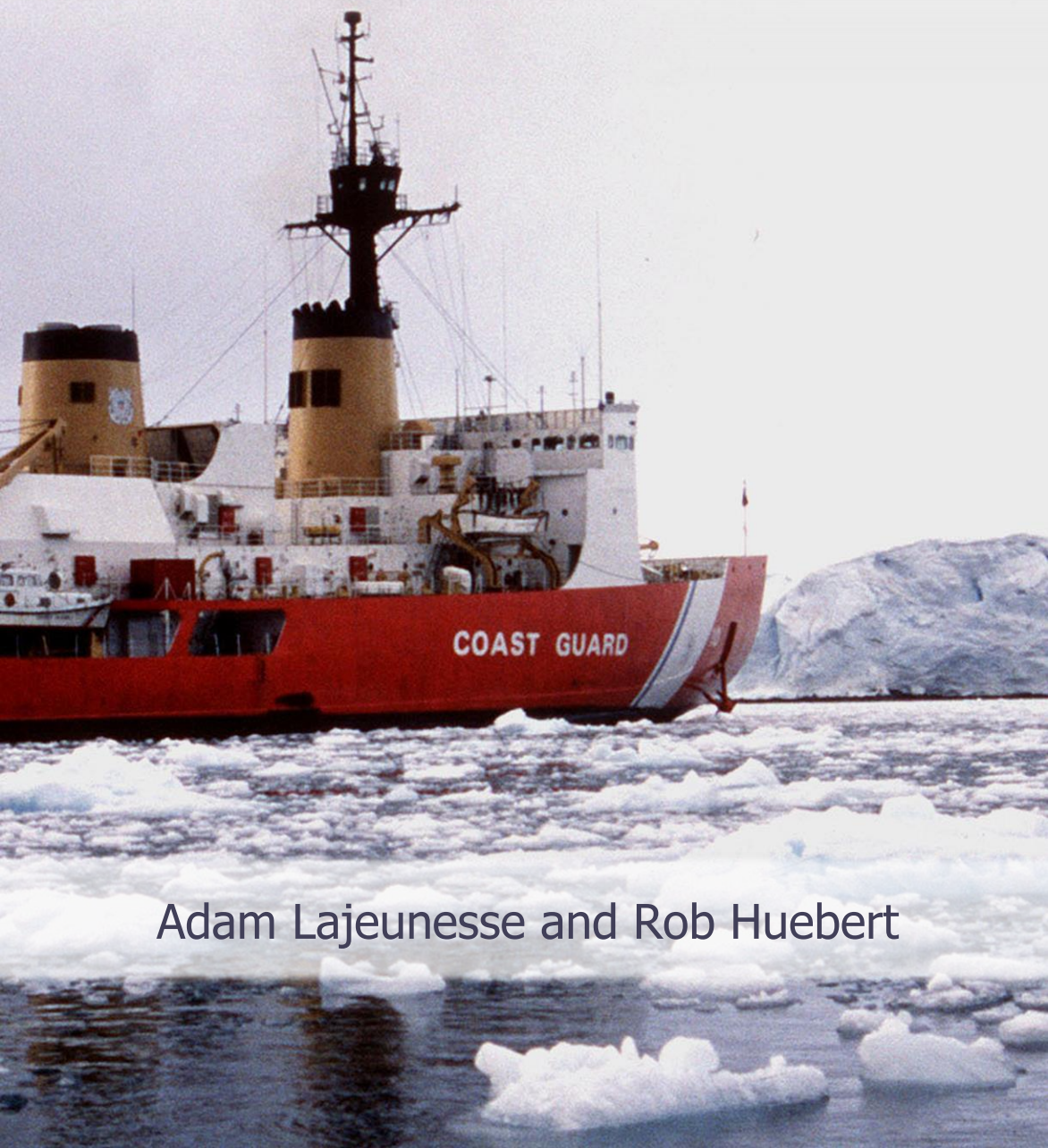


Documents on Canadian Arctic Sovereignty and Security

# **FROM POLAR SEA TO STRAIGHT BASELINES**

Canadian Arctic Policy in the Mulroney Era



Adam Lajeunesse and Rob Huebert

# **Documents on Canadian Arctic Sovereignty and Security (DCASS)**

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## **From Polar Sea to Straight Baselines: Arctic Policy in the Mulroney Era**

**Adam Lajeunesse and Rob Huebert**

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**From the *Polar Sea* to  
Straight Baselines:  
Arctic Policy in the Mulroney Era**

Adam Lajeunesse, Ph.D.

and

Rob Huebert, Ph.D.





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## Preface

This volume is a documentary history of Canadian Arctic sovereignty in the 1980s, with a focus on the dramatic policy shift which took place under the Conservative government of Brian Mulroney after the voyage of the US Coast Guard icebreaker *Polar Sea* in 1985. The collection combines some of the most relevant documents available to the public – assembled from the collections of Arctic historian Adam Lajeunesse and political scientist Rob Huebert, secured through personal contacts or the *Access to Information Act*.

While this material should provide researchers with an accurate picture of Canadian policy making during this period, it must be noted that much of the documentation on this subject remains classified and, as such, this compendium is an incomplete collection. Even those documents released to the public contain some redactions, and notations in this volume have been made to indicate these classified sections – the vast majority of which occur under section 15(1) of the *Access to Information Act*.

Section 15 is a discretionary injury exemption, which allows the government of Canada to except information from being disclosed if it believes that information may prove injurious to:

1. the conduct of international affairs;
2. the defence of Canada or any state allied or associated with Canada;  
or
3. the detection, prevention or suppression of subversive or hostile activities

This section reads as follows:

**15 (1)** The head of a government institution may refuse to disclose any record requested under this Act that contains information the disclosure of which could reasonably be expected to be injurious to the conduct of international affairs, the defence of Canada or any state allied or associated with Canada or the detection, prevention or suppression of subversive or hostile activities, including, without restricting the generality of the foregoing, any such information

- a) relating to military tactics or strategy, or relating to military exercises or operations undertaken in preparation for hostilities or in connection with the detection, prevention or suppression of subversive or hostile activities;
- b) relating to the quantity, characteristics, capabilities or deployment of weapons or other defence equipment or of anything being

- designed, developed, produced or considered for use as weapons or other defence equipment;
- c) relating to the characteristics, capabilities, performance, potential, deployment, functions or role of any defence establishment, of any military force, unit or personnel or of any organization or person responsible for the detection, prevention or suppression of subversive or hostile activities;
  - d) obtained or prepared for the purpose of intelligence relating to
    - (i) the defence of Canada or any state allied or associated with Canada, or
    - (ii) the detection, prevention or suppression of subversive or hostile activities;
  - e) obtained or prepared for the purpose of intelligence respecting foreign states, international organizations of states or citizens of foreign states used by the Government of Canada in the process of deliberation and consultation or in the conduct of international affairs;
  - f) on the positions adopted or to be adopted by the Government of Canada, governments of foreign states or international organizations of states for the purpose of present or future international negotiations;
  - g) that constitutes diplomatic correspondence exchanged with foreign states or international organizations of states or official correspondence exchanged with Canadian diplomatic missions or consular posts abroad

Given these limitations, this volume remains a work in progress and will be expanded as new material is released.

Certain files within this collection have also been reproduced with no archival finding information attached, since these documents were provided by government officials directly to the authors. Readers should note as well that spelling and other errors found in the originals have been retained in the transcriptions.



## Introduction

### **From the *Polar Sea* to Straight Baselines: Arctic Policy in the Mulroney Era**

*Adam Lajeunesse and Rob Huebert*

In September 1985, Secretary of State for External Affairs Joe Clark rose in the House of Commons to announce a radical shift in Canadian Arctic policy. For the first time, a Canadian Government would present a comprehensive plan to define and defend Arctic sovereignty. Furthermore, this plan was open and transparent, presented in the House of Commons for all Canadians to see. The catalyst was the voyage of the American Coast Guard vessel USCGC *Polar Sea*, which had sailed through the Northwest Passage that summer without requesting Canadian permission. The voyage was the result of operational requirements and was not part of the American Freedom of Navigation Program, which intentionally challenges sovereignty claims deemed excessive by the United States. Nevertheless, when the time came for the vessel to sail to resupply the military base in Thule Greenland, and then return to Alaskan waters, the Americans refused to ask Canadian consent for the transit.

The ensuing public and political response resulted in the government of Brian Mulroney crafting an approach that still provides the foundation for Canadian Arctic policy today. While the policy response to the voyage was completed in a compressed time frame, (i.e. within the month of August 1985) it brought together the key officials within the Canadian Government who had already dedicated substantial time and effort to thinking about their departments' positions and capabilities in the Arctic. The ideas and plans which emerged from this effort were, therefore, better thought-out and more comprehensive than the rapid turn-around might have suggested. Indeed, much of what was proposed and enacted in 1985 remains central to Canadian Arctic policy today. The documents within this collection provide the best available evidence to those seeking to understand how these efforts were developed and policies carried out.

The first theme to emerge from the government's Arctic push was the need to develop an interdepartmental approach to addressing the legal and political question of sovereignty. This framework is now commonly known as "whole-of-government" and these documents demonstrate a clear recognition that Canada's Arctic policy needed more than the attention and expertise of just one or two key departments. While the Department of External Affairs retained its position as lead agency, supported by the Department of National Defence, other departments and agencies, such as the Department of Justice and the

Canadian Coast Guard, gained an increasingly central role in the development – and execution – of policy.

The second theme to come out of this material is the centrality of the Canadian-American relationship, which remained extremely close despite the two states' conflicting legal and political positions. It is clear from these documents that American and Canadian officials recognized these differences yet worked cooperatively, and in good faith, towards a mutually beneficial solution that prioritized harmonious relations and practical accommodation, rather than a more narrowly focused concern with national positions and priorities.<sup>1</sup>

A third theme is the recognition within the Canadian government of its need for new and better assets, capable of exercising control and demonstrating sovereignty in the region. Equally clear was how difficult acquiring such assets really was. As the Canadian governments of Stephen Harper and Justin Trudeau have discovered in the 21<sup>st</sup> century, it is incredibly expensive to build heavy icebreakers and these documents tell the story of such challenges as faced by the Mulroney government in the 1980s.

These documents also provide important insight into the way Canadian policy was – and still is – shaped by our understanding of international law. The application of this understanding by Canadian officials was central to the crafting of national policy that established straight baselines and withdrew the reservation regarding foreign challenges of Canada's pollution prevention legislation to the International Court of Justice.

There are, however, two themes largely absent from these documents, themes which are central to Canada's understanding of Arctic sovereignty in the 21<sup>st</sup> century. First is the omission of indigenous people from most policy consideration. While Inuit occupancy and use of the northern lands, waters, and ice "since time immemorial" is used as a justification for the defence of Canadian Arctic sovereignty, these documents show little sign of actual involvement of the Inuit, or of the impact of this policy on northern land claim agreements.<sup>2</sup> While the impact of foreign activity on the Inuit is considered, that too is normally done in passing (**Documents 1, 2, 6, and 7**). The need for close consultation with Northerners on Arctic policy development had clearly not yet developed to the degree that it would in subsequent years.

The second missing theme is the complete absence of any concern regarding climate change. It is interesting to note the total lack of any discussion of the

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<sup>1</sup> The best analysis of this bargaining method is found in: Christopher Kirkey, "Smoothing Troubled Waters: The 1988 Canada-United States Arctic Co-operation Agreement," *International Journal* 50:2 (Spring, 1995).

<sup>2</sup> This is due in part to the fact that the very first land claims agreement had only been completed in 1984, with the conclusion of the Western Inuvialuit Lands Claim Agreement.

phenomenon which is now one the central themes of all Canadian Arctic policy. This was not so much of an omission as it was a reflection of the state of scientific knowledge at the time. As such, there is no mention of climate change in any of these documents and no appreciation that the Northwest Passage was in the process of a radical change.

Despite these omissions, these documents set the stage for much of Canada's modern Arctic sovereignty and security policy. They demonstrate the collective thinking surrounding the challenges presented by the Arctic and the growing importance of the sovereignty question. While much has changed since these documents were created, they still demonstrate the continuity that has defined Canadian policy from the mid-1980s into at least the 2010s.

## **Straight Baselines and the Arctic**

The most significant element of the new government policy was the declaration of straight baselines, drawn around the Arctic Archipelago effective January 1, 1986. This action effectively enclosed the waters within as internal and under the full sovereignty of Canada (**Annex to Document 1**). These lines settled once and for all the decades' old question concerning the precise limits and nature of Canadian maritime sovereignty and, in a stroke, formalizing Canada's ownership over some two million square kilometres of Arctic sea and ice.<sup>3</sup>

While this action represented the first legislation of Canadian Arctic maritime sovereignty,<sup>4</sup> the drawing of these lines was not a declaration of sovereignty *per se*. Rather, they were drawn to clarify the limits of the maritime domain which Canada had long considered to be its own by right of historic title (**Documents 7 and 17**).<sup>5</sup> This use of historic title, as the foundation of the country's claim, dates back to the early 1970s.<sup>6</sup> It rested upon the assumption that Canadian sovereignty was confirmed by an uninterrupted history of control over these waters by the Canadian state since the early 20<sup>th</sup> century; and, even more importantly, by Inuit use since time immemorial. A thorough

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<sup>3</sup> Ocean space calculation from: Claire Eamer, "The Canadian Arctic Remains Dangerously Unmapped," *Arctic Deeply* (May 9, 2016).

<sup>4</sup> With the exception of the enclosing of Hudson Bay in 1906 and Hudson Strait in 1937. On Hudson Bay see: Canada, *Statutes*, 6 Edw. VII (1906), Chapter 13, Section 4. On Hudson Strait see: *Statutes of Canada*, 4 Edward VII, Cap. 13, 1904.

<sup>5</sup> For an excellent account of historic title see: Donat Pharand, "The Arctic Waters and the Northwest Passage: A Final Revisit," *Ocean Development and International Law* 38:1 (2007), 5-13

<sup>6</sup> There were instances of historic title being considered prior to the 1970s, however it first entered government policy making in a systematic and consistent manner in the early 1970s. For a history of the evolution of this claim see: Adam Lajeunesse, *Lock, Stock, and Icebergs: The Evolution of Canada's Arctic Maritime Sovereignty* (Vancouver: University of British Columbia Press, 2016), 181.

description of this claim and its legal foundation can be found in a detailed memorandum on the subject created for Cabinet in 1982 (**Document 1**).

While an outright declaration of sovereignty, like that made by the government in 1985, had been considered by previous administrations, none had ever taken that final step. The preferred approach to the question of Arctic maritime sovereignty, since the 1950s at least, was to avoid the question to the best of the government's ability. And, instead of specifying the limitations and basis of that sovereignty, successive administrations pursued a "functional approach," whereby Canada asserted its authority and exercised as much control as possible over the Arctic waters – effectively exercising the responsibilities of sovereignty without ever confirming ownership by legislation, or announcing it definitively on the world stage (**Document 1**).

In the years leading up to 1985, this caution was rooted in the real and understandable assumption that any such declaration of sovereignty would be met by a forceful rejection by American, and possibly other, governments. While it had always gone to great lengths to avoid a political confrontation on the subject, Washington had long refused to recognize Canadian sovereignty over the Arctic waters (**Document 1**).<sup>7</sup> Rather, it considered Canadian jurisdiction to be nothing more than the internationally recognized twelve-mile territorial sea surrounding Canadian lands. In addition, official US policy (from at least 1969 onwards) was that an international strait ran through the Northwest Passage, in which it and other states enjoyed the right of innocent passage. An American decision to stand by this position and reject any explicit Canadian claim would have led to serious political ramifications and the inevitable weakening of the very claim that Canada was putting forward. No government before the Mulroney Conservatives was willing to take the final leap. Indeed, the drawing of these baselines had been recommended to Cabinet on a number of occasions, once during Lester Pearson's tenure in 1960<sup>8</sup> and twice during Pierre Trudeau's time in office: in 1976 and again in 1982 (**Document 1**). However, in each instance the government deferred, citing an inauspicious diplomatic climate or the need to avoid prejudicing negotiations on other maritime issues then ongoing.

In 1985, the government of Brian Mulroney inherited this history of functional sovereignty assertion and political caution. The last major interdepartmental examination of the question had been undertaken in 1982 under the Liberal government of Pierre Trudeau and, though that extensive memorandum (**Document 1**) recommended an explicit declaration of sovereignty, that recommendation was kept from Cabinet by Canadian Ambassador to the UN Law of the Sea Conference John Alan Beesley and the

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<sup>7</sup> On this position see, for example: James Kraska, "The Law of the Sea Convention and the Northwest Passage," In *Defence Requirements for Canada's Arctic*, Brian MacDonald ed. (Conference of Defence Associations Institute, 2007).

<sup>8</sup> Lajeunesse, *Lock, Stock, and Icebergs*, 128-32; 157-60; 247-52.

country's ambassador to the United States, Allan Gotlieb (**Document 1**). Both men, representing decades of tradition surrounding External Affairs Arctic policy, worried about American rejection and recommended continued caution and patience.

## The Polar Sea Crisis

In September 1984, the Liberals were out of office, replaced by Brian Mulroney's Conservatives. The Arctic had played no real role in the election, which was fought largely on the Liberal government's record and the question of patronage appointments. It was certainly not at the forefront of the new government's agenda going into 1985. By that spring, however, the caution which had long dominated External Affairs' approach to the Arctic was stripped away by circumstances and the Mulroney government found itself plunged into a surprising and unwelcome situation that changed the traditional *status quo*.

In August 1985, the US Coast Guard icebreaker *Polar Sea* transited the Northwest Passage, from Greenland, west to Alaska. The voyage was routine and uneventful, and undertaken after weeks of consultation between Canadian and American officials. The academic work undertaken to date on this subject indicates that that both sides recognized the existence of a disagreement concerning the precise status of the waters and therefore chose to reach a sensible arrangement, which stipulated that the voyage would be undertaken without prejudice to either side's legal position (**Documents 5, 7, 8, 13, and 14**).<sup>9</sup>

This narrative comes from hindsight however, and much of the discussion about the *Polar Sea* at the time focused on the voyage as anything but an operational transit. Opposition attacks made the pro-American Prime Minister out to be Washington's patsy. That July, Liberal opposition member Jean Chrétien said that allowing the *Polar Sea* through Canadian waters, without its having first sought Canadian permission, was "part of the cronyism between Brian Mulroney and the Americans." Chrétien went on to say of Mulroney: "[h]e goes on his knees all the time," an unusual statement clearly implying some form of genuflection.<sup>10</sup> The NDP offered its own criticism. In one of the House's more preposterous statements, MP Jim Fulton likened the voyage to "psychological rape."<sup>11</sup>

Academics added pressure of their own. University of Toronto political scientist Franklin Griffiths published an opinion piece in the *Globe and Mail*

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<sup>9</sup> See for instance: Rob Huebert, *Steel, Ice and Decision-Making: The Voyage of the Polar Sea and its Aftermath: The Making of Canadian Northern Foreign Policy*, PhD dissertation, Dalhousie University, 1993, 234 and Lajeunesse, *Lock, Stock, and Icebergs*, 256.

<sup>10</sup> Elaine Carey, "Trip by U.S. Ship called Threat to Arctic Sovereignty," *Toronto Star* (July 23, 1985), p. A15.

<sup>11</sup> Canada, House of Commons, *Debates*, September 10, 1985, p. 6467.



which served as a rallying cry.<sup>12</sup> In it, Griffiths warned that the voyage endangered Canadian sovereignty and represented only the first of many purposeful assaults to come. Canadian nationalists, meanwhile, made their voices hear in op-eds, letters, and – more dramatically – in a flyby of the *Polar Sea* itself. Chartering a small Twin Otter aircraft out of Inuvik, the self-styled nationalistic Council of Canadians, buzzed the US icebreaker, dropping Canadian flags and a message protesting her transit (**Document 13**).

In what might have been the most important reproach – if not necessarily the most widely heard – the Inuit Tapirisat, representing Canadian Inuit, issued a press release accusing the government of failing to defend Inuit waters. The organization warned that the *Polar Sea* was “nothing less than a challenge to Canadian sovereignty and jurisdiction in the Arctic” and raised “serious implications for Inuit in their efforts to safeguard their interest and to develop an effective management regime for the protection of the delicate Arctic environment.” It went on to warn that “if Canada fails to defend its sovereignty in arctic waters, Inuit will be left with no choice but to conclude that the issue of protecting their livelihood and the arctic environment is one that must also be resolved outside of Canada at the international level” (**Document 3**). The significance of the Inuit losing faith in Canada’s ability to defend its sovereignty must have been worrying, given that it was the Inuit history of land use over the previous millennia that did so much to buttress Canada’s historic claims.

Statements such as those from the Inuit, critical academics, and the opposition soon defined the *Polar Sea* story as one of an American challenge that demanded a reaction. Initially caught off guard, the government asked the Americans to make an official request to transit. Fearing that this would represent official recognition of Canadian sovereignty, and therefore damage America’s broader position on the freedom of the seas, the State Department declined. Even without such a request, Canada still announced that it had “authorized” the transit (**Document 4**). Public statements highlighting the cooperative nature of the voyage (**Document 6**) seemed to make little impact and a more direct and forceful approach was deemed necessary.

### **The Mulroney Government’s Arctic Policy**

Clark’s speech to the House of Commons was that forceful response (**Document 7**). In addition to drawing straight baselines, the Minister promised a Polar Class 8 icebreaker for the Coast Guard, increase aerial patrols, new naval deployments, an extension of Canadian jurisdiction in the offshore areas, and a withdrawal of Canada’s reservation to the International Court’s jurisdiction on matters relating to maritime pollution – a reservation put in

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<sup>12</sup> Franklyn Griffiths, “Arctic Authority at Stake,” *Globe and Mail* (June 13, 1985).

place by the Trudeau government in response to a similar voyage by an American vessel in 1969 (**Document 16**).<sup>13</sup>

This package of policy initiatives was crafted to appear forceful and decisive. The declaration of straight baselines was certainly ground-breaking; however, in Huebert's assessment, many of the other promises were attached largely for the sake of optics.<sup>14</sup> The military activity, the Polar 8, and the *Offshore Application Act* were all initiatives begun under previous governments. The Conservative promise to expedite and reinvigorate them represented a real commitment, however, this commitment began to fade in the years following their announcement.

