Canadian Arctic Sovereignty: Time to Take Yes for an Answer on the Northwest Passage

THOSE OF US WHO FOLLOW ARCTIC AFFAIRS HAVE BEEN HEARING OF A WIDENING array of threats to Canadian sovereignty for several years now.[1] Such threats tend to be framed as challenges to Canadian Arctic possession. What's ours and what might be lost to Denmark in the offshore delimitation of the water column and seabed in the Lincoln Sea will be known only to the most attentive. More familiar is our disagreement with the United States over our maritime boundary and therefore who owns what in, and under a part of, the Beaufort Sea. Virtually everyone who's been following the news will have heard of Hans Island, a small piece of rock in the strait between Greenland and Ellesmere Island whose ownership is contested by Canada and Denmark. And now we've begun to witness an international scramble for the resources of the outer continental shelf under the Arctic Ocean — a rush for riches that, many believe, could see us lose out if we fail to stand up for what's ours. But it's the Northwest Passage that continues to tower above all other of our Arctic sovereignty concerns. It does so by virtue of the direct connection between the passage and the Canadian identity. It does so because of the proven ability of perceived challenges to possession, principally by the United States, to mobilize real passion among the great southern majority of Canadians. This chapter therefore focuses on the Northwest Passage as prototypical of Canadian thinking and practice on matters of Arctic sovereignty. It calls for a radical reconsideration of how we southerners imagine the Arctic and what needs doing there.

Let us rid ourselves of the apprehension and self-doubt that surround the discussion of sovereignty over the passage and the need to assert it in an era of global warming and easier international navigation in Arctic waters. The facts are

different. We do not merely claim but have unquestioned possession of the islands, waters, seabed and subsoil of the Canadian Arctic Archipelago. The United States agrees that this is the situation but also insists that the varied waterways that make up the Northwest Passage are in the ensemble an international strait through which the government and private vessels of all countries have rights of unencumbered passage. We say the passage consists of internal waters, which are open, or closed, to foreign navigation as mandated by the will, laws and regulations of Canada. Accordingly, if we have a serious problem in the Northwest Passage, it has to do not with possession but with foreign transit through waters that are incontrovertibly our own.

A problem does indeed arise, because the sovereign needs not only to possess but to control the space that's hers. Even on this account, however, things are going our way. Due largely to our own efforts and partly to processes not of our making, we are in a position to exercise rights of exclusive jurisdiction over the Northwest Passage and to make that jurisdiction fully effective for foreign *private* vessels. When it comes to the sovereignty challenge posed by the merchant ships of other countries, the outlook is getting better for Canada, not worse. As I will show, there is reason here for congratulation and good cheer.

As to the exclusion or admission of foreign *government* ships, the situation is less promising. This is largely because naval vessels, unlike merchant ships, can fight. Canada, I will argue, is unable alone to prevent unauthorized entry and transit of the archipelago either by foreign nuclear submarines throughout the year at present, or by conventional submarines and warships in the course of a lengthening and ultimately a wholly ice-free summer. Simply put, we are not going to risk nuclear contamination of the Northwest Passage in pursuit of sovereignty over it. But then we are not without prospects where foreign navies are concerned. We have allies. With them, we would already seem to operate according to arrangements that provide for some degree of authorized entry into the passage and that circumvent differences of opinion on its status in international law. And in future consultation with them, we can create common security arrangements that give us assured authority and backing to police the archipelago against unauthorized naval activity in peacetime — which is ordinarily most of the time, and could be all of the time if the ice states are able to build new structures of cooperation and arms control against a remilitarization of the Arctic as a region.

Aided by our own actions, circumstances are conspiring to give us virtually all the privileges and benefits of sovereignty over the government and private vessels of other countries wishing to traverse or enter the Northwest Passage. Going with a favourable train of events, we should now be dealing directly with the United States, which has quietly been saying yes to unilateral Canadian action and multilateral initiatives that are consistent with exclusive Canadian jurisdiction. In a word, we ought now to take yes for an answer in a set of cooperative arrangements that deepen and widen the Canada-US agreement to disagree on the Northwest Passage. With worries over the Northwest Passage diminishing, we should be able to move forward with confidence and vigour into the Arctic region that's now opening before us.

All of this runs directly against the grain of contemporary Canadian discourse. It needs explaining, to say nothing of justification. I will therefore first consider the problem of the Northwest Passage as typically understood in this country. Thereafter I will elaborate on the solution as I see it. Finally, I will ask how Canada might best make the transition from a what's-mine-is-mine stance governed by fear of loss to a dynamic pursuit of gain through an active engagement in circumpolar affairs.

The Problem as Currently Understood

SOVEREIGNTY IS THE ABILITY OF THE STATE TO EXERCISE RECOGNIZED RIGHTS OF exclusive jurisdiction within a territorially delimited space. There is a lot packed into these few words. But it comes down to the capacity to do two things: to secure recognition of one's rights, and to act on or enact these rights. Recognition and enactment — the latter understood not as legislation but as performance — are interconnected. The more secure the recognition of one's rights or claims to exclusive jurisdiction, the more effective their enactment will be; the more potent one's ability to act on the same rights or claims, the greater the likelihood they will be acknowledged by others.

In its approach to Arctic sovereignty, Canada has until recently favoured recognition over enactment. When not a lot was happening in the waters of the Canadian Arctic Archipelago, and not a lot was therefore required by way of -

on-site action, we endeavoured to persuade others to accept our claims and subsidiary arguments without giving them compelling reasons to believe we could and would enforce them. Nevertheless, the United States and the member states of the European Union have continued to regard the passage as an international strait through which the vessels and aircraft of all countries have very considerable rights of transit under the 1982 United Nations Convention on the Law of the Sea (UNCLOS). In our view, the waters of our Arctic Archipelago are internal to Canada, bereft of any foreign right of transit and fully open to foreign navigation in accordance with Canadian law and Canadian regulations, all in keeping with the law of the sea (McRae 2007).

Though it's impossible to predict how the Canadian position might be constructed if ever the issue went to law, we seem likely to argue that the waters that make up the Northwest Passage are as internal to Canada as those of Lake Winnipeg. Being internal, they are subject to the sovereign will of Canada and to that will alone. These waters are internal by virtue of historic title transferred to us from Britain, transferred from Inuit who are now Canadian and have occupied them since time immemorial, and by virtue of decades of effective Canadian occupation and control. The waters in question were not so much enclosed as delimited in 1986, when we, following generally accepted legal practice, drew straight baselines from headland to headland around the entire archipelago to make clear where our internal waters end and the 12-mile territorial sea begins. Although UNCLOS article 234 allows us to regulate commercial and other private vessels for purposes of pollution prevention out to 200 miles beyond the baselines, the authority granted here has no direct bearing on Canada's internal waters claim (though clearly it does assist in controlling the approaches to the passage). In short, Canada claims and indeed has the unfettered historic right to permit and deny access to foreign government (naval, coast guard, oceanographic) and private (commercial, adventurer, pleasure) vessels wishing to transit or merely enter the Arctic Archipelago.

The United States, for its part in a future court proceeding, could well dispute Canada's historic waters claim, together with the length and other features of the baselines we have drawn. But the main burden of the US argument would surely go to show that, in keeping with the convention, the channels of the Canadian Arctic Archipelago constitute an international strait in that they join two high-seas areas and are used for international navigation. The geography being

what it is, the key contentions in the US case could revolve around the number of transits required to constitute international use, the number of transits that have been made, and the number of transits made not in conformity with Canadian regulations but in disregard and defiance of them. How the deliberation on questions such as these might unfold is anyone's guess. But the United States could have a case, especially if we start to experience conflicted transits in the years ahead.

Sovereignty conflicts often come down to a struggle for possession. But not where the Northwest Passage is concerned. When we consider the legalities, our dispute with the United States and other maritime powers is about terms of transit, not about ownership or possession, which is assured under the law of the sea. Both Canada and the United States take the passage to be open for international navigation. At issue is the nature and extent of coastal state control and maritime state freedom to proceed. Knowledgeable Canadians tend to believe that coastal state control over foreign vessels would be substantially less under a straits regime than when the waters concerned are treated as internal to Canada. The principal issues here are pollution of the marine environment and the vulnerability of Inuit to economic and cultural deprivation. There is truth to this view, but rather less than we might expect, as we will see in a moment.

