Sovereignty, Security, and Surveillance in the Arctic

In 1994, two joint committees of the House of Commons and Senate held extensive public hearings on Canada's foreign and defence policies. Both committees were charged with advising the federal government on priorities and issues into the next century, and both were doing so in the uncertain political context of the collapse of the Soviet Union and the demise of the Cold War.

There is much to applaud in the committee reports released in autumn 1994. For example, sustainable development is suggested as an "overarchin a foreign policy theme," and environmental security is acknowledged as a policy objective of the first order. Both themes resonate strongly in northern Canada, where pollutants generated through non-sustainable development in the South and in other countries are contaminating the food web and endangering the health of northerners, particularly aboriginal northerners, who eat large quantities of "country food."

Yet, neither parliamentary committee said much about the North. Nor did either suggest how its general recommendations should be implemented in this vast area. This is disappointing and illustrates a lack of foresight, for wide-ranging political and economic changes are under way in the circumpolar Arctic that will likely propel the region into the political spotlight in coming years.

The Arctic is the only portion of the globe bordered by the United States, Russia, and Canada. Past certainties—superpower confrontation over the pole—are giving way to new possibilities, including production of the region's extensive proven and prospective energy and mineral resources. In a few short years the Arctic Ocean may become a route for general cargo vessels linking Japan, east Asia, and the western seaboard of North America with western Europe and the eastern seaboard of North America. Such a development would have profound policy implications for Canada.

In the past, the circumpolar Arctic was dominated by defence needs—a policy arena in which Canada played only a minor role. Today this region is emerging as a venue in which all facets of foreign policy can be exercised, if we have sufficient imagination. Sustainable development and environmental security promise to be the policy touchstones in the circumpolar Arctic well into the next century.

Canada has persevered through the eight-nation Arctic Environmental Protection Strategy (AEPS) to promote circumpolar solutions to shared problems. Since 1989, Canada has sought to establish an Arctic Council to bring together senior ministers of the Arctic nations. The Hon. André Ouellet, Minister of Foreign Affairs, recently appointed an Arctic Ambassador and gave her a mandate to pursue the Arctic Council initiative. In the press conference introducing the ambassador, Mr. Ouellet endorsed the concept of a legally binding arrangement—presumably a treaty—to better equip the Arctic nations to deal with environmental and sustainable development issues.

All this is to the good. We cannot achieve environmental security through unilateral action. Moreover, multilateral approaches that serve our national self-interest sit well with
the Canadian body politic and reflect our sometimes diffident attitude. Certainly Mr. Ouellet’s treaty idea deserves very serious consideration.

But a third objective should guide our foreign and defence policies in the Arctic: Canadian sovereignty over the Northwest Passage. While Canadians believe the Northwest Passage to be “internal waters” subject to our control, this is neither the perception nor the position of the United States, which sees the passage as an international strait. In 1985 the American icebreaker Polar Sea transited the Northwest Passage uninvited and in so doing created a political storm that echoes still. In response, the federal government took both political and legal measures to assert Canada’s sovereignty over the passage, including effecting an agreement with the United States regarding Canadian consent for future transits. But that agreement applies only to icebreakers and does not prejudice the legal position of the United States.

These arrangements did not fully quiet the controversy. Sovereignty on paper is one thing: being there is another. To exercise our sovereignty and jurisdiction over the passage effectively and to ensure that our environmental standards and laws are enforced, we have to control how and by whom it is used. To provide for this, the federal government proposed to construct a polar class eight icebreaker for year-round operations in Arctic waters and to acquire a fleet of nuclear-powered submarines to allow our navy to patrol under the Arctic ice. An Arctic Subsurface Surveillance System (ARCSSS)—acoustic listening devices similar to those used in the north Atlantic—was proposed to monitor underwater use of the passage.

None of these technological components to Canada’s Arctic sovereignty has been implemented. Nuclear submarines and powerful icebreakers were abandoned as too expensive. The Department of National Defence (DND) has, apparently, been negotiating for some time with potential contractors to install an ARCSSS, but it is unclear whether or not Canada is actually committed to installing such a system.

The defence and foreign policy committees of Parliament discussed Canada’s territorial integrity and sovereignty, but little of this discussion was directed to the North, the very area in which our sovereignty is most directly and obviously questioned. Neither committee recommended technologies the federal government should use to affirm Canada’s sovereignty in the Arctic, although both looked forward to further bilateral and multilateral arrangements in the North and beyond to promote sustainable development and environmental security. The proposed acoustic surveillance system was not mentioned in the recently released defence white paper—an oversight of extraordinary proportions, if an oversight it was.

The sovereignty component of our national agenda in the North must not be lost even as we welcome past adversaries as new friends and collectively come to grips with common economic, environmental, and social problems. Donald McRae, a respected law professor at the University of Ottawa, when appearing before the parliamentary committee on national defence, said that “subsurface transits undertaken without Canada’s consent are a serious encroachment on Canada’s sovereignty over Arctic waters.” He noted that Canada’s sovereignty over Arctic waters can be lost through “dereliction,” or neglect of duty. That’s just what could happen if Ottawa fails to act.

Arctic Policy: The Views of Parliamentarians

The end of the Cold War has opened up possibilities for cooperation among the countries of the Arctic region that did not previously exist. For the first time it has become possible to think in circumpolar terms, of East-West collaboration among northern countries and peoples sharing similar experiences and challenges. In Yellowknife we were told of plans to open an office of the Northwest Territories government in Yakutsk (a city in northern Russia over 6000 km from Moscow), concrete evidence of new relationships that are developing in the Arctic.

Important preliminary work has been undertaken in recent years by the Inuit Circumpolar Conference, which has been developing cooperative programs in the areas of agriculture, health and education. More generally, the Committee heard impressive testimony from indigenous peoples organizations confirming their desire to play a significant role in developing, in particular, the northern dimension of Canada’s international policies.

As a result of the enhanced prospects, a prospectus has surfaced to form an Arctic Council that would build on the success of the Inuit Circumpolar Conference and comprise all of the countries facing the Arctic Ocean, namely Canada, Greenland (through Denmark), Iceland, Norway, Sweden, Finland, Russia and the United States. The initial area for its work, and the one which gives urgency to its formation, is the environment. The unusually fragile ecosystem is already being threatened by airborne pollution carried from Europe and Russia, which takes the form of Arctic haze. Potentially more serious is the dumping over the years by the former Soviet government of radioactive waste and even parts of reactors into the rivers that drain into the Arctic and into the ocean directly. Canada should continue to press the United States to join the Council, whose main work initially would be to develop uniform policies and programs for addressing the threats to the environment.

We recommend that the government work urgently with other states to establish the Arctic Council. One of the first priorities of the Council should be to deal with threats to the Arctic environment.

The government has appointed Mary May Simon, the founder of the Inuit Circumpolar Conference, as Circumpolar Ambassador. The Committee approves this appointment. Ambassador Simon should be well placed to reinforce Canadian sovereignty over Arctic waters and to develop cooperative relations among the countries in the region, which should include the promotion of circumpolar trade.

