOS Article 76, and how an Arctic Treaty might stop a new Cold War", *Environmental Law*, 39.1 (Winter 2009), p. 215

<sup>79</sup> Ibid.

seabed, and Canada has been involved in joint-mapping exercises with its Arctic neighbours, including the United States and Russia, two countries with which it has competing interests<sup>80</sup>. Russia's initial submission included areas that would be contested with both Canada and Denmark, but the Russians openly included the suggestion of negotiating over these contested areas<sup>81</sup>. Additionally, Russian and Canadian officials have speculated over the possibility of submitting their final claims as a joint submission, with the cooperation of Denmark as well, which would resolve any disputes between these countries before the claim reaches the UN<sup>82</sup>. While it is too early to tell how the possible disputes will be resolved, the progress to date has been encouraging, and the possibility of armed conflict in the region seems remote at best.

The conclusion that peace will prevail in the Arctic was reached in 2011 by the Canadian Senate Standing Committee on National Security and Defence, which noted that:

All of this points to how cooperation, negotiation, and international legal regime predominate in the Arctic. They are the means by which Canada and the other Arctic nations can and do resolve their differences. The Committee has no concern that Canada's disputes in the Arctic, with Denmark and the United States, will flare into conflict<sup>83</sup>.

Though having important interests in the region, recent events have shown that despite heated rhetoric, the Arctic countries are prepared to resolve their disputes peacefully. While armed conflict in the region appears unlikely, that is not to say that the Canadian Armed Forces do not have a role to play in the region. The next section of this paper will look at what the

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<sup>80</sup> Byers, p. 97

<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

<sup>83</sup> Senate Standing Committee on National Security and Defence, p. 39

military will be realistically expected to do in the region, and whether or not the government's current Arctic plans will allow the military to perform its necessary role.

## Future Military Operations in the Arctic

As seen above, the risk of military conflict in the Arctic is minimal. Instead, the types of missions that the armed forces are likely to perform will be either of a constabulary nature (monitoring maritime traffic, enforcing pollution regulations, etc.) or for the purposes of search-and-rescue<sup>84</sup>. Furthermore, these missions will likely involve non-military actors as well, such as the coast guard and the RCMP<sup>85</sup>. Though, as mentioned earlier, the Harper government has been criticised for a lack of follow-through and for downgrading its Arctic promises, in some cases this is due to a better realisation of the actual needs in the region. For example, while Stephen Harper promised the procurement of three armed icebreakers for the navy while he was in opposition, once in government he realised that the navy did not want to develop an icebreaking capability, which it had not had since 1957<sup>86</sup>. As icebreaking has traditionally been a responsibility of the coast guard, it makes more sense to give the coast guard control over any new icebreakers<sup>87</sup>. Taking this into account, the proposed new icebreaker, the *Diefenbaker*, will be a coast guard vessel, with the navy acquiring six to eight Arctic/Offshore Patrol Vessels (AOPS).

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<sup>84</sup> Pigott, p. 284

<sup>85</sup> Ibid.

<sup>86</sup> Griffiths, p. 102

<sup>87</sup> Ibid., p. 103

The design of the AOPS has been both praised and criticised<sup>88</sup>. The fact that these vessels will only be able to operate in first-year ice has led them to be derogatorily called “slushbreakers” that will be incapable of defending Canadian interests in the North<sup>89</sup>. They are seen as a compromise between fully Arctic-capable vessels and ships designed for Canada’s Atlantic and Pacific coasts (as they are intended to operate on all three coasts)<sup>90</sup>. Additionally, the AOPS will have a lower speed than other comparable patrol ships (a top speed of 17 knots, compared to 25-30 knots<sup>91</sup>), and will have a significantly lower range than current coast guard vessels that operate in the Arctic<sup>92</sup>. This limited range means that the AOPS based in Nova Scotia will likely have to refuel at the proposed naval facility in Nanisivik during their Arctic surveillance expeditions, while those based in British Columbia will be unable to even complete a round-trip journey to the Arctic without refuelling, either in Nanisivik or at American ports in Alaska<sup>93</sup>.

While the limitations mentioned above show that the Arctic/Offshore Patrol Vessels are by no means perfect, they will still be beneficial to the navy and will increase the military’s Arctic capabilities. The procurement of these vessels will be the first time in the post-Cold War era that the navy has gained a new capability<sup>94</sup>, and, though criticised as being the result of compromise, the AOPS will be versatile, allowing them to be used for diverse missions, as the

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<sup>88</sup> Griffiths, p. 102

<sup>89</sup> Ibid.

<sup>90</sup> Byers & Webb (2013), p. 8

<sup>91</sup> Ibid., p. 19

<sup>92</sup> Ibid., p. 13

<sup>93</sup> Ibid.

<sup>94</sup> Huebert, p. 7

need arises<sup>95</sup>. Although unable to operate in thick, multi-year ice, the missions that the AOPS will likely take on will not require this capability. As they will be used primarily during the shipping season, the role of the AOPS will be largely to monitor the movements of shipping vessels, which will be unlikely to have greater ice capability than the AOPS<sup>96</sup>. Furthermore, the low speed of the AOPS will not inhibit the movement of the ships in the Northwest Passage, where sea ice, unpredictable weather, and shallow waterways make speeds of even 10 knots unlikely<sup>97</sup>.

Finally, if the AOPS project were to be cancelled, as some have recommended<sup>98</sup>, the government's entire shipbuilding strategy would be upended, as the construction of the AOPS by Irving Shipbuilding in Halifax is intended to allow the shipyard to gain the expertise necessary to construct the navy's future Canadian Surface Combatants, which are more complex to build than the AOPS are<sup>99</sup>. The construction of the first Arctic Offshore/Patrol Ship is currently scheduled to start in 2015, with delivery of this first ship in 2017<sup>100</sup>. As preliminary contracts have already been signed with Irving Shipbuilding, a cancellation in the project would result not only in a postponement in acquiring Arctic-capable ships, but also in increased costs due to cancellation fees, as well as an increased cost in future vessels, due to inflation.

It is important, however, for the Nanisivik refuelling station to be operational by the time the first of the AOPS is ready for patrols. Originally due to open in 2013, this is now

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<sup>95</sup> Coates, p. 194

<sup>96</sup> Pigott, p. 283

<sup>97</sup> Senate Standing Committee on National Security and Defence, p. 37

<sup>98</sup> Byers & Webb (2013), p. 36

<sup>99</sup> Lerhe, Eric. "The National Shipbuilding Procurement Strategy: An Update", *Strategic Studies Working Group Papers* (Canadian International Council & Canadian Defence and Foreign Affairs Institute), February 2013, p. 6

<sup>100</sup> *Ibid.*, p. 5

delayed until at least 2016<sup>101</sup>. Delays due to environmental clean-up and an unstable seabed have meant that work at the site has been much more expensive and slow-going than anticipated<sup>102</sup>. As the lack of an Arctic refuelling station would greatly diminish the ability of these vessels to operate in the North, the government should look at the possibility of refuelling at existing Arctic ports in the event that the Nanisivik facility is not operational in time.

