



## Arctic Sovereignty

Canadian Arctic policy has long held that the waters of the Canadian Arctic Archipelago are historic, internal waters of Canada. As such, Canada enjoys the same sovereignty over these waters as over any other lake or internal body of water within the country. While national policy has been to support foreign shipping through the channels of the Arctic Archipelago – commonly referred to as the Northwest Passage(s) – Canada reserves the right to regulate unilaterally any such activity.

The extent of Canadian sovereignty is defined by maritime closing lines called straight baselines. Straight baselines – illustrated below – mean that instead of the lines following the coast in and out of bays/inlets, they are drawn straight across the coastline. The Canadian lines were drawn on January 1, 1986 by the government of Brian Mulroney after the voyage of the US Coast Guard icebreaker *Polar Sea* through Canadian Arctic waters. The voyage of *Polar Sea* caused consternation in Canada because it raised the specter of an American challenge of Canadian sovereignty and led Canada to clarify its position in the North.

The establishment of straight baselines represented the first official delineation and definition of the extent of Canada’s Arctic maritime sovereignty. However, this was not a claim to sovereignty *per se*. Since the Arctic waters have long been considered historic Canadian waters, the baselines only define the waters over which Canada has long exercised sovereignty. This sovereignty dates to the late nineteenth century, supported by a history of government activity exercising authority over the region through the issuance of fishing licenses and the application of Canadian laws. It is buttressed as well by the presence and activity of the Inuit over thousands of years.<sup>1</sup> This position is succinctly summed up in the “Statement on Canada’s Arctic Policy” in 2010, which notes that: Canadian “sovereignty is long-standing, well-established and based on historic title, founded in part on the presence of Inuit and other indigenous peoples since time immemorial.”<sup>2</sup>

Canada’s claim that the waters of the Arctic Archipelago are historic internal waters, over which it enjoys complete control, has never been accepted by the United States. This disagreement has persisted since the early 1950s and turned into a political confrontation in 1969, with the voyage of the US tanker *Manhattan* through the Northwest Passage, and again in 1985, with the voyage of the USCGC *Polar Sea* through those same waters.

Historically, the United States has actually shown little interest in maintaining its access specifically to the Arctic waters. Rather, American interest has revolved around global freedom of navigation and the fear that acquiescence to Canada’s claim might weaken the US position elsewhere. David Colson, a US State Department official negotiating with Canada in 1986 put it very simply: “we couldn’t be seen doing something for our good friend and neighbor that we would not be prepared to do elsewhere in the world.”<sup>3</sup> This fear of setting a precedent has dominated the American approach to the Arctic since the 1950s and continues to be represented in that country’s Arctic policy statements.<sup>4</sup>

From a strictly legal perspective the possibility of the Canadian Arctic setting a broader precedent has declined since the signing of the UN Convention on the Law of the Sea (UNCLOS) in 1982. This treaty codified rules for free transit through international straits and created a new legal category for ‘archipelagic’ states, such as Indonesia and the Philippines. In so doing the convention removed the possibility that Canada’s position might be held up by other states to close vital trade routes through their own archipelagos (which was a pressing US concern from the 1950s to 1980s).<sup>5</sup> Today there are few straits around the world that might be considered comparable to the Northwest Passage, and therefore affected by any precedent set there.

However, one area that does closely compare are the straits of the Russian Arctic. This has long been an important American consideration. Accepting Canadian control over the Northwest Passage would indirectly buttress Russia’s claim to the Kara, Sannikov, Laptev and Long Straits. During the Cold War, the USSR claimed many of these areas as internal, prompting an American Department of Defense official to state that, even if Canada’s Arctic sovereignty claims could be substantiated in law, the risk of this precedent strengthening the Soviet claim required the United States to oppose the Canadian position. These strategic concerns remain to this day.

While the Americans recognize the validity of straight baselines in international law, Washington has asserted that these lines must be drawn in conformity with a more rigid interpretation of the relevant international law. When Canada drew straight baselines in 1985 the US government conveyed its belief that any such lines exceeding 24 miles (twice the territorial sea) could not be considered acceptable under international law. Canada’s total baseline length in the Arctic is nearly 3,000 miles, with the largest enclosed section being McClure Strait at roughly 130 miles across. Washington also feels that the Arctic Archipelago fails the geographic test laid down in UNCLOS III, namely that an archipelago must consist of a “fringe of islands along the coast in its immediate vicinity.”<sup>6</sup> Essentially, Canada and the United States base their positions on Arctic sovereignty on the same precedents and conventions in law – however they interpret that law differently. Because those relevant sections in the law of the sea leave much to interpretation, both sides can marshal evidence in support of their positions.

Rather than sovereign Canadian waters, the United States asserts that the Northwest Passage is an international strait – a body of water passing through a state’s territorial sea which is commonly used for international navigation and which connects two parts of the high seas, or the high sea and a state’s territorial sea. Under existing conventional law, a right of innocent passage exists through such straits and, should the Northwest Passage be defined as such, Canada’s ability to regulate shipping, enforce its laws, and institute certain pollution prevention measures would be restricted. Prior to the 1970s, the United States avoided using this term, in large part, because Canada’s three-mile territorial sea left a section of high seas in the centre of the passage. After Canada’s adoption of a 12-mile limit (legislated in 1970) the entrances and exits to the passage were covered by territorial sea and rights of transit came to rest on the Northwest Passage as a strait.

In an increasingly ice-free Arctic, Canada will have to manage more shipping and economic activity in the region. Effective control is therefore important. Exercising this control, while providing Canadian support for maritime activity in the region, not only demonstrates Canadian sovereignty but allows Canada to leverage its assets to encourage compliance. While the Canadian Coast Guard is the lead agency in the North, Canada is preparing naval enforcement capacity with

six Arctic Offshore and Patrol Vessels. It was recently announced that the Coast Guard will receive two somewhat modified versions of these vessels as well, so capability in the North will increase. The Department of National Defence's White Paper, *Strong, Secure, Engaged*, also offers promising commitments in situational awareness, while Defence Research and Development Canada is spending millions of dollars on new monitoring technology for the Arctic waters. Canada is responding to the potential for more maritime activity in the Arctic by both increased political attention and increased capability.

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## References

- <sup>1</sup> Statement by M. Gaillard, Legal Affairs Bureau, Department of Foreign Affairs and International Trade, "Canada's Sovereignty in Changing Arctic Waters," 19 March 2001.
- <sup>2</sup> Canada, "Statement on Canada's Arctic Policy," 2010.
- <sup>3</sup> David Colson quoted in Christopher Kirkey, "Smoothing Troubled Waters: The 1988 Canada-United States Arctic Co-operation Agreement," *International Journal*, Vol. 50, No. 2 (Spring 1995), pp. 409-10.
- <sup>4</sup> See: United States, The White House, "National Strategy for the Arctic Region," 10 May 2013 and Presidential Directive NSPD-66/HSPD-25. "Subject: The Arctic Region," 9 January 2009.
- <sup>5</sup> On the Northwest Passage and precedent setting see: Suzanne Lalonde and Frédéric Lasserre, "The Northwest Passage: A Potentially Weighty Precedent?" *Ocean Development and International Law*, Vol. 43, No. 3 (2013).
- <sup>6</sup> United Nations, Convention on the Law of the Sea, Part II, Section 2, Article 7.