The indigenous peoples of the Canadian North face a special problem as a result of actions by the European Union and the United States: specifically the European Union has banned the import of furs of wild animals because of objections to leg-hold traps and the United States has enacted the Marine Mammals Protection Act with similar effect. In addition the Migratory Birds Convention, to which Canada and the United States are both parties, was also a subject of complaint. Representatives of indigenous peoples told the Committee that these measures had affected them, reducing the income that they could earn from furs as well as limiting their capacity to live off the land. We believe that exploring the possibility of securing relief for aboriginal peoples from these measures could be an early goal of the Circumpolar Ambassador. We also suggest that Canadian Parliamentarians participating in meetings with representatives of the European Parliament and in meetings of the Canada-US Inter-Parliamentary Group should pursue these matters with their colleagues.

The Arctic Subsurface Surveillance System

SOSUS (Sound Surveillance System) consists of fixed undersea acoustic networks of passive hydrophone detector arrays deployed in the Atlantic and Pacific Oceans. Over the years (SOSUS was conceived in the 1950s) it was inevitable that the network gradually expanded as increments were added to enlarge the coverage. Most of these additions were the subject of various classified programmes, of which most details remain secret apart from isolated programme code names. Hydrophones are located at intervals of 5 to 15 miles along a linking cable connected to shore station(s). Similar shore stations are understood to exist beyond the USA (for example, the Aleutian Islands, Canada, Denmark, Iceland, Italy, Japan, South Korea, the Philippines, Spain, Turkey and the UK).

In the SOSUS the raw data are passed to local centres for initial processing and thence to regional centres. From the regional centres the processed data are passed to main evaluation centres which combine the data with information from other sources.

Funding of the SOSUS programme remains fairly constant, but security classification prevents further information. Considerable funding for both development and procurement is likely for at least 10 years. It is understood that the Canadian government is considering the installation of a similar system to SOSUS to detect submarines beneath the ice cap and in Canadian territorial waters.

The ultimate objective for the SOSUS is the complete integration of all undersea surveillance sensor systems into a fully co-ordinated and centrally controlled network, IUSS (Integrated Underwater Surveillance System).

Operational Status: In operational service on a worldwide basis.

Arctic Sovereignty: Loss by Dereliction?

by Donald M. McRae

"Sovereignty" in the Arctic

Arctic sovereignty is a symbol of Canadian identity. The "North" is integral to Canada and to how Canadians perceive themselves. Canadian sovereignty over the lands and waters of the Canadian Arctic Archipelago is of the essence of Canada as a nation. The defence of Arctic sovereignty is therefore crucial to Canada's defence policy.

The term "sovereignty" evokes many images and, while the claim to Arctic sovereignty partakes of many of those images, there is at the core a question of law and a question of fact. Is it possible for a state to claim sovereignty over such an area, and has Canada in fact established such a claim? In the context of this submission, there is a third question: If Canada has established its sovereignty over the lands and waters of the Canadian Arctic Archipelago, is that sovereignty liable to be undermined by future events?

In law, the term "sovereignty" is more readily applied to the authority, or "jurisdiction," of a state over land territory. It signifies the full and complete authority of an independent "sovereign," or in more modern terms "state," over the lands within its territorial limits. The test in law for determining whether a state has obtained that authority, or sovereignty, over land is one of effective occupation and control manifested through continuing acts of authority. As essential is the acquiescence of other states to the claim of sovereignty or their formal recognition of the claimant state's authority.

In respect of the lands of the Canadian Arctic Archipelago, Canada's title and "sovereignty" are not in doubt. No state disputes Canada's claim over this territory, and thus no legal issues arise. Sovereignty over the waters between the islands of the archipelago, by contrast, is more complex, since historically the principle of freedom of the seas has meant that the jurisdiction of a state ends at its coast. The seas have been free and open to all.

The doctrine of the freedom of the seas runs contrary to any claim to Canadian sovereignty over Arctic waters. It would deny Canada the right to control access to those waters, to preserve the unique and fragile Arctic environment, or to protect the way of life of the indigenous inhabitants. For these and other reasons, successive Canadian governments have framed Canada's claim to the waters as a claim to sovereignty—a claim to full and complete authority and jurisdiction over the waters.

An enquiry into Canadian sovereignty over Arctic waters involves the questions of what jurisdiction a state may claim over waters off its coasts and whether Canada has done what is necessary to "perfect" a claim to these waters.

This submission will first outline the law relating to the authority of a state over waters off its coasts and then consider the Canadian claim over the waters of the Canadian Arctic Archipelago. It will then outline the areas in which the Canadian claim might be vulnerable in the future and suggest what should be done to preserve Canadian sovereignty over Arctic waters.

The Jurisdiction of a State over Waters off its Coasts

Traditional legal doctrine granted states authority over areas of sea off their coasts known as the "territorial sea." After years of controversy, it is now generally accepted that the breadth of the territorial sea is 12 nautical miles. The authority of a state within that territorial sea is akin to sovereignty, with one important exception: A state must grant foreign vessels a right of "innocent passage" through the territorial sea. In other words, although some limitations may be placed upon them, foreign vessels have a right of access through the territorial sea of any state.

Since the starting point for the territorial sea (the "baseline") was the low-water line on the coast, full "sovereignty" over waters—that is, sovereignty not subject to any right of passage—was limited to areas of the sea essentially enclosed by the land, bays having a narrow entrance-way into the sea. In such circumstances, states drew a straight
The Legal Basis of Canada’s Claim to Sovereignty over the Waters of the Canadian Arctic Archipelago

Canada’s claim to sovereignty over the waters of the Arctic Archipelago has been expressed in a variety of ways, not always consistently but always with the objective of ensuring Canadian control over the waters and over passage through them. An early expression of this claim is the “sector theory” associated with the famous resolution asserting Canadian sovereignty up to the North Pole introduced into the Senate in 1907 by Senator Poirier. According to the sector theory, polar states are entitled to exercise sovereignty between their mainland territory and the North Pole in an area bounded by the lines of longitude running from their east and west coasts to the Pole.

The rationale for the sector theory has never been clear. To the extent that it is based on contiguity—that is, the claimant state happens to be next to the territory claimed—it does not provide a sound basis for founding a territorial claim. Nor can a solid foundation for the theory be found in the practice of states. Canadian officials have made statements from time to time indicating that Canada’s claim to sovereignty over Arctic islands and waters is based on the sector theory, but such statements have been neither uniform nor consistent. Certainly Canada has never disavowed the sector theory as a basis for its claim to sovereignty over the waters of the Arctic Archipelago, but neither has it made the theory a principal plank of its position.

Similarly, Canada has not claimed that its sovereignty over Arctic waters is based upon an historic title. Such a claim in respect of the waters has not been made consistently; official statements refer to historic title over the land only. Moreover, it would be difficult to argue that other states have recognized or acquiesced in any claim to historic title by Canada to all of the waters of the Canadian Arctic Archipelago.