Another example of operations in the Arctic that the military will be asked to undertake involves search-and-rescue. Currently, the only military search-and-rescue aircraft stationed in the Arctic are four Twin Otters, which are based in Yellowknife. These aircraft are long overdue for replacement, and in 2005, the federal government announced its intention to replace the Twin Otters, however it was later decided to instead modernise the aircraft, in order to keep them in service until 2017<sup>103</sup>. Due to the age of the Twin Otter fleet, most search-and-rescue missions in the North are undertaken by aircraft which are based in Trenton, Ontario<sup>104</sup>. This poses a problem, however, in that these aircraft take six hours to reach the Northwest Passage, and are only able to drop search-and-rescue technicians, without being able to hoist people aboard the aircraft<sup>105</sup>. Along with finding a replacement for the Twin Otters, the government is looking to replace its search-and-rescue aircraft based in southern Canada: the CC-115 Buffalo

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<sup>101</sup> Byers & Webb (2013), p. 28

<sup>102</sup> Chase, Steven. "Hub for Canada's Arctic patrols has got that sinking feeling", *The Globe and Mail*, January 27, 2014. <http://www.theglobeandmail.com/news/politics/hub-for-canadas-arctic-patrols-has-got-that-sinking-feeling/article16510025/>

<sup>103</sup> Byers, Michael & Webb, Stewart. *Search and Replace: The Case for a Made-in-Canada Fixed-Wing Search and Rescue Fleet* (Ottawa: Canadian Centre for Policy Alternatives, 2012), p. 20

<sup>104</sup> Byers, p. 67

<sup>105</sup> *Ibid.*

and the CC-130 Hercules<sup>106</sup>. Though the replacement process for these aircraft started in 2002, there have been numerous delays, and the government has yet to select an aircraft to procure<sup>107</sup>.

The need for a greater search-and-rescue presence in the Arctic is not simply hypothetical. In some emergencies, helicopters that are based in southern Canada are sent on search-and-rescue missions in the North, as was the case in 2007 when a Cormorant helicopter was sent from Vancouver Island to rescue a hunter trapped on an ice flow in the Northwest Passage, a distance of thousands of kilometres<sup>108</sup>. In another example, in 1991, an air force aircraft crashed on Ellesmere Island in a blizzard, with the survivors of the crash having to wait two days before a search-and-rescue team could reach them<sup>109</sup>. As the melting Arctic ice allows for increased human activity in Canada's Arctic waters, there exists the potential for a greater number of search-and-rescue missions in the region. Though only a small minority of Canada's total search-and-rescue missions occur in the North, and there is debate over whether or not it is worthwhile dedicating more aircraft to the region<sup>110</sup>, the government's ability to provide necessary services over the entire country sends a stronger message of sovereignty in the North than preparing for an unlikely military threat does<sup>111</sup>.

The government has taken some steps to improve its emergency response capability in the Arctic. There are plans to develop a "hub-and-spoke" system in the North, where long-

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<sup>106</sup> Byers & Webb (2012), p. 7

<sup>107</sup> Ibid., p. 8

<sup>108</sup> Byers, p. 68

<sup>109</sup> Ibid.

<sup>110</sup> Griffiths, p. 230

<sup>111</sup> Ibid., p. 94

range aircraft can be sent to a designated hub, from where equipment and personnel can be taken on smaller aircraft to more remote locations<sup>112</sup>. The government should, however, act quickly to ensure that it has the proper search-and-rescue capability in the region. To do this, it should make the replacement of the air forces' Twin Otter, Buffalo, and search-and-rescue Hercules aircraft a priority. Additionally, it could station helicopters in the Arctic during the summer, which would allow a more immediate response to emergencies<sup>113</sup>. As the air force already uses airports in Inuvik, Northwest Territories and Iqaluit as operating locations for its CF-18 aircraft, the infrastructure already exists to station helicopters in these locations<sup>114</sup>.

As well as alleviating domestic concerns, improving search-and-rescue capabilities in the North would also allow the government to send a message to the international community that it takes the Arctic seriously. Search-and-rescue in the region is a major concern for all Arctic nations, a fact that was underlined in 2011 when the member states of the Arctic Council signed a regional agreement on search-and-rescue, the Council's first legally-binding agreement<sup>115</sup>. This document lays out the territory in which each state is responsible for providing search-and-rescue in the region. If Canada is not able to perform its search-and-rescue duties, it may have to rely heavily on other countries to assist with these missions, which may lead to questions about Canada's ability to protect its sovereignty in the region<sup>116</sup>.

In addition to constabulary operations and search-and-rescue missions, the military also plays a surveillance role in the Arctic. Traditionally, this has been performed by aerial patrols.

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<sup>112</sup> Griffiths, p. 231

<sup>113</sup> Byers, p. 69

<sup>114</sup> Ibid.

<sup>115</sup> Griffiths, p. 244

<sup>116</sup> Ibid., p. 95

The military uses CP-140 Aurora aircraft for regular patrols of the Arctic, and the air force is looking to augment these patrols with the use of aerial drones<sup>117</sup>. In addition, the military is able to use satellite data for 24-hour, all-weather surveillance through its *Polar Epsilon* project<sup>118</sup>. Through this project, the military can access data gathered by RADARSAT-2, a satellite launched by Canada in 2007 that was designed to allow better monitoring of Arctic activities<sup>119</sup>. In 2018, the government is planning to launch three more satellites, called the RADARSAT Constellation program, that will replace RADARSAT-2 and further enhance the military's Arctic surveillance capabilities<sup>120</sup>. Together, the three satellites will make up to four passes per day in the High Arctic, and several passes per day over the Northwest Passage<sup>121</sup>. These satellites will be able to pick out details as small as three square metres<sup>122</sup>, and provide a complete view of all three of Canada's coasts<sup>123</sup>.