The *Canadian Offshore Application Act* was intended to extend Canadian legal jurisdiction beyond the 12-mile territorial limit. In the Arctic, it was to provide the basis for Canadian control over oil rigs and other installations on the continental shelf. This was considered necessary since Canada enjoyed subsurface resource rights in these areas, though its criminal jurisdiction was questionable. An RCMP review in 1984, for instance, determined that police files contained little information on the enforcement of Canada's laws beyond its territorial sea in the region.<sup>15</sup>

This legislation originated in the late 1970s but developed slowly, largely because there had only ever been four cases where it might have applied.<sup>16</sup> By the autumn of 1985 its relation to sovereignty was questionable. Given that the basis for Canadian sovereignty in the Northwest Passage was historic title, any added jurisdiction within the limits of the newly applied straight baselines would have been redundant. Jurisdiction beyond the 12-mile limit in areas such as the Beaufort Sea might have been desirable for law enforcement purposes, but this was a separate issue entirely. It was not a coincidence that the legislation was revived for Clark's speech and therefore seems to have been included for the sake of optics more than anything else.

Following the *Polar Sea's* voyage, the bill was introduced twice in Parliament, each time with a different emphasis on its relationship to sovereignty. When the first edition of the bill (C-104) was introduced on April 11, 1986, the news release on the subject stated that the "bill was designed to reinforce Canadian sovereignty by creating a more comprehensive legal regime for Canadian offshore areas."<sup>17</sup> This bill did not advance beyond the first reading and did not make it to committee, later dying on the order papers.<sup>18</sup>

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<sup>13</sup> For more on this reservation and its significance see: Lajeunesse, *Lock, Stock, and Icebergs*, 165-66.

<sup>14</sup> Huebert, *Steel, Ice and Decision-Making*, 564.

<sup>15</sup> *Ibid*, 360.

<sup>16</sup> *Ibid*, 347.

<sup>17</sup> *Ibid*, 62n, 349.

<sup>18</sup> The bill was finally passed in 1990 by the Liberal government of Jean Chrétien

When the second edition (C-39) was introduced in 1990, the news releases surrounding it made no mention of any sovereignty ramifications.<sup>19</sup>

Like the *Offshore Application Act*, the planned increase in northern military activity was a continuation of government policy dating back to 1969. That was the year that the Trudeau government initiated semi-regular aerial surveillance and annual or semi-annual naval voyages to the region. That decision was made in response to the voyage of the US supertanker *Manhattan*, which transited the Northwest Passage under roughly similar circumstances to those surrounding the voyage of the *Polar Sea*.<sup>20</sup> While the *Polar Sea* itself was overflowed 25 times,<sup>21</sup> these flights normally spotted nothing in the vast and infrequently used Arctic seaways. The actual increase in flights was also minimal. As demonstrated in Figure 1, the number of missions varied from year to year, but never increased by any significant margin.

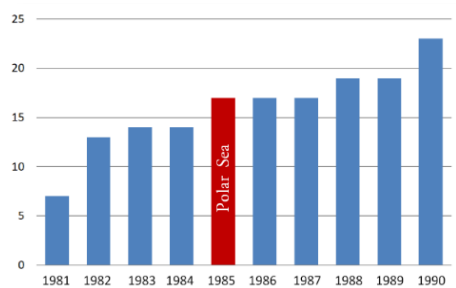


Figure 1: Northern Flights (source: letter from the Minister of Defence, September 1992, reproduced in Huebert, *Steel, Ice and Decision Making*, 366)

The situation surrounding Canadian naval activity was slightly different. After a surge in maritime deployments in the early 1970s (also a response to the *Manhattan* crisis) the number of missions levelled off by the mid-1970s at roughly one Northern Deployment (or NORPLOY) per year.<sup>22</sup> The last of these operations, under the Trudeau government, took place in 1979, before a hiatus that lasted until the *Polar Sea* pushed the government into restarting the operations. As part of this new push, NORPLOY '86 saw the diving support vessel HMCS *Cormorant* return to the eastern Arctic to undertake scientific work for the Defence Research Establishment.<sup>23</sup> The following year HMCS *Okanagan*, an *Oberon* class submarine, patrolled Hudson Strait for two weeks. The following two years saw the *Cormorant* return to the eastern Arctic each summer to continue its research work and to show the flag. This naval presence

<sup>19</sup> Huebert, *Steel, Ice and Decision-Making*, 349

<sup>20</sup> For the best history of the *Manhattan* voyage see: Ross Cohen, *Breaking Ice for Arctic Oil* (Fairbanks: University of Alaska Press, 2012).

<sup>21</sup> Huebert, *Steel, Ice and Decision-Making*, 363

<sup>22</sup> For a detailed list of ships deployed to the Arctic see: Michael Whitby, "Deployments by Ships of the Royal Canadian Navy into Canadian Northern Waters, 1949-2014," *Canadian Naval Review* – BroadSides Forum (November, 2014)

<sup>23</sup> For a history of the NORPLOY missions see: Adam Lajeunesse, "Canada's Northern Deployments, 1970-89: Symbolism and Substance," In *Canadian Armed Forces Arctic Operations, 1941-2015*, Adam Lajeunesse and P. Whitney Lackenbauer eds. (Fredericton: Gregg Centre, 2017).

was relatively minimal – consisting as it did of a single ship deploying for a few weeks a year to patrol an area the size of Europe. It also had no impact on American policy, or on the strength of Canada’s legal claim. Still, these missions had an important symbolic meaning for a country that claimed these waters on the basis of historic use and occupancy, and was anxious to be seen exercising more control over the region.<sup>24</sup>

Perhaps more significant than the increased naval activity was the government’s promise to construct a Polar Class 8 icebreaker. The intent behind this initiative was two-fold. First it was to demonstrate, in a very visible way, Canadian presence and capacity in the Arctic waters. Second, it was to provide Canada with the capability to respond to future incursions into its Arctic waters on a year-round basis.<sup>25</sup> While there was no thought of using an icebreaker to actually stop the *Polar Sea*, or any future American vessel, it was concerning that that *Polar Sea* was more powerful than any equivalent Canadian ship, and might therefore be able to enter areas of the Arctic Archipelago beyond Canadian reach. Legal scholar Ted McDorman, for instance, writes that much of the adverse publicity surrounding the voyage of the *Polar Sea* centered on that lack of Canadian icebreaking capacity. “The most embarrassing aspect of the *Polar Sea* incident for Canada,” says McDorman, “was not the perceived violation of sovereignty but the lack of Arctic class icebreakers that would establish a year round Canadian presence in Arctic waters.”<sup>26</sup>

In the House of Commons Joe Clark lamented that situation, complaining that, when the government looked for “tangible ways to exercise our sovereignty, we found that our cupboard was nearly bare” (**Document 7**). This was a not so subtle comment on the previous Liberal government, which had left the cupboard in that condition. The Polar 8 was seen as the solution to this conundrum. It was designed to be the largest non-nuclear icebreaker in the world, weighing 37,000 tons (compared to the 10,863 ton *Polar Sea*) and capable of breaking ice eight feet thick – hence the name ‘Polar 8’.

Like the *Offshore Application Act*, the Polar 8 was not a new idea. Planning dated back to the mid-1970s when Cabinet approved the construction of a Polar Class 7 vessel.<sup>27</sup> That ship was meant to facilitate offshore development but, as the projected boom in oil and gas production failed to materialize, construction was repeatedly delayed. The voyage of the *Polar Sea* naturally sped up the

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<sup>24</sup> These missions also had significant operational objectives relating to under-ice submarine detection. On this, see *Ibid*.

<sup>25</sup> Canada’s existing fleet of icebreakers could not (and still cannot) operate in the region during the winter months.

<sup>26</sup> Ted McDorman, “In the Wake of the Polar Sea: Canadian Jurisdiction and the Northwest Passage,” *Marine Policy* (October 1986), 643.

<sup>27</sup> Kim Richard Nossel, “Polar Icebreakers: The Politics of Inertia,” In *Politics of the Northwest Passage*, Franklyn Griffiths ed. (Kingston: McGill-Queen’s University Press, 1987), 278.

process. In October 1985 three bids were received and, in 1987, a \$500 million contract was awarded to Vancouver's Versatile Shipyards.<sup>28</sup> At the time, the Polar 8 represented the muscle in the Mulroney government's Arctic policy; it was a symbol of Canada's commitment to the region and of its willingness to pay the price that Arctic sovereignty demanded.

In a speech to the Canadian Club in September 1985, Clark highlighted this muscular approach as a shift not only in policy but in spirit, exemplified by projects like the Polar 8: "What has happened is not just that there is a new government in office, but that there is a new strength to our claims. Because times have changed, it is possible for us to assert, with certainty and confidence, positions that previous governments had judged they could not" (**Document 9**). Despite this new attitude, circumstances conspired against the project and it soon began to spiral out of control. The Versatile shipyard was in dire financial straits and its selection had been based on political considerations rather than a solid appreciation of its capacity. In December 1988, the yard was put up for sale by its owners and, in 1990, the Polar 8 project was officially cancelled – after its price tag climbed to \$680 million.<sup>29</sup>

## Talking to the Americans

Apart from the drawing of straight baselines, the one initiative mentioned by Clark in the House of Commons that was acted upon quickly was the commencement of talks with the US government. Given the close relationship between the two countries, and their long history of strategic cooperation, Canadian governments had always discussed changes in maritime policy with Washington, though normally those discussions came before major decisions were made.<sup>30</sup> Rather than going to Washington to sound out American opinion (or potential resistance), the Mulroney government sent negotiators to secure American acceptance – or at least minimize American objections – to the new straight baselines and pronouncement of sovereignty. These discussions were, Clark assured the House, "on the basis of full respect for Canada's sovereignty" (**Document 7**).

While Canada was not willing to backtrack on its core position, the documents in this volume seem to indicate that the government was willing to compromise on the margins. A close reading also shows how careful External Affairs was in laying the groundwork for these talks. To begin with, the Mulroney government took every opportunity to make it clear that Canadian sovereignty did not preclude the Northwest Passage from becoming a useful shipping route. **Document 10**, which considered possibilities for a

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<sup>28</sup> Canada, House of Commons, *Debates*, March 2, 1987, 33<sup>rd</sup> Parliament, 2<sup>nd</sup> Session, 3723.

<sup>29</sup> Ken MacQueen, "Ottawa's Paper Ship: A Massive Waste of Time, Talent and Money," *Montreal Gazette* (February 22, 1990).

<sup>30</sup> Such conversations took place throughout the 1960s and into the mid-1980s. For a complete history see: Lajeunesse, *Lock, Stock, and Icebergs*.

compromise agreement, demonstrates Canada's willingness to offer the US "some concessions in respect of government ships, warships and government-sponsored ventures." Likewise, **Document 18**, which lists talking points for Canadian officials, makes it clear that "Canada will encourage the development of international navigation in Canadian Arctic waters." This activity would be "subject to the controls and other measures required for Canada's security, for the preservation of the environment, and for the welfare of the Inuit," however these measures would apply to Canadian ships as well. As negotiations began, the Canadians even suggested to the Americans that their navigational rights in the Arctic might be modeled on the St. Lawrence Seaway (**Document 6**).

This willingness to keep the Northwest Passage open to navigation was important to the United States. In the mid-1980s there was still some hope that the offshore region might yield significant oil and gas production, requiring the Canadian passage to be used as a supply and export route. The US Navy was also interested in retaining access to those same waters for its nuclear submarine force.<sup>31</sup> Still, these offers were insufficient to move the US from its core position and, as **Document 6** demonstrates, some Americans continued to fear that a future Canadian government may even rescind these rights.

Subtler than the offer for navigational concessions, was the frequent reference made by Canadian representatives to the issue of 'precedent', and how Canada's actions did not apply to areas beyond the Archipelago. This was important because the principal American concern was that recognition of Canadian sovereignty would make it more difficult to reject claims made by other states seeking to enclose more strategically important waters in a similar fashion.<sup>32</sup> This was something that the US brought up repeatedly in discussions with Canadian officials, and was even mentioned by President Ronald Reagan when he was questioned on the subject in 1987 (**Document 20**). Canadian policy makers were hardly ignorant of this fact when setting their course (see **Document 1**) and, in his address to the House of Commons, Clark made sure to note that these straight baselines "set no precedent for other areas, for no other area compares with the Canadian Arctic archipelago" (Document 7). The talking points in **Document 18**, likewise, seem to indicate the importance of this issue by instructing officials to point out that Canadian policy "establishes no precedent that might be cited to justify interference with international navigation in other parts of the world because it is based on unique circumstances."

With these positions established, the Canadian government began talks with the US in September 1985. The principal negotiators were Leonard Legault and Barry Mawhinney of External Affairs and David Colson and Richard Smith of

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<sup>31</sup> For a history of US subsurface operations in the Canadian Arctic see: Adam Lajeunesse, "A Very Practical Requirement: Under-Ice Operations in the Canadian Arctic, 1960-1986," *Cold War History* 13:4 (November, 2013).

<sup>32</sup> On this concern see: Lajeunesse, *Lock, Stock, and Icebergs*, 120, 132, 280.

the State Department. The initial talks were informal and dedicated as much to discovery as to serious negotiations. They also provided some encouraging signs for the Canadians, however, while the Americans seemed to want to help their Canadian counterparts, the precedent surrounding sovereignty was too much to overcome. In an interview after the fact, David Colson made this very clear, stating:

if there was nothing else going on [i.e. the Philippines, Indonesia],<sup>33</sup> sure we might be quite happy to give Canada their position, but we couldn't do that because that's not the way the world works, and 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>34</sup>

Document 14 examines some of these negotiations in detail and sheds light on the Canadian strategy and some of the difficulties encountered. One tactic attempted by External Affairs was to highlight the strategic benefits to formally enclosing these waters as Canadian. In conversation with his American counterparts, Legault expressed surprise that the United States “would call into question Canada’s territorial integrity and invite the Soviet navy into Canada’s Arctic waters” (**Document 14**). The logic behind this statement was clear; if the Northwest Passage was an international strait as the Americans suggested, then Soviet warships, submarines, and bombers would have the right to transit the passage unhindered. This talking point can also be seen in Document 18, and came up repeatedly during the years of negotiations. The argument made some sense and Legault notes that it had an impact the US Navy representative Admiral John Poindexter during talks in January 1986. Still, the question of global navigation and the freedom of the seas seemed to trump the localized security benefits that would be had from closing off the waters of the Arctic Archipelago.

A second approach, attempted in these early rounds of negotiations, was to separate the concept of sovereignty from the validity of Canada’s straight baselines. Since the lines drawn by the Mulroney government were only to delineate Canada’s historic internal waters, it was hoped that the Americans could be brought to accept the historic waters claim without the straight baselines – which the US felt did not conform to the standards set in international law.<sup>35</sup> The result was a draft treaty offered as a compromise (Document 15). Most relevant was section three of this treaty, which stated:

The Government of the United States of America does not agree that the straight baseline system is applicable in law to the Canadian Arctic waters described above. Nonetheless, in view

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<sup>33</sup> Two of the countries trying to use straight baselines to close off vital international sea routes were the Philippines and Indonesia.

<sup>34</sup> David Colson quoted in: Kirkey, “Smoothing Troubled Waters,” 409-10.

<sup>35</sup> See Document 1 on the American concerns over the length of straight baselines.

of the unique circumstances pertaining to these waters, the Government of the United States of America recognizes Canada's sovereignty over them, independently of and without reference to the straight baseline system.

This draft treaty was described as a “non-paper” which did not carry ministerial approval or constitute a Canadian proposal. It was a way to sound out American opinion on what External Affairs thought was a creative solution, separating the most important element of Canadian policy – namely that the Northwest Passage constituted historic internal waters – from the straight baselines which merely marked their boundaries. While the US side called this draft treaty a “constructive step,” the crucial element of recognition remained a step too far (**Document 14**). It was impossible, Smith informed the Canadians, to agree that the waters of the Northwest Passage were “like Lake Winnipeg” (Document 14).

The possibility of an easy agreement was therefore dead by early 1986 and Canadian strategy shifted towards engaging US President Ronald Reagan directly (**Document 14**). Presidential engagement had never worked for Canada in the past. Twice Canada had negotiated with the United States on the subject of Arctic maritime sovereignty, once from 1963-67 and once after the *Manhattan* incident, from 1969-73.<sup>36</sup> On both of these occasions the reception to Canadian proposals was not only hostile but made more difficult by the toxic relationship between the then prime ministers and presidents.

In 1963, Prime Minister John Diefenbaker's counterpart was President John F. Kennedy; the two men despised each other. Diefenbaker once described the US President as a “hothead” and a “fool – too young, too brash, too inexperienced, and a boastful son of a bitch!”<sup>37</sup> By 1964, the two states had elected new leaders and then Prime Minister Lester Pearson hardly found a better friend in President Lyndon Johnson. In 1965, while law of the sea negotiations between the two countries were ongoing, Pearson met with Johnson in the White House after delivering an unwelcome speech about the Vietnam War. The president reportedly startled the prime minister, angrily shouting “you pissed on my rug!”<sup>38</sup> By the time of the *Manhattan's* transit, President Richard Nixon and Prime Minister Pierre Trudeau were even more hostile. On his private tapes, Nixon was heard calling Trudeau “an asshole,” “a son of a bitch,” and a “pompous egghead.” When these tapes were made public,

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<sup>36</sup> For a history of these negotiations see: Lajeunesse, *Lock, Stock, and Icebergs*, chapters 4, 7, and 8.

<sup>37</sup> CBC News, *Prime Ministers and Presidents*, July 7, 2006, [cbc.ca/news/background/canada\\_us/pms-Presidents](http://cbc.ca/news/background/canada_us/pms-Presidents)

<sup>38</sup> Ibid.



Trudeau's response was simply: "I've been called worse things by better people."<sup>39</sup>

### When Irish Eyes are Smiling ...

It is not hard to understand why these men were unwilling to go out of their way to accommodate their counterparts. Mulroney and Reagan offered a stark contrast. The two were on a first name basis and, only a month before the *Polar Sea's* transit, the two leaders made headlines by singing a duet of 'When Irish Eyes are Smiling' during the president's visit to Canada.<sup>40</sup> Hardly the lackey the Liberals accused him of being, Mulroney simply chose to abstain from the traditional anti-Americanism which so many Canadian prime ministers found a convenient vote winner. Instead, Mulroney supported the American government on the international scene whenever he could. In his diaries, Allan Gotlieb, then Canada's Ambassador to the US, credits this relationship with keeping the two sides talking and, ultimately, with the success they achieved.<sup>41</sup>

In March 1986, Mulroney raised the subject at a summit meeting in Washington. There, the prime minister conveyed the importance of the Arctic to Canadians generally and to his political fortunes in particular. The prime minister had built his foreign policy on the basis of improved relations with the US, he told Reagan, and this dispute over an issue that struck to the core of Canadians' sense of national identity called that fundamental tenant into question (**Document 6**). For Canadians, Mulroney insisted, this issue went beyond questions of Arctic navigation. It was an emotional matter powerful enough to derail the ongoing free trade negotiations and damage the bilateral relationship that the two leaders had worked so hard to improve.

In Reagan, Mulroney found a sympathetic ear. Seeking to help his friend and ally, the president made what External Affairs believed to be a ground-breaking promise. Reagan announced that it would be best if the two nations simply let the sovereignty issue "lie where it is" and that "anything we do in [Canadian Arctic waters] will be with your permission." The previous day the president had also promised that the United States would not "challenge" Canadian sovereignty.<sup>42</sup> Taken together, it appears Reagan had come just short of explicitly accepting the Canadian position. This was a far cry from the adversarial approach taken by President Nixon sixteen years earlier. This intervention rejuvenated the talks and special negotiators were appointed to

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<sup>39</sup> Lee-Anne Goodman, "Nixon Tapes Include Testy Trudeau Chat," *The Star* (December 8, 2008).

<sup>40</sup> Ibid.

<sup>41</sup> Allan Gotlieb, *I'll be with you in a Minute Mr. Ambassador: The Education of a Canadian Diplomat in Washington* (Toronto: University of Toronto Press, 1991), 115. The importance of this relationship is pointed out in other works on the subject as well, see for instance: Huebert, *Steel, Ice and Decision Making* and Kirkey, "Smoothing Troubled Waters."

<sup>42</sup> Brian Mulroney, *Memoirs 1939-1993* (McClelland & Stewart, 2007), 431.

continue the process. Under-Secretary of Science and Technology Edward Derwinski was given this post for the United States and Derek Burney, Mulroney's Chief of Staff, for Canada. Derwinski recalled that his instructions from Reagan were simple and straightforward, the president had called and said: "Ed, I understand you're going to handle this and I wish you well ... get this nailed down."<sup>43</sup>

Despite this new impetus, the core issues remained and President Reagan came to realize the limits of what he could actually deliver. The matter was being closely followed by a host of powerful American departments and agencies. The Navy, Coast Guard, Department of Transport, Chiefs of Staff, the policy side of the Pentagon, and the State Department all had an opinion and none were in favour of the president's desire to assist the Canadians. In his memoirs, Allan Gotlieb recounts going into what he believed was an informal 'one-on-one' meeting with Derwinski: "never will I forget the enormous crowd of officials in the room – some two dozen or so – most of them agitating for a hard line against the Canadian claim."<sup>44</sup> In March 1987, Reagan had to write to Mulroney to convey his frustration with the process:

Brian this vexing issue has proven to be more difficult for us to resolve than I thought when we discussed it ... I have to say in all candor that we cannot agree to an agreement that obliges us to seek permission for our vessels to navigate through the Northwest Passage. To do so would adversely affect our legitimate rights to freely transit other important areas globally.<sup>45</sup>

The next year the two leaders met in Ottawa and, again, Mulroney convinced Reagan that the United States must come further towards recognition. That the president was swayed is clear from his conversation with reporters a month after the meeting. When asked about any American recognition of Canadian sovereignty Reagan replied:

When you look at the Canadian islands and the extent to which they dominate those waters, and know that a great many of those islands year round are connected by a solid ice cover upon which there are many people who live above those waters on that ice, that this is a little different than the other situations in the world. And we sincerely and honestly are trying to find a way that can recognize Canada's claim and yet, at the same time, cannot set that dangerous precedent that I mentioned **(Document 20)**.