The principal foundation in law for Canada’s sovereignty claim over the waters of the Arctic Archipelago is that the waters lie behind the proper baselines for the measurement of the territorial seas (and hence are internal waters of Canada) and that the Northwest Passage does not constitute an international strait (and hence there is no right of passage through it for foreign vessels). Canada’s approach to asserting its claim to sovereignty over these waters has been largely a reactive one; that is, rather than seeking the express approval of other states for its position, Canada has reacted to events that might be interpreted as challenges to its sovereignty. In the face of such events, the Canadian government has taken actions designed to reinforce Canada’s authority and to make clear where sovereign authority lies. In other words, it has exercised authority where that has appeared necessary.

In the early 1970s such an approach was known as the “functional” approach to the assertion of Canadian sovereignty. Following the voyage of the American oil tanker Manhattan through the Northwest Passage, the Canadian government adopted the Arctic Waters Pollution Prevention Act (AWPPA), under which Canada asserted the jurisdiction necessary to control future tanker traffic through the Northwest Passage.
Canadian officials followed this assertion of jurisdiction with a strategy to secure its international acceptance. Not prepared to have its authority challenged directly, Canada made a reservation to its acceptance of the jurisdiction of the International Court of Justice to prevent other states from challenging the Arctic Waters legislation before the Court. Ultimately, the Canadian strategy was successful, and Article 234 of the 1982 Law of the Sea Convention contains what is known as the “Arctic exception,” a provision that recognizes the jurisdiction of states in ice-covered areas to take measures affecting shipping—for the purpose of preventing, reducing, and controlling marine pollution—that go far beyond those they could take in other ocean areas off their coasts.  

The Arctic Waters Pollution Prevention Act was not an assertion of full sovereignty; indeed, critics argued that by asserting a jurisdiction less than sovereignty, Canada had diminished its sovereignty claim. But the AWPPA was a manifestation of sovereignty, and its ultimate international acceptance helped to consolidate Canada’s authority over the waters of the Canadian Arctic Archipelago.

In 1985, the voyage of the U.S. icebreaker Polar Sea through the Northwest Passage raised again the question of whether Canada really had sovereignty over the Passage. This clear indication that the United States did not accept Canada’s claim to sovereignty over the waters of the archipelago reinforced some of the concerns about the Manhattan voyage some fifteen years earlier. An important factor in ensuring the international validity of Canada’s claim is acceptance by other states, particularly by the only state having an overt interest in using the Northwest Passage for transit purposes.

The question for Canada at that time was whether everything possible had been done both to assert its claim to sovereignty over Arctic waters and to ensure that it was in a position to demonstrate a de facto capability to exercise the sovereign authority it claimed. Two types of action were taken by the Canadian government. First, “straight baselines” were drawn around the outermost islands of the Arctic Archipelago to indicate that these were internal waters of Canada. Second, measures were announced to reinforce Canada’s presence in the area and to enhance its ability to detect the actions of others: building a Class B icebreaker and increasing surveillance overflights.

At the same time, Canada began exploring with the United States mechanisms to ensure that Canada could consent to the U.S. interest in the transit of the Northwest Passage. The result was the 1988 Arctic Cooperation Agreement, under which the United States pledged that all navigation by U.S. icebreakers in waters claimed by Canada to be internal would “be undertaken with the consent of the Government of Canada.” However, the agreement also provides that nothing in it or any practice under it affects the position of either government in respect of “the Law of the Sea in this or other maritime areas”—in other words, both sides are preserving intact their respective positions on the status of the waters of the Northwest Passage. Thus, while the agreement does not advance Canada’s claim, it does negate the impact of U.S. actions that would otherwise be detrimental to the claim.

Canada’s claim to sovereignty over the waters of the Arctic Archipelago stands or falls on whether the drawing of straight baselines enclosing the waters as internal waters can be justified in law and on whether the waters of the Northwest Passage constitute an international strait. The argument supporting the use of “straight baselines” in the context of the Arctic Archipelago derives from the decision of the International Court of Justice in the Fisheries Case. The geographic relationship between the Canadian mainland and the islands of the archipelago and among the islands themselves; the unique nature of waters frozen and used as land for much of the year; the particular economic dependency of the indigenous peoples of the area on the waters; and the highly irregular and indented nature of the coastline and islands lead to the conclusion that this is almost a classic case for departure from the low-water
line rule. As this writer said in an article some 11 years ago, "The Canadian Arctic is nothing more than the Norwegian skjerengaard writ large."13

Canada’s drawing of straight baselines was protested by some states, although none took the opportunity to take the matter to the International Court of Justice, an option that Canada had expressly invited by removing its 1970 reservation to the Court’s jurisdiction. Thus, the matter has not been resolved definitively. However, after an exhaustive analytical review of the law on this matter, Canada’s leading legal scholar, the waters of the Arctic, Professor Donat Pharand, has concluded that the “straight baselines” promulgated in 1986 are justified in law. Moreover, Professor Pharand has pointed out that most writers who have considered the matter of “straight baselines” for the Arctic have reached a similar conclusion.14 In short, the preponderant view of legal authorities is that the waters of the Canadian Arctic Archipelago are properly enclosed by straight baselines and are the internal waters of Canada.

Nevertheless, could the waters of the Northwest Passage still be regarded as constituting an international strait, through which a right of innocent or “transit” passage exists? The test for determining whether a body of water amounts in law to an international strait consists of two elements: a geographic test and a functional, or “use,” test. There is no doubt that the Northwest Passage meets the geographic test; it is a body of water joining two oceans or two areas of high seas.15 The application of the functional test, however, suggests that these waters do not constitute an international strait.

The functional, or “use,” test requires that the waters be “used for international navigation.” The key question is whether a certain volume of shipping is necessary. Clearly, the fact that a body of water could be used for navigation does not constitute it an international strait. And, it is generally accepted that the use must be more than token or isolated; there must be evidence of actual use and some kind of widespread interest in continuing use. In the Corfu Channel Case,16 where the test was laid down, there were something in the order of 3,000 transits of the North Corfu Channel over a 21-month period. In 1984, Professor Pharand pointed out that in an 80-year period there had been only 11 foreign transits of the Northwest Passage, all “with Canada’s consent or acquiescence, either expressed or implied.”17 On that basis he was prepared to conclude that, “The Northwest Passage is not an international strait, because it has never been used for international navigation.”18

Since that time, the voyage of the Polar Sea is the only known transit of the Passage undertaken without Canadian consent. This single isolated incident could hardly alter the validity of Professor Pharand’s conclusion, particularly in light of the United States having made it clear at the time that it did not regard the voyage as establishing a precedent that would challenge the Canadian position on the waters of the Northwest Passage. Moreover, the subsequent Arctic Cooperation Agreement suggests that there will be no more Polar Sea voyages—that is, no more American icebreakers transiting the Northwest Passage without Canadian consent. So, even if the Polar Sea was a precedent, it is no more than an isolated, single instance. Thus, the conclusion remains: The Northwest Passage is not a strait that is “used for international navigation” and hence cannot constitute in law an international strait.