Meanwhile, I take it to be the general opinion of Canadians that the Northwest Passage and all it stands for cannot and must not be surrendered if Canada is fully to pursue a destiny of its own on the continent of North America. "Use it or lose it" has become the watchword. Many of us seem to believe we could actually lose the passage to other states — indeed, to the United States. The premise is misguided. The slogan should be stricken from our vocabulary. Canadians should know that they have not been, and continue not to be, informed of the realities by a succession of federal governments only too pleased to talk the talk of an imperilled Arctic sovereignty. Nor has the Canadian public been made aware of an evolution in the ability of Canada and the United States to manage their Arctic waters differences to mutual advantage.

Pursuing international recognition of our right to prevent pollution in the passage, Canada's diplomats achieved a triumph in securing US assent in 1982 to UNCLOS article 234 (McRae 1987). In so doing, they made consensual Canada's *Arctic Waters Pollution Prevention Act, 1970* (AWPPA), which was enacted unilaterally in the wake of the intrusive voyages of the US supertanker *Manhattan* in 1969-70. Then, following the unauthorized transit of the US icebreaker *Polar Sea* in 1985, a

further Canadian initiative resulted in the Arctic Cooperation Agreement of 1988, which sidestepped the dispute in allowing the two coast guards to collaborate in the Arctic waters of North America without prejudice to the legal position of either party. Net effect as of the late 1980s, and indeed today: agreement to disagree, which enables both countries to work together on matters of mutual interest despite our dispute on the law. And then, in the 1990s, an awareness of climate change came upon the scene.

As of about 2000, Arctic sovereignty became directly linked to a growing awareness of global warming that no right-minded Canadian could ignore. Thus was born the sovereignty-on-thinning-ice thesis: in melting Arctic sea ice, global warming promised to open the Northwest Passage to high volumes of intercontinental commercial shipping, which could not but result in a US, or a US-backed, legal challenge to Canada's sovereignty claim based on flag-state objections to Canadian regulatory action. Note that when climate change is accentuated in the way we frame our sovereignty problem, attention is biased toward surface vessels — the comings and goings of nuclear-powered submarines not being greatly affected by ice conditions. Although public opinion and the media might also have been exercised by the imminence of foreign ice-capable surface naval ships in Canada's Arctic waters, proponents of the thinning-ice thesis chose to focus on the prospect of new intercontinental commercial navigation and how it might play into the Canada-US dispute over the passage (Huebert 2002, 2003, 2004, 2007; Byers and Lalonde 2006; Byers 2006b, 2007c). All along, I disagreed (Griffiths 2003, 2004, 2006).

The scenario as it first appeared was one that confronted us with a challenge of steadily growing urgency: the more rapidly the passage is emptied of ice, the greater its allure to commercial shipping firms, which stand to save their container ships and bulk carriers travelling between Asia and the North Atlantic thousands of miles, as they will not have to resort to the Suez or Panama canal. In turn, the greater the volume of transits, the more likely it is that one firm or another will sail as though the passage were an international strait — which is to say, without proper regard for Canadian regulations. Accordingly, and in a lengthening chain of argument, we are faced with a greater likelihood of a flag-state legal challenge in the event we take enforcement action; Canadian inaction, which would work strongly against the Canadian claim; or direct intervention by the United States to ensure Canada was brought to court, where we could face an adjudicated loss of sovereignty. All of this is quite alarming, especially when accompanied by expert talk of an "inevitable showdown" with the United States (Harris 2007).

Today, the extent and thickness of sea ice in the Arctic Ocean and within the Canadian Arctic Archipelago continue to diminish with extraordinary rapidity. The focus of sovereignty-on-thinning-ice discourse has, however, shifted from the coming armada of high-value merchantmen to a few tramp ships or rust-bucket tankers, even a single rogue ship, whose illicit or improper voyage — any day now — could gravely weaken Canada's claim if uncontested, or could again prompt us into regulatory action that risks a hostile court ruling.

Leaving aside the potential for pollution, drug and human smuggling, and the landing of terrorists and weapons of mass destruction — all of which those most worried about Canadian Arctic sovereignty are inclined to cite — we can say that climate-related and commercial shipping variables in the sovereignty-on-thinning-ice scenario have boiled down to a fear of imminent legal proceedings stemming from the wayward activities of the occasional small operator. Whether the small operator is to be regarded as a major threat to Arctic sovereignty or a challenge to Canadian law and law enforcement, there should be no question of Canada's need for the hardware to cope with vagrant shipping. Getting the threat right is nevertheless a precondition for getting the hardware together over the course of procurement processes likely to last many years.

The niceties of Arctic threat assessment tend not to be well captured by the attentive, much less by the general public. Quite the contrary: climate-related fear for sovereignty over the Northwest Passage shows signs of morphing into a pervasive concern that the entire High Arctic may be lost. Consider the following from an editorial in the *Winnipeg Free Press*:

> At the moment, the Northwest Passage is not good for much except history lessons and romantic fancies. But if global warming is a long-term reality that leads to even partial melting of the Arctic ice, it will become a hot spot as other nations deny not just this country's claim to the passage, but to the islands around it as well.
>
> This is already happening, to a degree. The Danish claim to Hans Island may seem frivolous, but it possibly forebodes other American and European claims to many other larger and more important islands.
>
> If those claims were pressed, Canada might find itself hard-pressed to refute them. This country's claim to sovereignty over the archipelago is considered by rivals to be only tenuously based — some of the islands were actually discovered by Americans, Danes and Norwegians; others were ceded to Canada by Britain before they had been discovered.

The editorialist ends up saying that with "half the world" waiting to use an open Northwest Passage, for Canada "losing the waterway could mean losing the islands as well" ("Our Arctic" 2007; also, more broadly, Struzik 2007; White 2007).

Meanwhile, the government ships of other countries add a dimension to our Arctic sovereignty problem that is even less well appreciated by the Canadian public. Actually, this is what drew Stephen Harper's attention when first he addressed the theme of Arctic sovereignty.

Speaking in December 2005 in the course of the federal election, the future prime minister declared it intolerable that the submarines of other states should enter the Arctic waters of Canada without Canadian consent. No longer would we acquiesce to the unauthorized naval operations of others — above all, the United States — within Canada. On the contrary: we would acquire new military means to secure respect for Canadian sovereignty.

> The single most important duty of the federal government is to defend and protect our national sovereignty. And now there are new and disturbing reports of American nuclear submarines passing through Canadian waters without obtaining the permission of — or even notifying — the Canadian government.
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> It's time to act to defend Canadian sovereignty. A Conservative government will make the military investments needed to secure our borders. You don't defend national sovereignty with flags, cheap election rhetoric, and advertising campaigns. You need forces on the ground, ships in the sea, and proper surveillance. And that will be the Conservative approach.
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> As Prime Minister, I will make it plain to foreign governments — including the United States — that naval vessels travelling in Canadian waters will require the consent of the government of Canada. (Harper 2005)

Clearly, Harper was determined to change the way the Government of Canada spoke and acted on the matter of Arctic sovereignty. Indeed, he went on to commit a Conservative government to installing submarine sensing devices in the passage, procuring and deploying several heavy naval icebreakers, establishing a training base in the High Arctic, building a deepwater seaport and so on.

There was no sign here of the lawyerly interest in international recognition of Canada's right to exercise exclusive jurisdiction over the Northwest Passage. Nor was commercial shipping the threat. Instead, the problem lay in the dereliction of duty on the part of Liberal governments, which had failed to enforce Canada's sovereign rights against foreign naval vessels. Prime Minister Harper entered office firmly prepared to change Canada's sovereignty conversa-

tion from recognition to enactment and from the commercial to the naval dimension of the problem.