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<sup>43</sup> Interview with Derwinski in: Kirkey, "Smoothing Troubled Waters," 411.

<sup>44</sup> Gotlieb, *I'll be with you in a Minute Mr. Ambassador*, 113.

<sup>45</sup> Mulroney, *Memoirs*, 495.

While still reserving the US position, Reagan gave the Canadian side a clear recognition that the waters of the Arctic Archipelago were unique and that the US was at least trying to find a way to recognize them.

### ***The Arctic Cooperation Agreement***

After two years of discussion an agreement was finally reached in late 1987. It was not the full acceptance that Canada sought but it was a significant achievement. The *Arctic Cooperation Agreement* was signed on January 11, 1988 and is reproduced herein as **Document 23**. In it, the United States pledged that that “all navigation by U.S. icebreakers within waters claimed by Canada to be internal will be undertaken with the consent of the Government of Canada.” To ensure that the agreement had no negative effects on either side’s legal position, it included an article which read: “Nothing in this agreement of cooperative endeavor between Arctic neighbours and friends nor any practice thereunder affects the respective positions of the Governments of the United States and of Canada on the Law of the Sea in this or other maritime areas or their respective positions regarding third parties” (**Document 23**).

The genius of the agreement was to link the question of “consent” to scientific research. Article 245 of the UN Convention on the Law of the Sea clearly states that in the territorial sea and on the continental shelf maritime research “shall be conducted only with the express consent of and under the conditions set forth by the coastal state.”<sup>46</sup> Scholars such as Rob Huebert and Christopher Kirkey have noted that, if the US icebreakers transiting Canadian waters conducted scientific research en route, a request for consent would be required under international law, as the US understood it.<sup>47</sup> Under this agreement, both nations secured that which was most important to them. Canada had its political victory, since Mulroney could legitimately claim that the Americans were now requesting Canadian permission to transit. Meanwhile, the Americans could say that such permission did not represent recognition of Canadian sovereignty, since conducting research along the way necessitated such a request.

The agreement was first tested in 1988, when the US icebreaker *Polar Star* – sister ship of the *Polar Sea* – requested consent under the terms of the agreement to transit from west to east after sustaining damage assisting two Canadian vessels. The request read:

As provided by the terms of that Agreement, the government of the United States hereby requests the consent of the Government of Canada for the United States Coast Guard Cutter “Polar Star,” a polar class icebreaker, to navigate within

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<sup>46</sup> United Nations, Convention on the Law of the Sea, Part XIII, Section 3, Article 245.

<sup>47</sup> Kirkey, “Smoothing Troubled Waters,” 421 and Huebert, *Steel, Ice and Decision Making*, 483-84.

waters covered by the Agreement, and to conduct marine scientific research during such navigation (Document 26).

The crucial phrase within that request was: “and to conduct marine scientific research during such navigation.” Seeing as how *Polar Star* was damaged and making an emergency transit, it is unlikely that it was truly interested in conducting research. Still, that phrase had to be included to ensure that the request was seen as falling within the parameters of Article 245 of the Law of the Sea Convention. Canada quickly consented to this request and the phrasing of the Canadian response is equally telling:

The Department has the honour to inform the Embassy that the Government of Canada consents to the “Polar Star’s” navigation within waters covered by the Agreement. The Department has the further honour to inform the Embassy that the Government of Canada also consents to the conduct of marine scientific research during such navigation (**Document 26**).

Unlike the American request, which bundled the issues of transit and scientific research, the Canadian response separated them out into two distinct matters – both of which it gave permission for. This political sleight of hand was a clever bit of diplomatic maneuvering and was what enabled the two states to reach this agreement – which remains a cornerstone of Canadian-American Arctic cooperation in the 21<sup>st</sup> century.

There were naturally critics of this arrangement. The Liberal opposition made much of the fact that there was no explicit American acceptance of Canadian sovereignty, asking in the House of Commons why the prime minister would sign an agreement which “clearly weakens Canada’s legal claim to the Arctic.” Clark’s response was simply to remind the House that, while not perfect, this agreement represented “a very concrete step” (**Document 24**). This response was a repetition of what the Minister told the *Ottawa Citizen* a few weeks earlier: “we would have preferred naturally, to have the Americans accept the legal concept of sovereignty. What we are trying to do here, is assert a step that will close another hole in the claims of Canada to control of our North.”<sup>48</sup> This step by step progress was certainly slower than any government would have liked, but it was real progress. With the Agreement, Canada bolstered its control of the region while removing an avenue of protest that the United States might have someday employed.

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<sup>48</sup> Iain Hunter, “Arctic Claims not at Risk, Government says,” *Ottawa Citizen* (December 7, 1987).

## The Defence Review

While finalizing the *Arctic Cooperation Agreement*, the Mulroney government was also engaged in a defence policy review which, not surprisingly given the political climate, paid special attention to the Arctic region. The 1987 Defence White Paper, entitled *Challenge and Commitment*, made several significant procurement announcements aimed at strengthening Canada's ability to monitor and control its northern waters. The White Paper included plans to acquire new patrol aircraft, an under-ice surveillance system, a fleet of Arctic vehicles, new northern airbases and training facilities, upgrades to the Canadian Rangers and, of course, the Polar 8.<sup>49</sup> Most importantly, it promised the Navy a fleet of nuclear attack submarines (SSNs), able to operate under the Arctic ice on a year-round basis. These submarines, like the Polar 8, were never constructed. An uncomfortably large budget deficit and the collapse of the Soviet Union combined to eliminate the perceived need and the planned acquisition was cancelled in 1989.

In the closing years of the Cold War, the hard-power approach adopted by the government lined up with its approach to Arctic sovereignty, but it also fit into the Conservatives' broader understanding of global geopolitics. Unlike the Liberal government before them, the Conservatives envisioned the Cold War as a conflict that could (and should) be won. The Defence White Paper made this abundantly clear, labelling the Soviet Union an "ideological, political, and economic adversary whose explicit long-term aim is to mold the world in its own image."<sup>50</sup> **Documents 21** and **27** provide a window into the government's approach to the Soviet Union and how that conflict was seen extending into the Arctic.

## Conclusions

A proper analysis of the 1987 White Paper and the country's late Cold War defence policy will require a separate volume. This compendium has focused instead on the political evolution of the Arctic sovereignty file under the Mulroney government, how it shifted during the voyage of the *Polar Sea* and the ensuing negotiations. The documents provided in this volume were selected to provide researchers access to the core material available, though it should be remembered that the vast amount of government documentation – from both the Canadian and American side – remains classified.

What has been produced herein is, to employ the unavoidable pun, the tip of the iceberg. The relative dearth of deep historical debate on this subject is

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<sup>49</sup> Canada, Department of National Defence, *Defence Update 1988-89* (Ottawa: Minister of Supply and Services Canada, 1988), 10-13 and Susan Allan, "Worlds at War," 236.

<sup>50</sup> Canada, Department of National Defence, *Challenge and Commitment: A Defence Policy for Canada* (Ottawa: Minister of Supply and Services Canada, 1987), 5.

largely the result of this lack of material. Missing still are the records of the Mulroney government's deliberations leading up to the declaration of straight baselines, much of the communications with the United States on the subject, and the External Affairs assessments which must surely have been produced to support the policy statement delivered by Joe Clark in the House of Commons. Likewise, scholars examining Canadian-American relations and the interactions between Reagan and Mulroney have little to go on beside the former Prime Minister's memoirs.

This introduction has provided the context surrounding these documents and a basic narrative tying them together; though it is one which clearly reflect the editors' own reading of that material. As more documents become available, the history of this crucial period will acquire more detail and new insights will almost certainly change the established narrative. Such new material will be added to this volume as it becomes available, creating a living document. In the meantime, we hope that the files provided in this volume will facilitate research, encourage scholars to pioneer new interpretations, and to generate new work on Canada's increasingly important Arctic region.



**1. Memorandum to Cabinet, “Status of Arctic Archipelagic Waters,” June 1, 1982, LAC, vol. 5, file 8100-15-4-2 (s).**

***LAC, RG 25, vol. 4, file 8100-15-4-2***

SECRET  
SERIAL NO \_\_\_\_\_  
June 1, 1982  
le 1 juin, 1982

MEMORANDUM TO CABINET  
MEMOIRE AU CABINET

Status of Arctic Archipelagic Waters

Statut des eaux archipelaquiques de l'Artique

SECRETARY OF STATE FOR EXTERNAL AFFAIRS  
SECRÉTAIRE D'ÉTAT AUX AFFAIRES EXTÉRIEURES



## EXECUTIVE SUMMARY

### OBJECT

The purpose of this Memorandum is to:

- a) examine the existing legal situation with regard to Canadian sovereignty in the waters of the Arctic Archipelago;
- b) examine the future demands for the commercial use of the Archipelagic waters, particularly the Northwest Passage, and determine whether the existing legal regime can adequately respond to these demands;
- c) recommend a course of action' which will assure full Canadian control over these waters.

### DECISION REQUIRED

Decisions are required with regard to:

- a) agreement in principle that an Order-in-Council pursuant to the Territorial Seas and Fishing Zones Act be drafted providing for straight baselines around the perimeter of the Arctic Archipelago on the basis of geographical coordinates provided in Annex I of this Memorandum and as indicated on the chart provided in Annex II;
- b) the timing on when such an Order would be implemented;
- c) discussions with selected states in advance of the enactment of the Order-in-council;
- d) coordination of the development of appropriate legislation and guidelines to ensure that Canada exercises effective control over these Arctic waters once the baselines are drawn;
- e) whether Canada should ratify two marine pollution liability conventions with a reservation to protect our position on Arctic waters.

### BACKGROUND AND EXISTING LEGAL SITUATION (paras 3 to 7)

In 1976 Cabinet reaffirmed that the waters of the Arctic Archipelago, including the Northwest Passage, were internal but decided to defer the drawing of baselines around the perimeter until the "international climate, in particular developments at the Law of the Sea Conference, would be more propitious to such action". Negotiations at the Conference have how

concluded and in view of the increasing number of proposals being put forward on the commercial use of these waters especially a proposal by the United States Coast Guard to make the first winter crossing of the Northwest Passage to test its commercial potential the time has come to consider what further Canadian action might be required.

In the past our approach to the question of sovereignty over these archipelagic waters has been a "functional" one. Our objective has been to build up our claim through a series of statements, and administrative acts while stopping short of legislation which would specifically declare these waters as internal by drawing baselines around them. We have therefore gained a degree of control without provoking sustained international challenge. To support this approach a number of Canadian acts could be amended to make clear they apply in the absence of baselines.

#### FUTURE LEGAL SITUATION IN THE ARCTIC (paras 8 to 17)

Can the "functional" approach respond to changing future demands on these waters? The most significant factor is that the 'status' of the Northwest Passage, which we maintain is not an international strait since it has not been used for international navigation, can change as a result of use. There is increasing interest, not only in Canada but in USA and even Japan, in utilizing the strait to transport hydrocarbons (five Canadian proposals are listed and three U.S.) If Canada does not act to place shipping in the Northwest Passage clearly under Canadian control, commercial use of the Passage by foreign ships will eventually turn the Passage into an international strait. Under the provisions of the new Convention on the Law of the Sea, Canada would then have virtually no control over the ships using the Passage, save for the important "Arctic exception" article in the text which would permit Canada to adopt and enforce its own pollution prevention laws within out 200-mile economic zone in the Arctic. Aircraft and submarines would enjoy the respective rights of overflight and underwater transit. As proposals for foreign use of the Northwest Passage increase, it can be expected that public pressure on the Government, similar to that of the 1969 Manhattan voyage, to exercise control over the waters of the Archipelago will also increase.

#### OPTIONS FOR CANADA (paras 16 and 17)

Two options present themselves:

- 1) to carry on with the "functional" approach of regulating activity in the Archipelagic waters to the extent possible without actually drawing straight baselines. A number of relevant acts could be

amended to enhance this ability and drawing straight baselines could be postponed - perhaps indefinitely;

- 2) to draw straight baselines around the Archipelago to indicate in clear and certain terms that they are internal waters of Canada.

A decision on the future Canadian policy with regard to these waters is important now for the following reasons:

- a) Shipping - While Canada can enforce environmental standards under the Arctic Waters Pollution Prevention Act and exercise routing control through the Canada Shipping Act, we do not have the means to prohibit, delay or regulate the frequency of transit. This ability might be essential in the future and the only way to contend with all eventualities is to deal with these waters as internal, requiring the drawing of baselines
- b) Security - the lack of complete control over the waters of the Archipelago opens up the possibility of foreign warships or military-related communications vessels entering the waters. The Northwest Passage is in a strategic location and Canada has a vital interest in Arctic security and in ensuring that it controls access to it. Again, only by designating these waters as internal will Canada have the necessary control over military vessels.
- c) Inuit Interests - the Inuit's historic occupation of the ice between the Arctic islands, as well as the land, is well documented and contributes to Canada's claim of historic title to the waters of the Archipelago. The Inuit have been encouraging the Government to clearly claim these waters as internal. Drawing baselines neither advances nor hinders land claim negotiations with the Inuit.
- d) Draft Convention on the Law of the Sea - the negotiations on the Convention have not concluded and any move on Canada's part with regard to these waters will have no effect on them or the Convention. We have not yet issued charts showing the exact location of the territorial sea and fishing zone in the Arctic and if we become a party to the Convention we would be required to clarify the status of these waters. As well, the Convention contains dispute settlement procedures and the sooner we clarify the status of these waters the better for any Canadian case.
- e) Convention on Civil Liability for Oil Pollution Damage, 1969, and 1971 Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage - Cabinet has agreed that Canada should ratify these two conventions subject to guidance on whether an "Arctic reservation" is required. The two Conventions

provide a different liability regime for pollution damage than that of the Arctic Waters Pollution Prevention Act (but are in accord with the Canada Shipping Act) and would give Canadians who suffered pollution damage access to a \$67 million international compensation fund. Since the Conventions apply to the territory of a state, and we maintain the waters of the Arctic Archipelago are internal, we would wish to see the Conventions apply to these waters as well. An "Arctic reservation" is therefore not required. Some amendments to the Arctic Waters Pollution Prevention Act will be necessary but the benefits outweigh any possible political question about doing so.

**ENSURING CANADIAN SOVEREIGNTY: DRAWING STRAIGHT BASELINES** (paras 18 to 20)

The above indicates that only by clearly establishing that the Archipelagic waters are internal will Canada have the degree of control required in the future to effectively regulate the expected use of them. The "functional" approach is not adequate to meet future demands for the use of these waters. The three theories, or principles, upon which Canada can base its claim to sovereignty, in order of importance to our case, are: 1) the sector theory; 2) historic title; and 3) the straight baseline doctrine (i.e. that baselines can be drawn on the basis that the Archipelago constitutes a single unit with the mainland.) An examination of these principles indicates that on balance international law favours the Canadian position and, the drawing of straight baselines. Since Canada has always regarded these waters as internal, no right of innocent passage would exist within them; Canada has never said, however, that it would prohibit the passage of foreign commercial vessels as long as that passage were subject to reasonable Canadian laws. The drawing of straight baselines around the Archipelago will lay to rest the sector theory, as far as Canada is concerned, upon which some claims of sovereignty have been made to ice-covered waters outside the Archipelago up to the North Pole. Given our interest in the Arctic "sector" we would wish to maintain a special role like a "droit de regard" - throughout the sector, even beyond the 200-mile economic zone.

**THE POSITION OF FOREIGN STATES ON ARCTIC WATERS** (paras 21 to 24)

There has been an evolution in Law of the Sea since Canada first drew its fishing closing lines, claimed a 12-mile territorial sea and initiated pollution control in Arctic waters. All of these acts were protested by maritime powers who, in many cases, feared the establishment of precedents for use by other countries. The Law of the Sea Conference has now resolved many of these questions. The United States has the most direct interest in Canadian Arctic claims

since they are looking at the Northwest Passage as a potential shipping route. The United States has a policy of protesting all straight baselines of more than 24 miles in length and we can expect that they will protest the drawing of Arctic baselines. We should, however, stress that commercial shipping subject to reasonable regulation will be permitted through the Passage. The USA is in a somewhat difficult position in questioning the actions of others since it is questioning its own commitment to the multi-lateral treaty approach to Law of the Sea.

Members of the EEC and Japan will likely not protest the Canadian action, at least publicly, and the USSR might even tacitly support us. We should not be deterred by the possibility of international protest, particularly from the USA, since the latter would have protested such a move at any time in the past and can be expected to do so at any time in the future. Postponing action can only lead to the gradual erosion and final abandonment of the Canadian claim to internal waters.

#### EFFECT ON THE SPECIAL BODIES OF WATER (paras 25 to 27)

Our claims to internal waters in the so-called special bodies of water, the Gulf of St. Lawrence, Bay of Fundy, Queen Charlotte Sound, Hecate Strait and Dixon Entrance, are often considered in the same context as those in the Arctic. There is not the pressing need to act with regard to these waters and action on the special bodies should be taken in the future following action on the Arctic.

#### TIMING OF CANADIAN ACTION (para 28)

There is no ideal time to draw Arctic baselines; the matter has been under Cabinet consideration for the past 20 years and, as indicated, it is important to move before Canadian claims are eroded by the advent of commercial shipping. The Law of the Sea Convention will be signed in December and a case can be made that Canada should act before that time or shortly thereafter. The Cabinet could agree in principle that the baselines be drawn within that time frame and the exact date could be left to a recommendation from the Secretary of State for External Affairs in consultation with other interested Ministers.

#### FEDERAL-PROVINCIAL AND PUBLIC CONSIDERATIONS (paras 32 to 34)

The provinces are not directly involved but would likely support the clarification of Canadian sovereignty. Since Inuit organizations have advocated the move the Territorial Governments would also likely

welcome the action. Indicating that the waters are clearly internal should receive wide public endorsement (a Communications Plan is attached). This memorandum has been prepared by External Affairs in consultation with all relevant Government departments.

### RECOMMENDATIONS

It is recommended that:

1. the legislative section of the Department of Justice be instructed to draft an Order-in-Council which will promulgate baselines pursuant to the Territorial Seas and Fishing Zones Act around the perimeter of the Arctic Archipelago so as to make the waters therein internal waters of Canada. The baselines should be drawn on the basis of the co-ordinates and chart attached as Annexes I and II hereto (co-ordinates for baselines along the coast in the Beaufort Sea are also included to assist in the delimitation of the territorial sea and fishing zone there);
2. the Order-in-Council be promulgated in 1982 or early 1983 on a date to be recommended by the Secretary of State for External Affairs, on the basis of consultations with other interested Ministers;
3. while activities in these waters will be subject to reasonable Canadian regulation and control, the Government reaffirms its intention to permit passage of foreign commercial shipping;
4. the USA, members of the EEC, Japan, Norway, and the USSR be informed of the Government's decision above before the Order-in-Council is promulgated;
5. departments continue the development of regulations, guidelines and amendments to legislation for future consideration by Cabinet to ensure that Canada maintains effective control over the waters of the Archipelago;
6. the Government reaffirms its intention to provide government services essential to the safe, effective development of year round Arctic exploration and transportation projects, if and when such projects may be approved;
7. Canada ratify 1969 Convention on Civil Liability for Oil Pollution Damage and the 1971 Convention for the Establishment of an

International Fund for Compensation for Oil Pollution Damage,  
without an Arctic Reservation.

## OBJECT

The purpose of this Memorandum is to:

- a) examine the existing legal situation with regard to Canadian sovereignty in the waters of the Arctic Archipelago;
- b) examine the future demands for the commercial use of the Archipelagic waters, particularly the Northwest Passage, and determine whether the existing legal regime can adequately respond to these demands;
- c) recommend a course of action which will assure full Canadian control over these waters.

## DECISION REQUIRED

2. Decisions are required with regard to:

- a) agreement in principle that an Order-in-Council pursuant to the Territorial Seas and Fishing Zones Act be drafted providing for straight baselines around the perimeter of the Arctic Archipelago on the basis of geographical coordinates provided in Annex I of this Memorandum and as indicated on the chart provided in Annex II;
- b) the timing on when such an Order would be implemented
- c) discussions with selected states in advance of the enactment of the Order-in-Council;
- d) coordination of the development of appropriate legislation and guidelines to ensure that Canada exercises effective control over these Arctic waters once the baselines are drawn.
- e) whether Canada should ratify two marine pollution liability conventions with a reservation to protect our position on Arctic waters.

## BACKGROUND

3. The Arctic holds a certain mystique for Canadians. Few have lived in or even visited this vast, inhospitable area or know in detail what life north of '60' is like, and yet there is an attachment to the Arctic felt in every part of the country. Many would see the Arctic as a vast storehouse of wealth on

which we can draw in the future. But the bond is more than economic - it borders on emotion. The Arctic is seen as an integral part of our history, our nationhood and the continuing struggle to tame, and adapt to, the northern wilderness. In a sense, the Arctic is our last frontier. For the native people, who have hunted and lived there for centuries, the feeling is more intense - it is simply "home". On the matter of Canadian sovereignty in the Arctic there is perhaps a limited appreciation for the finer questions of law, economics and security. The gut reaction is that "it is ours". And to a large extent it is.

4. The Arctic lands, including the islands of the Archipelago are clearly and undisputably under Canadian sovereignty. The same cannot be said, however, for the waters of the Arctic Archipelago -- waters which we have long claimed as internal but have not established by drawing baselines. In 1976, Cabinet reaffirmed that the waters of the Archipelago were internal and decided to defer the drawing of baselines around the perimeter until the "international climate, in particular developments at the Law of the Sea Conference (including the US view on Arctic pollution prevention measures) would be more propitious to such action by Canada." The Law of the Sea Conference will conclude this year and it is also becoming increasingly apparent that developments in the Arctic are beginning to move at a pace which raises the danger that Canada's policy will be dictated by events. The number of proposals being announced for the use of the Northwest Passage grows yearly: the latest is a United States Coast Guard proposal to make the first winter crossing of the passage in 1984 in order to test the commercial, viability of Alaskan tankers using the route. The time has now come to consider what further Canadian action might be required in light of Cabinet's 1976 decision and developments since then.