The Future Vulnerability of Canadian Sovereignty over Arctic Waters

Can Canada rest satisfied that its claim to sovereignty over the waters of the Arctic Archipelago is secure and not subject to future challenge? The answer is no, for three reasons. First, the arguments to support the Canadian position have not been tested in international litigation—and may never be—but until such a test occurs some uncertainty will remain. Second, it is not possible to say that the Canadian position on sovereignty over Arctic waters has received universal acceptance by other states. In particular, the position of the United States continues to be troubling for Canada. Third, the discussion of transit has always been about surface transit. What implications does subsurface transit have for Canadian sovereignty over Arctic waters?

There is no Canadian interest in having the question of Arctic sovereignty litigated before an international tribunal. No state is currently challenging Canada on this matter, and thus there is no question to be placed before such a tribunal. Moreover, the longer states refrain from active challenge to Canada’s position, the stronger that position grows. In this respect, the words of Ivan Head written some 30 years ago remain valid today: “the passage of time ensures the benefit of the Canadian claim.”19

Equally, it does not appear that any action by the Canadian government designed to change the position of the United States would be fruitful. Clearly, the United States has neither endorsed the view that the Northwest Passage is part of the internal waters of Canada nor accepted that the Passage does not constitute an international strait. At the same time, the United States does not appear interested in actively challenging the Canadian position. Moreover, the 1988 Arctic Cooperation Agreement assures that future voyages by U.S. icebreakers will be conducted only with Canada’s consent. In effect, the major threat to Canadian sovereignty posed by the voyage of the Polar Sea has now been eliminated.20 However, it is incumbent on Canada to ensure that any future voyages, whether by vessels of the United States or of other states, take place only with Canadian consent.

The principal issue that remains, therefore, is that of subsurface transit of the Northwest Passage. That such transits occur appears to be widely accepted, although their extent is a matter of speculation.21 The position taken by the Government of Canada has been that any submarine transit of Arctic water is undertaken pursuant to bilateral and multilateral defence arrangements and hence is, at least implicitly, with Canadian consent.22 However, this not only leaves unanswered the question of transit by states with whom no such defence arrangements exist, but also assumes that the United States would not in the future invoke these transits to the detriment of the Canadian claim. Furthermore, and perhaps most importantly, Canada’s argument that these voyages have been consented to assumes that Canada knows of each transit.

What would be the consequences be for Canada of submarine transit of the Northwest Passage without Canada’s knowledge or consent? Real doubt would be cast on the credibility of Canada’s claim that it is exercising sovereign functions over Arctic waters. Incursions into the undersea territory of a state without that state’s consent are regarded as serious encroachments on
sovereignty, and the Arctic sovereignty claim treats the waters of the Northwest Passage as if they were land territory. At the very least, therefore, subsurface transits undertaken without Canada’s consent are a serious encroachment on Canada’s sovereignty over Arctic waters.

Would such transits weaken Canada’s sovereignty claim? To a certain extent, the matter is complicated by the fact that these submarines would undoubtedly be military vessels. The ability of warships to partake of passage rights through the territorial sea and international straits has been a matter of controversy in international law.23 For its part, the United States is a strong advocate of warships having such rights, and the tenor of the 1982 Convention on the Law of the Sea is to treat warships as having access to international straits and to recognize that submarines may transit such straits submerged.24 As a result, any submarine transit of the Northwest Passage without Canadian consent could have an important impact on Canada’s claim to sovereignty over those waters.

Such an impact would be twofold. First, if Canada does not know of these transits, or knows about them but does nothing, then the Canadian government is not exercising the functions of a state in that area.25 Those functions imply having authority and control over the area, both of which would be lacking if such transits continued unimpeded. Second, a pattern of submarine transit of the Northwest Passage over a period of time could give credence to the argument that the Northwest Passage was being “used for international navigation,” and hence was subject to the regime of international straits. Again, this would defeat the Canadian sovereignty claim.

**What Must be Done to Preserve Canada’s Sovereignty Claim?**

The question arises, what must Canada do to ensure that its rights over Arctic waters remain secure? In respect of surface transit, Canada has acted to ensure that in practical terms its rights will not be challenged by the United States, although the question of enforcement has not been addressed clearly. Has Canada done the same in respect of subsurface transit? As a starting point, does Canada have an adequate surveillance capacity to ensure that it has knowledge of any submarine transit of the Northwest Passage?

In 1971, the *Defence White Paper* indicated that Canada had “only very limited capability to detect submarine activity in the Arctic.”26 By 1983 the situation did not appear to have improved significantly; in that year the Sub-Committee on National Defence suggested that a bottom-based sonar system might be considered.27 Finally, the provision of a fixed sensor system in Arctic sea routes was announced in the 1987 *Defence White Paper* along with plans for the acquisition of nuclear-powered submarines.28 Such a system still remains to be established,29 and plans for the submarines have been abandoned.

Are there any limits to what Canada must do to preserve its sovereignty claim over Arctic waters? In other words, does Canada have to take all measures possible to assert and continue to assert its sovereignty over these waters? Does this imply that it must be able to detect all transits of the Northwest Passage by whatever means they occur and have the capacity to enforce its laws against all who contravene them? In 1985 the government announced that it would construct a Polar Class 8 icebreaker to “provide more extensive support services, to strengthen regulatory structures, and to reinforce the necessary means of control.”30 Such a vessel was designed to signify that Canada had the means to exercise control over the waters of the Northwest Passage. In 1990 the project was cancelled. This raises questions about how Canada plans to exercise the sovereignty functions for which the icebreaker was intended.

Failure by a state to exercise its sovereign authority can lead to an abandonment of its sovereignty claim. Failure to object or to take action in the case of prejudicial activities of another state can constitute acquiescence to the activities of that state. In the context of sovereignty over land territory, it has been said that, “absence of a reasonable level of state activity can lead to a loss of title.”31 This suggests that the standard is one of reasonableness. Thus, the question becomes, what is a reasonable level of activity in the context of the waters of the Canadian Arctic Archipelago?

Certainly, failure to take any steps at all to become aware of subsurface transit of the Northwest Passage would cast doubts on the seriousness of Canada’s sovereignty claim and could, in the long term, contribute to a perception that it had been abandoned. By contrast, having the full capacity to become aware of any transit of the Northwest Passage and to prevent unauthorized entry into waters claimed by Canada to be internal would be a clear and unequivocal manifestation of sovereign authority. Obviously, this capability is unrealistic in the Arctic environment, in the light of the technological, economic, and political considerations that have to be taken

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**Commitments to Canadian Arctic Sovereignty**

**1970, Mitchell Sharp in the House (17 April)**

“I have made clear, as has the Prime Minister, that we will not back down one inch from our basic position on sovereignty.”

**1985, Jean Chrétien in the House (10 September)**

“If we had a Prime Minister (Mr. Mulroney) who did not always go to the President (of the United States) on his knees, we would have been in a position to challenge the President and say that we would not tolerate such action” (infringement of Canada’s sovereignty in the Polar Sea incident).

**1986, Lloyd Axworthy in the House (8 December)**

“Has this country the capacity to detect when its waters are being used, or do we simply rely on information from other countries? We expect answers from the government, not the cheap rhetoric of the Minister” (asking Joe Clark why U.S. submarines were able to traverse Arctic waters without Canadian knowledge or permission).