For interested southerners, the enactment of Arctic sovereignty comes down to surveillance and enforcement. International recognition is not, however, to be ignored. On the contrary, in generating new means for Canada to act in sovereign fashion, Harper might have expected to improve our negotiating position if and when it came time to address the issue of the Northwest Passage directly with the United States. Let us therefore briefly consider what's happened under the headings of surveillance, enforcement and negotiation since the federal election of January 2006. Let us also distinguish between the surface and subsurface waters of the passage.

Surface surveillance has traditionally been performed by the polar icebreakers of the Canadian Coast Guard. Able to go readily where neither commercial nor naval vessels have yet been able to venture, the polar fleet is aging rapidly and needs to be replaced. I am told that recapitalization of the fleet is well in hand — which is to say, well understood by the Harper government and proceeding as expected through the federal apparatus. Indeed, the February 2008 budget provides $720 million for a new Polar-class icebreaker (El Akkad 2008). Meanwhile, surveillance is being improved with the first Arctic deployment of a Victoria-class Canadian submarine, HMCS *Corner Brook*, and with the launch of RADARSAT-2 in December 2007. During sovereignty operation Nanook, in August 2007, the *Corner Brook* demonstrated a capacity to exercise covert surveillance of vessels of interest in the eastern approaches to the passage (Canuel 2007). As to RADARSAT-2, a commercial venture in which the government has been participating through the Department of National Defence and its Project Polar Epsilon (Taylor 2007), it is soon to give us Arctic surface imagery at about 90-minute intervals, together with follow-on surveillance technology for effective High Arctic governance in coming years.

And then we have the eight naval patrol vessels that are to be acquired and deployed beginning in 2012 (Office of the Prime Minister 2007). Though the doctrine governing the use of these ships is to be determined in the course of a two-year project definition phase, it's clear they will have gun armament and likely they will have no capability for active antisubmarine warfare. They will conduct armed surveillance of the surface. Possibly equipped with an on-board helicopter, they will assist other government departments in the boarding, arrest

and detention of private ships deemed to be in violation of Canadian regulations or to present a security threat. This they will do in our internal waters, and out to the end of the exclusive economic zone and beyond, on all three coasts, in the course of a 25-year service life. In the Arctic, they will be active during the months in which private vessels (such as merchant and fishing vessels) are likely to approach and venture into the Arctic Archipelago. Costing $3.1 billion to build and $4.3 billion to sustain, and dedicated to the performance of constabulary tasks for which the coast guard is better suited, these new vessels will be financed from the existing capital allocation for the navy. What navy, I ask, will persevere in championing an acquisition that not only obliges it to break ice in its own internal waters but also comes out of its own hide?

Irrespective of what happens to the naval patrol vessel program, it's fair to say that Canada's ability to exercise surveillance over the surface waters of the Northwest Passage has improved since January 2006, and this should stand us in good stead in responding to modest increases in the level of foreign commercial and other surface-ship activity in the years ahead. Might the same be said of the subsurface?

Through NORAD, if not NATO as well, we would seem to have some awareness of nonallied submarine activity around and within North American waters, notwithstanding continued formal rejection of our Arctic sovereignty claim by our allies. This inference follows from the fact that for many years we operated extremely silent diesel submarines and are now doing so again. An implication: within NATO and NORAD, we may for years have participated in allied Arctic maritime surveillance on the basis of without-prejudice "agree-to-disagree" arrangements, on which the 1988 Canada-US cooperation agreement could also have been patterned. A further implication: if allied intelligence sharing is what it should be, the new national submarine sensor system that was Harper's first promise in his sovereignty speech of December 2005 is not a necessity. But now we learn that Canada is to test and report on available submarine sensing technologies by 2010 (Defence Research and Development Canada 2008).

Whatever the reasons for this announcement — fulfillment of a campaign pledge, preliminaries for an independent Canadian contribution to NORAD maritime domain awareness — it gives rise to a question: What do we intend to do when the sensors are deployed and we detect a foreign submarine voyaging in the passage without our say-so? No way would we take ourselves to court by contesting the legal right of the state concerned to voyage in our waters. Nor would

we confine ourselves to public protest: in advertising unauthorized naval activity, we would help to establish an international practice that contravened our claim. Instead, the sensor announcement implies Canadian readiness to establish and defend the archipelago as a keep-out zone for unauthorized naval vessels. This brings us to the enforcement of Canadian jurisdiction.

There's really not a lot to say here. Whether we do or don't end up with a small fleet of modestly Arctic-capable naval patrol vessels, it's my view that coast guard icebreakers already suffice and will likely continue to do so in providing for effective law enforcement with regard to private-vessel activity in the archipelago. Others, anticipating a surge of intercontinental commercial shipping or an increase in the frequency of voyages by accident-prone and ill-intentioned tramp ships, are sure to disagree. They may well be representative of prevailing opinion when it comes to our enforcement capabilities in maintaining sovereignty over the Northwest Passage. Meanwhile, there has been virtually no public discussion of how Canada might enforce its will in denying access to the subsurface waters of the archipelago to foreign submarines making unauthorized voyages. Nor, beyond the exploration of submarine-sensing technologies, has the federal government hinted at how we might defend our claim with armed force, as proposed by Harper in December 2005. And yet it's just such things that would be front and centre if we were somehow to enter a negotiation with the United States.

The idea in negotiating is that since the events of September 2001, US national security interests have changed sufficiently to warrant a new Canadian approach to Washington on the status of the Northwest Passage in international law (Byers and Lalonde 2006, 34). Specifically, the United States no longer gains from a position that treats the passage as an international strait and thereby gives ready entry to foreign vessels, which may be carrying terrorists, weapons of mass destruction and the like into northernmost North America for transfer southward. Meeting with President George Bush at the North American Leaders' Summit at Montebello in August 2007, Prime Minister Harper reportedly suggested something like this, only to be told that whereas the United States supported greater Canadian defence preparedness in the Arctic, there was no change in the US position on the passage as strait (Foot and Greenaway 2007; Freeman 2007). Although for now the Prime Minister shows no signs of readiness to pursue things beyond the exchange at Montebello, some in Canada have favoured formal negotiation (Byers 2006a; Pharand 2006; New Democratic Party of Canada 2007).

If advice in favour of negotiating wth the United States were taken, we would no doubt stay focused on the Arctic sovereignty theme over the next two or three years — certainly into the early tenure of a new US administration. By holding one or more informal Canada-US consultations on the matter, we might possibly familiarize Congress, the executive and American influentials outside of government with the issues. Either a coalition of the willing would be built in the United States, or the president would be persuaded of the wisdom of a Northwest Passage in Canadian hands. In any event, talks would be ordered. The two sides would sit down and work out an exchange in which US recognition of our claim was traded for assured US transit though the passage and fully effective Canadian suppression of terrorist and other asymmetrical security threats that might appear in the archipelago.

The main problem here is that, from an American point of view, international law already gives the US the right of transit through a Northwest Passage that has never been — nor is ever likely to be — well secured by Canada. I am reminded of my days as a keen defender of endangered Canadian Arctic sovereignty in the early 1970s, when I said to a senior US naval officer that the American position on the passage opened our waters to Soviet nuclear submarine operations, only to be told, "Don't you worry, we'll look after those subs." Back then, I took the remark as a sign of US presumption and readiness to intrude. But it could as well have been heard as a statement of readiness to assist in something we were not equipped to handle alone.

Be this as it may, commentators on Canadian Arctic sovereignty continue to focus on the civil and commercial dimensions of our problem. Specifically, it's proposed that Canada and the United States work out a transit management system for the Northwest Passage, modelled perhaps on the St. Lawrence Seaway and the International Joint Commission (Byers 2007a; Flemming 2007). It's also thought that Canada should actively promote and support intercontinental navigation by foreign firms on Canadian terms (Byers 2007c). As of early 2008, formal negotiation with the United States for a binational Northwest Passage seaway is yet to be excluded as a route to US acceptance of our internal waters claim.