#### EXISTING LEGAL SITUATION IN THE ARCTIC

5. Under international law we have sovereign rights over the resources of the continental shelf under the whole of the Arctic Basin. Our claim to a 12-mile territorial sea in the Arctic, as off our other coasts, is now also supported by customary international law, as is our claim to a 200-mile fisheries zone. The intent of the Arctic Waters Pollution Prevention Act has gained international acceptance through a special provision in the draft Law of the Sea Convention. Our overall approach to sovereignty in the Arctic archipelagic waters, including the Northwest Passage, for the past 20 years has been what might be called a "functional" one. While claiming them as internal, the objective has been to build up the Canadian claim through a series of statements and administrative acts, while stopping short of legislation which would specifically declare these waters as internal. In this way Canada has achieved a degree of control without provoking sustained international challenge, permitting us to gradually build up our claim.



Furthermore, Canada has maintained that the Northwest Passage is not an international strait, for reasons which will be outlined, although our position on this question is not necessarily shared by the major maritime states.

6. The current application of Canadian law to the waters of the Archipelago is not dependent on the waters being internal but is determined on the basis of other criteria, as follows:

The Territorial Seas and Fishing Zones Act. Canada has a 12-mile territorial sea and 200-mile fishing zone in the Arctic but in order not to undermine our internal waters claim, we have not issued a chart indicating the location of either. The Territorial Sea and Fishing Zones Act does not provide sufficient clarity on the legal status of the Archipelagic waters. It defines internal waters as including those waters behind straight baselines from which the territorial sea is measured. While there is no court decision interpreting this definition, officials view the use of the word "includes", as permitting historic waters or other waters over which Canada claims sovereignty to be covered by the Act. The definition of internal waters could be improved and doubts about it alleviated if it was amended so as to specifically refer to historic and other waters over which Canada exercises sovereignty.

The Canada Oil and Gas Act. This Act implements existing Canadian sovereign rights over the mineral resources of the continental shelf which would include the shelf between the Arctic islands. It clarifies Canada's rights to exploit these resources which were previously exercised under two Acts.

The Arctic Waters Pollution Prevention Act (AWPPA). This legislation, which was the subject of some international protest when passed in 1970, has largely now received international acceptance and its validity is recognized by the draft Convention on the Law of the Sea through the so- called "Arctic exception" to the pollution prevention rights of coastal and flag states. The AWPPA bans the discharge of waste into Arctic waters (the Archipelagic waters and 100 miles beyond), requires evidence of financial responsibility and regulates the construction, design and operation of vessels in Arctic waters. The Act and its regulations indicate what type of vessels can navigate during a particular season within 16 shipping safety control zones in Arctic waters. A Lancaster Sound study committee concluded in 1980 that these shipping standards are stringent and technically sound. The Departments of Transport and Northern Affairs intend to soon place proposals before Cabinet to amend the Act to permit the establishment of traffic routes, shipping traffic controls and vessel traffic management systems in Arctic waters. Under such an overall system, vessels would be

required to follow defined routes and submit to vessel clearance procedures.

The Canada Shipping Act (CSA). The pollution prevention provisions of the Act (Part XX) do not apply to waters covered by the Arctic Waters Pollution Prevention Act but all other provisions of the CSA related to ship safety do. The Act does apply in our Arctic fishing zone beyond 100 miles. Cabinet has agreed that the Act should be amended so that the Maritime Pollution Claims Fund, which can provide up to \$100 million for pollution claims, will apply north of 60 degrees.

The Criminal Code. A section of the Code purportedly extends its application to the territorial sea and internal waters but the section is ambiguous and the Department of Justice will be proposing to Cabinet that it be amended so as to indicate that the ambit of criminal law extends to all Canadian territory, including internal waters and the territorial sea as well as to installations on the continental shelf. Such an amendment would also serve to clarify the jurisdiction of courts martial for offences "within Canada" under the National Defence Act. Internal waters will be defined so as to include those waters behind baselines and historic and other waters over which Canada exercises sovereignty. If necessary, the Secretary of State for External Affairs could provide a certificate advising the Court on the location of Canada's internal and territorial waters. There still could be problems, however, since whether or not an offence occurred outside or inside internal waters, in the absence of baselines defining them, would be determined post facto.

The Customs Act. While the Territorial Sea and Fishing Zones Act provides a definition of the territorial sea and internal waters, the Customs Act has a different definition of internal waters so that straight baselines are required in order to make the Act applicable in internal waters behind baselines. The Customs Act clearly extends to the territorial sea, however. This has created difficulties in applying customs duties to drilling installations in the Archipelagic waters located beyond 12 miles from shore. The Department of Finance has recommended that the Act be amended to apply to all offshore installations located anywhere on Canada's continental shelf. The Department of Justice will shortly be requesting Cabinet authority to prepare legislation to establish a comprehensive legal regime for the offshore which will ensure that all relevant Canadian laws (i.e. the Customs Act, the Immigration Act, the Labour Code etc.) apply to offshore installations. Such legislation would overcome the difficulties in applying Canadian

laws to installations in the Archipelagic waters (as well as in other locations). Canadian law would be applied in these waters not on the basis that these waters are internal but rather that these installations are on the continental shelf. The Customs Act could also be amended to expand its definition of internal waters, perhaps along the lines proposed for the Criminal Code.

7. The above Acts have provided a fairly effective means to date for exercising functional jurisdiction in the Arctic, particularly with regard to pollution prevention and the exploitation of offshore mineral resources. It is apparent, however, that serious gaps exist which could be at least partially rectified through the following actions, which would not entail the drawing of baselines:

- The amendment of the Custom's Act to indicate that it applies to internal waters in the absence of baselines.
- The amendment of the Criminal Code to indicate beyond all doubt that it applies in internal waters over which Canada claims historic or other title.
- The amendment of the Territorial Seas and Fishing Zones Act to make clear that the definition of Canadian internal waters is not dependent on the drawing of straight baselines.
- The amendment of the Arctic Waters Pollution Prevention Act to permit the establishment of ship routeing and vessel traffic management schemes in Arctic waters.
- The passage of a comprehensive offshore legislation so that all relevant Canadian laws apply to installations on the continental shelf in the Arctic (as well as off Canada's other coasts).

#### FUTURE LEGAL SITUATION IN THE ARCTIC

8. The "functional approach" has been the modus operandi up to the present when there has been limited commercial activity in Arctic waters; the question is whether this approach can respond to changing future demands. The very nature of this approach means that there is no legislation indicating that these Archipelagic waters are internal. Their status is left unclear until such time as straight baselines are drawn indicating that these waters are internal and under complete Canadian control. Even if the Acts listed above were amended, Canada might increase its control over the waters to some degree but their exact status would remain unclear. As things

now stand under Canadian law there is the ever-present fear that a Canadian court might hold that it has no jurisdiction since the waters of the Archipelago are not internal under Canadian law. The uncertain status of these waters and the uneven application of Canadian law to them has contributed to the high degree of confusion among government officials, academics and the public at large as to whether the waters of the Arctic Archipelago are internal waters of Canada or not.

9. Moreover, the advent of commercial shipping in the Arctic will have a profound effect on the status of the Northwest Passage under international law. (The Passage joins Baffin Bay with the Beaufort Sea and is actually any one of four different routes through Archipelagic waters, as indicated on the chart in Annex II). Some nations might already view the Passage as an international strait and subject to the rules applicable to such straits. Such rules apply to straits which join two parts of the high seas (or economic zone) and are used for international navigation. While the Northwest Passage meets the first part of this criteria, it can by no means be considered as a strait used for international navigation. All of the nineteen crossings of the Passage to date have been experimental in nature; six were by foreign vessels but with Canada's consent or acquiescence. The fact that the Passage is frozen for nine months of the year and can only be navigated with the assistance of ice breakers militates against it being considered as a strait used for international navigation.

10. For this reason Canada has maintained that the Northwest Passage is not an international strait. But while potential use is not a factor in determining whether a strait is subject to international legal rules, actual use is and we now face the situation where the Northwest Passage will soon be used for commercial navigation perhaps on a large scale. With increased attention being paid to Arctic hydrocarbon resources, there is a concomitant interest in the best means of transporting these resources to southern markets. This interest has been demonstrated not only in Canada but in the United States, the EEC and even Japan and has focused on the use of the Northwest Passage. The main proposals for using the Passage are:

#### Canadian Proposals

Arctic Pilot Project - sponsored by PetroCanada to move gas in LNG carriers from the high Arctic through the eastern portion of the Passage beginning in 1986. Two class 7 icebreakers would be used making up to 60 transits annually with the possibility of 9 ships in use by 1992 making up to 270 transits annually. PetroCanada is looking to regasification in the Eastern Canada.

## *From Polar Sea to Straight Baselines*

Trans-Canada Pipeline Proposal - to move gas through the eastern portion of the Passage from King Christian Island after 1986 using 3 LNG carriers.

Dome Petroleum Proposal - now well into the planning stage to move crude oil through the Passage from the Beaufort Sea beginning in the late 1980's in 10 tankers. Dome envisages 10 to 20 ships in service by 2000 making up to 280 transits per year.

Panarctic Oils Proposal - to move oil in one 200,000 ton tanker at some future time from Bathurst Island to eastern markets resulting in 30 transits a year.

Cominco Proposal - to ship lead and zinc from Cornwallis Island to Europe beginning in 1982. There would be eight shiploads a year resulting in 16 transits of the eastern portion of the Passage.

### U.S. Proposals

Seatrail Proposal- to move oil through the Passage in three class-8 icebreaking tankers 15 times a year from Alaska's North Slope.

Globtik Tankers Proposal - to carry Alaskan oil to the U.S. east coast through the Passage initially using six tankers (possibly expanding up to 24) each carrying 2.5 million barrels of oil 12 times a year. There is also a proposal from the same company to carry liquefied natural gas along the same route using four class-10 icebreaking LNG carriers. In the case of the oil tankers, the Globtik proposal would result in from 144 to 576 transits of the Passage annually.

General Dynamics Proposal - to ship liquefied natural gas in nuclear powered submarine tankers from Alaska's North Slope under the Northwest Passage to Southern U.S. markets (the company has also proposed supplying the Northern European market utilizing submarines under the Polar ice cap but outside of Canadian jurisdiction).

11. To test the feasibility of U.S. tankers and LNG carriers using the Northwest Passage the United States Coast Guard has informed Canadian officials that they propose to make the first winter transit of the Passage in the Coast Guard vessel Polar Sea in 1984. This voyage would be part of a joint project with 11 U.S. oil companies to test the feasibility of Arctic marine transportation and assess its commercial prospects. The U.S. Coast Guard has not asked permission to make this crossing but has enquired unofficially whether the Department of Transport would be interested in cooperating with them on it. (The Department has already participated in one expedition under this project).

12. While some of the U.S. proposals might never come into effect, it is impossible at this stage to discount the future viability of any of them. A U.S. House of Representatives Committee has already heard testimony on the Globtik proposal without coming to any conclusions. In the October, 1981 Report of the U.S. National Academy of Science, the Academy has recommended to the U.S. Government: that it financially sponsor the first tanker shipments from the Arctic; that Congress direct federal government agencies to take long-range responsibility for weather and ice prediction services; that further study be made of transport through the Northwest Passage and that there be a continuous exchange of information with other polar nations, especially Canada.

13. There has also been an expression of interest in shipping North Sea oil from the U.K. to Japan through the Passage, although no proposals have been advanced. Japanese businessmen have had consultations with Canadian government and industry representatives on icebreaker construction, the application of Canadian laws in the Passage and ship routes through it. Japan's main interest would appear to be oil and gas tanker shipments from the Beaufort Sea to Japan.

14. Special rules apply to straits when they are used for international navigation. The 1958 Geneva Convention on the Territorial Sea provided that these straits are subject to a regime of non-suspendable innocent passage. When negotiations at the Third UN Law of the Sea Conference began in 1973, flag states argued that a less restrictive rule should apply to international straits - particularly since the new 12-mile territorial sea limit would; make "legal" straits out of some 113 straits which previously had high seas corridors. The regime under the draft Convention is therefore one of "transit passage" through international straits, which is more akin to freedom of navigation on the high seas than innocent passage through the territorial sea and gives the coastal state very little control over shipping. Aircraft and submarines are also given the right of overflight and underwater transit respectively - a right which they have not previously enjoyed. The method of determining whether a particular strait is subject to these rules continues to be a geographic test and a functional one based on use.

15. The status of the Passage can change as a result of use. It is impossible to say at this stage how many crossings a year would be necessary to turn the Northwest Passage into an international strait. There is no doubt that in the absence of action to subject shipping to clear Canadian control, commercial use of the Northwest Passage by foreign ships will eventually turn it into an international strait. Assuming that the draft Law of the Sea Convention will be applicable by then, this would mean that Canada would

have virtually no control over the ships using the Passage save for the important "Arctic exception" article in the text which would permit Canada to adopt and enforce its own pollution prevention laws within the Arctic 200-mile economic zone. Even routing systems would be subject to international approval. Canada's rights under the "Arctic exception" would not extend to warships which would be free to transit the strait unhindered by any Canadian laws. Aircraft and submarines would enjoy the respective rights of overflight and underwater transit; the security implications of having a northern corridor open to the warships, aircraft and submarines of all nations are discussed later in the Memorandum.

16. As proposals for the use of the Northwest Passage, particularly by foreign interests, increase it can be anticipated from past experience that the domestic pressures on the Government to ensure that Canada exercises complete control over the use of the waters of the Archipelago will also increase. The expression of public concern about Canadian Arctic sovereignty when the "Manhattan" transited the Passage in 1969 could be matched by the winter crossing of the U.S. Coast Guard's "Polar Sea" in 1984. In the face of mounting plans for commercial Arctic navigation, two options present themselves.

- 1) To carry on with the "functional" approach of regulating activity in the Archipelagic waters to the extent possible without actually drawing straight baselines. Relevant legislation, such as the Criminal Code, Customs Act and the Territorial Seas and Fishing Zones Act, could be amended to enhance this ability and the drawing of straight baselines could be postponed perhaps indefinitely.
- 2) To draw straight baselines around the Archipelago to indicate in clear and certain terms that they are internal waters of Canada.

17. Option (1) has served us reasonably well over the past 20 years, but it is questionable if it will be sufficient in the face of changing conditions in the Arctic in the future. The closer we come to commercial use of the Passage, the less viable the choice of options becomes since once foreign shipping activities begin in earnest the harder it will be to change or even clarify the rules. A decision on the future course of Canadian policy with regard to these waters is important for the following reasons:

- a) Shipping - We are only now beginning to understand the effects of ship traffic on the Arctic environment, although the Arctic Waters Pollution Prevention Act was an early attempt to minimize its adverse effects. The Lancaster Sound Regional Study has been important in assessing the long-term detrimental effects of an oil spill on the Arctic environment. But oil spills are only part of the

concern since the passage of ships may have other adverse environmental effects, particularly on wildlife and ice conditions.

Under current Canadian law, if a vessel met the standards of the Arctic Waters Pollution Prevention Act and the Canada Shipping Act, we would be obliged to permit its passage through the Archipelagic waters and could not prohibit or delay passage or regulate the frequency of transit. The ability to do so would be important if we wished to delay the passage of vessels pending the completion of an environmental assessment. While a vessel traffic management scheme for Arctic waters as proposed by the Department of Transport would assist in ship routing in the Passage, it is questionable whether ship clearance procedures could be made mandatory if the Northwest Passage were to be regarded as an international strait. Moreover, in such an event Canada would have to submit designated sea lanes or traffic separation schemes to the U.N. maritime organization (IMCO) for approval. In order to contend with all of these and possibly other, as yet unforeseen eventualities involving shipping we will have to deal with these Archipelagic waters as internal, which in turn dictates the drawing of straight baselines.

- b) Security - The opening of the Northwest Passage to commercial navigation has security implications, although many of these implications can only be surmised at this stage. Lack of complete control over shipping opens up the possibility of foreign warships or military-related communications vessels entering the waters of the Archipelago. While this situation has not yet arisen, the case of the Polish yacht Gdynia is perhaps illustrative of non-Western interest in these waters. In that case the yacht sailed as far as Resolute before it responded to a Government request to leave the Archipelago. It is open to question what law the Government could have utilized to enforce its decision had the Gdynia not complied. Moreover, it should be noted that Department of National Defence resources to respond to this or any other kind of security incident are extremely slender. Therefore it would seem prudent and necessary that the defence posture North of 60° be kept under constant review.

This or any other kind of security incident are extremely slender. Therefore it would seem prudent and necessary that the defence posture North of 60° be kept under constant review.

The USSR has, as a policy objective, the enhancement of their naval presence in areas of interest to them around the world. It is impossible to say at this stage what the Soviet interest might be in



the Northwest Passage if it were opened to navigation. Again, it must be remembered that if the Passage were to be considered an international strait that it would be open not only for largely unrestricted navigation but to overflight and underwater submarine passage. As of now, it is thought unlikely that the Soviets would utilize the Passage for submarine transit for military purposes due to the inherent risks of under-ice navigation and difficult manoeuvrability. The same argumentation would apply to warships having to navigate through ice. Canada and the U.S.A. maintain a "watching brief" on portions of these waters for security purposes in the event of increased Soviet interest. With the Northwest Passage as a potential link between the Atlantic, Pacific and Arctic oceans, particularly as a route to transport vital energy supplies, and its strategic location at the top of North America, Canada has a vital interest in Arctic security and in ensuring that it controls access to these waters so as to be in the best position to respond to all future circumstances, both foreseeable and unforeseeable. Only by designating these waters as internal will we have the legal basis to ensure that the passage will not be open for use by military or military-related vessels at some time in the future.

The RCMP is responsible for policing the waters of the Archipelago, and in particular providing the policing service necessary to support the Inuit in pursuit of their traditional hunting and living patterns on these frozen waters. The RCMP recognize that they have a potential problem due to gaps in legislation in applying Canadian laws to these waters, particularly over hydro-carbon development activities, and would welcome a clarification of the extent of Canadian jurisdiction.

- c) Inuit Interests - The process of determining the impact of the commercial use of Arctic waters on the native peoples in the North has only recently begun. The Lancaster Sound Regional Study has been useful in this regard particularly in determining how the frequency of ship transits and the opening of routes through the ice will affect traditional hunting and living patterns on the ice-covered waters. The historic occupation by the Inuit of the ice between the islands, as well as the land, is well documented and contributes to Canada's claim of historic title to the Archipelagic waters. The Inuit Tapirisat is well aware of this contribution and has been encouraging the Government to clearly claim these waters as internal. While the Inuit might see some link between such action and their own land claim negotiations, drawing baselines neither advances nor hinders these negotiations. We have always maintained that these waters are internal and taking effective legal means to indicate this will not affect the Inuit. Canada has a responsibility to the Inuit to ensure that their interests are

recognized in any commercial use of Arctic Archipelagic waters and the greatest degree of protection would appear to come from the exercise of complete Canadian sovereignty.

- d) Draft Convention on the Law of the Sea - The draft Convention recognizes the rights of a coastal state to a 12-mile territorial sea, a 200-mile economic zone (EEZ) and sovereign rights over its continental shelf. The Convention was adopted in April and will be open for signature in December. Recommendations to Cabinet on whether or not Canada should sign the Convention are currently being prepared. Under its terms, a coastal state party will be required to provide charts to the UN Secretary General indicating the baselines from which the territorial sea, economic zone and continental shelf are measured. We have not yet issued charts showing the exact location of the Arctic territorial sea and fishing zone and would be required to do so should we become a party to the new Convention. In view of the imminent commencement of commercial navigation in the Archipelagic waters and the need for the users to know exactly what the waters' status is, Canada cannot delay much longer in indicating the location of these various zones of coastal state jurisdiction. The fact that we have not yet done so contributes to some of the confusion and misunderstanding regarding Canada's Arctic claims. If we fail to act to draw baselines, we are increasing the difficulties for ourselves should we become involved in dispute settlement procedures on the status of these waters if we become a party to the Law of the Sea Convention some time in the future. Under its terms, one party can require another party to submit to compulsory dispute settlement or compulsory arbitration if one alleges that another has acted in contravention of the Convention with regard to inter alia the freedoms and rights of navigation (such as Canadian control of shipping in the Northwest Passage). We would be in a much better position to argue that such procedures do not apply in the case of the Northwest Passage if we had clearly indicated before the commencement of commercial navigation that these waters are internal and therefore not subject to the Convention regime. If we do not act, we increase the chances that many Canadian actions related to shipping and submarine activity in the Archipelagic Waters will be subject to review and challenge through the dispute settlement procedures.

Since the Law of the Sea negotiations have concluded and the Convention will be opened for signature in December. It is unlikely that any move on Canada's part after that time would have any effect on them or upset any of the compromises in the text, including the

Arctic exception article which is supported by other Arctic states, especially the USSR.

- e) Convention on Civil Liability for Oil Pollution Damage, 1969 and 1971 Fund Convention - The question of whether or not to draw baselines around the Archipelago has implications for Canadian accession to other international conventions as well. Cabinet agreed on December 16, 1980 that Canada ratify the 1969 Convention on Civil Liability for Oil Pollution Damage and the 1971 Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage but has requested guidance on whether or not we should make an "Arctic reservation" (ie. indicate that the Conventions will not apply in the Canadian Arctic in the same way that Canada has reserved its position on the Arctic with respect to our accession to the 1973 Marine Pollution Convention). The question of an "Arctic reservation" arises because the 1969 and 1971 Conventions have a different liability regime from that provided in the Arctic Waters Pollution Prevention Act (AWPPA) and if Canada were to become a party to them we would either have to a) indicate that they do not apply in the Arctic or b) amend the AWPPA. In fact, while the AWPPA itself provides for a regime of absolute liability, the de facto regime is one of strict liability (the only regime the underwriters would agree to) which is the same regime as under the two Conventions and the Canada Shipping Act. It would appear reasonable to bring the AWPPA in line with these Conventions and the legislation in effect south of 60 degrees and there would be significant benefits for Canada in doing so which would outweigh any possible political question about amending the AWPPA. These Conventions would give Canadians who had suffered damage as a result of a maritime oil pollution incident access to a \$67 million international compensation fund. This would supplement the \$21 million maximum liability of the tanker owner and Canada's own \$100 million Maritime Pollution Claims Fund. These two Conventions specifically apply to damage caused in the territory, including the territorial sea, of a contracting party. Since Canada considers that the Archipelagic waters are part of Canadian territory, we would wish to see the Convention apply to these waters as well so that a reservation for the Arctic is not required. A more detailed examination of this question is included in Annex IV.