**1999, Herb Gray in the House (6 March)**

“Again the government made ringing commitments about not putting a price on the defence of our Arctic sovereignty. What happened? It did put a price on it. Suddenly, Arctic sovereignty was too expensive” (criticizing the Conservative record on Arctic sovereignty).
into account. Nevertheless, some capacity for enforcement of Canada’s sovereignty claim is essential.

The starting point for any enforcement function is knowledge. Thus, adequate provisions for surveillance become an essential element in maintaining Canada’s sovereignty claim over Arctic waters. Knowledge of any subsurface transit gives Canada a variety of options, diplomatic and otherwise, for dealing with potential challenges to its sovereignty. The objective is not necessarily to prevent such transits—indeed, past Canadian governments have indicated that they wish to ensure that properly controlled traffic does have access through the Northwest Passage. The objective is to ensure that such transits occur with Canadian consent and in accordance with regulations established by Canada—precisely what a sovereign state would expect of anyone entering its territory.

Conclusions

Canada’s claim to sovereignty over the waters of the Canadian Arctic Archipelago is well-founded in law. Its rests on the fact that the unique geography and environment of the Arctic Archipelago justifies the drawing of straight baselines and enclosing the waters as the internal waters of Canada. The relatively small number of transits of the Northwest Passage over history prevents it from being regarded as a strait “used for international navigation” to which the legal regime of international straits would apply.

Canada’s sovereignty over Arctic waters cannot, however, be taken for granted. Sovereignty can be lost; it can be abandoned. And it can be abandoned by dereliction. Failure by Canada to exercise its sovereign authority over the waters will diminish the credibility of its claim of sovereignty, and continued and frequent transit of the Northwest Passage, whether by surface or subsurface vessels, could lead to the Passage becoming a strait “used for international navigation.” In such circumstances, Canada could no longer claim sovereignty over the waters.

Canada has taken measures to assure that surface transits are with its consent. In this regard the Arctic Cooperation Agreement diminishes the threat of unilateral transit by U.S. government icebreakers. And Canada has the capacity through oversight and surface vessels to monitor foreign surface passage or overflight. Subsurface passage, by contrast, remains a matter over which Canada is not in a position to assert its sovereign authority.

A precondition for exercising enforcement jurisdiction—taking measures against unauthorized subsurface traffic—is knowledge of occurrence. To exercise the sovereign authority it claims and to preserve its claim to sovereignty over Arctic waters, Canada must at least be in a position to monitor subsurface use of the waters of the Arctic Archipelago.

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Endnotes

1. The term “waters of the Canadian Arctic Archipelago” refers to the water between the islands of the archipelago and not to the waters in the open seas of the Beaufort Sea and the Arctic Ocean to the west or to the waters of Davis Strait and Baffin Bay to the east.

2. This right of “innocent passage” also includes a right of overflight.

3. According to Article 7 of the 1958 Convention on the Territorial Sea and Contiguous Zone, such a baseline could be no more than 12 miles in length. Article 10 of the 1982 Convention on the Law of the Sea contains the same provision.


5. Article 37 of the 1982 Convention on the Law of the Sea applies the international straits regime also to straits between the high seas and the exclusive economic zone of a state.

6. The concept of “transit” passage embodied in Part III, Section 2 of the 1982 Law of the Sea Convention prevents the coastal state from impeding “continuous and expeditions” transit by foreign vessels.

7. For a detailed discussion of the sector theory, see Donal Phurand, Canada’s Arctic Waters in International Law, 3-67 (1988).

8. Ibid., 80-130.


10. The Law of the Sea Convention will enter into force later this year, although it is unlikely that either Canada or the United States will be parties to it at that time. This does raise some questions for Canada about the effect on the consistency of provisions of Article 234.

11. The United States did attempt to downplay the significance of the voyage for the sovereignty issue. See, e.g., “Beyond the Arctic Sublime” in Franklyn Griffiths, ed., Politics of the Northwest Passage, 248 (1987). Nevertheless, the voyage was undertaken without seeking the consent of Canadian authorities.


15. Law of the Sea Convention, 1982, Articles 37 and 45.


18. Ibid., 120.


20. It should be noted that some have questioned the effectiveness of the Council for Maritime Cooperation Agreement as a means for protecting Canadian sovereignty. In particular, it has been argued that the reference to the consent of Canada does not guarantee that consent will be requested before a voyage takes place. See, e.g., “Aspects of Sovereignty and Security in the Arctic,” in North American Policy: National Strategies and the New Law of the Sea, ed. Donald McRae and Gordon Munro, 172-173 (1980).

21. Ibid., page 712 and 177. See also Critchley, “Defence and Policing in Arctic Canada” in Politics of the Northwest Passage, p. 209. See above, note 11.


24. The reference in Article 39 (1c) of the 1982 Law of the Sea Convention to transit by vessels in their “normal nodes” is understood to mean submersible transit by submarines.

25. As Parver has written, “the occurrence of activities that Canada has little ability to detect, let alone prevent, cannot but derogate from its claim to full sovereignty.” See above, note 20, p. 178.


29. The development of an Arctic subsurface surveillance system was announced by the Minister of National Defence on 3 January 1991, but the matter has yet to be proceeded with.

30. See above, note 12.


32. As Professor Phurand has said: “Surely (Canada) has a right to know what goes on in its own waters; indeed, it has a duty to find out.” See above, note 7, p. 243.
A Northern Foreign Policy for Canada

by Whit Fraser and John Harker


This is a condensed version of the report of the chairmen from the proceedings of a conference on “A Northern Foreign Policy for Canada,” convened by The Canadian Polar Commission and the Canadian Centre for Global Security, in association with the Inuit Circumpolar Conference and the Canadian Arctic Resources Committee. The conference was held in Ottawa, April 29-30, 1994.

Why a Northern Foreign Policy for Canada?

The Arctic is emerging as a region in its own right, with its own unique problems and needs. Historically, responsibility for Canada's Arctic foreign relations has been divided among various bureaus within the Ministry of Foreign Affairs. In most recent years, the Western European Bureau has been assigned the task of coordinating circumpolar matters. During the Cold War, when there was relatively little interaction among the countries of the region other than on defence, policy-makers in southern Canada generally regarded the Arctic as a subset of other Canadian foreign policy concerns. Today, that is no longer adequate. A northern foreign policy would help ensure that cooperative approaches are developed to encompass the problems and aspirations of northern Canadians.

The political map in the North is changing rapidly, both abroad and at home. Internationally, the chief political impediment to the expansion of circumpolar relations, the Cold War, has been removed. With the collapse of the Soviet Union, the way to closer relations with Canada's largest Arctic neighbour, Russia, have been opened up. The evolution of a united Europe, possibly involving the Nordic neutrals and Norway, comprises a further major change in the regional context.

Domestically, the process of political devolution is accelerating, and territorial governments are increasingly involved in international activities. The establishment of Nunavut will take this trend further still. These political changes present Canada with both opportunities and problems which are best addressed in a focused, regional context.