While not a military function, the role of the coast guard in the Arctic deserves attention as well, as it serves as Canada's main maritime presence in the region<sup>124</sup>. Currently, the Canadian coast guard operates seven icebreakers in the Arctic, though only two are classified as "heavy" icebreakers that can operate in thick Arctic ice: the *Louis S. St. Laurent*, built in 1969

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<sup>117</sup> Bond, Levon. "JUSTAS and *Project Epsilon*: Integrated Intelligence, Surveillance, and Reconnaissance of the Canadian Arctic", *Canadian Military Journal*, Volume 11, Number 4 (Autumn 2011), p. 28

<sup>118</sup> *Ibid.*, p. 25

<sup>119</sup> Byers, p. 66

<sup>120</sup> Canadian Space Agency. "RADARSAT Constellation", January 15, 2013. <http://www.asc-csa.gc.ca/eng/satellites/radarsat/>

<sup>121</sup> *Ibid.*

<sup>122</sup> Senate Standing Committee on National Security and Defence, p. 15

<sup>123</sup> Ivison, John. "Stephen Harper steps in to save Radarsat upgrade after budget cutbacks threatened satellite program's future", *National Post*, December 19, 2012. <http://news.nationalpost.com/2012/12/19/stephen-harper-steps-in-to-save-radarsat-upgrade-after-budget-cutbacks-threatened-satellite-programs-future/>

<sup>124</sup> Senate Standing Committee on Fisheries and Oceans. *Controlling Canada's Arctic Waters: Role of the Canadian Coast Guard* (Ottawa: Canada Senate, 2010), p. viii

and the *Terry Fox*, built in 1983<sup>125</sup>. Both of these ships are based in St. John's, Newfoundland, but can only operate in the Arctic during the summer and fall, after which they are deployed to the Gulf of St. Lawrence<sup>126</sup>. Of the other five icebreakers sent to the Arctic during the summer months, four are classified as "medium" icebreakers, and one is "light"<sup>127</sup>. In addition, the coast guard operates two vessels during the summer months in the Mackenzie River to assist with navigation, and one in the Beaufort Sea for scientific research purposes, though these vessels are not ice-capable<sup>128</sup>.

Though the government has promised a new icebreaker, the *Diefenbaker*, this will be a replacement for the *St. Laurent*, and will therefore not add an additional vessel to the coast guard's fleet, though it will have greater capabilities than the *St. Laurent* and will be able to operate in the Arctic for nine months per year<sup>129</sup>. The rest of the coast guard's fleet will soon need replacing as well. Normally, the lifespan of an icebreaker is thirty years, though the Canadian fleet will be between forty and fifty years old when they are scheduled to be replaced<sup>130</sup>. In 2007, however, the Auditor General found that this was unrealistic, and that the icebreakers will need to be retired sooner than anticipated<sup>131</sup>. This could pose serious problems for the coast guard's capabilities in the future, as increased traffic in Canada's Arctic waters are expected to put a strain on the current fleet, and if the icebreakers are taken out of

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<sup>125</sup> Pharand, Donat. "The Arctic Waters and the Northwest Passage: A Final Revisit", *Ocean Development & International Law*, Volume 38, Issue 1-2 (2007), p. 51

<sup>126</sup> Byers, p. 62

<sup>127</sup> Senate Standing Committee on Fisheries and Oceans, p. 33

<sup>128</sup> *Ibid.*

<sup>129</sup> *Ibid.*, p. 39

<sup>130</sup> *Ibid.*

<sup>131</sup> *Ibid.*, p. 40

service sooner than scheduled, Canada will be unable to keep up with the demand for icebreaking services<sup>132</sup>.

On the whole, the Canadian government's military approach to the Arctic appears to be moving in the right direction. Decisions such as modifying its plans for armed icebreakers to more practical offshore patrol vessels show that the government can look past rhetoric to acknowledge the real needs for the Arctic. By investing in greater surveillance technology instead of heavily-armed military equipment, the government is preparing itself for the most likely challenges it will face in the future. One exception, however, is the long-delayed procurement process for the replacement of search-and-rescue aircraft. The government has not made this procurement a priority, though search-and-rescue may be the most vital use of the Canadian military in the Arctic<sup>133</sup>. If Canada wishes to be seen as a nation that takes its Arctic responsibilities seriously, it will need to increase its search-and-rescue capability in the North, and prioritise the procurement of new aircraft for this purpose.

On the non-military side, it is clear that the government needs to reassess its icebreaking capability. The coast guard's current heavy and medium icebreakers were all built between the years of 1969 and 1987<sup>134</sup>, and will all need replacing in the coming years. While the construction of the *Diefenbaker* will be a needed addition to the fleet, the delays that it faces do not bode well for the construction of future icebreaker replacements. While the Arctic/Offshore Patrol Ships will be a welcome presence in the North, the coast guard will continue to be Canada's main marine presence in the region. Indeed, the AOPS will require

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<sup>132</sup> Senate Standing Committee on Fisheries and Oceans, p. 37

<sup>133</sup> Byers, p. 67

<sup>134</sup> Senate Standing Committee on Fisheries and Oceans, p. 39

icebreaking assistance in order to reach their maximum effectiveness in the North<sup>135</sup>. The government should develop an updated icebreaker renewal plan to prepare for the future requirements of the coast guard.

As mentioned before, the impetus for a greater military and coast guard presence and capability in the Arctic is largely due to an expected increase in maritime traffic in the region. The next section of this paper looks at this possibility, and how Canada can effectively manage this increase of traffic in northern waterways.

## Increased Use of the Northwest Passage

Though it has been over one hundred years since the first complete navigation of the Northwest Passage in 1906, only in recent years has the Passage seen more than an extremely limited number of vessels. From 1906 to 2004, there was an average of 1.7 transits of the Northwest Passage per year, while in 2010 alone there were 26 transits<sup>136</sup>. While this average of 1.7 transits is skewed by the fact that until the 1970s, there had only been a total of nine completed journeys through the Passage, the number of annual transits started to increase significantly in 2006, due mainly to an increase in the number of commercial cruise ships using the Passage<sup>137</sup>.

Despite this increased traffic, there is debate on whether or not the Northwest Passage will turn into a major shipping route. A journey via Canada's Arctic would represent a shortcut

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<sup>135</sup> Senate Standing Committee on Fisheries and Oceans, p. 37

<sup>136</sup> Østreng, Willy [et al]. *Shipping in Arctic Waters: A Comparison of the Northeast, Northwest and Trans Polar Passages* (Berlin: Springer-Verlag, 2013), p. 27

<sup>137</sup> Ibid.

of up to 7,000 kilometres for many ships, as compared to routing through the Panama Canal<sup>138</sup>. While current commercial traffic consists mainly of cruise ships, the success of these ships in navigating the Passage without major problems has set the stage for commercial shipping vessels to attempt the same<sup>139</sup>. Many observers look to Russia's success in managing the Northern Sea Route, an Arctic Ocean passageway along the northern coast of Russia, with the hopes of Canada emulating the Russian experience and developing the Northwest Passage in a similar manner<sup>140</sup>. On the other hand, there are significant differences in the Canadian and Russian routes, and there are doubts about the viability of the Northwest Passage for shipping. The level of sea ice varies significantly from year to year, making the route unpredictable<sup>141</sup>. Even in years where there is low ice cover, there is the potential for a greater hazard to ships, as drifting ice poses a danger and can block shipping routes<sup>142</sup>. Additionally, the seabed underneath the Northwest Passage can be extremely shallow, with underwater ridges that can potentially damage vessels<sup>143</sup>. These dangers would lead to high insurance costs, harming the financial advantage of taking the shortcut through the Northwest Passage<sup>144</sup>.