#### ENSURING CANADIAN SOVEREIGNTY: DRAWING STRAIGHT BASELINES

18. The above factors demonstrate that only by clearly indicating that the Archipelagic waters are internal will Canada have the degree of control required in the future to effectively regulate the expected use of these waters. The question of whether to take this action has been the subject of Cabinet

consideration and public debate for at least the past two decades. A variety of theories and principles of international law have been invoked over the years in support of the Canadian claims that the waters of the Archipelago are internal and that Canada has full sovereignty over them. The three most commonly advanced are:

- a) the sector theory
- b) historic title
- c) the "straight baseline" doctrine (ie. that baselines can be drawn on the basis that the Archipelago constitutes a single unit with the mainland).

These three can be viewed as a spectrum, with the sector theory at one end offering the least amount of support and the "straight baselines" doctrine the most. They are not mutually exclusive and all, or elements of each provide a basis under international law for Canada's claim and ample justification for use to move now to clarify the status of these waters. Details on each of these three approaches are provided in Annex III. An examination of them indicates that Canada has a good basis under the "straight baselines" doctrine enunciated by the International Court of Justice in the *Anglo-Norwegian Fisheries Case* and contained in the 1958 Geneva Convention on the Territorial Sea, to draw baselines around the perimeter of the Arctic islands on the rationale that the Archipelago is a northward projection of the mainland and constitutes a single unit with it. By drawing baselines, Canada would also be consolidating its historic title to these waters, making them internal and under complete Canadian control. The application of the "straight baselines" doctrine and historic consolidation of title is not cut and dried and arguments can be made that neither applies in the Canadian Arctic (ie. that the whole of the Archipelago is too distant to constitute a "fringe of islands along the coast" in the same way that the Norwegian archipelago does and that Canada has not expressed its historic claims with sufficient clarity. On the other hand, the year round presence of ice which binds the land to the water, the water to land ratio, which is one of the lowest of any of the world's archipelagos, and the historic record run counter to this argument). On balance, international law favors the Canadian position, and the drawing of straight baselines.

19. The drawing of straight baselines around the Arctic Archipelago would clearly delineate Canadian internal waters and provide certainty, now lacking, as to where Canadian laws and regulations do and do not apply. It would permit Canada to completely regulate ship traffic in these waters and would serve as a clear statement that Canada controls these waters and that the Passage cannot be considered as an international strait. Utilizing the

"functional approach" by amending the legislation itemized above can only be regarded as an interim response which would not provide Canada with complete control over the Archipelagic waters and would not respond to the pressing concern that the Passage might be regarded as an international strait. The baselines would be drawn to consolidate Canada's historic claim to the waters and would meet the requirements of international law in following the general direction of the coast and in enclosing waters which are closely linked to the "land domain" Canada's position would be that by consolidating its title and enclosing waters which Canada has always regarded as internal, no right of innocent passage would exist - Canada has never said, however, that it would prohibit the passage of foreign commercial vessels as long as that passage is subject to reasonable Canadian laws. National Defence believes it highly unlikely that foreign warships would wish to transit the Passage. Nevertheless, we would likely wish to apply the same requirements to warships wishing to navigate in these waters as is applicable to all our internal waters: that is, that any such entry would be subject to prior notification and approval, taking into account our existing military agreements.

20. Canada has long claimed these waters as internal, Cabinet has agreed that baselines should be drawn at an appropriate time and such an indication appears to be the only viable means of ensuring that Canada can effectively respond to all expected, and unexpected, future demands. Delay in acting will only work against our claim and make more difficult to implement our policies particularly as the date for the start of commercial navigation approaches and foreign interest mounts. That is why a decision on the waters is important now in advance of the political and economic pressures which are certain to develop rather than response to them. The drawing of baselines will, by implication, lay the sector theory to rest as far as Canada is concerned since the waters outside of the Archipelago will be either territorial seas out to 12 miles or fishing zone from that point on out to 200 miles. Given our interest in the whole of our Arctic "sector", it would seem that Canada would wish to maintain a special role -- something like a *droit de regard* -- throughout the sector, even beyond the 200-mile limit.

#### THE POSITION OF FOREIGN STATES ON ARCTIC WATERS

21. There have been dramatic developments over the past decade since Canada adopted fishing closing lines of s east and west coasts, a 12-mile territorial sea, and aimed anti-pollution jurisdiction in Arctic waters. At that time maritime powers regarded all of these actions as being unacceptable under international law and our Arctic aims were viewed in the overall context of creeping coastal state jurisdiction in all parts of the world. As a result of nearly 13 years of negotiation surrounding the Third UN Conference on the Law of the Sea these Canadian actions, and those like them of other coastal states, are now accepted and even emulated by the maritime powers themselves. Initial concerns that our actions in the Arctic

might be a precedent for archipelagic states (such as the Philippines and Indonesia), to draw baselines around their archipelagos have been largely overcome by provisions in the draft Convention which recognize the right of oceanic archipelagic states to draw baselines, subject to transit passage through established sea lanes.

22. These developments should be taken into account in determining the positions of other states on possible Canadian action on baselines. Further information on the positions of the USA, of the members of the EEC, Japan and the USSR is provided in Annex IV attached. The USA has the most direct interest in Canadian Arctic claims since they are looking to the Northwest Passage as a potential commercial shipping route for Alaskan oil and gas. They also have Arctic security interests and would probably want to ensure unimpeded passage for their warships. (It should be noted that U.S. Coast Guard ships have made transits of the passage in 1957 and 1969 and U.S. submarines three recorded transits, but no U.S. surface warship has transited the Passage - nor are such transits planned for the near future.)

23. The USA protested the Arctic Waters Pollution Prevention Act in 1970 and said that they could not agree to Arctic claims not supported by international law. As a matter of policy the USA protests nearly all straight baselines of more than 24 miles in length and we can therefore expect that they would protest our move in the Arctic (there is no indication that the USA has departed from its policy of diplomatic protest in favor of military confrontation; the Gulf of Sidra incident involving Libyan claims to internal waters appears to have been directed more against Libya than against straight baselines.) It is difficult to predict the vigor of a possible U.S. protest at this stage since Arctic baselines were first discussed with the USA in 1976 but we can assume a negative reaction. When the matter was last discussed with them, a number of U.S. officials expressed sympathy for Canadian concerns about the possibilities of the Northwest Passage becoming an international strait and open to Soviet ships. We should encourage the USA to continue to take this position and emphasize that Canada would permit the passage of commercial vessels, subject to reasonable Canadian laws, and any passage of U.S. warships and submarines would be on the basis of existing defence arrangements. Paradoxically, it is the United States, which has traditionally encouraged states to adopt the multilateral treaty approach to the Law of the Sea (and specifically did so with Canada in the U.S. Note on the Arctic Waters Pollution Prevention Act) that has been questioning its own commitment to this very approach. The United States, (along with Venezuela, Turkey and Israel) voted against the adoption of the draft Convention on the Law of the Sea in April due to its opposition to a number of provisions on seabed mining. It appears likely that the USA will not sign the Convention and even try to undertake seabed mining outside of the Convention regime. This puts the USA in a difficult position since it

approves of the navigational guarantees under the Convention, in particular those granting vessels transit passage rights through international straits. The USA might well find itself embroiled in controversy if it attempts to take the benefits conferred by the Convention on maritime states (ie. transit passage) while ignoring those portions it does not like (ie. seabed mining). The attached Communications Plan indicates how Canada might address the question of Canada's position with regard to Arctic waters publicly in the United States.

24. It now appears possible, as a result of developments since 1970, that the expected reaction of some foreign states might not be as adverse as once might have been anticipated. Members of the EEC and Japan will likely not protest the Canadian action (at least publicly) and the USSR might even tacitly support us. The U.S. will probably protest, however; we should not be deterred since it is clear that the USA would have protested Canadian action in this regard in 1960, 1970 and likely will at any time in the future. Postponing drawing baselines to a time to meet with U.S. approval can only lead to the gradual erosion and final abandonment of the Canadian claim to internal waters. While acquiescence to the Canadian claim is an element recognized by international law in sustaining a claim to sovereignty over water or land; foreign protest or protests would not necessarily be fatal. Acquiescence might come over time - as in the case of the Arctic Waters Pollution Prevention Act.

#### EFFECT ON THE SPECIAL BODIES OF WATER

25. The special bodies of water and the waters of the Arctic Archipelago are often considered in the same context and if Canada moves to draw straight baselines in the Arctic, political pressure might be expected for similar action in the "special bodies of water", the Gulf of St. Lawrence, Bay of Fundy, Queen Charlotte Sound, Hecate Strait and Dixon Entrance. Our claim that the waters of the Gulf and the Bay of Fundy are internal is legally the most secure, although all claims are contentious.

26. Many of the same arguments for drawing baselines in the Arctic would also apply to these special bodies of water including the uncertainty about the application of Canadian law and the need to clearly set out our zones of coastal state jurisdiction for international treaty purposes (including Canada's ratification of the 1973 Marine Pollution Convention). The difference is that none of the special bodies of water can be considered as waters which have not been used for international navigation and which face the prospect of having their status changed as a result of changing circumstances. Thus, there is not the same need for immediate action with regard to, the special bodies. Also, federal action with regard to all or some of these bodies would have to take account of the lengthy federal provincial consultations on the offshore. The USA has rejected our assertions of sovereignty over these waters in the past and our drawing baselines to



## *From Polar Sea to Straight Baselines*

delineate these waters as internal might add an additional complicating factor to our boundary negotiations with them.

27. A good case can be made for proceeding with the Arctic on its own merits rather than in conjunction with claims to other, unrelated bodies of water. Action on Canada's claim to these special bodies of water can be taken in the future following action in the Arctic.

### TIMING OF CANADIAN ACTION

28. There is no ideal time for Canada to draw Arctic baselines. Ministers recommended the drawing of baselines in 1960 and the Cabinet again agreed that they should be drawn in 1976 once Law of Sea negotiations had concluded, (which is now the case). Because the Convention is not yet open for signature and foreign governments should be notified of the Canadian move, it is somewhat difficult to recommend an exact date for drawing baselines, but Cabinet could agree in principle that it be done in 1982 or in early 1983. A case can be made that Canada should move during the fall of 1982, before the signing of the Convention so that the Canadian move, resting on an historic claim and existing international law, stands apart from the conclusion of the Law of the Sea Convention in December, 1982. If not, the baselines should be drawn shortly after the Convention's adoption, i.e. in early 1983. The decision on the actual date to implement the Order in Council designating the baselines might best be left to the recommendation of the Secretary of State for External Affairs on the basis of consultations with other interested Ministers.

### COMPREHENSIVE GOVERNMENT ACTION AND FINANCIAL IMPLICATIONS

29. Drawing baselines in itself will not assure Canadian control of Arctic waters. Any decision to draw baselines is a first step but it must be augmented by a determination on the part of Canada to provide adequate operational systems such as icebreaking, communications, aids to navigation, surveillance, search and rescue and policing, so that Canada exercises (as well as proclaims) its control over these waters. Canada must also maintain a competitive advantage in Arctic technology to eliminate the need to turn to or rely on foreign interests, particularly in the field of Arctic shipping. Once these waters are clearly internal under Canadian law some amendments to existing legislation and guidelines will be required to deal with such matters as permission to use Arctic waters; frequency of transit; traffic separation schemes; military exemptions; ship design, construction equipment and manning standards, and foreign access to Canadian Arctic technology. On the whole such legislation should be less complicated, and



more effective, than amending Canadian laws to expand the use of the "functional approach".

30. Much of the work is already underway through interdepartmental and Cabinet consideration of such things as an Arctic Marine Services Policy, under the direction of the Department of Transport and a northern hydrocarbon policy, under the Department of Indian and Northern Affairs. The Marine Services Policy is geared to respond to the demand for operational services from industry. Following the recommendation of the Federal Environmental Review Office (FEARO) Transport established a Control Authority for Arctic Shipping as well as an interdepartmental Advisory Committee to provide advice to the Department based on biological / environmental studies. The Canadian Coast Guard has established a Northern Directorate, which will evolve into a year-round Arctic Region Coast Guard command.

31. The drawing of baselines around the Archipelago will complement these and other activities and will not result in any immediate financial expenditures. Such a move by Canada would indicate a clear Canadian resolve to control these waters and would reinforce the Government's stated intention to provide services essential to the safe, effective development of year round Arctic exploration and transportation projects.

#### FEDERAL-PROVINCIAL RELATIONS

32. While the provinces are not directly involved in the drawing of Arctic baselines, provincial governments would likely welcome the federal governments move to clarify Canadian sovereignty and clearly assert control over an area of importance to all Canadians; Since such a move has been advocated by Inuit organizations and would assist in the application of Canadian laws in the north, the Territorial Governments would also welcome this action. The Territorial Governments should be advised in advance of the promulgation of baselines.

#### PUBLIC INFORMATION CONSIDERATIONS

33. A Communications Plan identifying interest groups is attached as Annex VI.

#### INTERDEPARTMENTAL CONSULTATIONS

34. This Memorandum has been prepared by the Department of External Affairs in consultation with the Departments of Transport, Energy Mines and Resources, Indian and Northern Affairs, Justice, Environment, National Revenue and National Defence as well as the Royal Canadian Mounted Police.

## CONCLUSIONS

35. While Canada's sovereignty over the Arctic Islands is beyond question, Canada has yet to "perfect" its claim to sovereignty over the waters of the Archipelago. Cabinet decided in principle, in 1976, that this claim should be precisely and formally asserted by drawing straight baselines around the perimeter of the Archipelago. Such action was to be deferred until the international climate, particularly developments at the Law of the Sea Conference, created a more propitious atmosphere. It is apparent that while the existing legal regime might be sufficient for the limited uses now placed on the Archipelagic waters, that maintaining our policy of applying the "functional approach" (ie. attempting to apply relevant Canadian laws to Arctic Archipelagic waters without drawing baselines to clearly indicate them as internal) will not be sufficient to protect our interests once commercial navigation of the Northwest Passage begins, perhaps in three years time.

36. Drawing baselines to delimit our full sovereignty over the Archipelagic waters is essential to ensure full Canadian control over these waters, particularly in terms of our legal, ecological, security, and Inuit interests. Although the exceptional nature of Arctic waters has now gained international recognition insofar as pollution prevention is concerned, the Canadian, claim to full sovereignty over the waters of the Archipelago, remains a subject of some controversy and drawing straight baselines would no doubt cause a reaction from the USA and perhaps other major maritime powers. Developments at the Law of the Sea Conference have altered the perception of many maritime states of what they once regarded as unacceptable maritime claims and it is possible that our action will not engender the sort of negative reaction once expected. A strong protest still might be expected from the United States. The Law of the Sea negotiations are now nearly at an end and any Canadian move to draw baselines, upon their completion in 1982 would not upset the consensus at the Conference - including agreement on the "Arctic exception" article which recognizes the validity of the Arctic Waters Pollution Prevention Act.

37. An increasing amount of urgency is attached to the drawing of these baselines because the need to protect the Canadian claim in the face of proposals to begin using the Northwest Passage as a commercial waterway, with the prospect of its becoming an international strait through usage. Under the new draft Law of the Sea Convention, if the Northwest Passage were to become or be considered as an international strait, Canada would have only limited control over foreign ships, and would have to permit the passage of warships, overflight and underwater submarine traffic. It is therefore essential that the waters of the Archipelago be clearly brought under Canadian control through the delimitation of straight baselines

around the perimeter of the Arctic Archipelago. Canada would not wish to bar the passage of foreign commercial ships in these waters; we would, however, wish to regulate their passage. It is important that we have our Arctic regime in place as soon as possible before considering whether to ratify the new Law of the Sea Convention. A decision on whether or not to draw baselines is necessary now before commercial traffic begins and Cabinet could therefore decide in principle that baselines would be drawn in 1982, with the exact date to be recommended by the Secretary of State for External Affairs on the basis of consultations with his colleagues.

38. To maintain its claim to these waters, Canada must do more than proclaim baselines. We must also have the capacity, and exhibit the capability, to control and regulate the use of these waters and provide the navigational, icebreaking, communications, surveillance search and rescue, customs, hydrographic and policing services which the exercise of full sovereignty would require. There must be a commitment to maintain a technological lead in the provision of these services or Canadian activities could be supplanted by more efficient or advanced foreign capacity (on which we could come to rely) leaving Canada with only a paper claim.

### RECOMMENDATIONS

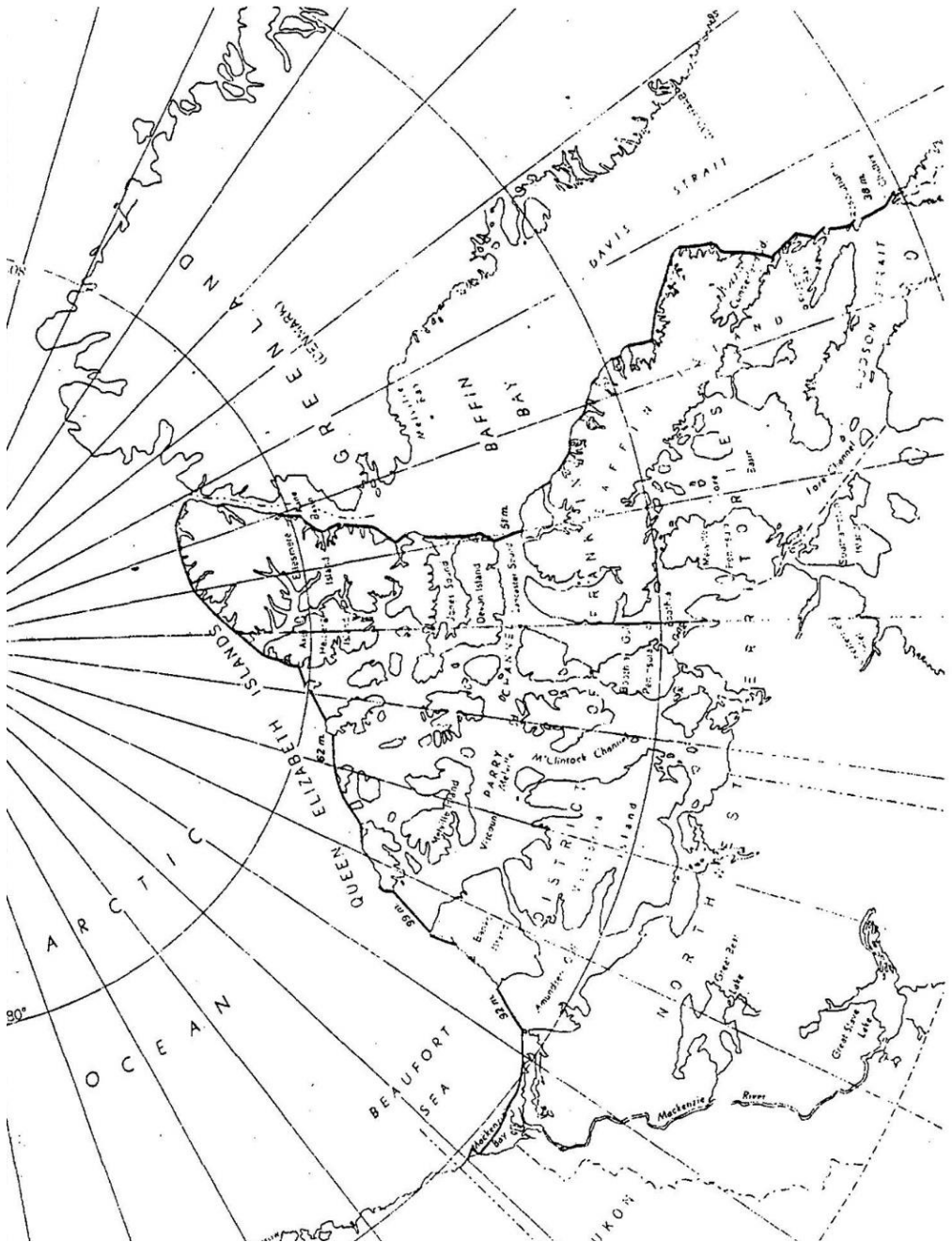
It is recommended that:

1. the legislative section of the Department of Justice be instructed to draft an Order-in-Council which will promulgate baselines pursuant to the Territorial Seas and Fishing Zones Act around the perimeter of the Arctic Archipelago so as to make the waters therein internal waters of Canada. The baselines should be drawn on the basis of the coordinates and chart attached as Annexes I and II hereto;
2. the Order-in-council be promulgated in 1982 or early in 1983 on a date to be recommended by the Secretary of State for External Affairs, on the basis of consultations with other interested Ministers;
3. while activities in these waters will be subject to reasonable Canadian regulation and control, the Government reaffirms its intention to permit passage of foreign commercial shipping;
4. the USA, members of the EEC, Japan, Norway, and the USSR be informed of the Government's decision above before the Order-in-Council is promulgated.
5. departments continue the development of regulations, guidelines and amendments to legislation for future

consideration by Cabinet to ensure that Canada maintains effective control over the waters of the Archipelago.

6. the Government reaffirms its intention to provide government services essential to the safe, effective development of year round Arctic exploration and transportation projects, if and when such projects may be approved.