The economic scene in the circumpolar North is also changing. Economic development and trade for the benefit of northerners have become a high priority for all northern peoples and their governments. Canada's territorial governments have been particularly active in their efforts to stimulate sustainable economic development in the North. Canada needs a northern foreign policy to give direction to its economic activities in the circumpolar North, to take advantage of the opportunities that are opening up there, and to ensure that economic development in the region benefits northerners.
As Canada endeavours to re-discover its national identity, its northern identity can act as an important unifying concept. Part of this entails building a new relationship between Canada’s northern Aboriginal peoples and the rest of Canada. The development of a northern foreign policy will be viewed by northern Canadians, and especially Aboriginal Canadians, as a genuine response to their interests. It will also strengthen national unity by elevating the profile of Canada’s North among all Canadians. The potential of a northern foreign policy reflecting Canada’s northern identity, both symbolically and in reality, to serve the interests of Canadian national unity, has not been utilized nearly as effectively as it should.

A new international community is taking shape in the Arctic, reflected in the development of new institutions and processes such as the Arctic Council proposed by Canada, the Arctic Environmental Protection Strategy, the International Arctic Science Committee, the Northern Forum, the Inuit Circumpolar Conference, and the Aboriginal Leaders’ Summit. To make effective use of these new processes and organizations, Canada must have a distinctive northern foreign policy that is an integral part of its overall international policies.

Finally, to continue in the way we have for the past 20 or 30 years is probably costing a great deal of money, in both lost resources and lost time. The uncoordinated, piecemeal approach Canada has tended to take to Arctic policy and operations has resulted in wasteful inefficiencies, an inability to join with our neighbours in many valuable cooperative enterprises, lack of information-sharing, and so on. Whether in scientific research or environmental protection, coordination of effort among the countries of the region will generate substantial savings. Further, a northern foreign policy will afford Canada opportunities to work more effectively with its circumpolar neighbours to develop cooperative approaches to economic development and employment in northern communities. In turn, this will make it easier to tackle in a cooperative, cost-saving way the enormous social problems found in so many northern communities, not only in Canada but in other Arctic countries as well.

The Agenda for a Northern Foreign Policy
Mindful of these principles, the conference examined six specific areas deemed central to a Canadian foreign policy agenda for the circumpolar Arctic.

Economic Development and Trade
The first area considered was economic development and trade. The starting point for this discussion was a recognition that economic conditions in the North are grim. The region is suffering some of the highest unemployment rates in the country, with extremely serious social consequences. This places a high premium on seizing opportunities, such as those offered by circumpolar economic cooperation, to alleviate this grave situation.

Canada’s northern Aboriginal leaders know that the majority of their people cannot be hunters and trappers like their ancestors have been. With a young, growing population, they know they must reduce their dependency on Canadian taxpayers and, together with other northern Canadians, diversify their economy. The key to diversification, they recognize, is the development of the North’s resources, both renewable and non-renewable, following principles of sustainability, and effective marketing of these resources both within Canada and internationally.

Too often, however, policy initiatives, or specific economic undertakings have failed to benefit the North. One example is tourism. Today, too many tourists, from the United States, Europe or the Far East, take excursions to northern Canada, but because of how these trips are organized, leave little more than refuse behind, and certainly no significant economic benefits are felt by northerners.

A northern foreign policy must aim at expanding joint management of resources by the countries of the Arctic, and stimulate circumpolar trade in ways that directly benefit northern Canadians. As John Amagoalik, Chief Commissioner of the Nunavut Implementation Commission, suggested, “The resource management regime now being instituted in Nunavut could perhaps be used as a model in other parts of the Arctic. Joint management by Arctic nations of such species as the narwhal, beluga and polar bear should be implemented by international treaties.” That tourism has often failed to benefit northerners was seen as a challenge. It was recognized that tourism could, by the end of the century, be the largest industry in the North. Further, it was suggested that consideration be given to establishing free trade zones with Canada’s Arctic neighbours. In all of this, the emphasis is to ensure that economic development and circumpolar trade policies are designed to benefit northern Canadians directly.

A number of specific problem areas were identified on which concerted action by the Arctic countries is required, and in which joint efforts would pay substantial dividends. First, in regard to the fur industry, it was felt that circumpolar cooperation could be effective in countering the campaigns of animal rights movements, which have had such a devastating impact on the northern Canadian economy. Second, it was argued that the Government of Canada should seek changes in a number of international agreements, notably the Migratory Birds Convention Act and the Marine Mammal Protection Act, which were designed and necessary to protect valuable birds...
and sea mammals from destruction or extinction by unregulated commercial exploitation but which in their broad modern application have placed restrictions on aboriginal hunting and trade with no corresponding conservation benefit. Third, it was noted that northern fisheries, increasingly important to the North’s economy, are coming under threat as fishing fleets move northward in response to the depletion of southern fishing grounds.

The Environment

A second critical focus for a northern foreign policy is the environment. It is, perhaps, trite to point out that the Arctic environment is sensitive and vulnerable to disturbance, perhaps uniquely so. The scale of the threat, however, has in recent years become increasingly alarming, and led to public demands for action. In a study of one Arctic community, mentioned by Dr. Andrew Gilman of Health Canada, scientists found concentrations of PCBs in the breast milk of some Inuit women which were seven times higher than those of women living in southern Ontario. Up to 6 tonnes of PCBs entered the Canadian Arctic each year, compared to the 1.7 tonnes entering the Great Lakes.

The other principal focus concerns the nuclear legacy left in the Arctic by the former Soviet empire. It is generally believed that most of the major radioactive waste and obsolete missile dump sites will discharge radioactivity into the surrounding ground waters, streams or seas in the next few years. Even more worrisome is the fact that a large proportion of the reported six hundred nuclear power stations in Russia are on rivers draining into the Arctic Ocean, and most of these reactors are old, producing a large volume of “hot” wastes.

Clearly, the volume of nuclear materials already dumped on land and offshore in the Eurasian sector of the Arctic is large, and a great deal more of these materials has yet to be disposed of. While the direct threat to Canada from the nuclear legacy in the eastern Europe and Russia is currently viewed as negligible, the circumpolar effects are potentially serious and require further study.

With its broad experience in nuclear matters, and with considerable expertise in monitoring and managing radioactive wastes in northern latitudes, Canada has a great deal to bring to the international effort to deal with this legacy.

The vast majority of this pollution of the Canadian North originates outside of Canada, and arrives via air currents and ocean currents, mainly from the former Soviet Union and from South Asia. While there may be taps in Canada, that could still be turned another quarter-turn to reduce domestic sources of Arctic pollution, the pressing challenge is to conclude a Long-Range Transport Protocol for persistent substances that have health impacts. It was felt that support for the U.N.’s efforts in this area must be a high priority of Canadian foreign policy. The future of the Arctic in terms of contaminants depends, to a great extent, on the success of that Protocol.

The key vehicle through which Arctic environmental questions are addressed is the Arctic Environmental Protection Strategy, which Canada had a large hand in establishing. It must continue to be a central element of Canada’s northern foreign policy, including in relation to circumpolar cooperation on the Russian nuclear problem and other environmental problems in the circumpolar area. Conference participants welcomed DIAND Minister Ron Irwin’s indication that Canada will host the next ministerial conference of the AEPS in 1995.