Viewing the entirety of our sovereignty problem, I suggest that we've talked ourselves into believing we are challenged more severely in the Northwest Passage than actually we are. In reality, the issue is not possession but the conditions under which foreign vessels will sail into and through the Canadian Arctic Archipelago. The public has come to believe that considerably more is at stake

than this. Academic purveyors of polar peril bear some of the responsibility for this state of affairs. But the sovereignty-on-thinning-ice scenario and the focus on foreign commercial ships would not have been received the way they have been if the media and the public at large weren't already disposed to a discourse of fear and apprehension over sovereignty and possession. Nor would thinning-ice worries have deflected public interest from the naval dimension of our problem. Nearly 40 years after the first of the *Manhattan* voyages, the great majority of southern Canadians are still caught up in what's-ours-is-ours Arctic thinking from behind the lines of sovereign authority. Such is our stance at a time when the entire circumpolar North is coming alive.

The Solution

In offering a solution to our Arctic waters dilemma, I will consider first the commercial shipping threat to our internal waters claim and its enactment, and then the naval dimension of our situation — all with our principal adversary in mind. Where merchant vessels are concerned, we need to address the economics of intercontinental shipping through the Northwest Passage; comparative ice conditions; US continental security interests in light of the events of September 2001; and the evolving legal context as it relates to the status of, and Canadian rights over, the waters of the Arctic Archipelago.

For the first time in recorded history, Parry Channel was almost clear of ice and easily navigable from one end to the other in September 2007. Sea ice is indeed retreating in the Arctic Ocean and in the archipelago. Barring the appearance of nonlinear effects, the Northwest Passage shipping season will continue to lengthen. Some of us are sure to entertain new illusions of a Canadian Arctic throughway that cuts thousands of kilometres off the sailing distance between Asia and the North Atlantic. Let us therefore rehearse the realities likely to be met by the shipping firm that would begin to use the Northwest Passage for reliable intercontinental navigation in the course of the next couple of decades. These realities came to the fore in July 2007 at a conference in Washington, DC, on the effects of an ice-diminished Arctic on naval and maritime operations. Sponsored by the US Navy and attended by Canadian ice scientists, who participated actively, the gathering produced a valuable update on conditions and prospects for

Arctic navigation (Falkingham 2007). I'll comment and elaborate on the proceedings as they relate to the Northwest Passage, in particular.

Variability of ice conditions continues to be "extreme." Formed in the dark and cold of winter, seasonal sea ice can be absent or very challenging in the course of the summer months. From one year to another, and within the archipelago from one location to another, new ice also varies in extent and thickness. But in its difficulty and danger it pales in comparison with the old ice that will persist in the passage until it has disappeared entirely from up in the archipelago and out in the ocean. This old sea ice has lost its salt. Hard as concrete, it is lethal to the vessel not strengthened against it.

International shipping is conducted as a year-round liner business in which everyday lost risks scheduling disasters and financial losses. When it encounters high seas, fog, twilight and old ice, a thin-skinned ship cannot expect to run the passage at speeds allowed in temperate waters. Ice-condition variability and the continued presence of old ice also negate predictable and therefore regular use of the passage by high-value vessels sailing on tight schedules. Add the necessity to ice-strengthen in order to steam with greater assurance and speed during the summer months, add the need to amortize the cost of strengthening a ship that sails the greatest part of the year in ice-free waters, add insurance expenses, including the inevitable deductibles — and the economic advantage in using the Northwest Passage to move cargo between the Atlantic and the Pacific all but vanishes.

Major messages arising from the July 2007 gathering on Arctic operations are that "ship traffic will be overwhelmingly destinational and dominated by the development of natural resources and tourism," and that "ocean to ocean transit shipping will not develop significantly for a long time" (Falkingham 2007, 2). In short, the Northwest Passage will see an increase in commercial shipping, but it will move in and out of sites in Arctic North America and not between the Atlantic and Pacific in volume any time soon. And yet there's something more that needs saying about intercontinental Arctic shipping before we turn to the sovereignty threat of destination voyages.

Let us imagine an Arctic region that's totally free of ice year-round. Let us also find someone with the software required to determine the length of alternative shipping routes and then ask who might sail where between Asia and the North Atlantic — actually, between Yokohama and Rotterdam or New York. Right away, it becomes clear that the shortest trade route between Yokohama and Rotterdam is right over the pole: 12,074 kilometres, as opposed to 14,759 kilometres via the Parry Channel

route through the Northwest Passage. Barring other variables that might compel liner ships to take longer routes, the passage — a 14,111-kilometre Yokohama-New York trade route — will be the route of choice for vessels sailing only between Asian markets and ports on the eastern seaboard of North America. This suggests that development of an intercontinental passage through the Arctic waters of North America — for instance, the generation of infrastructure and management rules for safe and efficient navigation — would in essence be a joint Canada-US enterprise. But how much should Canada pay and indeed charge to help move cargo between US and Asian ports? Meanwhile, there's still plenty of ice, and there's also the Panama Canal. Widened to accommodate the largest of container ships, the canal could prove more attractive than the Northwest Passage for destinations south of New York (Somanathan, Flynn and Szymanski 2007).

As for foreign ships sailing to and from Canadian Arctic locations, they will of necessity conform to Canadian regulations. They therefore pose no challenge to Canadian authority. Destination shipping that might offer a challenge is confined to the movement of US bulk cargo and equipment in and out of the Beaufort Sea and North Slope. Here the US interest in conflict avoidance may come into play. The events of September 2001 would seem to have altered the politics of the Northwest Passage in the United States by adding to the force of pre-existing agree-to-disagree considerations (Griffiths 2003). Dictates of the global war on terror have made the US government not only less likely to act on its view of the passage as a strait, or to welcome third-party efforts to straiten the archipelago, but also more likely to value Arctic cooperation with Canada.

Even though the American people and their leaders seem to know even less about the Arctic than they do about Canada, advisers on Canadian affairs are sure to report that an active US effort to impose a straits regime on the Northwest Passage would create a furor in Canada. Canadians would turn in rage and humiliation against the United States at a time when continental security requires ever more intimate and effective cooperation. Best, therefore, for Washington to steer clear of confrontation. And while this is inference on my part, there's fact as well. US officials — for example, Admiral Thad Allen, Commandant of the US Coast Guard; Commander James Kraska, oceans policy adviser to the Joint Chiefs of Staff; and Mead Treadwell, Chair of the US Arctic Research Commission — have been signalling an interest in Canada-US Arctic waters cooperation that's inconsistent with prevailing Canadian conceptions of inflexible US opposition.

To be specific, Admiral Allen is strongly in favour of extending Canada-US cooperation in North Pacific oil spill response and search and rescue into the Arctic. As well, he says, "Now is the time to look for international coordinating mechanisms and establish governance models that can help us all develop whatever is going to go on in the Arctic in terms of policy, presence and national interests in a way that benefits us all in a world that we all share together" (Allen 2007, 7). To the extent that the Commandant speaks for the US government, his is a recipe for working it out, getting along and finding a way together, including through Canada-US Arctic relations. Kraska, who cannot but be in the loop, makes no bones about the Northwest Passage being an international strait. Nevertheless, he would not override the Canadian view; instead, he speaks of opportunities for Canada to "attract support for appropriate measures to protect the Arctic ecosystem, ensure Canadian security and sovereignty, and promote safe navigation through designated routes through the vast northern expanse" (Kraska 2007, 59). To these ends, he proposes that Canada consider an International Maritime Organization (IMO)-led multilateral straits management model, such as the one already used for the Straits of Malacca and Singapore. For his part, Treadwell favours not just an IMO-multilateral approach but an Arctic regime similar to the one the US and Canada share in the St. Lawrence Seaway and the Great Lakes, "where coordinated investment and joint action has made operational issues across national borders virtually seamless." The St. Lawrence Seaway being a binational operation in which Canada has complete authority over what occurs on the Canadian side, he seems willing to countenance a Northwest Passage management regime in which, irrespective of differences over the law, the two parties each assume exclusive responsibility for what goes on in their respective areas. Citing UNCLOS article 234 as a means of "conflict avoidance," he also refers to "sovereign-type control in an area in which sovereignty is under dispute" (Treadwell 2008, 4, 12).