ANNEX II



ANNEX III

SECRET

BASIS FOR CANADIAN CLAIM

1. The Sector Theory

Under this theory countries bordering on the Arctic Ocean have a claim to sovereignty over the lands (and waters) included within a pie-shaped area bounded by their northern coasts and lines projected from the extreme eastern and western limits of their coasts to the North Pole. In Canadian terms this would mean that we would claim sovereignty over all lands and waters within a triangle whose base is the northern mainland, the apex is the North Pole and the sides respectively 141 degrees on the west and the 60 degree meridian on the east. The sector theory has been invoked by officials and academics in Canada over the last 80 years mainly as a means of claiming sovereignty over Arctic islands. Some argue that it applies to the waters within the sector as well, although pronouncements in this regard have never been as clear-cut as the claims to land territory. The use of the theory has been inconsistent, having been both affirmed and denied by Ministers and officials. The USSR has used this theory to claim sovereignty over the islands within its sector (and has left claims to the waters unclear). It has also recently argued in delimitation negotiations with Norway that its western sector line forms the boundary for the USSR's continental shelf. Whatever its application for land claims, it is generally agreed that the theory has a weak foundation in international law and Canada's claim has a more solid basis elsewhere.

Nevertheless, insofar as the waters in the sector are concerned, Ministers recommended to Cabinet in 1960 that "the sector theory be held in reserve by Canada and not repudiated". Officials have been guided by this recommendation, although it has become increasingly difficult to avoid giving the impression that the theory has been abandoned. In the Lincoln Sea boundary negotiations between Canada and Denmark, Cabinet agreed in 1976 that Canada should press for a median line delimitation favoring Canada's interests but departing from the 60° "sector" line boundary with Denmark (Greenland). In the Beaufort Sea, Canada continues to claim the 141st meridian as the maritime boundary with the USA, but this on the basis of the 1825 Treaty between Great Britain and Russia rather than on the sector theory. It will, of course, be even more difficult to support the theory if baselines are drawn around the Archipelago so as to make those waters internal. Canada's proclamation of a 100-mile pollution prevention zone in 1970 and a 200-mile fishing zone in 1977 are in themselves inconsistent with the sector theory and the claim that the waters within the sector are internal. Canada might wish, however, to keep a droit de regard in those parts of the

sector not under Canadian jurisdiction. In sum, while the number of assertions of sovereignty over the land and waters of the Archipelago pursuant to the theory give continuity to Canada's claim, we should not rely on the sector theory as the basis for sovereignty over these waters.

## 2. Historic Title

There are three requirements under international law to establish a claim to historic title over lands or waters:

- (i) the exercise of state authority;
- (ii) the continuity of the exercise of state authority or usage; and
- (iii) the general toleration of states.

The state must first of all manifest its sovereignty. It is difficult to determine what acts are sufficient, but they must go beyond mere legislation or proclamation. A state must exhibit effective control of the lands or waters in question. The degree of control required will depend on a number of factors: the size of the area, its remoteness, the extent of its use and the demand for use on the part of other states. While the passage of time in the exercise of this authority is necessary, international law does not specify how long an historic title will take to materialize. Foreign states also have to tolerate the claim; the absence of protest is sufficient and acquiescence in the form of consent is not necessary. Convincing evidence must be presented to substantiate an historic claim and the burden of proof is on the claimant state. It is questionable whether Canada can say with certainty that we have met all of these standards. Unfortunately, our position with regard to the status of these waters has not been especially clear over time. While we can point to a long history of British and Canadian Arctic exploration, it has only been in recent years that Ministers and officials have clearly stated that we regard these waters as internal - although we have never acted in a manner in any way inconsistent with this.

While we might not be able to point to one or more manifestations of sovereignty which clearly establish Canadian title over these waters, international law recognizes a less onerous route to achieve the same end - historic consolidation of title. The requirements are similar to those outlined above but are more flexible, with the passage of time taking on much more prominence. It is based on the principle of international law that "it is necessary to abstain as much as possible from modifying factual situations which have existed for a long time " (*quieta non movere*). A state would therefore be able to point to its activities in an area over a period of time (no one act of which would be sufficient in itself to grant immediate sovereignty) and the general toleration of states with regard to them, in order to "consolidate" or "perfect" its sovereignty claim. Canada has demonstrated its sovereignty over these waters since the turn of the century, specifically by enforcing fisheries and whaling legislation and exercising control over the



movement of ships in the Archipelago. The Inuit have traditionally made no distinction between the ice-covered waters of the Archipelago and the land territory and their habitations and hunting patterns on the ice are well documented. A number of states protested the adoption of the Arctic Waters Pollution Prevention Act in 1970, but Canada was not claiming sovereignty under this legislation but applying environmental legislation in an area one hundred miles off our coasts. The USA and the UK did leave two Aide Memoires in 1969 which sought clarification of Canadian claims over Arctic waters. The U.S. Aide Memoire said that they would not be able to accept claims "not clearly justified under appropriate principles of international law". Neither of these could be described as a protest note although as indicated elsewhere a protest from the USA can be expected should we draw baselines.

Canada can make a convincing claim to enclose these waters on the basis of historic consolidation of title. The matter is not totally beyond dispute, however, and we could not expect to succeed on this ground alone and the third line of argument, the "straight baselines" doctrine, must therefore be considered in conjunction with it.

#### 4. The "Straight Baseline" Doctrine

International law recognizes the unique nature of "fringes of islands along the coast" in determining the outward limit of coastal state sovereignty. The International Court of Justice decided in the 1951 Anglo-Norwegian Fisheries case that the straight baselines system constitutes an exception to the normal rule of delineating the territorial sea from the low water mark following the sinuosities of the coast. The Court held, and the ruling was later codified in the 1958 Geneva Convention on the Territorial Sea, that the baseline from which the territorial sea is measured becomes independent of the low water mark where the coast is deeply indented or where there is a fringe of islands in the immediate vicinity of the coast, in the words of the Geneva Convention. In such an event, the baselines may depart from the physical line of the coast as long as (1) they do not depart to any appreciable extent from the general direction of the coast; and (2) the sea areas, within the lines are sufficiently closely linked to the land domain to be subject to the regime of internal waters. It would appear from the judgment that it is these two basic criteria which are important and not the length of a particular baseline. The two longest baselines in the Archipelago would be, 99.5 miles across McLure Strait and 91.9 miles across Amundsen Gulf, both at the western end of the Passage. Sixteen other states including the USSR have drawn longer baselines, largely across coastal gulfs and bays and linking coastal archipelagos and at least 40 states, including France, Norway, U.K., Spain and Iceland, have drawn baselines of more than 24 miles. Not all of these lines are universally accepted and some, such as



Libya's of 300 miles are clearly excessive; the questionable legality of baselines such as this should not affect Canada's claim that the waters of the coastal Arctic Archipelago are internal.

In Canada's case the geography of the triangular Arctic Archipelago is a prolongation or projection northward of the mainland and constitutes a single unit with it, in the same way that the fringe of islands along the Norwegian coast was held by the ICJ to constitute a single unit with Norway. Geographic realities would dictate, therefore, that Canada's territorial waters be delimited from baselines surrounding the Archipelago. If the whole Archipelago is viewed as a single unit there is no question that the baselines follow the outer line of the Archipelago, as the chart in Annex II demonstrates. The "close link" between the land and the water once the Archipelago is enclosed by baselines is underscored by the fact that the ratio of sea to land territory would be 0.822 to 1, one of the lowest sea to land ratios of any archipelago in the world (in Norway's case the ratio was 3.5 to 1). Further, the waters are frozen solid for nine months of the year and are treated as being one with the land by the Inuit inhabitants.

Once enclosed by straight baselines, the waters of the Canadian Arctic Archipelago would clearly have the status of internal waters. Under a provision of the 1958 Geneva Convention on the Territorial Sea, a right of innocent passage would apply if these waters were considered to be territorial or high seas before the baselines were drawn. As has been indicated above, Canada maintains that these waters have always been internal and that the baselines serve to consolidate Canada's historic title to them. No right of innocent passage would therefore exist - although Canada has indicated that it would permit such passage, subject to reasonable Canadian laws and regulations.

ANNEX IV

SECRET

CANADA'S RATIFICATION OF THE 1969 CONVENTION ON CIVIL  
LIABILITY FOR OIL POLLUTION DAMAGE AND THE 1971  
CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL  
FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE

Cabinet has agreed that Canada ratify these two Conventions but has requested guidance on whether or not we should make a reservation with regard to the Arctic. The 1969 Civil Liability Convention places a maximum of \$21 million on the liability of a tanker owner for an oil pollution incident under a strict liability regime (i.e. permitting the defences of Acts of God, war, etc.), This is in fact the same regime now employed under the Canada Shipping Act. In addition, the Fund Convention provides supplementary compensation (now up to \$67.5 million) to victims who suffer damage in excess of a shipowner's liability. The Fund is made up from contributions from parties to the Convention on the basis of a formula related to the amount of oil carried by tanker to or from each party (Japan is now the largest contributor although the USA has now indicated its intention of ratifying the Conventions). In order to become a party to the Fund Convention, states must also be parties to the 1969 Convention.

The question of whether or not Canada should reserve its position in the Arctic arises because the liability regime under the Arctic Waters Pollution Prevention Act (absolute liability, with no defences permitted and no maximum on the amount of that liability) and the liability regime under the 1969 Convention (strict liability with a maximum of \$21 million) are different. Becoming a party to the 1969 and 1971 Conventions without an Arctic reservation would therefore require an amendment to the AWPPA. In fact, this does not present much of a problem. When the Arctic legislation was passed it was thought that a more stringent regime should apply so that there was no maximum amount placed on a tanker owner's liability and it was to be absolute. It did not prove possible to obtain the underwriters' agreement for such a regime, however, and in practice the one currently in effect is the same as that of the Canada Shipping Act and the 1969 Convention. It would seem reasonable therefore to amend the AWPPA to bring the liability regime into line with the actual situation, both nationally and internationally. Any political question about amending this legislation would appear to be outweighed by the benefits that acceding to these two conventions without a reservation would bring.

The fund provides compensation for pollution from an oil tanker which causes damage on the territory, including the territorial sea, of a contracting party. The Fund would also compensate for preventive measures

taken to ensure that a state's territory is not damaged. Canada would also receive all the benefits from an international fund, to which it was making only a small portion of the contributions. (Canada will continue to maintain its own \$100 million Maritime Pollution Claims Fund as part of the Canada Shipping Act, and these Conventions would provide an additional source of compensation if other sources prove inadequate or unavailable). Since the Fund compensates for damage to the territory of a state, a strong case can be made that the Conventions should apply anywhere in Canada including the Arctic so that victims north of 60 degrees would have the same advantages as those in the south. Not making a reservation for the Arctic would also be an indication that it is as much part of Canadian territory as any other part.

In ratifying the Conventions without an Arctic reservation, it is necessary to weigh the possibility that a Canada claim for compensation for pollution damage in the waters of the Archipelago could be challenged by another party to the Convention on the basis that the damage did not affect Canadian territory or the territorial sea. This would be the case, say, if a tanker caused damage in the middle of the Northwest Passage more than 12 miles from land and Canada sought compensation from the Fund on the basis of damage to Canadian territory (i.e. internal waters). In awarding compensation it has been the practice of the Fund to examine the expenses incurred by a state party on the basis of its national legislation or its state practice. The existence of straight baselines around the Archipelago would be the best indication that these waters are internal and of Canada's responsibilities with regard to them. While there is the possibility of another party which did not recognize these waters as internal challenging a compensation award, the chances of this happening are slight considering that it is unlikely that incident would occur without affecting undisputed Canadian territory; the fact that Canada can claim for measures to prevent damage to its territory and the practice of the Fund to look to national legislation and practice

Considering the benefits which ratification of the two Conventions will bring, the fact that the liability regime under the 1969 Convention is now in place in either a de jure or de facto form and the remote possibility that our position with regard to the Arctic could be compromised, it is recommended that Canada ratify the two Conventions without an Arctic reservation.

ANNEX V

SECRET

POSITIONS OF FOREIGN STATES

THE USA

A number of informal discussions with senior U.S. officials took place in the 1960s about Canadian claims not only to Arctic waters but to the "special bodies of waters" - the Gulf of St. Lawrence, the Bay of Fundy and Queen Charlotte Sound. The U.S. Government in a 1969 Aide Memoire said that it would be "unable to accept claims of internal waters or territorial seas in these (Arctic) areas not clearly justified under applicable principles of international law. The USA protested the Arctic Waters Pollution Prevention Act on the basis that international law did not recognize a pollution prevention zone of one hundred miles on the high seas. At the same time the USA protested Canada's extension of its territorial sea to twelve miles.

As a matter of policy the USA protests all straight baselines of more than the 24 miles specified as the maximum closing lines for bays in the 1968 Geneva Convention and the draft Convention on the Law of the Sea. The USA, as a major maritime power makes few exceptions to this policy in order not to give encouragement to states to draw lengthy straight baselines (from a domestic point of view the USA only claims three historic bays, all under 24 miles across, and has little inducement to draw straight baselines to make other waters internal since they would fall under state, rather than federal control). The USA utilizes diplomatic protests and a recent incident in which the USA militarily challenged Libya's claim to a 300-mile baseline across the Gulf of Sidra (which has no foundation under international law) appears to be related more to bilateral relations with Libya than is the start of a general departure from previous practice.

We can expect that the USA will protest our move to draw baselines in the Arctic. It is worth noting that some US officials have shown some flexibility on how vehemently the USA could do so. The last time this issue was raised with US officials was in 1976 when the "Arctic exception" article in the draft Law of the Sea Convention was being considered. On Cabinet instructions, the USA was advised of Canada's intention to draw Arctic baselines at some appropriate future time. The head of the U.S. delegation said that the USA would reserve its position on this matter and the drawing of baselines would "cause us some problems." Privately, members of the U.S. delegation expressed some sympathy for the Canadian position since they saw this as a means of prohibiting Soviet military vessels from navigating in the archipelagic waters. On the basis of these consultations, the last with the

USA on sovereignty over Arctic waters, the Canadian delegation reported that "the USA itself would not subject its warships and paramilitary vessels to such Canadian authority but might conceivably make only pro forma noises about the Canadian action in drawing straight baselines." We cannot say whether U.S. officials would continue to privately take such a position.

#### The EEC, Norway and Japan

The UK, France, Belgium and Japan protested the Arctic Waters Pollution Prevention Act, largely on the same basis as the USA - that it was a unilateral declaration of jurisdiction over the high seas and would set a precedent for other states. In a separate confidential Aide Memoire, the UK specifically said that "it would not be acceptable to consider all water lying between the Arctic Islands to be internal waters". They did not wish the document made public. It is likely that the UK's attitude or interest in the subject has modified over the past decade as a result of events, particularly the Law of the Sea Conference. Other EEC countries do not appear to have any direct interest in the matter since we have not learned of any plans that these countries have to use the Northwest Passage for transit purposes. As indicated, there has been a suggestion to ship North Sea oil to Japan via the Northwest Passage but this idea has never been put into concrete form. Moreover, Japan, like West Germany, is interested in obtaining oil and gas exports from the Arctic and would likely take their economic interests into account in considering their reaction. If these states have any concern it would likely relate to possible precedent-setting aspects of the Canadian move and these aspects would appear limited.

Both Denmark or Norway have been "low key" in expressing any concerns about Canada's actions on coastal jurisdiction and it is unlikely that they would react any differently on this occasion while Norway is a major flag state it is also the "author" of the straight baseline doctrine). One purpose of drawing baselines would be to put Canada in a better position to regulate tanker traffic through the Northwest Passage and ensure that ecological and Inuit interests are taken into account. This objective should appeal to Denmark and Greenland. There is the possibility that it might encourage Greenland authorities to try to move to claim its portion of the Davis Strait as internal but there is no legal foundation for such a claim. Denmark (Greenland) might be able to apply its own non-discriminatory pollution prevention regulations under the "Arctic exception" to Canadian and other tankers using its side of Davis Strait, but any attempt to completely bar ship traffic would be going beyond its provisions.

#### The USSR

The Soviet Union would probably remain neutral on any move by Canada to draw straight baselines around the Archipelago although they would likely support us privately. Soviet claims to its own Arctic waters are

unclear. In a 1926 decree, the USSR claimed all the lands and islands located north of the Soviet mainland within its sector (with the exception of the Spitzbergen Archipelago) and while the decree does not refer to waters, some Soviet jurists have interpreted it to so apply. The Soviet Government appears to regard the Northeast Passage as being internal waters but again their practice has not been wholly consistent and no law has proclaimed it as such (although a 1960 statute defined internal waters as including the waters of bays, seas and straits "historically belonging to the USSR").

ANNEX VI  
SECRET

COMMUNICATIONS PLAN

Objective

To inform Canadians and select audiences in the United States and a number of European countries of the reasons why Canada has drawn straight baselines around the perimeter of the Arctic Archipelago.

Target Populations

Within Canada there are two audiences: the general public, which is concerned about Canadian sovereignty in the Arctic, and those who have a particular interest in Arctic affairs, such as residents of the Northwest Territories (in particular the Inuit), academics (in particular international lawyers); those in the business community with Arctic interests (particularly in the petroleum and transportation sectors).

Within the United States, outside of Government, the audience would be a specialized one, mainly in the media, the academic community and among those in the business community with interests in Arctic petroleum and transportation. The same audiences would exist in European countries with an interest in the Arctic and/or maritime affairs (the UK, FRG, Norway, Denmark and Japan).

Theme of the Announcement

The basic theme of the announcement is that Canada has drawn straight baselines around the Arctic Archipelago in order to clarify its longstanding claim that these waters are internal waters of Canada. Since Canada has always believed these waters to be internal, the announcement should be relatively low-key, in a sense routine, so as not to make it appear that Canada is laying claim to new territory (and to avoid heightening any foreign (especially U.S.) concerns). Nevertheless since the question of Canadian sovereignty in the Arctic, in particular as it relates to the Northwest Passage, has been the subject of public interest in the past, it can be expected that the announcement will arouse interest within Canada and media coverage will be significant. A fairly detailed press release setting out why baselines are being drawn and their effect should therefore be prepared. While Canada has waited until the conclusion of the Law of the Sea negotiations before acting, the announcement should not be linked to developments at the Conference since the Draft Convention does not deal explicitly with Canada's claim, nor does it prohibit such Canadian action. Our move stands on its own, separate from developments at the Conference. The reason for acting at this particular time can be given as the need to

## *From Polar Sea to Straight Baselines*

clarify the legal situation in these waters in view of the increasing activity, and plans for such activity, within them

The press release should contain the following information: the nature of Canada's historic claim to these waters the recognition under international law of a coastal state's right to draw straight baselines around coastal archipelagos; the legal effect of such an action, especially on the Northwest Passage; the commitment of Canada to permit foreign commercial traffic through the passage subject to reasonable regulation.

Outside of Canada, the fact that Canada will permit foreign traffic and is acting under established principles of international law should be stressed.

### Timing of Announcement

Since the drawing of straight baselines relates to Canadian sovereignty in the Arctic and requires an Order-in-Council, the most appropriate place would be the House of Commons. A press release could be issued simultaneously and the Secretary of State for External Affairs could respond to questions in a press conference the same day. Our Embassies in the relevant countries could send out press releases to their target audiences and be briefed to respond to any questions.

### Follow-up Activities

In an attempt to keep the announcement relatively low key, limited follow-up public relations activity is contemplated. The Secretary might wish to speak on the question of Arctic sovereignty in some suitable forum shortly after the announcement. The Department of External Affairs could arrange for "seminar-type" briefing for Canadian academics and Canadian businessmen with Arctic interests. In addition, members of the Legal Bureau of the Department of External Affairs address academic audiences on a fairly regular basis and could include the subject of baselines in speeches on Arctic sovereignty. The Bureau would be prepared to respond to foreign requests for speakers on the subject at significant symposiums such as the American Society of International Law and the Law of the Sea Institute. Our Ambassador in Washington and our Consul General in New York might also wish to address interested groups on the subject and similar "seminar" briefings could be held in both locations for academics and businessmen. While contingency planning for the USA is important, the extent of our public relations activities there should await a determination on interest in the subject among target audiences in the USA.



**Budget**

It is expected that the above communications plan can be met out of existing departmental budgets.

**2. Memorandum for the Deputy Minister and Secretary of State for External Affairs, “Canada-United States Consultations on the Law of the Sea and Arctic Baselines,” November 3, 1983.**

***LAC, RG 25, vol. 4, file 8100-14-4-2***

Bureau of Legal Affairs  
T.C. Bacon/2-2728  
Legal Advisor  
L.H. Legault/3-4324

SECRET WITH ATTACHMENTS/  
CONFIDENTIAL

November 3, 1983  
JCD-0128

Memorandum for the Deputy Minister and Secretary of State for External Affairs

c.c. Minister of State (External Relations)  
c.c. Minister of State (International Trade)

Subject: Canada-United States Consultations on the Law of the Sea and Arctic Baselines

Purpose

To inform you of the results of recent Canada-United States consultations on Law of the Sea matters, including the question of Arctic baselines, [line classified under Access to Information Act s. 23]

Summary Report on Consultations

There have been two rounds of consultations with the United States on Law of the Sea matters following the adoption of the new Convention: the first on February 4, 1983 (our memorandum LAP-008 of February 14, 1983) and the second on October 11, 1983. On both occasions the consultations took place at the request of the United States.

At the February session, the Americans’ main concern was the question of the right of transit passage through international straits

overlapped by the 12-mile territorial sea. The United States considers that this right is assured under customary international law and is not contingent on signature of the Law of the Sea Convention. The two sides agreed on a modus vivendi with regard to their different views on the issue.

At the October session, the United States informed us of the results of its bilateral consultations with other countries on the question of transit passage, and of its future intention in this respect. The Americans also provided an update on their proposed legislation to establish a National Oceans Policy Commission and to implement President Reagan's proclamation on the establishment of a United States exclusive economic zone. The main United States interest, however, was to determine Canada's intentions with regard to drawing baselines around the Arctic archipelago to give explicit legislative expression to the long-standing claim that the waters of the archipelago are internal waters of Canada. This matter had been raised by the Canadian side in February, when it was indicated that the establishment of baselines (which Cabinet had approved in principle in 1976) was again under active consideration following the conclusion of the Law of the Sea Conference. At that time, the United States had reserved its position and expressed the hope that we would consult further before proceeding. The United States had also made it clear that, although it regards the provisions of the Law of the Sea Convention on environmental protection in ice-covered waters (the so-called "Arctic exception") as being customary international law, it does not consider that these provisions give international recognition to Canada's Arctic Waters Pollution Prevention Act.