However, these challenges do not mean that the Northwest Passage will not see an increase in maritime traffic. Even observers who question the viability of the Passage as a shipping corridor foresee an increase in destination-shipping, meaning shipping to and from

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<sup>138</sup> Byers, p. 11

<sup>139</sup> Coates, p. 146

<sup>140</sup> Griffiths, p. 136

<sup>141</sup> Østreng, p. 23

<sup>142</sup> *Ibid.*, p. 24

<sup>143</sup> *Ibid.*, p. 25

<sup>144</sup> Senate Standing Committee on National Security and Defence, p. 38

Arctic locations<sup>145</sup>. This is due to increased resource development in the North, with numerous current or planned mining and oil extraction projects existing in the Northwest Territories and Nunavut<sup>146</sup>. In addition, the port of Churchill, Manitoba is expected to see an increase in traffic as one end of an “Arctic Bridge” route, connecting it to Murmansk, Russia<sup>147</sup>.

Churchill is northern Canada’s only deep-water port<sup>148</sup> (though the Nunavut government would like to build one in Iqaluit<sup>149</sup>). While Churchill has primarily been used as a port to export wheat, the Russian and Canadian governments have been promoting two-way trade via Churchill and Murmansk<sup>150</sup>. Climate change has increased the shipping season in Churchill, and the route from Churchill to Murmansk avoids the hazards of the Northwest Passage, as ships leave Hudson Bay following the northern coast of Quebec before entering the Atlantic Ocean<sup>151</sup>. This route reduces the journey from North America to Russia from seventeen to eight days<sup>152</sup>, and reduces the cost of shipping by nearly ten percent<sup>153</sup>. The Russian government sees so much potential in this route that it has offered to use its icebreakers to keep the Churchill port open year-round<sup>154</sup>. While relying on a foreign power to access a Canadian port would bring about obvious sovereignty concerns, the offer shows that Russia is serious in developing this Arctic Bridge.

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<sup>145</sup> Østreng, p. 30

<sup>146</sup> Ibid., p. 28

<sup>147</sup> Byers, p. 86

<sup>148</sup> Ibid.

<sup>149</sup> CBC News. “Iqaluit’s summer ice woes renew call for port”, August 25, 2012.

<http://www.cbc.ca/news/canada/north/iqaluit-s-summer-ice-woes-renew-call-for-port-1.1145963>

<sup>150</sup> Byers, p. 86

<sup>151</sup> Østreng, p. 30

<sup>152</sup> Coates, p. 150

<sup>153</sup> Ibid., p. 151

<sup>154</sup> Ibid., p. 150

## Monitoring Activity in the Canada's Arctic

Whether the Northwest Passage ultimately becomes a major shipping route or not, the increased maritime traffic will represent a challenge to Canada. An incident such as an oil spill in the region would be disastrous for the environmentally-fragile Arctic ecosystems, especially in areas such as Lancaster Sound, which is home to numerous endangered and threatened species<sup>155</sup>. Furthermore, the remoteness of the region means that the cleanup of an environmental disaster would be slow and expensive<sup>156</sup>.

In order to protect the Arctic environment, the Canadian government passed the Arctic Waters Pollution Prevention Act (AWPPA) in 1970, which allowed Canada to regulate shipping within 100 nautical miles of the Arctic archipelago, including the Northwest Passage. This legislation, however, was not meant to assert Canada's sovereignty, but rather to simply allow for environmental protection<sup>157</sup>. Though many foreign countries, including the United States, opposed the AWPPA, due to the fact that they consider the Northwest Passage an international strait, Canada reserved the legislation from the jurisdiction of the International Court of Justice, meaning that Canada's position could not be challenged in court<sup>158</sup>. Canada bolstered the legality of the AWPPA when it helped draft the UN Convention on the Law of the Sea in 1982, which included an article allowing coastal nations to extend pollution controls to 200 nautical miles from the shoreline in cases where year-round ice poses a hazard to shipping<sup>159</sup>. In 1985, Canada pulled its reservation over the jurisdiction of the International Court of Justice over the

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<sup>155</sup> Byers, p. 73

<sup>156</sup> *Ibid.*, p. 14

<sup>157</sup> Coates, p. 99

<sup>158</sup> *Ibid.*, p. 102

<sup>159</sup> Byers, p. 47

AWPPA, allowing the legislation to be challenged in court, but the United States and other countries have not chosen to dispute Canada's position<sup>160</sup>. In 2009, the Canadian government extended the reach of the AWPPA to 200 nautical miles from shore, the full extent allowable under UNCLOS. Though not outright opposed to this extension, the United States has raised concerns about whether or not Canadian Arctic waters qualify for the 200-nautical-mile limit under UNCLOS, wondering whether the ever-shrinking levels of summer ice continue to qualify as year-round ice<sup>161</sup>.

In order to monitor compliance with the AWPPA, the Canadian government created a system which allowed vessels to register their movements in Canada's Arctic waters, known as NORDREG. Established in 1977, NORDREG was applied to all ships over 300 tons, however registration was voluntary, unlike similar monitoring systems on Canada's East and West coasts. The voluntary nature of NORDREG was mainly due to concerns about the reaction of the United States, though 98% of vessels operating in the affected waters did register with NORDREG<sup>162</sup>. In 2010, however, Canada made registration in NORDREG mandatory, drawing a diplomatic note of protest from the United States<sup>163</sup>. Despite this protest, however, the United States declined to directly challenge Canada's position<sup>164</sup>. While allowing Canada to have stronger environmental controls in the area, the conversion of NORDREG into a mandatory regulatory system does not in and of itself bolster Canada's internal waters claims, as Australia has

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<sup>160</sup> Byers, p. 47

<sup>161</sup> Steinberg, Philippe. "Steering Between Scylla and Charybdis: The Northwest Passage as Territorial Sea", *Ocean Development and International Law*, Volume 45, Issue 1 (2014), p. 99

<sup>162</sup> Byers, p. 71

<sup>163</sup> Steinberg, p. 99

<sup>164</sup> Ibid.

implemented a similar registration system for vessels transiting the Torres Strait, an international strait between Australia and Papua New Guinea<sup>165</sup>.