None of this is to say there's zero risk of another *Manhattan*. But the basis for getting along together is wider now. Given stated US preferences, the likelihood of a confrontation is in decline. Furthermore, a third party wishing to contest Canadian jurisdiction in the passage will now find it difficult to secure US backing. Foreign vessels that pose an environmental, social or security threat to Canada can expect to be at the mercy of Canadian law and law enforcement. They are therefore likely to desist from a challenge.

Barring serious error on the part of Canadian and US policy-makers, the United States will exercise restraint in furthering its legal position, Canada will exercise Canadian jurisdiction in regulating foreign shipping, and what might be called the rustbucket threat to Canadian Arctic sovereignty will very largely disappear. We are not going to be taken to court as we monitor and respond to the actions of small private operators in the archipelago. Nor do we face an onrush of intercontinental shipping between the North Atlantic and North Pacific. Nor, as we were reminded at Montebello, is the United States going to surrender its position on the status of the Northwest Passage in international law. Canada and the United States seem set on agree-to-disagree as the best they can do in the management of foreign shipping in the Arctic waters of North America.

At first sight, agree-to-disagree is likely to be viewed as an inferior and even unworthy solution to our Arctic sovereignty problem, which must be resolved with general and complete acceptance of our claim. But, as I see it, agree-to-disagree arrangements, propelled by the Canadian side, represent very real progress in the two parties' handling of their Arctic waters differences. What we have here is a proven way of coping that could be extended from the icebreakers to the commercial and indeed the naval vessels of both countries. It would allow us to move, if we wished, from agree-to-disagree on one class of ship to a wider, without-prejudice arrangement whereby cooperative activity in waters claimed by Canada to be internal would proceed under Canadian authority. This kind of formula has in fact arisen in Canada-US security cooperation — for example, in planning for the renewal and expansion of NORAD. The awkward passage reads, "Being able to control what goes on above and under the waters within Canadian and US jurisdiction requires mechanisms that facilitate critical capabilities to…[f]ulfill the responsibilities implicit in claiming jurisdiction over certain bodies of water" (Bi-national Planning Group 2004, 37-8). There is no reason why wording like this should not be extended to US destination shipping eastward through the passage from the North Slope of Alaska.

In Canada, the thought of shipping to and from American locations in Arctic North America is sure to be associated with the *Manhattan* episode and the necessity to avoid a repetition of it. US opposition to Canada's internal waters claim does not, however, signify indifference to the risk of pollution in the passage. Quite the contrary — US commercial vessels would need to sail the Northwest Passage in accordance with Canada's *Arctic Waters Pollution Prevention Act*, or

themselves proceed without the backing of the US government. In the 1992 issue of the Limits in the Seas series entitled *United States Responses to Excessive National Maritime Claims*, the State Department refers in passing to the AWPPA: "The United States continues to object to the application of the law in so far as it purports to apply to sovereign immune vessels. The United States believes that internationally agreed standards should be developed to replace many of the unilateral provisions. However, the United States considers U.S. commercial vessels subject to this law. The United States has agreed to consult with Canada in the development of standards and operational procedures to facilitate commercial navigation in the Arctic" (United States Department of State 1992, 73). This US government position is not widely known in Canada. It means that article 234 applies in the Northwest Passage when the latter is taken to be an international strait. It should now be reaffirmed by the State Department (Borgerson and Griffiths 2007).

Unless the US government has changed its mind, US merchant ships in transit through the Northwest Passage may be expected to conform, as others already do, to Canada's pollution prevention regulations under the AWPPA. Commercial vessels that are US-owned or carrying US cargo would be unlikely to challenge any reasonable application of our regulations. If they did, they could not rely upon the US government, which does not wholly oppose Canada on the matter and even gives effect to the Canadian legislation. Furthermore, if and when US commercial vessels are seen to comply in moving oil and liquefied natural gas eastward from the Beaufort Sea, the merchant ships of other states will be less likely to contest Canadian regulations and their enforcement.

With few third-party intercontinental transits in the offing and the prospect of US compliance with Canadian pollution prevention legislation governing merchant vessels in destination mode, the notion of deep-seated Canada-US conflict over what is to transpire in the Northwest Passage starts to melt away. Thinking in terms of internal waters and strait status as the two possible outcomes of the dispute begins to yield to the idea of an intermediate solution in which there's little to bar Canada from the nondiscriminatory exercise of sovereign rights to regulate foreign commercial shipping. Strongly influenced by the practicalities of the Canada-US relationship, this development also owes something to the collapse of the distinction between internal waters and international strait where the Northwest Passage is concerned.

With the negotiation of article 234, Canada normalized the provisions of the AWPPA by entering them into the international consensus on the law of the sea. The regulations issued by Canada pursuant to the AWPPA were, however, a different matter in that the particular standards applied by Canada were ahead of the consensus and difficult to update unilaterally in light of changing polar ship technology and design. Now, as a consequence of a lengthy Canadian initiative, the AWPPA regulations (AWPPR) have also been normalized. They became consensual when, in March 2008, the member societies of the International Association of Classification Societies (IACS) completed their ratification of a new set of uniform requirements for polar ship construction, equipment, operations and environmental protection (International Association of Classification Societies 2006). This they did as mandated by the IMO, pursuant to the latter's 2002 Guidelines for Ships Operating in Arctic Ice-Covered Waters (Brigham 2000; International Maritime Organization 2002). Both the IMO guidelines and the IACS uniform requirements have the support of the United States.

Canadian regulations for ship safety and pollution prevention in ice-covered waters that we regard as internal to Canada have now become pretty well synonymous with the "generally accepted regulations, procedures and practices" governing the duties of ships in what might otherwise be regarded as an international strait under article 39 of UNCLOS. Actually, the new international standards constructed with Canadian leadership are superior to the AWPPR, which have not been revised since they were issued, in 1972. Be they applied by Canada in what we take to be our internal waterways or in Canadian waters that another state regards as an international strait, the standards we employ in regulating commercial activity in the Northwest Passage are now harder than ever to dispute. As such, they are less likely to be contested by flag states large or small. Meanwhile, in its support for Canadian-led IMO/IACS guidelines, the United States tacitly endorses Canadian regulation of commercial traffic in the Northwest Passage.

The very question of whether the Northwest Passage is an international strait or an international waterway wholly subject to Canadian jurisdiction is becoming less consequential. In effect, and as arrived at via a different route by Professor Donald McRae of the Faculty of Law at the University of Ottawa, "although it would widely be perceived as a significant sovereignty loss, [a determination] that the Northwest Passage constituted an international strait would have little effect on Canada's legal authority to regulate commercial shipping"

(McRae 2007, 18). And yet, I'd add, there's little likelihood of any such outcome. Though the United States and others will continue to claim that the passage is a strait, we are not going to encounter serious resistance in acting on our rights. On the contrary: we already meet with tacit assent when it comes to foreign commercial navigation. Exclusive jurisdiction is well in hand for foreign commercial and other private ships. Can the same be said of naval vessels?

The ends-means fit between exclusive jurisdiction and armed force is by no means an easy one for a stand-alone Canada that would have all other states treat the Northwest Passage as internal Canadian waters. In first committing a Conservative government to the armed defence of sovereignty, back in December 2005, Harper promised that no foreign submarine, American or otherwise, would enter or transit our Arctic waters without our authorization. To my mind, 100 percent effective solo Canadian control over foreign naval activity in the passage cannot be achieved. The military means required and the likely consequences of their use would force us either to build a nuclear navy or to deter foreign intrusion by promising devastation within the archipelago in the name of Arctic sovereignty. All the while, we could be responding to one, two or no intrusions per year in the 2010s. As with intercontinental commercial voyages, the appeal of the passage for submarines could turn out to be small — indeed, small enough to obviate the need for expensive countermeasures. Or, depending on the strategic naval development of the Arctic as a region, the threat of intrusion could one day be substantial.