At the latest consultations, the United States reiterated its position on the "Arctic exception" and its serious concern with respect to any possible Canadian move to draw baselines in the Arctic. The Americans are particularly concerned that such action would establish an undesirable precedent, which might be followed by Indonesia in particular. They have not yet been able to advance their negotiations with the Indonesians on the question of sealane passage, and it seems unlikely that they will be able to do so for some time. It was explained to the United States

- i) that any Canadian baselines in the Arctic would not be based on the new "archipelagic state" provisions of the new Law of the Sea Convention (upon which Indonesia relies) but rather on traditional provisions retained from the 1958 Territorial Sea Convention (originally derived from the 1951 Anglo-Norwegian Fisheries case);
- ii) that, unlike the waters separating the islands of Indonesia, Canada's Arctic waters are unique because of their ice cover, their use by the Inuit virtually as land territory, and the absence of commercial navigation in this area; and

- i) that, unlike the Northwest Passage, the waters of the Indonesian archipelago have customarily been used for international navigation, so that, even if Indonesia were to draw baselines connecting all its islands, it would not be able to deny customary rights of passage.

United States officials acknowledged that the two situations were not parallel, but argued that this would probably have little effect on the Indonesian attitude.

It was further explained to the United States that, in light of the public reaction to the experimental transit of the Northwest Passage by the "SS Manhattan" in 1969, political pressure in Canada to consolidate Canada's Arctic waters claims could be expected to mount if plans for intensified navigation in Canadian Arctic waters should materialize, as expected, in the near future. In this context, we asked if the United States Coast Guard would be proceeding with its plans to send two icebreakers to transit the Northwest Passage in January and February of 1984. We were informed that this program has been postponed and that no decision on its reactivation in 1985 has yet been taken. The last round of discussions concluded with an undertaking to consult further on the question of baselines, in general, and the United States ice-breaker program, in particular.

#### Memorandum to Cabinet on Arctic Baselines

In keeping with the Canadian position on the internal status of the waters of the Arctic archipelago, including the Northwest Passage, Cabinet decided in principle, in 1976, that this claim should be more precisely defined and more formally asserted by drawing straight baselines around the perimeter of the archipelago (the waters landward thereof being internal). Cabinet also decided, however, to defer such action until the international climate and developments at the Law of the Sea Conference were more propitious. In 1982, the attached memorandum to Cabinet was approved by the Mirror Committee and by Cabinet Committee which agreed inter alia:

- i) to draw baselines in late 1982 or early 1983;
- ii) to hold consultations on this decision with the United States and other countries; and
- iii) to delay the decision on the precise date for the promulgation of baselines until Ministers were advised of the results of these consultations.

It was agreed interdepartmentally that it was timely to proceed with such a submission because the Law of the Sea Conference was scheduled to end in December 1982, and because a number of projects, both Canadian and foreign, were being actively considered that would involve the use of the Northwest Passage for commercial navigation. In the circumstances, it was considered that Canada should proceed to draw baselines in order to achieve the following objectives:

- to ensure that the Northwest Passage would not acquire, through commercial usage, the status of an international strait;
- to ensure that access to the Passage for any navigation, commercial or military, would be subject to Canadian approval, control and regulation;
- to place Canada in a position to charge "user states" for services, such as ice-breaker, navigational and other aids, search and rescue, etc., which Canada would be required to establish and maintain in its Arctic waters;
- to avoid the implications of Article 43 of the Law of the sea Convention under which coastal states bordering on international straits are required to cooperate with other states navigating such straits in the establishment and maintenance of navigation facilities (thus making these facilities a matter for international rather than national decision); and finally,
- to protect Inuit interests.

In the event, the decision of the Cabinet Committee did not go to full Cabinet because Ambassador Beesley expressed concern over the proposed timing as being too close to the December 1982 signing of the Law of the Sea Convention and advocated continuation of the "functional" approach (by which Canada gradually applies its laws to Arctic waters but stops short of drawing baselines) to maintain Canadian claims. Ambassador Gotlieb also expressed concern regarding the anticipated adverse reaction of the United States, and also regarding the legal merits of the Canadian case.

Ambassador Beesley's concern in respect of the timing has now been overtaken by events. As to whether Canada's claim could be fully protected through the functional approach, this appears doubtful in the light of the United States position that the Arctic Waters Pollution Prevention Act does not accord with the provisions of the Law of the Sea Convention. In any case, the functional approach has been continued, and the process of extending Canada's criminal, customs and civil jurisdiction to the offshore is nearing completion. As to Ambassador Gotlieb's view of the legal merits of the

## *From Polar Sea to Straight Baselines*

Canadian case, this has been carefully studied by three outside legal experts, who generally agree that Canada could successfully defend the legal validity of its actions in drawing straight baselines and that, in any event, it is questionable whether Canada could be taken to the International Court of Justice on this issue.

At the same time, it remains abundantly clear that drawing baselines would create a very serious irritant -- possibly a major confrontation -- in Canada/United States relations (for the United States baselines are a matter of global strategic concern). It has also become clear that although there is considerable Arctic navigation activity in the offing, none of it -- including the United States Coast Guard ice-breaker program -- is now imminent. In the circumstances, there is not the same pressure to act immediately as there appeared to be in 1982, and accordingly there is time to consider possible alternatives to baselines (whether as an interim or long-term measure). It has also become necessary to "re-visit" the attached Memorandum to Cabinet in the light of recent developments such as the extension of customs, commercial and civil jurisdiction to the offshore, and the further understanding we have acquired concerning the United States position on the Law of the Sea Convention.

If the Northwest Passage is opened up to foreign commercial navigation by the facilities of the United States or any other country, Canada's claim to sovereignty over these waters would be seriously eroded. If Canada's claim is to be substantiated, it is essential that Canada should provide all the necessary navigational services for foreign shipping. It might be possible to recapture some of the high costs involved, both in establishing and maintaining these navigational and other aids, by entering into agreements with potential user states for the payment of charges for the use of these facilities. Such an approach would not prejudice Canada's claim so long as Canadian facilities were being used. It is therefore proposed if you agree, to explore this possibility with other departments and, if this kind of arrangement appears possible, to make a further recommendation to you regarding consultations on this matter with the United States and other countries.

### Recommendations

It is recommended that:

- i) for the time being, we do not refer the attached memorandum of July 7, 1982 to the full Cabinet and that we review it in light of recent developments;

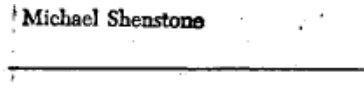
*From Polar Sea to Straight Baselines*

- ii) we explore possible alternatives to baselines interdepartmentally, in particular the user fee idea;
- iii) if alternatives are agreed at the official level, and approved by you, we test their viability in further consultations with the United States.
- iv) We keep in close contact with the United States on its plans for a Coast Guard ice-breaker program; and finally
- v) We report further to you in light of this exploratory work and other developments

Do you agree?



L.H. Legault  
Marchand  
Legal Advisor



for de Montigny

### **3. Inuit Tapirisat of Canada, “News Release: Inuit call on Federal Government to Take Stand on Canadian Arctic Sovereignty, July 2, 1985.**

Canadian Inuit have been monitoring with increasing uneasiness the proposed passage of the U.S. icebreaker *Polar Sea* through Canadian Arctic waters, with, or without the permission of the Canadian Government.

To date, Canadian Inuit have received no clear indication of their government's stand on this issue, despite the fact that the American Coast Guard icebreaker will be sailing through Canadian waters for which permission is required. The proposed passage of the *Polar Sea* sometime this August constitutes nothing nothing less than a challenge to Canadian sovereignty and jurisdiction in the Arctic, and it raises serious implications for Inuit in their efforts to safeguard their interest and to develop an effective management regime for the protection of the delicate Arctic environment.

Canadian Inuit must know how the federal government plans to respond to this challenge, if for no other reason than to gain a clear understanding of who they will have to deal with in the future on arctic matters. If Canada fails to defend its sovereignty in arctic waters, Inuit will be left with no choice but to conclude that the issue of protecting their livelihood and the arctic environment is one that must also be resolved outside of Canada at the international level.

Inuit are no strangers to the question of Canadian sovereignty in the Arctic. In the 1950's, Inuit from Northern Quebec were relocated a thousand miles further north to Grise Fiord by the federal government in order to reinforce Canada's claim to the high Arctic.

Removed from family, friends, and a familiar environment, those Inuit sacrificed a great deal for Canadian sovereignty. Inuit dependence on the sea ice environment has given Canada a strong claim by virtue of Inuit use and occupancy to what some other nations wish to view as international waters.

While seeking justice for their land claims, Inuit have unceasingly supported Canadian claims to sovereignty in the Arctic, and Canada has made full use of Inuit recognition of Canadian sovereignty in asserting jurisdiction over the Northwest Passage.

The proposed voyage of the *Polar Sea* through the Northwest Passage is a challenge not only to Canadian sovereignty and jurisdiction, but also to Canadian responsibilities towards Inuit who made possible that sovereignty in the Arctic in the first place. Inuit are primarily concerned with the wildlife



and the environment on which they depend. Sovereignty and jurisdiction mean little if they do not mean that Canada has the will and capacity to protect the interest of Inuit in the Arctic environment. If the Northwest Passage becomes an international shipping lane, there will be environmental impacts, particularly if other nations attempt to deploy supertankers on this route.

The Canadian Government must take a strong stand on the proposed voyage of the Polar Sea in the interest of Canada and the Inuit. Failure to do so can only be viewed as abdication of responsibility and betrayal. If Canada intends to open the Northwest Passage to shipping, it should be done openly, under full public scrutiny and environmental review, and not by default or omission.

#### **4. News Release: “Voyage of the Polar Sea,” July 31, 1985**

##### **VOYAGE OF THE POLAR SEA**

The Right Honourable Joe Clark, Secretary of State for External Affairs, the Honourable Don Mazankowski, Minister of Transport and the Honourable David Crombie, the Minister of Indian and Northern Affairs, announced today that Canada has authorized the United States Coast Guard icebreaker Polar Sea to conduct a voyage through Canada's Arctic waters between August 1 and 15, 1985. The voyage will proceed with Canadian support and participation.

Canada and the United States have consulted closely regarding plans and arrangements for the voyage.

The Government of Canada has made clear that the waters of the Arctic archipelago, including the Northwest Passage, are internal waters of Canada and fall within Canadian sovereignty. At the same time, the Government has reaffirmed Canada's longstanding commitment to facilitating safe navigation in the Arctic, subject to necessary conditions for the preservation of its environment and the welfare of its inhabitants. These conditions have been met.

The Government of Canada was informed of plans for the proposed voyage by the Government of the United States on May 21. In conveying this information, the United States proposed that the voyage proceed on a cooperative basis, with Canadian participation on board the Polar Sea.

While the United States has made known that it does not share Canada's view regarding the status of these waters, it has assured the Government of Canada that the purpose of the voyage is solely operational, to reduce the Polar Sea's sailing time to Alaska. The United States has also formally advised the Government of Canada that the transit, and the preparations for it, are without prejudice to the position of either country regarding the Northwest Passage. It is on this basis that consultations and the exchange of information have proceeded, and that Canada has agreed to cooperate in the voyage.

At the same time, however, the Government of Canada has expressed to the United States its deep regret that the United States over a period of many years has been unwilling to accept Canada's sovereignty over the waters of the Arctic archipelago. While Canada recognizes that the United States view derives from long-held general concerns about global freedom of navigation, Canada nevertheless considers that the evolution of international law fully supports the Canadian position.

## *From Polar Sea to Straight Baselines*

The Polar Sea will enter the Northwest Passage at Lancaster Sound on or about August 1, 1985 and proceed through Viscount Melville Sound, exiting the Passage through Prince of Wales Strait and Amundsen Gulf.

Canada has sought and obtained detailed information and specific assurances on such matters as the routing of the vessel, its design, construction and equipment, and other requirements for the protection of the environment, including contingency plans and liability for costs and damage in the event of a pollution incident. The Canadian Coast Guard has examined the drawings of the ship and has concluded it substantially meets Canadian standards.

The Canadian authorities are satisfied that on the basis of the information and assurances they have obtained, the United States has taken the necessary measures to ensure that the Polar Sea complies with standards substantially equivalent to those prescribed under Canadian regulations, and that all required precautions have been taken to reduce any danger of pollution arising from the voyage.

An order in council in respect of the Polar Sea is being issued pursuant to subsection 12(2) of the Arctic Waters Pollution Prevention Act. This subsection of the Act was expressly intended to provide vessels owned or operated by a sovereign power other than Canada, with an exemption from regulations relating to design, construction, equipment and manning of vessels, where the government is satisfied that equivalent standards are met and sufficient pollution protection is provided.

Canadian officials will be on board the Polar Sea during its voyage through Canadian waters as observers and advisors. Mr. Crombie has directed his Inuvik District Manager to participate in the voyage. Transport Canada will be represented by two Canadian Coast Guard icebreaker captains.

Technical support is being provided by the Canadian Coast Guard in the form of routing advice, communications, and ice reconnaissance. Canadian Forces aircraft will monitor the progress of the Polar Sea.

If further information is required please contact Mr. L.H. Legault (995-8901) or Mr. B.M. Mawhinney (992-2728).

## **5. House of Commons Briefing Book, Briefing Note, September 4, 1985**

### Subject

Voyage of USA icebreaker POLAR SEA. Reference to the International Court on the question of the statue of the Arctic waters.

### Source

Media

### Assessment

Questions have been raised in the press and elsewhere as to whether Canada should take the initiative to refer the question of the status of the waters of the Northwest Passage to the International Court of Justice.

### Suggested Reply

- We are confident in the strength of our case and would be prepared to adjudicate the issue in the world Court if that were the only recourse to defend our sovereignty.
- Such action, however, would only be in response to a challenge. It would hardly be appropriate for us to call our own sovereignty into question or to sue ourselves, so to speak.
- If asked, Because the voyage of the POLAR SEA was without prejudice to either side, it could not be raised by either Canada or the United States in support of their respective positions in any action before the world Court.

Prepared by: Peter McRae

Division: JLO

Date: Sept. 4/85

**6. Memorandum for the Secretary of State for External Affairs, “Canada/United States Arctic Cooperation,” September 6, 1985**

***LAC, RG 25, vol. 4, file 8100-14-4-2***

CONFIDENTIAL  
September 6, 1985  
JCD-0332

Memorandum for:  
The Secretary of State for External Affairs

c.c. Minister for International trade  
c.c. Minister for External Relations

SUBJECT: Canada/United States Arctic Cooperation

PURPOSE:

The purpose of this memorandum is to report on an informal discussion over lunch on September 5, 1985 with United States officials concerning possible cooperative arrangements on Arctic issues.

[section redacted under Access to Information Act, section 15(1)]

... of jurisdiction by Canada would seriously complicate their efforts to convince other agencies in Washington of the desirability of striking a deal with Canada. They did not say that an understanding in such circumstances would be impossible, but it would be much more difficult. Smith pointed to the risk for the United States of relying on the goodwill of the littoral state to guarantee rights of passage through off-lying waters; even in the case of a friendly country like Canada there were risks, since a new government sometime in the future could conceivably renege on the guarantee. This may be far fetched but that was the perception of some in Washington.

Mr. Legault was guarded in his statements about possible government action. He made it clear, however, that the voyage of the Polar Sea and the controversy it generated in Canada made it imperative that the sovereignty issue be addressed. The government had been stung by the voyage, cooperative and non-prejudicial though it may have been, not least because it brought into disrepute one of the fundamental tenets of its foreign policy, improved relations with the U.S. We had gone past the time when an understanding between the two countries on an environmental regime would meet Canadian requirements. Any accommodation would have to be on the basis of full respect for Canadian sovereignty. He emphasized that any action by Canada would derive from our historic claim, and the unique

physical character of the Arctic which distinguished it from "choke points" in temperate waters in other parts of the world. At the same time, Canada would welcome a cooperative arrangement with the U.S. based on shared security and navigation interests. He noted that Canadians find it puzzling that the United States advocates a legal position which would open up the Northwest Passage to uncontrolled transits by all ships, including Soviet warships and submarines.

While acknowledging that the security aspect of regulated ship transits in the Arctic might lend credibility to the Canadian case in Washington and that this "handle had yet to be firmly grasped" by interested agencies, Colson was still concerned that any pre-emptive action by Canada, for example "to draw baselines" to enclose the archipelago waters, would greatly complicate State Department efforts to enlist support for a cooperative arrangement.

However, if Canada were to pursue this approach, and Colson and Smith recognized the compelling political reasons why the Government might choose the course of immediate action, then it would be helpful if we could furnish as much argumentation as possible regarding the uniqueness of the area and the shared defence interest. Lengths of baselines and land to water ratio would be key factors. A claim supported by Inuit occupation of the ice since time immemorial would, however, cause concern in Washington since it could stimulate unhelpful offshore claims on the part of Alaskan Inuit who would be only too happy to reopen a previous land settlement with the federal authorities.

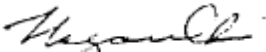
Smith stressed that the U.S. was ready to begin consultations at an early date, particularly if this would serve to delay a unilateral move by Canada. Legault replied that, no matter what happened, consultations should begin as soon as possible. An accommodation was essential and entirely compatible with full Canadian sovereignty. Guaranteed rights of passage in the St. Lawrence Seaway might serve as a kind of model for the type of non-suspendable guarantee of rights of navigation which Canada could accord to the United States. This, however was a matter that had not been discussed with Ministers and Legault was expressing purely personal and private views, without authority and without commitment.

Smith enquired whether a call from President Reagan to the Prime Minister might forestall immediate unilateral action by Canada and allow time for consultations. Legault replied that he didn't know whether there was any unilateral action to forestall, although he observed that the Opposition will be pressing the Government on this issue when the House opens on Monday and it would be impossible for the Government not to say something (Montgomery said he had it from a reliable political source that the Government would be making a series of policy statements next week

and a statement on the Arctic would be one of them). Legault said that while he could not speculate on how the Prime Minister might react specifically in connection with the Arctic, such a call from Mr. Reagan in the context of the overall relationship could not help but have a positive effect.

CONCLUSION:

In summary, this was a most illuminating and encouraging two-hour discussion. Although Smith and Colson are not high-ranking figures in the State Department bureaucracy, they are key players on this particular issue. Never before have we had such a clear sign of flexibility from the United States on the question of Arctic navigation. The fallout from the Polar Sea voyage and the strong public statements by the Prime Minister and the SSEA on Arctic sovereignty have obviously been registered in Washington. If Smith and Colson can deliver on what they have said, there is a real chance of an accommodation with the United States. Certainly as regards a regime for protection of the marine environment the elements of a deal are there--the United States, for the first time, is apparently ready to recognize the application of the Arctic Waters, Pollution Prevention Act to commercial vessels transiting the Northwest Passage. Admittedly the issue of sovereignty is still a very difficult obstacle to an accommodation and preemptive action by Canada on straight baselines might, as Smith and Colson avow, impede discussions. But, even in that event, they were far from foreclosing the possibility of an understanding. In short, the U.S. are ready to parley and the chances are at least even that a deal can be struck which satisfies our respective interests.



L.H. Legault  
Legal Adviser

J.H. Taylor

**7. Statement in the House of Commons by the Secretary of State for External Affairs, the Right Honourable Joe Clark, on Canadian Sovereignty September 10, 1985.**

Mr. Speaker,

Sovereignty can arouse deep emotion in this country. That is to be expected, for sovereignty speaks to the very identity and character of a people. We Canadians want to be ourselves. We want to control our own affairs and take charge of our own destiny. At the same time, we want to look beyond ourselves and to play a constructive part in a world community that grows more interdependent every year. We have something to offer, and something to gain in so doing.

The sovereignty question has concerned this government since we were first sworn in. We have built national unity, we have strengthened the national economy, because unity and strength are hallmarks of sovereignty, as they are hallmarks of this government's policy and achievements.

In unity and strength, we have taken action to increase Canadian ownership of the Canadian petroleum industry. We have declared a Canadian ownership policy in respect of foreign investment in the publishing industry. We have made our own Canadian decisions on controversial issues of foreign policy - such as Nicaragua and South Africa. We have passed the Foreign Extraterritorial Measures Act to block unacceptable claims of jurisdiction by foreign governments or courts seeking to extend their writ to Canada. We have arrested foreign trawlers poaching in our fishing zones. We have taken important steps to improve Canada's defences, notably in bolstering Canadian forces in Europe and in putting into place a new North Warning System to protect Canadian sovereignty over our northern airspace. And we have reconstructed relations with traditional friends and allies, who have welcomed our renewed unity and strength and the confidence they generate.

In domestic policy, in foreign policy, and in defence policy, this government has given Canadian sovereignty a new impetus within a new maturity. But much remains to be done. The voyage of the Polar Sea demonstrated that Canada, in the past, had not developed the means to ensure our sovereignty over time. During that voyage, Canada's legal claim was fully protected, but when we looked for tangible ways to exercise our sovereignty, we found that our cupboard was nearly bare. We obtained from the United States a formal and explicit assurance that the voyage of the Polar Sea was without prejudice to Canada's legal position. That is an assurance which the government of the day, in 1969, did not receive for the voyage of



the Manhattan and of the two United States Coast Guard Icebreakers. For the future, non-prejudicial arrangements will not be enough.

The voyage of the Polar Sea has left no trace on Canada's Arctic waters and no mark on Canada's Arctic sovereignty. It is behind us, and our concern must be what lies ahead.

Many countries, including the United States and the Federal Republic of Germany, are actively preparing for commercial navigation in Arctic waters. Developments are accelerating in ice science, ice technology, and tanker design. Several major Japanese firms are moving to capture the market for icebreaking tankers once polar oil and gas come on stream. Soviet submarines are being deployed under the Arctic ice pack, and the United States Navy in turn has identified a need to gain Arctic operational experience to counter new Soviet deployments.