By making NORDREG registration mandatory, the Canadian government has completed a long-called-for step in securing Canadian control over the Northwest Passage<sup>166</sup>. While there have been no major troubles so far, there are questions about what would happen if a foreign vessel defied Canadian law and failed to register via NORDREG<sup>167</sup>. If a vessel were intercepted by Canada, would the ship's home government protest and possibly take Canada's claims over the Northwest Passage to court? The next section of this paper looks at questions concerning the legal status of the Northwest Passage, and whether Canada should continue with the status quo (agree to disagree with other countries), or push for a resolution of the issue, which would risk Canada losing some control over the Passage.

## Legal Status of the Northwest Passage

The status of the Northwest Passage has long been a contentious issue. The United States government has always considered the Passage to be an international strait, though the issue did not come to the forefront until 1969, when an American oil tanker, the *Manhattan*, transited the Passage without the permission of the Canadian government (though there was a Canadian representative onboard the ship)<sup>168</sup>. Though not asked for, Canada granted permission to the ship, and supplied icebreakers to assist the transit<sup>169</sup>. After the *Manhattan*

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<sup>165</sup> Byers, p. 72

<sup>166</sup> Ibid.

<sup>167</sup> Ibid., p. 140

<sup>168</sup> Kenney, Gerard. *Dangerous Passage: Issues in the Arctic* (Toronto: Natural Heritage Books, 2006), p. 172

<sup>169</sup> Griffiths, p. 34

transit, the United States government decided to ship oil south from Alaska via pipeline, as opposed to shipping it through the Northwest Passage, so the disagreement between the two countries became less prominent<sup>170</sup>.

In 1985, the issue of the Northwest Passage returned to relevance when an American icebreaker, the *Polar Sea*, travelled through the Passage without asking for Canada's permission<sup>171</sup>. However, the United States did attempt to work with Canada on the issue before the *Polar Sea*, which was based in Seattle, made the journey<sup>172</sup>. The United States needed to provide an icebreaker escort to a military base in Greenland, however the intended icebreaker ran into mechanical problems, resulting in the need of a different ship<sup>173</sup>. The United States asked Canada if the Canadian coast guard would be able to provide the needed escort, but Canada was not able to, so the United States decided to use the *Polar Sea*<sup>174</sup>. Conscious of the Canadian position concerning the Northwest Passage, the *Polar Sea* travelled from Seattle to Greenland via the Panama Canal, but after the mission needed to return to West Coast through the quickest route: the Northwest Passage<sup>175</sup>. Canada and the United States had reached an agreement beforehand, allowing the transit to occur without compromising either side's position on the Passage, but the Canadian government cancelled the agreement after the deal became public, due to criticism over American influence<sup>176</sup>. As

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<sup>170</sup> Griffiths, p. 35

<sup>171</sup> Kenney, p. 172

<sup>172</sup> Griffiths, p. 35

<sup>173</sup> Ibid.

<sup>174</sup> Ibid.

<sup>175</sup> Ibid.

<sup>176</sup> Byers, p. 51

was the case in the *Manhattan* incident, the Canadian government decided to publicly grant permission to the American vessel, though permission was never asked<sup>177</sup>.

In the aftermath of the *Polar Sea* issue, the Canadian and American governments reached a compromise through the Arctic Cooperation Agreement, in which the United States government pledged to only operate icebreakers in waters which Canada deems internal with the prior consent of the Canadian government<sup>178</sup>. This agreement, however, was explicit in that it did not affect either country's position on the legal status of the Northwest Passage<sup>179</sup>.

Though only applying to icebreakers operated by the United States coast guard, the presence of thick ice throughout the Northwest Passage at the time meant that for all intents and purposes, any surface voyage would have required permission from Canada, as icebreakers would have to accompany any vessel<sup>180</sup>.

In the past decade, however, recent developments have made the Arctic Cooperation Agreement less meaningful. Climate change has opened up the Northwest Passage to ships unaccompanied by icebreakers. Furthermore, in 2006, the United States Ambassador to Canada at the time, David Wilkins, informed the Canadian government that the agreement only applies to icebreakers that are undertaking scientific research, as this type of activity entails more than the right of transit passage through an international strait allows<sup>181</sup>. Though the

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<sup>177</sup> Griffiths, p. 36

<sup>178</sup> Pigott, p. 249

<sup>179</sup> Byers, p. 57

<sup>180</sup> Ibid.

<sup>181</sup> Ibid., p. 58

agreement did make mention of scientific research, this was the first time that it was made explicit that the agreement only applies to certain icebreakers<sup>182</sup>.

Past experience shows that the United States, while not moving away from its disagreement with Canada over the legal status of the Northwest Passage, has been willing to work with the Canadian government on an ad hoc basis to find solutions that are mutually-acceptable compromises. For this reason, some have argued that the best course of action for Canada is to continue with the status quo, as it has been successful thus far<sup>183</sup>. Others, on the other hand, maintain that Canada should push for a final resolution on the issue<sup>184</sup>. This paper will now look at the different positions on the legal status of the Northwest Passage, as well as the positive and negative aspects of maintaining the status quo.

## **The Canadian Position: The Northwest Passage as Internal Waters**

In the opinion of the Canadian government, the Northwest Passage is comprised of internal waters. While transiting internal waters, foreign vessels have the right to innocent passage, while the coastal state (in this case, Canada) can prevent any vessel that it does not deem as “innocent” from transiting these waters<sup>185</sup>. In addition, the coastal state can temporarily suspend the right to innocent passage<sup>186</sup>.

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<sup>182</sup> Byers, p. 57

<sup>183</sup> Nordquist, Myron [et al]. *Changes in the Arctic Environment and the Law of the Sea* (Leiden, Netherlands: Martinus Nijhoff Publishers, 2010), p. 249

<sup>184</sup> Senate Standing Committee on National Security and Defence, p. 36

<sup>185</sup> Steinberg, p. 90

<sup>186</sup> Ibid.

Though Canada has always claimed the waters around its Arctic islands as internal, its justification for this claim has changed over time. In 1907, a Canadian senator proposed what is known as the sector theory to claim waters up to the North Pole<sup>187</sup>. According to the sector theory, Canada (as well as the other states bordering on the Arctic Ocean) would extend its land borders north, until reaching the North Pole. In Canada's case, all waters between the longitudinal meridians of 60°W and 141°W could be claimed as internal<sup>188</sup>. This became explicit government policy in 1946, when Lester B. Pearson (who was then Canada's Ambassador to the United States), announced that the sector theory validates Canada's claim to the Arctic waters<sup>189</sup>. The sector theory, though, has no basis in international law, and Canada's use of the theory to advance its sovereignty claims has been rejected by other countries<sup>190</sup>.