Science & Technology

A third focus of Canada’s northern foreign policy must be science and technology, for it is through research that the circumpolar Arctic will come to be understood, and solutions to its problems developed. Indeed, it is also the case that Arctic research is critical to understanding threats to global survival, such as ozone depletion and global warming.

Canada, however, along with other countries, has been cutting back funding for Arctic research to the point where many important programs are ceasing to be viable. This points to the importance of regional cooperation and cost-sharing.

A priority of Canada’s Arctic foreign policy should be to assume a larger role in supporting Arctic science, including traditional indigenous knowledge, within Canada as well as through cooperative research programs undertaken with Canada’s circumpolar neighbors. This can pay dividends in environmental protection, in economic development and in many other areas.

In this connection, conference participants welcomed DIAND Minister Irwin’s statement that “cooperation in building our base of northern science and knowledge” is viewed by the government as an area where “an effective foreign policy can best support our domestic goals.”

Providing for the Defence of Canada and Canadian Sovereignty

Sovereignty is a vital attribute of a nation-state. For Canada, sovereignty means ensuring that, within our area of jurisdiction, Canadian law is respected and enforced. The Government is determined to see that this is so.


Maritime Issues

A fourth item on Canada’s Arctic foreign policy agenda concerns maritime issues. Over the coming years, however, there is a very real prospect that there will be an expansion of Arctic shipping in the areas of northern supply, tourism, resource extraction, exploration, and scientific support.

In the past, Canada’s approach to Arctic maritime issues has tended to be reactive, focused on responding to crises as they occurred. Priority has tended to be given not to long-term goals, but to policies that would deal with the problem immediately, that would appear to be forceful, that would appear to be economic, and that could be quickly implemented. The responses to the passages of both the Manhattan and the Polar Sea followed this pattern.
It was argued that now is the time for the Arctic countries, including Canada, to develop policies able to deal with an expansion of Arctic maritime shipping. Recognizing the value of unilateral regulations such as Canada's Arctic Waters Pollution Prevention Act, it was felt that cooperative international action is also necessary, and that, among other possibilities, consideration should be given to designating the Arctic a special area under the Marpole Convention.

On another aspect of the transportation issue, a number of northern participants in the conference pointed out that, up to now, transportation routes in the North have been mostly north-south, and argued that the transportation system in the Arctic should be realigned to be more east-west.

It was suggested that Iqaluit be classified as a full-fledged international port, to be used as a means to facilitate travel around the circumpolar region and use the evolution in communications to advantage in overcoming the vast distances that must be covered in the Arctic region.

In November 1994, the Law of the Sea Convention will come into force. Canada has played a major role over the past three decades in bringing this Convention to fruition, and will, indeed, be responsible for the provisions connected with ice-covered waters. Conference participants believe strongly that this Convention must comprise a key component of Canada's policy toward the circumpolar Arctic.

In all of this, strong support was expressed for public involvement in the discussion of both the operational and technological aspects of these transportation issues, particularly Inuit involvement since Nunavut is likely to cover most of the Arctic shipping routes.

Finally, sovereignty was also a significant theme addressed at the conference. In this connection, Foreign Affairs Minister André Ouellet made the following comments:

The Canadian government is committed to maintaining our sovereignty in the Arctic. Of course, Canada has no intention of closing its Arctic waters, including the Northwest Passage, to other countries. However, we insist that any voyage be made with Canadian consent and be subject to Canadian law, particularly the Arctic Waters Pollution Prevention Act.

**Security**

In his presentation to the conference, defence analyst David Cox pointed out that both of the last two Canadian defence white papers, in 1971 and 1987, were published with covers featuring the Arctic, yet with content largely ignoring it. While emphasizing Canada's defence commitments to the NATO Alliance, they paid little attention to Arctic security. Why this discontinuity? he asked. What should Canada be doing to maintain Canadian security in the North in this post-Cold War period?

Reflecting the contentious defence issues often engendered, two principal schools of thought emerged. One school of thought, broadly reflecting current official thinking, holds that little heed need be paid to Arctic security, that other problems such as Yugoslavia demand greater attention, and that NATO remains the appropriate institution for preserving security in the North.

The other school of thought regards the current climate of amity as an opportunity to put confidence- and security-building measures in place in the Arctic, as a hedge against any future decline in political relations, or the growth of instability in Russia. This perspective also noted that military activity in the Arctic is anything but over. In particular, the Arctic Ocean continues to be the site of underwater cut-and-mouse games between the nuclear submarines of the U.S. and Russian navies. A variety of confidence- and security-building measures for the Arctic were suggested.

These contending approaches merit greater attention than the conference was able to give them. While defence analysts argue over these alternatives, however, it must be said that the discussion made clear that northern Canadians do not favour, and do not support, the view that status quo is good enough to ensure Arctic security. As John Amagoalik put it, "Some Arctic countries may not want to discuss security issues and military activity, but Arctic residents will insist that they be discussed. A circumpolar treaty for peace and security should be negotiated."

Both the Government of the Northwest Territories and the Inuit Circumpolar Conference, for instance, have prepared reports calling on Canada to adopt a circumpolar perspective to Arctic security, and seek ways to engender cooperation among the countries of the region.

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**Providing Peacetime Surveillance and Control**

The provision of surveillance and control is an integral part of the Forces' activities in Canada. Even at a time when there is no direct military threat to Canada, the Forces must maintain and exercise the basic navy, army, and air force skills to ensure effective control over our territory, airspace, and maritime approaches. In and of itself, maintaining the capability to field a presence anywhere where Canada maintains sovereign jurisdiction sends a clear signal that Canadians will not have their sovereignty compromised.


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At this conference, for instance, MLA Michael Ballantyne suggested that "a shift from war readiness to peace objectives could see an increased role for the military in search and rescue, logistic support for cooperative scientific initiatives, and response capabilities in the event of environmental disasters." So far, however, these calls for greater Arctic security cooperation have not been heard by Ottawa.

In this, and on such issues as low-level flying in Labrador, conference participants expressed a conviction that greater attention must be paid to the interests and perspectives of northern Canadians who, possessing little political clout, have nevertheless had to bear the impact of decisions taken for reasons of Canadian foreign and defence policy.

Finally, there was considerable support expressed for Canada to explore the possible role of the Conference on Security and Cooperation in Europe (CSCE) in regard to Arctic security.
Culture

Lastly, support for cultural cooperation should be an element of Canada's northern foreign policy, just as it is part of Canadian policy toward La Francophonie and the Commonwealth. Over just a couple of generations, many of Canada's northern Aboriginal peoples have come from living on the land, following subsistence lifestyles and speaking only their indigenous languages, to having land claims agreements, living in communities, being bombarded by southern mass media and culture, and having an education system based on southern curriculum.

In their struggle to cope with this rapid change while preserving their language and culture, Canada's Inuit have understood to re-establish strong traditional ties and cooperation with Inuit living in other Arctic countries, particularly in Alaska, Greenland and Russia. Similarly, other northern indigenous groups in Canada have worked to cooperate internationally in support of their rights through such organizations as Indigenous Survival International. The survival of Aboriginal languages and cultures must be a concern for all Arctic nations, and that to this end, Canada should encourage and support cultural cooperation as part of its Arctic foreign policy.