A middle way must be found between the desire for complete naval control and the fear of none, between premature commitment to complete mastery and failure to take the first steps toward capabilities with long lead times to acquisition. Discovery of the *via media* begins with a glance at a map of the Canadian High Arctic and a consideration of the diverse channels it presents for north-south as well as east-west voyages by foreign submarines and, we assume increasingly, surface naval vessels in a less icy region.

Basically, there are three ways to deny the archipelago to naval vessels proceeding without Canadian authorization. The first, of which no more need be said, is to be liberal with our authorizations. The others entail a defence that is either archipelagic or oceanic. As recommended some years ago by the late David Cox, an archipelagic defence would see Canada not merely install underwater sensors but also mine the Northwest Passage in order to deter illicit naval operations and yet allow legitimate civil navigation to proceed. Two or three sites —

Barrow Strait, Jones Sound and possibly one other — could suffice for the emplacement of bottom-mounted torpedo devices that would launch on receipt of the appropriate acoustic signature. In what would amount to an act of unilateral arms control, Canada would thereby make the archipelago into a "peacetime submerged vessels keep-out zone" for all states. In a crisis situation, however, the United States would be given unfettered access to Canadian Arctic waters. Washington, for its part, would accept a keep-out zone in exchange for Canadian contributions to US security in the form of peacetime surveillance, crisis stability and denial of the archipelago to third parties (Cox 1986).

Whatever we might think of the negotiability of a peacetime keep-out zone now, Cox was writing in 1986. No way today is the leader of the global ban on land mines going to lay mines in its pristine Arctic domain in the name of sovereignty. Nor will Inuit and other nort h e rn residents, to say nothing of southern Canadians, fail to object vehemently to a defence that involves radioactive contamination of the archipelago. And if Canada were to undertake to defend with mines in territorial waters seaward of the baselines in Lancaster Sound and the Beaufort, Canadian Inuit would surely be joined by their counterparts in Greenland and Alaska. In short, if Canada is to explore an archipelagic defence of Arctic sovereignty, means will have to be found to deter unauthorized transits without great risk of destroying a nuclear submarine in the Northwest Passage. Even then, deterrence that fails to face a violator with fateful consequences may well be unsuccessful.

The alternative is an oceanic defence, which would see us acquire and deploy a fleet of nuclear attack submarines such as we considered in the late 1980s. These and other antisubmarine warfare (ASW) assets would allow us to operate under ice in monitoring, countering and, if necessary, engaging foreign submarines and, in due course, warships bent on unauthorized transit through or entry into Canadian Arctic waters. All this we would endeavour to accomplish seaward of the archipelago. But it's obvious that little or none of it could be done unilaterally. In practice, we would surely set the exercise of Arctic sovereignty aside and join the United States and other allies in the exercise of a common naval strategy for the Arctic Ocean, and indeed the world oceans. This we would do if not only the United States but also other of our allies continued to reject our claim of exclusive jurisdiction. An oceanic defence of exclusive jurisdiction over foreign naval vessels in the archipelago would therefore see us replicate our present situation at vastly greater expense and opportunity cost.

A cost-effective unilateral defence of Canadian Arctic sovereignty by military means is not on. When it comes to foreign naval vessels — and to submarines, in particular — the binary option of no sovereignty and general and complete sovereignty yields to a choice between more and less. We cannot secure our Arctic sovereignty against foreign naval activity without the military cooperation of those who oppose us — which is to say, first of all, the United States, the most favourably disposed of the states that reject Canada's internal waters claim. In other words, it's not all states but only hostile states that must be constrained in their access to the Canadian Arctic Archipelago. Harper pointed us in this direction when, at the end of the North American Leaders' Summit in Montebello, he cited the continuing need for Canada and the United States to manage their Arctic differences (Freeman 2007). But how to manage our differences with the United States in a way that makes it easier to handle hostile foreign navies seeking to use the archipelago?

Intelligence comes first. Not only the federal government but also the Canadian public need to know what's happening by way of submarine traffic in the passage from year to year. Public knowledge gained with a national Arctic sensor system is essential if in the long haul we are to avoid a disproportionate military response. Again, there may be so little going on that for now we ought to confine ourselves to extending surveillance and scientific research into the high archipelago in anticipation of an increasing need to exercise control as sea ice is reduced in the years ahead. At the same time, we should today be seeking out ways of bringing our allies into common security arrangements whereby they may more readily support Canadian control over the Northwest Passage.

To this end, I propose that we consider what might be accomplished if Canada, without prejudice to its right to exclusive jurisdiction over the waters of the Arctic Archipelago, chose to govern the Northwest Passage *as though* it were an international strait. Since the outlook is good for Canadian control over foreign private vessels, I will for now confine discussion of this "as though" proposition to warships.

Under the law of the sea, states bordering an international strait are entitled to channel foreign vessels along designated sea lanes. Ships so proceeding must do so in a continuous and expeditious manner. Refraining from all activity other than that incident to sailing without delay, they must in no way threaten the sovereignty, integrity or political independence of the bordering state, or in any manner

violate the principles of international law as embodied in the charter of the United Nations. As well, they are to comply with generally accepted international standards, and corresponding bordering-state regulations, for safety at sea and environmental protection (United Nations 1983, 12-14). If the Northwest Passage were an international strait, Canada would need, under UNCLOS article 41, to refer its sea lane proposals for adoption by the IMO. But the passage is not an international strait. We are, however, free unilaterally to make use of the elements of a straits regime, if that's what best meets our needs in managing the waters of the archipelago and in providing allies with reason to support our actions.

Applied without prejudice by Canada, provisions of the law relating to international straits could see us confine all foreign submarine transits of our internal waters to a single route through Parry Channel, unless permission were given to proceed otherwise. Warships appearing as ice conditions allowed would be channelled, as required, along alternative routes. There would be no deviation, no dallying, no ASW activity, no reconnaissance for alternative passages, no exercising to find sites for sanctuary in a crisis, no coming ashore — only direct and expeditious transit. Any departure from these rules would be met with countervailing Canadian enforcement action backed up by allied support as necessary. Allies would support Canada in pursuit of common security requirements to limit and deny hostile use of the archipelago. They would do so even as they persisted in their denial of Canada's internal waters claim. Net effect: vastly simplified, less expensive and more effective policing and control over foreign naval activity than could be achieved by a stand-alone Canada bent on denying all unauthorized activity.

The Arctic interaction of Canada and the United States is marked by a steady elaboration of agree-to-disagree, in which we proceed not to settle but to set aside our disagreement in favour of coordinated action without prejudice to our positions in law. We take the initiative, and the United States responds. There is a repeated "yes" in the US acceptance of article 234, in the negotiation of the Arctic Cooperation Agreement of 1988, in the State Department's going on record that US commercial vessels will conform to Canada's AWPPA, in persistent shows of middle-level US support for getting along as distinct from putting Canada's internal waters claim to the test, in US endorsement of IMO Arctic guidelines that make Canadian regulatory standards the international norm for ship construction and operation. And then, in what may be the biggest US "yes" of all, at Montebello in August 2007, President Bush endorsed Prime Minister Harper's

unilateral commitment to defend Canadian Arctic sovereignty with armed force. Washington has been telling us that the issue of the status of the Northwest Passage in international law need not hold us back from security cooperation nor prevent self-help of the kind Canada wishes to pursue.

It's time for us to take yes for an answer from the United States. We have the sovereignty we need. Let us exercise it unilaterally and in cooperation with our allies, as circumstance requires. We are in a strong position as new space opens up before us in the Arctic. No longer needing to hunker down behind our straight baselines, we ought to be moving out into the region. We should engage.

Beyond Sovereignty

Southern Canadians who look to the Arctic cannot be expected to yield their obsession with sovereignty and possession any time soon. New thinking will take hold in the course of a transition that carries forward some of the old — especially the felt need to control, police and exclude. While we do need to move forward, we will have differing ideas of what lies beyond sovereignty as an animating impulse. For me, it is stewardship: locally informed governance that not only polices but also exhibits respect and care for the natural world. A great deal might be said about stewardship, but not here. Instead, let us briefly imagine how something like it might shape our conduct as and when we southerners come out of our shell and actively engage our own North and, foremost, Canada's Inuit; the United States on Arctic issues; and the awakening circumpolar region. In drawing this chapter to a close, I consider Inuit first.