In 1986, however, the Canadian government responded to the *Polar Sea* incident by newly demarcating the boundaries of Canadian internal waters. The government drew a boundary around the outer limit of the Arctic archipelago and claimed the waters within this limit (including the Northwest Passage) as historic internal waters<sup>191</sup>. The ability of creating a boundary around islands and coastlines (known as creating straight baselines) was affirmed by the United Nations Convention on the Law of the Sea in 1982, though the United States and other countries hold the position that Canada's use of straight baselines in the Arctic go beyond

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<sup>187</sup> Griffiths, p. 43

<sup>188</sup> Byers, p. 43

<sup>189</sup> Ibid., p. 43

<sup>190</sup> Griffiths, p. 43

<sup>191</sup> Pharand, p. 11

what is legally permissible<sup>192</sup>. Canada's position is that its use of straight baselines follows the UNCLOS criteria that states that:

In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured [...]<sup>193</sup>.

In addition, the Canadian government's assertion that the waters within the Arctic archipelago consist of "historic" waters is used to bolster Canada's claim, as UNCLOS has a provision that states that:

[A]ccount may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by long usage<sup>194</sup>.

When announcing the creation of straight baselines in the Arctic, Joe Clark, the Secretary of State for External Affairs, used the presence of Inuit in the Arctic to justify Canada's claim to "long usage" of the region, when he stated that:

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<sup>195</sup>.

While the acceptable guidelines for creating straight baselines are vague, past precedent shows that two requirements must be met: the baselines must follow the same

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<sup>192</sup> Steinberg, p. 87

<sup>193</sup> Ibid.

<sup>194</sup> Ibid., p. 87-88

<sup>195</sup> Byers, p. 53

general direction as the coast<sup>196</sup> and there must be a close link between the land and the maritime areas affected<sup>197</sup>. Canada's straight baselines in the Arctic appear to meet both of these criteria, and Canada would have a strong case in its favour if the issue were taken to the International Court of Justice<sup>198</sup>.

As for the principle of long-usage, this argument is not necessary for Canada's baselines to be valid, but can be used to reinforce its argument<sup>199</sup>. Inuit living on the coastline of Arctic waterways have long ventured onto the sea ice as if it were land, both for the purposes of hunting and transportation<sup>200</sup>. In particular, Inuit have used two entrances to the Northwest Passage, Lancaster Sound in the east and Amundsen Gulf in the west, for fishing and hunting, which strengthens Canada's baseline claims in those areas<sup>201</sup>.

Inuit use of frozen Arctic waterways is not confined to localised areas around coastline communities. In June 2014, researchers unveiled an atlas showing traditional Inuit routes in the eastern Canadian Arctic, providing evidence that northern inhabitants used the sea ice connecting the Arctic islands as extensive transportation routes<sup>202</sup>. In the past, the International Court of Justice has ruled that indigenous people do have some rights over their

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<sup>196</sup> Pharand, p. 17

<sup>197</sup> Ibid., p. 19

<sup>198</sup> Ibid., p. 28

<sup>199</sup> Steinberg, p. 88

<sup>200</sup> Pharand, p. 21

<sup>201</sup> Ibid.

<sup>202</sup> CBC News. "New atlas documents traditional Inuit trail network", June 12, 2014.

<http://www.cbc.ca/news/canada/north/new-atlas-documents-traditional-inuit-trail-network-1.2673559>

traditionally-occupied land, and Canadian researchers hope that the new atlas can be used to extend those rights to sea ice as well<sup>203</sup>.

Even if Canada's use of straight baselines were to be internationally accepted, the status of the Northwest Passage would remain in question, as baselines cannot close off an existing international strait<sup>204</sup>. Therefore, if the Northwest Passage is considered to have been an international strait prior to the application of straight baselines in 1986, the right of transit passage remains, regardless of the validity of the baselines.

In 1949, the International Court of Justice ruled that the Corfu Channel in the Adriatic Sea was an international strait, due to "its geographical situation as connecting two parts of the high seas and the fact of its being used for international navigation"<sup>205</sup>. Since the Northwest Passage connects the Atlantic and Arctic Oceans, the relevant question is whether or not it is used for international navigation.

There is disagreement on whether the requirement of being used for international navigation refers solely to present and past use, or if future potential use of the strait can apply; most scholars see the relevant issue as being past and present usage, but members of the American military have argued that the potential for future usage is equally important<sup>206</sup>.

In the ruling on the status of the Corfu Channel, the court looked at the usage of the channel for international navigation, and found that over a twenty-one month period, there

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<sup>203</sup> CBC News (2014)

<sup>204</sup> Byers, p. 54

<sup>205</sup> Ibid.

<sup>206</sup> Pharand, p. 36

were nearly 3,000 vessels that were documented as docking in Corfu while transiting the strait<sup>207</sup>. Furthermore, the court heard that the British navy had been using the channel for over eighty years<sup>208</sup>. While the court's ruling did not touch on the possibility of potential future passages, the ruling does show that present and past usage is important when determining the status of a waterway. By any measure, the Northwest Passage is far from being used for international navigation as the Corfu Channel was at the time of the court case. Moreover, every foreign vessel known to have transited the Northwest Passage, with the exceptions of the *Manhattan* and the *Polar Sea*, has had the prior authorisation of the Canadian government<sup>209</sup>.

Finally, Canadian control of the Northwest Passage could be seen as beneficial in terms of North American security. With the greater focus on terrorism since the attacks of September 11, 2001, the American government has been increasingly worried about the border security of the United States, and by extension, of North America as a whole<sup>210</sup>. While the prospect of terrorists entering the continent through the Arctic may seem remote, there have been security breaches in the region, including the landing in Iqaluit of an aircraft thought to be owned by Al-Qaeda in 1993 and the re-entry in 2006 of a deported convicted criminal into Canada by motorboat from Greenland<sup>211</sup>. If the Northwest Passage were deemed to be internal waters, Canadian authorities would be better able to protect against the possibility of terrorists or other unwanted individuals entering North America through the Arctic<sup>212</sup>. Worries about a threat to North American security led former U.S. Ambassador to Canada Paul Cellucci to state

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<sup>207</sup> Byers, p. 55

<sup>208</sup> Pharand, p. 37

<sup>209</sup> *Ibid.*, p. 42

<sup>210</sup> Byers, p. 78

<sup>211</sup> Canadian Parliament Standing Committee on National Security and Defence, p. 29

<sup>212</sup> Byers, p. 78

in 2006 that it is in the best interest of the United States that the Northwest Passage be under Canadian control<sup>213</sup>.

While Canada's position on the status of the Northwest Passage does have arguments in its favour, the only country that has publicly supported Canada's claim is Russia, which faces similar international opposition to its claim of the Northern Sea Route<sup>214</sup>. The next section of this paper will look at the position taken by the United States.