Participants were encouraged by the words of Foreign Affairs Minister André Ouellet: "Canada's Arctic foreign policy must be premised not only on protecting the fragile environment, but also on preserving the traditional way of life of Aboriginal peoples. To do this, we must ensure that Aboriginal peoples have a direct role in decision making on the full range of Arctic issues."

Circumpolar cooperation in culture has additional dimensions, however, which should also be considered part of a northern foreign policy. Among the ideas that should be considered are a circumpolar education system, possibly including a university for Inuit from around the circumpolar North; and an expanded circumpolar media network to facilitate the sharing of cultural information among Arctic peoples.

Multilateral Cooperation

In addition to considering the objectives of a northern foreign policy for Canada, the conference participants also focused on the means through which Canada's interests in the Arctic can most effectively be pursued. At the centre of Canada's strategy, it was concluded, must be the establishment of an international Arctic Council. This Canadian initiative received an overwhelming endorsement from conference participants.

A brief background note on the Arctic Council is warranted here. In 1991 the Canadian government announced its intention to seek the support of its Arctic neighbours to establish a new body, called the Arctic Council, to help focus multilateral cooperation in the circumpolar North. Over the past three years, talks have proceeded slowly, achieving the support in principle of six of the other seven Arctic states, but held up by American reluctance to support the creation of a new multilateral body concerned with the North. Washington's position has recently shifted somewhat, however, and Canada is now endeavouring to secure its support for the Council.

While the conference saw vigorous debate over the various approaches that might be taken to the Council, in particular whether or not it should be amalgamated with the Arctic Environmental Protection Strategy, there was a clear consensus that Canada should persist in its efforts to bring the initiative to fruition as soon as possible.

In this connection, conference participants were encouraged by Foreign Affairs Minister Ouellet's statement that the government intends to "push forward the creation of an Arctic Council by the end of this year."

The message was clear that Canada should stick to its guns in support of the two principles it has sought from the beginning to have enshrined in the Council: first, that the Council must have an open agenda, that is, be mandated to tackle any and all issues agreed by its members; and second, that direct and effective participation by the Arctic's Aboriginal peoples must be assured.

Conference participants were encouraged to learn that the Minister of Foreign Affairs raised the Council with U.S. Secretary of State Warren Christopher earlier this year. It was
felt that the success of this initiative may well depend on making clear to the Americans at the most senior political level the importance Canada places on the establishment of an Arctic Council.

Canada’s Bilateral Arctic Relationships

The conference also considered how bilateral relations with Canada’s circumpolar neighbours, including the United States, Russia, and the Nordic countries, should be approached in the context of a northern foreign policy. The principal, and very widely supported, conclusion of this discussion was that Canada’s northern foreign policy should emphasize relations with Russia, according to this relationship a much higher priority in the overall scheme of Canadian foreign policy than it currently enjoys. The reason for this, apart from the fact that Russia is the largest Arctic state, is that it has a very great capacity to harm Canada’s interests in the North, and a very great untapped potential to benefit those interests.

As was explained by government officials, Canada currently has a sizable programme of technical and humanitarian assistance for Russia. That programme, however, disperses Canada’s assistance across virtually the entire former Soviet Union. It was felt that Canada should seriously consider refocusing its programme to concentrate on the Russian North. Instead of being a small fish in a big pond, Canada would become a big fish in a smaller pond. In this way, the political, and eventually the commercial, benefit to Canada would be maximized.

It was noted that Canadian-Russian Arctic relations have been passing through a period of stagnation in recent years, in part caused by political and economic turmoil in Russia, in part by tight budgets in Canada. Participants expressed the hope that under the Canada-Russia Joint Commission on Arctic Cooperation, this hiatus will soon end, and that the visits to Russia planned for later this year by both Minister Ouellet and Minister Irwin will help move this process forward.

American policy toward the Arctic has, of course, long centered on geopolitical considerations relating to the Cold War standoff with the Soviet Union. As a result, Canadian-American Arctic relations have been heavily focused on military issues, particularly through NORAD. Beyond this there have been various transboundary issues between Yukon and Alaska, and issues relating to multilateral cooperation on science and the environment.

With the ending of the Cold War, the United States began to revisit its Arctic policies, and, indeed, just recently completed a formal interagency review. That review indicates a greater American openness to Canada’s positions on a variety of issues, particularly in the environmental field.

While this is positive from a Canadian perspective, it also points to the need for Canada to be prepared, more prepared than it has been, to press its case effectively on such issues as the protection of the 1002 lands on the Alaska-Yukon boundary, modification of the Migratory Birds Convention, the Pacific fishery, and so on. In regard to the Arctic Council initiative, which the United States has resisted, Whit Fraser suggested that Canada continue to develop and utilize established Alaskan connections in order to stimulate American support. This could be pursued through the Inuit Circumpolar Conference, through the Northern Forum, through the Government of the Northwest Territories and Yukon, and through the Council for Yukon Indians and the Yukon Conservation Society.

Among all of the bilateral Canadian-American issues that were considered, it was the resource and land use issues in the Porcupine caribou region that received the greatest attention. Support was expressed for twinning the dedicated areas on either side of the U.S.-Canadian border there to ensure proper environment management, possibly under a UNESCO world heritage designation. Conference participants were encouraged by the following statement by Foreign Minister Ouellet: “I believe we must move quickly with the Americans to formalize arrangements for preserving this herd and the surrounding wilderness.”

Above all, it was argued that time is of the essence in terms of forwarding Canadian interests and views to the United States government. With its inter-agency review of Arctic policy now complete, it seems likely that the government and Congress will move quite quickly on a number of fronts, and Canada should make its views known clearly and forcibly as soon as possible.

In Canadian-Nordic relations there is a fundamentally solid set of relations upon which Canada can continue to build. A caution was issued, however, that the positive relations between Canada and the Nordic countries should not be taken for granted. Circumstances do change and these connections will have to be monitored. Three of the Nordic countries are poised to join the European Union at the end of this year, moving them into a more Eurocentric orientation. Unless Canada makes special efforts, this could weaken its traditional relations with them. More positively, if Canada can maintain its close relations with the Nordics, their membership in the European Union could help Canada increase the concern in the European community for Arctic pollution.

It was noted that the Nordic Council has established a Standing Committee of Parliamentarians for the Arctic Region, and that in 1993 Canada signed this declaration. As of yet, however, Canada has not nominated a representative to this Committee, nor set up the necessary support structure in the Canadian Parliament. Conference participants felt that these steps should be taken as soon as possible, so that Canada can begin participating in this important new body.

Finally, it was suggested that, in the context of a northern foreign policy, Canada’s relations with Greenland should be expanded, based on geographic proximity, but also on the linkages with the Inuit people of Greenland. Cooperation between Canada and Greenland grew considerably in the 1970s to the mid-80s during the period of oil exploration in the Baffin Bay area, but more recently has waned somewhat. A renewal of that activity seems to be on the horizon again, but it is now accompanied by issues relating to the fishery and the tourist industry, and a basic thing like the need for better postal service between Iqaluit and Nuuk.

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