Everything I have said thus far will appear to some degree disrespectful and offensive to Inuit in its unexamined southern assumptions of the need to rely on hardware and law in maintaining control over a prized but distant domain that's essentially uninhabited. Inuit — what they might wish as fellow Canadians on site in the Arctic, and what they might be able to contribute to the Canadian enterprise — have been excised from the discussion. This is quite in keeping with the observation of Inuit that to us down south they are invisible. There should be no more of it. Paul Okalik, Premier of Nunavut, has pointed the way ahead: "But sovereignty is not just about military presence, surveillance and enforcement. From a Nunavut perspective, sovereignty would be enhanced by fulfilling the opportunities to build

capacity in the North and to create a vision of Canadian Arctic stewardship in which Nunavummiut play a significant role for Canada" (Okalik 2006).

As well as capacity building, the agenda here is one that calls for the use of existing and new institutions to address a host of matters relating to the Arctic environment, health, social and economic development, human resources and circumpolar affairs. Aside from recognizing that Canada's internal waters claim owes much to Inuit occupancy, the agenda is also one that would see us shift from sovereignty to stewardship in approaching the Arctic.

Inuit do have something to tell the rest of Canada about stewardship. Consider the mix of meanings that attend the Inuit word *aulatsigunnarniq*. Used to translate "sovereignty" into Inuktitut, *aulatsigunnarniq* is a compound word meaning "to run things" and "being able to." The "sovereign" in Inuit culture is not, however, the free-standing, self-realizing individual typical of European civilization. On the contrary — he or she is doubly embedded, in community and in nature. She watches, keeps, takes care of and provides for in the running of things. As such, she has much in common with the steward, though not in the European sense of managing a stand-apart environment.

If the Canadian imagination is heading north — as it must with the greater accessibility brought on by climate change — a new dialogue between southerners and northerners about who we are, what we seek and how we ought to conduct ourselves is indispensable. *Aulatsigunnarniq* may well be of use to us down south as we endeavour to understand the Arctic not so much as an expression of our identity, but as it is. Inuit, too, may have something to learn in deploying their own understandings of the world, as distinct from relying upon European conceptual frameworks. A Canadian *aulatsigunnarniq* might therefore inform our actions as keepers of the Northwest Passage — and by "keepers" I mean those who take care of and protect, not those who have avoided becoming losers. But if there's new thinking to be done as Canada surrenders its fixation on sovereignty, as yet there is no north-south process for policy-related consensual learning. Given that existing forums are suffused in and unable to get free of old-think, new means of Canadian Arctic governance are required.

A commitment to establish a new body already exists, but it has yet to be acted on. It's to be found in the Nunavut Land Claim Agreement of 1993 — specifically, in the call for a marine council to advise and recommend to government agencies on marine matters in the settlement area, which embraces by far the greater part

of the Arctic Archipelago. Enlarged to include Beaufort-Delta representation, the marine council could become the key Canadian forum for priority setting and analytical input into federal government policy on High Arctic issues and for our participation in the Arctic Council. Focusing on marine matters to begin with, it could serve as the domestic Canadian equivalent of the Arctic Council, establishing priorities for Canadian action in the archipelago and providing guidance and backup for Canadian participation in the Arctic Council. Proceeding by consensus and including nongovernmental participation, the marine council ought to be equipped with a secretariat and located in Resolute Bay, given that there is a Canadian Armed Forces training facility there. Obliging southern officials and private persons to travel, if not also relocate, to the archipelago, a fully instituted marine council would support a northward transfer of the Canadian imagination and political purpose.

As to engaging the United States, Canada needs to act on commonalities that have been slighted in the mutual leeriness that's arisen from our dispute over the Northwest Passage. Fully aware of the Arctic region's opening to cooperation as well as conflict, Canada and the United States ought to recognize and base their collaboration on unexploited opportunities for joint stewardship in Arctic North America.

The range of bilateral hands-on cooperation strategies open to our two countries is very large. The majority should be undertaken with the direct participation of Canadian and US Arctic indigenous peoples. The list includes maritime domain awareness and, in due course, maritime command under NORAD; ocean stewardship under the Security and Prosperity Partnership of North America; coast guard cooperation in search and rescue operations, including in the event of a cruise ship fire or grounding; cooperation between other agencies of our two countries if there is a major air disaster; improved capabilities for oil spill cleanup in ice-covered waters; protection of Arctic ice and snow albedo against black soot through the joint imposition of commercial vessel smokestack emission controls; joint marine environmental monitoring and study of marine ecosystems especially vulnerable to climate change; fisheries management and response to invasive species in Arctic waters; reduction of greenhouse gas emissions and increasing reliance on renewable energy sources for small Arctic communities; reconsideration of measures to protect the Porcupine Caribou herd; further harmonization of navigational practices and ice information classification, involving Denmark/Greenland as well; and an invitation to the United States and Denmark/Greenland to comment as Canada proceeds to bring the AWPPA regulations up to date.

All of the foregoing, and more, could readily be addressed by Canada and the United States acting not only as joint stewards, but also as neighbours determined to proceed with practical cooperation on priority issues. Where the larger strategic interests of the two countries are concerned, climate change also raises the prospect of naval and commercial developments, which we should plan for without delay.

Given what I take to be the limits on Canada's ability to mount an Arctic oceanic defence, to say nothing of our interest in peaceful change, we should be opening a discussion with the United States that, from the start, emphasizes regional cooperation to reduce the likelihood of tension, crisis and thereby loss of control over what happens in Canadian Arctic waters. In so doing, we would necessarily address the potential for renewed geopolitical rivalry in the region, and the need to begin positioning ourselves now for advantage later. We Canadians, northerners and southerners alike, should therefore be considering alternative futures for naval interaction and arms control in the circumpolar region, identifying means of steering the region's development toward a preferable future and discussing the implications with the United States. In any such discussion, it will be hard to avoid considering what lies ahead for Arctic resource development and marine transportation.

Actually, when it comes to resources and transportation, what might Canada's ambitions be for its High Arctic and the circumpolar region beyond? Do we want, and will we therefore go to the trouble and expense of inducing, a high volume of intercontinental shipping in the Northwest Passage? Are foreign merchant vessels to be capable of independent navigation, as Canada has long required, or are we now to provide icebreaker services for them? Are we to charge transit fees, and what might this do to the competitiveness of the passage relative to Panama? What might Inuit say about transiting ships that generate no local revenue and yet produce black soot and adverse effects on marine mammals? What might their position be when it comes to destination shipping in the Arctic waters of North America? And beyond matters such as these, what might Canada contribute to the construction of a region-wide regime for safe and efficient marine transportation?

The time has come for Canada not merely to engage in the affairs of a part of the world long frozen in the standoff of the Cold War but to take the lead in resolving its problems. For many years, we southerners played in the Arctic principally with political-military cards, in deterrence mode and without reference to

indigenous peoples. Today, we and the seven other ice-state members of the Arctic Council, along with representatives of the region's indigenous peoples, are beginning to draw on a full deck. We are dealing with a host of issues related to, among other things, geopolitical matters, resource extraction, legal questions, marine transportation, environmental protection, climate and indigenous peoples — all of which are interrelated. Putting surety of possession in its proper place, we in Canada must rise to the occasion. Whether it's a Canadian *aulatsigunnarniq* or another vision of stewardship that is to move us, we need to create an array of new relationships and to work out new means of Arctic governance. This we must do within Canada, with the United States and by contributing to the work of the Arctic Council far more actively than we have in recent years.

Like nostalgia, sovereignty ain't what it used to be. Along with the sea ice, our Arctic sovereignty problem in the Northwest Passage is melting away. Before us lies a beckoning region in which we have much to give and much to gain. With others, we should now move forward into the Arctic not as possessors but as stewards.