### **The American Position: The Northwest Passage as an International Strait**

Despite fears of North American security, the United States government has not wavered from its claim that the Northwest Passage is an international strait. In this point of view, foreign vessels are given the right to transit passage, meaning that the coastal state only has regulatory rights in four areas: safe navigation, pollution control, fishing regulation, and smuggling prevention<sup>215</sup>. In addition, the coastal state cannot restrict the transit of any military vessel or aircraft that does not appear to pose a threat, and it cannot demand that submarines surface during the transit<sup>216</sup>. Thus, coastal states only have a very limited ability to regulate traffic in the strait.

While opposed to Canadian control of the Northwest Passage, the United States does not have a great interest in the Passage itself<sup>217</sup>. The main concern of the United States is that

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<sup>213</sup> Elliot-Meisel, Elizabeth. "Politics, Pride, and Precedent: The United States and Canada in the Northwest Passage", *Ocean Development & International Law*, Volume 40, Issue 2 (2009), p. 220

<sup>214</sup> Byers, p. 107

<sup>215</sup> Steinberg, p. 90

<sup>216</sup> Ibid.

<sup>217</sup> Nordquist, p. 241

Canadian control over the Passage would set a precedent for other straits worldwide, which would impede freedom of navigation, a long-standing American interest<sup>218</sup>. This concern was reiterated in the recent *Implementation Plan for The National Strategy for the Arctic Region*, in which the United States government stated that:

The United States will continue to promote freedom of the seas and global mobility of maritime and aviation interests for all nations in accordance with international law. The United States will promote and conduct such activities in the Arctic region as appropriate<sup>219</sup>.

It is clear that, despite the views of former Ambassador Cellucci, the United States has no interest in changing its position on the status of the Northwest Passage. This follows the United States government's pattern of objecting to the perceived nationalisation of straits around the world<sup>220</sup>.

Though the fear of creating a precedent exists, the straits most often identified in the debate about the Northwest Passage (the straits of Gibraltar, Malacca, and Hormuz) are unlikely to be affected by the legal status of the Northwest Passage<sup>221</sup>. These straits have all long been used for international shipping, and all border the territory of more than one country. Furthermore, these straits, as well as other international shipping routes, such as the Torres Strait, are all recognised as international straits in multilateral treaties, meaning that any

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<sup>218</sup> Nordquist, p. 240

<sup>219</sup> Government of the United States of America, *Implementation Plan for the National Strategy for the Arctic Region*, January 2014, p. 9

<sup>220</sup> Lalonde, Suzanne & Lasserre, Frédéric. "The Position of the United States on the Northwest Passage: Is the Fear of Creating a Precedent Warranted?", *Ocean Development & International Law*, Volume 44, Issue 1 (2013), p. 62

<sup>221</sup> Lalonde & Lassarre, p. 45

Canadian control over the Northwest Passage would not change the status of these straits<sup>222</sup>.

While there are certain situations around the world where governments may try to use Canadian control over the Northwest Passage as a precedent to assert control over straits in their territories, the number of these cases is limited and are not typically seen as important passages for navigation<sup>223</sup>. In any case, the Northwest Passage is unique in both its length and in the fact that it has almost always been impenetrable to the vast majority of maritime vessels, and this uniqueness could be used to deter the threat of creating a precedent<sup>224</sup>.

### **A Compromise Position: The Northwest Passage as a Territorial Sea**

A third option that has been put forward is the idea that the Northwest Passage could become a territorial sea of Canada<sup>225</sup>. This would assert the fact that the Passage is unique, and is not in the same situation as international straits around the world<sup>226</sup>. There would be advantages and disadvantages for both Canada and the United States if the Northwest Passage (and other Arctic waters) were to become a territorial sea. The upside for Canada is that, for the first time, there would be international agreement that the right of transit passage does not exist through these waters<sup>227</sup>. While losing its claim that the Northwest Passage consists of internal historic waters, the rights given to Canada would be nearly the same<sup>228</sup>. Foreign vessels would still only have the right to innocent passage, though Canada would lose the

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<sup>222</sup> Byers, p. 79

<sup>223</sup> Lalonde & Lassarre, p. 45

<sup>224</sup> Byers, p. 79

<sup>225</sup> Steinberg, p. 100

<sup>226</sup> Ibid.

<sup>227</sup> Yang, Haijiang. *Jurisdiction of the Coastal State over Foreign Merchant Ships in Internal Waters and the Territorial Sea* (Berlin: Springer Berlin – Heidelberg, 2006), p. 265

<sup>228</sup> Steinberg, p. 101

ability to enforce regulations on some ships<sup>229</sup>. However, Canada could address this through multilateral agreements, taking into account the unique geography and remoteness of its Arctic waters<sup>230</sup>.

For the United States, the designation of the Northwest Passage as a territorial sea would protect it from creating a precedent for international straits around the world<sup>231</sup>. By recognising that the Passage is not and never has been an international strait, the rights of transit passage around the world would not be threatened<sup>232</sup>. The largest downside to the United States would be that any underwater vessels are required to surface while transiting a territorial sea, meaning that American submarines would not be able to travel submerged through the Passage<sup>233</sup>. While it is not publically known whether the United States Navy undertakes submerged transits, it is widely assumed that they do so, whether the Canadian government is made aware or not<sup>234</sup>. However, as Canada and the United States are close military allies, it is probable that if the Northwest Passage were deemed a territorial sea, the two governments could reach an agreement regarding American use of the Passage<sup>235</sup>.

## Maintain the Status Quo?

While there do appear to be favourable arguments for the Canadian position on the legal status of the Northwest Passage, as well as a basis for a potential compromise with the

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<sup>229</sup> Yang, p. 185

<sup>230</sup> Steinberg, p. 102

<sup>231</sup> Ibid., p. 101

<sup>232</sup> Ibid.

<sup>233</sup> Yang, p. 288

<sup>234</sup> Byers, p. 75

<sup>235</sup> Steinberg, p. 101

United States, the status quo of agreeing to disagree with the United States has worked well for Canada, and has effectively given the Canadian government control of the Passage<sup>236</sup>. While disagreeing over the level of Canadian control over its Arctic waters, the United States government has acknowledged that American vessels are subject to Canadian environmental laws under the AWPPA<sup>237</sup>. As neither side seems ready to move from its position, it appears that maintaining the status quo is the easiest course of action<sup>238</sup>. Both Canada and the United States feel that they have too much to lose if their position were rejected, making it unlikely that either country will push for a legal resolution<sup>239</sup>. Furthermore, international freedom of the seas is a Canadian interest as well as an American one, and if the Northwest Passage were to set a precedent for international straits around the world, Canada's strategic mobility would be affected as well<sup>240</sup>.

While agreeing to disagree with the United States may have worked well for Canada up to the present, it may not be feasible in the future. As mentioned previously, one of the criteria of a passageway forming an international strait is its use for international navigation. While the idea of international navigation through the Northwest Passage has largely been academic and focused on future potential, the opening of the waterway due to climate change means that more and more vessels are expected to make the journey through the Northwest Passage, lending credence to the argument that the Passage is indeed used for international navigation. As maritime traffic through the Passage increases, Canada's claim of the Passage as internal

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<sup>236</sup> Griffiths, p. 129

<sup>237</sup> Steinberg, p. 98

<sup>238</sup> Nordquist, p. 248

<sup>239</sup> Ibid., p. 249

<sup>240</sup> Griffiths, p. 130

waters diminishes<sup>241</sup>. In addition, while the United States might deem that a losing argument would be too costly to its position, and therefore not press the issue in court, a country that is not a global maritime power might not worry about setting a precedent, and could challenge Canada's claim<sup>242</sup>.

## Recommendation

Though pushing for a final resolution does entail some risk to Canada, the status quo should not be seen as a viable option going into the future. Canada's argument against the Northwest Passage being an international strait is at its strongest at the present, and will weaken each year that the sea ice lessens and the shipping season grows longer. While there is no real consensus on how quickly traffic will increase through the Northwest Passage, or how useful the Passage will ultimately be as a maritime corridor, Canada would be better to assume "the worst" and expect that an increase in traffic is on its way, which will hurt Canada's claims. (While this is a "worst-case" scenario in that it harms the Canadian position, an increase in traffic, if subject to Canadian regulation, is not contrary to the Canadian government's interests<sup>243</sup>). Canada should push for an agreement<sup>243</sup> with the United States and other members of the international community, either in support of its claim over the Northwest Passage as internal waters or, more likely, in a compromise that would see the Passage become part of a territorial sea, with provisions giving Canada more control over environmental regulation, due to the fragile Arctic environment and the remoteness of the region.

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<sup>241</sup> Pharand, p. 44

<sup>242</sup> Byers, p. 82

<sup>243</sup> Senate Standing Committee on National Security and Defence, p. 36

Canada should not be afraid to defend its position in the International Court of Justice if it is challenged by another country. Though a loss, and the resulting right of transit passage through the Northwest Passage, would without question pose challenges to Canada, it would be better for Canada to lose its argument now than it would be to lose in the future. If the Passage were to be deemed open to transit passage in the near future, there would not be much of a change, due to the lack of significant traffic through the Passage. Canada would have sufficient time to determine what it can do to cope with a transit passage through the Arctic, before it sees a large number of ships in the region. If Canada were to wait until the Northwest Passage was already being used by a significant number of vessels, a change in status of the Passage would have an immediate real effect, leaving Canada with no time to prepare for this change.

Furthermore, if Canada were proactive in finding a solution to the status of the Northwest Passage, the government would have the luxury of defending its case on its own terms. If a foreign vessel decided to ignore Canada's NORDREG requirements, for example, and decided to take the Canadian government to court, Canada would have to defend its position even if it were not fully prepared. Pressing for a resolution to the issue before an incident arises would be in Canada's best interest.

## **Conclusion**

In the past decade, the Canadian government has made numerous promises to increase its presence in the Arctic. With plans for new naval vessels to patrol Arctic waters and Canada's most powerful icebreaker, the Canadian military and coast guard are poised to see their

northern capabilities expanded in the coming years. By making registration in NORDREG mandatory and launching new surveillance satellites, Canada will have a greater knowledge than ever before of maritime traffic through its Arctic waterways. Much of this new focus on Canada's North is due to the personal interest that Prime Minister Harper has taken in the region, who proclaimed in 2007 that he hopes that a focus on northern issues will be seen as one of the major legacies of his government<sup>244</sup>.

There remains much work to do, however. While new patrol vessels and surveillance systems are appropriate and necessary responses to the challenges that Canada will face in the region, there have been major delays in realising virtually every promise made with regards to the Arctic. By the time the navy takes control of its Arctic/Offshore Patrol Ships and the coast guard receives the *Diefenbaker*, these projects will have been years behind schedule and well over their original budgets. Coupled with the delays in creating a deep-water port in Nanisivik and the long-overdue replacement of the air force's search-and-rescue aircraft, as well as insufficient plans to replace the coast guard's icebreaker fleet, the Canadian government needs to back up its use-it-or-lose-it rhetoric on the North with a greater commitment to follow through on its Arctic promises.

The world will not wait for Canada. Each summer that the Arctic ice recedes, the navigable season through the Northwest Passage lengthens. This will bring about many possibilities, all of which involve an increase in maritime traffic in the region. The Passage will almost certainly see an increase in destination shipping to and from locations in Canada's

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<sup>244</sup> Coates, p. 175

territories. There is the possibility of the Arctic becoming major thoroughfare for international shipping. The Northwest Passage will likely see an increase in the number of private and commercial vessels catering to adventurous travellers who wish to transit this historic route. Every passing year brings Canada closer to these scenarios, and the government should prepare itself for the emergency situations that this increase in activity may bring. Environmental disasters, search-and-rescue missions, and security threats are all real possibilities that Canada will face in the region.

Canada cannot act alone, and the country does have a strong history of cooperation in the North. The Arctic nations have collaborated to produce an agreement on search-and-rescue under the auspices of the Arctic Council. Canada and the United States have been able to agree to disagree on the status of the Northwest Passage. Canada has obtained international recognition (however begrudging) of its authority over Arctic waters through the Arctic Waters Pollution Prevention Act.

This, however, will not be enough in the future. Disagreement over the legal status of the Northwest Passage will hamper Canada's ability to control the waterway. Only by reaching a final resolution over the Passage will Canada be able to effectively implement legally-sound measures to regulate vessels in its waters. Canada has a strong case for the Northwest Passage to be considered internal waters, and there is also the possibility for a reasonable compromise in naming the waters a territorial sea. Canada should press to reach an international agreement on the issue, even if it involves defending its case in front of the International Court of Justice. Even if Canada were to lose, in a worst-case scenario, and see the Northwest

Passage become an international strait, it would be better to discover this now than in the future.

Though the country's largest city is geographically closer to the Equator than the North Pole, Canadians have always seen themselves as a northern nation, and the Arctic has long played an important role in the Canadian mindset. Videos of the northern lights and images of the vast Arctic environment of ice and snow resonate with Canadians, who view the North as an integral part of the Canadian identity. Climate change is bringing a new focus to this long-isolated piece of Canada, bringing Arctic issues to the forefront and challenging the complacency that Canadian governments have generally given to the region. Though Canada has taken steps in the right direction, much more needs to be done to cope with the challenges that the North faces in the future. The opening up of the Arctic holds great potential for northern Canada, but the government must make the decisions necessary to protect its interests in the North.

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