Notes

1 A version of this paper was presented to Foreign Affairs and International Trade Canada (DFAIT) on October 18, 2007, in the context of the Deputy Minister Presents series. The opinions and recommendations expressed are the personal views of the author and do not necessarily represent the views, policies or positions of DFAIT or those of the Government of Canada.

References

Allen, Thad. 2007. Presentation to the IFPA-Fletcher National Security Conference, September 26-27, Washington, DC. Accessed February 29, 2008. http://www.ifpafletcherconference.com/oldtranscripts/Allen.pdf

Bi-national Planning Group. 2004. *Interim Report on Canada and United States (CANUS) Enhanced Military Cooperation*, October 13. Patterson AFB, CO: Bi-national Planning Group.

Borgerson, Scott, and Franklyn Griffiths. 2007. "This Is No Time for Chest Thumping." *International Herald Tribune*, September 10.

Brigham, Lawson. 2000. "The Emerging International Polar Navigation Code: Bi-polar Relevance?" In *Protecting the Polar Marine Environment: Law and Policy for Pollution Prevention*, edited by Davor Vidas. Cambridge: Cambridge University Press.

Byers, Michael. 2006a. "Canada Must Seek Deal with the U.S." *Toronto Star*, October 27.

_____. 2006b. "Canadian Government Cannot Afford to Dither on Arctic Sovereignty." *Hill Times*, October 16.

_____. 2007a. "Build an Arctic Gateway for the World." *Globe and Mail*, November 26.

_____. 2007b. "Sovereignty Will Solve the Northwest Passage Dispute." *Globe and Mail*, August 11.

_____. 2007c. "Unfrozen Sea: Sailing the Northwest Passage." *Policy Options* 28 (5): 30-3. Montreal: Institute for Research on Public Policy.

Byers, Michael, and Suzanne Lalonde. 2006. "Who Controls the Northwest Passage?" Discussion paper for the conference "Canada's Arctic Waters in International Law and Diplomacy," June 14, Ottawa. Accessed March 8, 2008. http://www.ligi.ubc.ca/sites/liu/files/Publications/7Jun2006ArcticWatersDiscussionPaper.pdf

Canuel, Hugues. 2007. "Nanisivik Refuelling Facility Will Enable Naval Presence." *Hill Times*, August 20.

Cox, David. 1986. *Trends in Continental Defence: A Canadian Perspective.* Ottawa: Canadian Institute for International Peace and Security.

Defence Research and Development Canada (DRDC). 2008. *Northern Watch: A Window into Canadian Arctic Surveillance*, February. Ottawa: DRDC. Accessed February 24, 2008. http://www.drdc-rddc.gc.ca/newsevents/spotlight/spotlight_e.asp

El Akkad, Omar. 2008. "Large Chunk of Security Measures Aimed at Foreigners." *Globe and Mail*, February 27.

Falkingham, John. 2007. Presentation notes for the National Ice Center and United States Arctic Research Commission conference "Impact of an Ice-Diminishing Arctic on Naval and Maritime Operations," July 10-11, Washington, DC.

Flemming, Brian. 2007. "Northwest Passage: A Voyage Canada and the U.S. Can Take Together." *Globe and Mail*, December 18.

Foot, Richard, and Norma Greenaway. 2007. "Bush Praises Mission." *National Post*, August 22.

Freeman, Alan. 2007. "Troops Doing 'Fabulous Job,' Bush Says." *Globe and Mail*, August 22.

Griffiths, Franklyn. 2003. "The Shipping News: Canada's Arctic Sovereignty Not on Thinning Ice." *International Journal* 53 (2): 257-82.

_____. 2004. "Pathetic Fallacy: That Canada's Arctic Sovereignty Is on Thinning Ice." *Canadian Foreign Policy* 11 (3): 1-16.

_____. 2006. "Our Arctic Sovereignty Is Well in Hand." *Globe and Mail*, November 8.

Harper, Stephen. 2005. Remarks on Canadian Arctic sovereignty. Accessed March 7, 2008. http://www.cs.queensu.ca/home/skill/election/10.txt

Harris, Kathleen. 2007. "Our True North Strong and Free?" *Ottawa Sun*, February 23.

Huebert, Rob. 2002. "Climate Change and Canadian Sovereignty in the Northwest Passage." *Isuma* 2 (4): 86-94.

_____. 2003. "The Shipping News Part II: How Canada's Arctic Sovereignty Is on Thinning Ice." *International Journal* 58 (3): 295-308.

_____. 2004. "The Coming Arctic Maritime Sovereignty Crisis." *WWF Arctic Bulletin* 2.04: 22-4. Accessed June 26, 2008. http://assets.panda.org/downloads/ab0204.pdf

_____. 2007. "Warming Likely to Trigger Cold War." *London Free Press*, February 23.

International Association of Classification Societies (IACS). 2006. *Unified Requirements for Polar Ships*. London: IACS. Accessed February 29, 2008. http://www.iacs.org.uk/document/public/Publications/Unified_Requirements/PDF/UR_I_pdf647.pdf

International Maritime Organization. 2002. *Guidelines for Ships Operating in Arctic Ice-Covered Waters*. Ottawa: Transport Canada. Accessed February 29, 2008. http://www.tc.gc.ca/marinesafety/CES/Arctic/menu.htm

Kraska, James C. 2007. "The Law of the Sea Convention and the Northwest Passage." In *Defence Requirements for Canada's Arctic*, edited by Brian MacDonald. Vimy Paper 2007. Ottawa: Conference of Defence Associations Institute. Accessed June 26, 2008. http://www.cda-cdai.ca/Vimy_Papers/Defence%20Requirements%20for%20Canada's%20Arctic%20online%20ve.pdf

McRae, Donald. 1987. "The Negotiation of Article 234." In *Politics of the Northwest Passage*, edited by Franklyn Griffiths. Kingston and Montreal: McGill-Queen's University Press.

_____. 2007. *Arctic Sovereignty? What Is at Stake?* Behind the Headlines 64, no. 1. Toronto: Canadian Institute of International Affairs.

New Democratic Party of Canada (NDP). 2007. "Jack Layton's Letter to Prime Minister Stephen Harper on Arctic Sovereignty," August 6. Ottawa: NDP. Accessed February 28, 2008. http://www.ndp.ca/page/5580?refer=more

Office of the Prime Minister. 2007. "Backgrounder — Strengthening Canada's Arctic Sovereignty — Constructing Arctic Offshore Patrol Ships," July 9. Ottawa: Office of the Prime Minister. Accessed March 5, 2008. http://pm.gc.ca/eng/media.asp?id=1743

Okalik, Paul. 2006. "Nunavut Needs 'Provincial-Like' Authority to Help Manage Canada's Arctic Sovereignty." *Hill Times*, August 21.

"Our Arctic, Their Desire." 2007. *Winnipeg Free Press*, February 19.

Pharand, Donat. 2006. "Our Sovereignty Is Melting." *Ottawa Citizen*, August 23.

Somanathan, Saran, Peter C. Flynn, and Josef K. Szymanski. 2007. "Feasibility of a Sea Route through the Canadian Arctic." *Maritime Economics and Logistics* 9 (2): 324-34.

Struzik, Ed. 2007. "Who's Guarding Our Back Door?" *Toronto Star*, November 18.

Taylor, Paul. 2007. "A Hawkeyed Addition to Canada's Arctic Arsenal." *Globe and Mail*, December 10.

Treadwell, Mead. 2008. Remarks on US Arctic policy to the United States Arctic Research Commission, January 9, Washington, DC.

United Nations (UN). 1983. *United Nations Convention on the Law of the Sea*. New York: UN. Accessed June 26, 2008. http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf

United States Department of State. 1992. *United States Responses to Excessive National Maritime Claims*, March 9. Limits in the Seas 112. Washington, DC: Office of Ocean Affairs, Bureau of Oceans and International Environmental and Scientific Affairs. Accessed February 25, 2008. http://www.state.gov/documents/organization/58381.pdf

White, Marianne. 2007. "'Frightening' Projection for Arctic Melt." *Gazette* (Montreal), November 16.