Mr. Speaker,

The implications for Canada are clear. As the Western country with by far the greatest frontage on the Arctic, we must come up to speed in a range of marine operations that bear on our capacity to exercise effective control over the Northwest Passage and our other Arctic waters.

To this end, I wish to declare to the House the policy of this government in respect of Canadian sovereignty in Arctic waters, and to make a number of announcements as to how we propose to give expression to that policy.

Canada is an Arctic nation. The international community has long recognized that the Arctic mainland and islands are a part of Canada like any other. But the Arctic is not only a part of Canada. It is part of Canada's greatness.

The policy of this government is to preserve that greatness undiminished. Canada's sovereignty in the Arctic is indivisible. It embraces land, sea, and ice. It extends without interruption to the seaward-facing coasts of the Arctic islands. These islands are joined and not divided by the waters between them. They are bridged for most of the year by ice. From time immemorial Canada's Inuit people have used and occupied the ice as they have used and occupied the land.

The policy of this government is to maintain the natural unity of the Canadian Arctic archipelago, and to preserve Canada's sovereignty over land, sea, and ice undiminished and undivided.

That sovereignty has long been upheld by Canada. No previous government, however, has defined its precise limits or delineated Canada's internal waters and territorial sea in the Arctic. This government proposes

to do so. An order in council establishing straight baselines around the outer perimeter of the Canadian Arctic archipelago has been signed today, and will come into effect on January 1, 1986. These baselines define the outer limit of Canada's historic internal waters. Canada's territorial waters extend 12 miles seaward of the baselines. While the Territorial Sea and Fishing Zones Act requires 60 days notice only for the establishment of fisheries limits, we consider that prior notice should also be given for this important step of establishing straight baselines.

Canada enjoys the same undisputed jurisdiction over its continental margin and 200-mile fishing zone in the Arctic as elsewhere. To protect the unique ecological balance of the region, Canada also exercises jurisdiction over a 100-mile pollution prevention zone in the Arctic waters. This too has been recognized by the international community through a special provision in the United Nations Convention on the Law of the Sea.

No previous government, however, has extended the application of Canadian civil and criminal law to offshore areas, in the Arctic and elsewhere. This government will do so. To this end, we shall give priority to the early adoption of a Canadian Laws Offshore Application Act.

The exercise of functional jurisdiction in Arctic waters is essential to Canadian interests. But it can never serve as a substitute for the exercise of Canada's full sovereignty over the waters of the Arctic archipelago. Only full sovereignty protects the full range of Canada's interests. This full sovereignty is vital to Canada's security. It is vital to Canada's Inuit people. And it is vital even to Canada's nationhood.

The policy of this government is to exercise Canada's full sovereignty in and over the waters of the Arctic archipelago. We will accept no substitutes.

The policy of this government is also to encourage the development of navigation in Canada's Arctic waters. Our goal is to make the Northwest Passage a reality for Canadian and foreign shipping, as a Canadian waterway. Navigation, however, will be subject to the controls and other measures required for Canada's security, for the preservation of the environment, and for the welfare of the Inuit and other inhabitants of the Canadian Arctic.

In due course the government will announce the further steps it is taking to implement these policies, and especially to provide more extensive marine support services, to strengthen regulatory structures, and to reinforce the necessary means of control. I am announcing today that the government has decided to construct a Polar Class 8 icebreaker. The Ministers of National Defence and Transport will shortly bring to Cabinet

recommendations with regard to design and construction plans. The costs are very high, in the order of half a billion dollars. But this government is not about to conclude that Canada cannot afford the Arctic. Meanwhile, we are taking immediate steps to increase surveillance overflights of our Arctic waters by Canadian Forces aircraft. In addition, we are now making plans for naval activity in eastern Arctic waters in 1986.

Canada is a strong and responsible member of the international community. Our strength and our responsibility make us all the more aware of the need for cooperation with other countries, and especially with our friends and allies. Cooperation is necessary not only in defence of our own interests but in defence of the common interests of the international community. Cooperation adds to our strength and in no way diminishes our sovereignty.

The policy of this government is to offer its cooperation to its friends and allies, and to seek their cooperation in return.

We are prepared to explore with the United States all means of cooperation that might promote the respective interests of both countries, as Arctic friends, neighbours, and allies, in the Arctic waters of Canada and Alaska. The United States has been made aware that Canada wishes to open talks on this matter in the near future. Any cooperation with the United States, or with other Arctic nations, shall only be on the basis of full respect for Canada's sovereignty. That too has been made clear.

In 1970, the government of the day barred the International Court of Justice from hearing disputes that might arise concerning the jurisdiction exercised by Canada for the prevention of pollution in Arctic waters. This government will remove that bar. Indeed, we have today notified the Secretary General of the United Nations that Canada is withdrawing the 1970 reservation to its acceptance of the compulsory jurisdiction of the world Court.

The Arctic is a heritage for the people of Canada. They are determined to keep their heritage entire. The policy of this government is to give full expression to that determination.

We challenge no established rights, for none have been established except by Canada. We set no precedent for other areas, for no other area compares with the Canadian Arctic archipelago. We are confident in our position. We believe in the rule of law in international relations. We shall act in accordance with our confidence and belief, as we are doing today in withdrawing the 1970 reservation to Canada's acceptance of the compulsory jurisdiction of the World Court. We are prepared to uphold our position in that Court, if necessary, and to have it freely and fully judged there.

In summary, Mr. Speaker, these are the measures we are announcing today;

### *From Polar Sea to Straight Baselines*

- 1) immediate adoption of an order in council establishing straight baselines around the Arctic archipelago, to be effective January 1, 1986;
- 2) immediate adoption of a Canadian Laws Offshore Application Act;
- 3) immediate talks with the United States on cooperation in Arctic waters, on the basis of full respect for Canadian sovereignty;
- 4) an immediate increase of surveillance overflights of our Arctic waters by aircraft of the Canadian Forces, and immediate planning for Canadian naval activity in the Eastern Arctic in 1986;
- 5) the immediate withdrawal of the 1970 reservation to Canada's acceptance of the compulsory jurisdiction of the International Court of Justice; and
- 6) construction of a Polar Class 8 icebreaker and urgent consideration of other means of exercising more effective control over our Arctic waters.

These are the measures we can take immediately. We know, however, that a long-term commitment is required. We are making that commitment today.

**8. Address by the Honourable Joe Clark, Secretary of State for External Affairs at Dalhousie University,”  
September 14, 1985.**

[Document edited to exclude sections unrelated to the Arctic]

I am very pleased to have been asked to speak to you today. I wish to commend, once again, the Canadian institute for International Affairs for its continuing efforts in stimulating informed public discussion of contemporary international issues

...

In our view, all Arctic archipelagic waters internal waters and our sovereignty over them extends absolutely without qualifications, by virtue of law, history and geography. But the United States has in the past argued that Canadian sovereignty extends only to territorial water (that is, to a distance of 12 miles from the mainland and from each island of the archipelago).

The distinction is important.

Sovereignty over internal waters is without qualification.

Sovereignty over territorial waters is qualified by the right of innocent passage for foreign vessels (i.e. passage is which not prejudicial to the peace, good order and security of the coastal state).

And sovereignty over territorial waters which also join two parts of the high seas and are used for international navigation, is qualified still further by the right of transit passage akin to freedom of navigation on the high seas.

At issue, then, is whether the Northwest Passage constitutes internal waters over which we have exclusive jurisdiction, or an international strait through which others can transit with few or no conditions.

I should add that while the Canadian position has been that others have no rights in Arctic waters, we would nonetheless allow passage subject to certain controls and safeguards

It was against this background that the United States Government approached us in the matter of the Polar Sea expedition. Both sides were aware of the legal differences which divided them, and neither wished the expedition to prejudice its position. Nor was there any interest in seeing a major confrontation develop if the concerns of the two sides could be satisfied. So the two sides proceeded on a cooperative basis.

## *From Polar Sea to Straight Baselines*

We were notified in advance about the voyage, our cooperation was sought, Canadian officials were placed aboard the vessel, we received the assurances we needed in respect of protecting the environment and Inuit interests, and we obtained an explicit guarantee that the voyage would not prejudice in any way our claim to full sovereignty.

It was for that reason that, earlier this week, I announced in the House of Commons a series of measures in respect of Arctic waters. The first of these is the adoption of an order-in-council, to take effect on January 1, 1986, which establishes straight baselines around the outer perimeter of the Canadian Arctic archipelago and defines all the waters within that perimeter as historic internal waters. A further legal measure is to be the early adoption of an act of Parliament extending the application of Canadian civil and criminal law to offshore areas. And we are also withdrawing the reservation we entered with the International Court of Justice in 1970 in respect of its ability to hear disputes concerning jurisdiction in Arctic waters, as a sign of our confidence that we can uphold our claim to Arctic waters in the event it is challenged.

In addition, we are manifesting our determination to exert jurisdiction, by immediately increasing surveillance flights in the region and by beginning work on the construction of a Class 8 icebreaker - which would be the biggest in the world and capable of near year-round passage through the North. Other measures to exercise more effective Canadian control over Arctic waters are being studied.

We intend, of course, to continue to cooperate with other countries whose interest in the North overlaps with ours, and for that reason have extended a special offer of cooperation to the United States - our nearest Northern neighbour.

Let me conclude with the observation that a policy of asserting sovereignty must be tempered by two considerations: as the world grows more interdependent, the scope for exercising sovereignty becomes more limited; and as the history of the 20th century attests, excessive nationalism can endanger the cooperative approach so necessary for finding solutions to contemporary international problems.

It is within these confines that the Government of Canada shall continue to give expression to the sovereignty of the Canadian people.

**9. Statement by the Secretary of State for External Affairs,  
the Right Honourable Joe Clark, to the Canadian Club,  
September 19, 1985.**

[Document edited to exclude sections unrelated to the Arctic]

I want to speak today of the intimate and essential connection that exists between domestic priorities and international policy.

The priority of a national government in this country at this time has to be to encourage jobs and economic growth. But the purpose of a national government in a country like ours, at any time, is to express the spirit and the nature of the country in contemporary terms.

A nation is more than its gross national product. Economic Policy and economic accomplishment are essential, but so also is it essential to have a sense of the goals and purposes which make us distinctive and make us strong. I approach my remarks today in that spirit.

The election of a year ago was an expression both of what people wanted and what people rejected. There was an overwhelming positive desire, on the part of Canadians everywhere, for policies of national reconciliation, to bring an end to a decade or more of fruitless division among the various governments and regions of the country.

There will always be differences; they are part of the vitality of Canada. But the pre-occupation with national differences, the definition of national affairs as disputes over differences, was something Canadians wanted ended. We take it as part of our mandate to rekindle a pride and awareness in what we can do as a strong whole country.

Canadians wanted their Government, in our actions, to express and demonstrate real confidence in the country, real confidence in the nature of Canada, in our identity, in our future. They wanted a Government that would be prepared to stand up for Canada in the world, that would be prepared to say "here we are, we are different from other countries, we are different from our neighbours, we have distinct interests of our own, we are going to express those in the world, we are going to assert those in the world."

Nations grow gradually, becoming stronger in stages. And those stages rarely change dramatically. They shade one into another, and suddenly we realize that old assumptions no longer fit.

Ten and twenty years ago, national policy assumed a vulnerability about Canada. The creation of the Foreign Investment Review Agency, the development of the National Energy Policy, and other programmes were

based upon the view that there was a certain fragility to the Canadian nature, and that our fragility had to be protected against the rest of the world.

So we restricted access to our minds and markets, instead of encouraging Canadian Initiative and excellence. We looked inward, rather than outward. Our cultural and economic competitiveness declined. Our ability to take advantage of the opportunities that beckon a country like Canada diminished. Policies that assumed we were vulnerable were making us vulnerable.

On the fourth of September last year, Canadians signalled that they had had enough. Instead of drawing back from the world, they wanted this country to reach out to the world, to stand strong on our own. In circumstances that, while obviously difficult, are better for Canada than for almost anyone else.

As I said last week in the House of Commons, the cost of establishing a Polar, Class 8, icebreaker is 500 million dollars. But neither Canadians nor this Government are about to say that Canada cannot afford our Arctic. We can afford our Arctic; we can afford the risks that are involved in actively pursuing our interests; and I believe there is broad public support, indeed a broad public desire, for Canada to begin to take those positions which express the strength and self-confidence of Canadians.

What is at issue here, in this shift from a desire to draw back from the world to a desire to reach out to the world, is not a difference of party or of ideology, but of time. The country has matured - to a point where it is now appropriate for Canada to be more assertive, both as to who we are and as to what we can do.

You will know that among the actions on the Arctic announced in the House last week was a decision that we will withdraw a restriction that a previous government had placed on having Canada called before the International Court of Justice with respect to our sovereignty over Arctic waters. That restriction was placed there in 1970, at a time when the Law of the Sea was much less developed than it is now, at a time when Canada's confidence in our claims was not as strong as it is now.

What has happened is not just that there is a new government in office, but that there is a new strength to our claims. Because times have changed, it is possible for us to assert, with certainty and confidence, positions that previous governments had judged they could not.

There are, of course, risks to be run. The External Affairs critic of the official opposition, the Honourable Jean Chretien made the point, quite accurately, in the House that It was both bold and risky for us to assert our



sovereignty over Arctic waters. We are saying we are prepared, if necessary, to defend our claims before the International Court, and of course there are risks to that.

But risk is the price of opportunity. If there are risks, there are also opportunities for us in adopting a more self-confident position at home, and by extension, internationally. Perhaps the most dramatic lesson I have learned, in my first year as Secretary of State for External Affairs, is that opportunities are not static. In the North, for instance. If we don't seize the opportunities that are ours now, we could well lose them as others begin to advance their own claims. The insistence on our sovereignty, then, is important both as Canadian self-expression, and as Canadian self-interest.

In Canada's North, we have no ice-breaker that can traverse those waters year round. The vessels we do have are not strong enough to deal with winter ice, and not fast enough to keep up with the Polar Sea. That is a situation which we didn't create and which we won't continue. As other countries develop a capacity to use our waters, to use our North, we have to acquire practical means to occupy what we claim, to exercise what we claim.

The United States and the Federal Republic of Germany are preparing actively now for commercial navigation in northern waters, which is to say in our waters. The Japanese, with a keen eye to the development of oil and gas flows from Northern regions, are developing new technology and capacity in the development of tankers to carry oil and gas through northern waters. The Soviets have a submarine capacity that we would be naive to believe they are not exercising under our icecap, in our waters. Iceland has an ice-breaker capacity greater than our own. The Americans are showing interest, the Germans are showing interest, the Japanese, the Russians and the Icelanders are showing interest-more interest than we have often shown in waters which are ours.

For a variety of reasons, the former regime did not put us in a position to fully express and defend our sovereignty in the North. We've done that. But I don't want to confine my remarks to the urgent and important question of the North. What has been happening in Northern Canada has also been happening in our international trade.

...

**10. Memorandum: Possible Canada/US Agreement,  
September 24, 1985**

***LAC, RG 25, vol. 4, file 8100-14-4-2***

SECRET (URGENT)

September 24, 1985

Subject: Possible Canada/US Agreement

Preliminary discussions are underway with the US on their possible recognition of our position on Arctic waters including the Northwest Passage.

External Affairs would like a preliminary listing of likely issues that would be dealt with, i.e., that would be raised by the US as problems, and could be resolved on a special bilateral basis. The end result could be a Treaty in which the US recognizes our position in exchange for our recognition of their special relationship and need to have some concessions in respect of government ships, warships and government-sponsored ventures.

DCGN was at the opening round of "informational" talks in Washington, and has been asked by External for some input to a negotiating package and a first draft of a possible Treaty. The attached is DCGN's preliminary listing of possible sub-agreements within such a Treaty.

I would appreciate your review and additions to the listing later this week, by Thursday PM if possible. Send your input direct to DCGN/T, and I will review the final result.



R. A. Goss

Possible sub-agreements within a Canada/US Agreement on Arctic Waters

<u>The US may ask for:</u>	<u>Canada's Attitude:</u>
1. Canadian Coast Guard participation in ABS new Arctic ship standards assessment, recognition and cross-reference with Canadian Arctic classes	Until now, reluctance and minimum participation on grounds of:  (a) No benefit to Canada; (b) Scarce resources; and (c) Other Societies making same request, very time consuming, many technical aspects, subject to long debate.
<hr/> Position: Can Agree <hr/>	
2. Increased Arctic Marine R&D participation by 2 Coast Guards but with oil companies also involved. In particular US interested in ship/ice trials in Canadian waters, to match the work they have shared with us off Alaska.	Under Jamieson-Volpe Agreement, joint R&D projects agreement in place and others proposed. Initiative until now principally from US side, POLAR SEA, POLAR STAR usual platforms. With Treaty in place, increased level of joint R&D, subject to funds, can be initiated/accepted on Canadian side
3. Sharing of icebreaker design, operational data. (Considerable sharing, already in place, but its mention in a Treaty expresses a special bilateral relationship.)  They will be interested in trips aboard Class 1200's. (FRANKLIN, DES GROSEILLIERS, RADISSION and ship under construction). They may want an arrangement for design discussions, then trials and R&D on POLAR 8.	We have had virtually full access, especially to POLAR SEA and POLAR STAR data. We have shared POLAR 8 information with them, and consulted briefly on their new icebreaker design.  Canadian Coast Guard attitude would be positive, if all agreements expressed in mutual terms, with cost sharing.

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|--|--|
| 4. US may ask of sub-agreement for US transits through our internal waters, in order to: | Attitude would be positive, if care taken to satisfy Inuit rights, and if transits were controlled in terms of number, areas etc., so US capability not seen to exceed Canadian. |
| a) Restrict liability in case of a spill, to actual, direct damage;                      |  |
| b) To protect their sovereign immunity;  |  |
| c) To define pollution prevention obligations;   |  |
| d) To ensure full support, no salvage rights; and  |  |
| e) To prevent delays in approvals.   |  |
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- |  |   |
|--|---|
| 5. A joint Arctic Policy Review structure, as a mechanism for discussion and cooperation on policy and legislative / administrative changes affecting Arctic waters. | This may be feasible, but Northern governments' and peoples' rights cannot be overshadowed. |
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## **11. Memorandum, "Possible Canada/U.S. Agreement on Arctic Waters," September 27, 1985**

***LAC, RG 25, vol. 4, file 8100-14-4-2***

SECRET (URGERNT)

September 27, 1985

Subject: POSSIBLE CANADA/U.S. AGREEMENT ON ARCTIC WATERS

As requested per your memorandum dated September 24, 1985, I have reviewed the preliminary listing of possible sub-agreements on the proposed U.S./Canada accord, prepared by DCGN/T. The following comments are offered, with respect to the DCGN/T list:

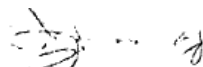
1. Discussions with ABS should include the reservation that the right to determine Arctic Class equivalency for ABC ice classes-should rest with CCG.
2. Any Arctic marine R&D sharing, involving oil companies, would have to take cognizance of the need to preserve commercial confidentiality.
3. Would it be intended to have CCG personnel on board USCG icebreakers and vice versa. If so, could CCG personnel act in their PPO capacity or would they have those powers removed while on the U.S. ship?
4. The current Arctic Act imposes a system of strict liability. If liability is to be restricted for U.S. ships, the Act would have to be changed and would then become discriminatory to other states.

In addition to the foregoing comments on the DCGN/T input, consideration should be given to the following points:

- 1) In any discussions regarding tacit U.S. recognition of Canada's Arctic Waters claims, U.S. support should be solicited for Canada's instruments of accession to MARPOL 73/78, in which the Arctic will be excluded from application of the convention, by way of a reservation. The U.S. may take the view that MARPOL discharges should be permissible, in the Arctic or that it be declared a "Special Area" under MARPOL.
- 2) The U.S. is likely to ask for exemption of its ships from the inspection and some enforcement provisions applicable to P.P.O. powers. It would be difficult to justify any exemption for American flag ships that was not equally applicable to other foreign vessels.

*From Polar Sea to Straight Baselines*

- 3) To what extent would the U.S. be willing to comply with ASPPR zone entry restrictions? Would Order-in-Council authorizations be required under the proposed bilateral arrangements?
- 4) Unfettered freedom of access to U.S. ships may, in the long run, weaken our claims to these waters, since the more powerful U.S. ships could, for several years, establish a presence in zones in which navigation by Canadian icebreakers is currently not possible.

  
J. Hornsby,  
Director General,  
Ship Safety.

## **12. US Coast Guard, “Chronology of Decision Making and Clearances for the 1985 Transit of the Northwest Passage by the U.S. Coast Guard Icebreaker Polar Sea,” October 11, 1985.**

### Background

The U.S. Coast Guard operates all the U.S. government icebreakers. The icebreaker fleet presently includes a total of five (5) polar icebreakers. The NORTHWIND, homeported in Wilmington, North Carolina, is usually assigned the Arctic East Summer patrol, which includes breaking a channel into Thule, Greenland for resupply of the U.S. Air Force base. The POLAR SEA, homeported in Seattle, Washington, is often assigned the Arctic West Summer patrol, which includes scientific and other operations in the waters north of Alaska. Prior to the beginning of the Arctic Summer patrols, various engineering problems required the NORTHWIND to remain in the shipyard longer than scheduled, making her unavailable for the commencement of the Thule resupply mission. Due to the shortage of icebreakers, the POLAR SEA was tentatively assigned to both the Thule resupply mission and the Arctic West Summer patrol.

### Operational Level Recommendation

The recommendation to utilize the POLAR SEA for both the Thule resupply mission and the Arctic Summer West, with an intermediate transit of the Northwest Passage was made by the Chief, Ice Operations Division (G-oIo). This officer is charged with the overall management of the Coast Guard icebreaker fleet. Initial estimates were that 20 to 30 days ship time and \$200,000 to \$500,000 fuel costs would be saved by using the Northwest Passage rather than sailing through the Panama Canal. Additionally, use of the Northwest Passage would allow completion of both the Thule resupply mission and the Arctic West Summer patrol. Otherwise, one or both missions would suffer. On or about April 22, 1985, the recommendation was forwarded up the chain of command to the Chief, Office of Operations (G-o) and thence to the Commandant.

### Clearances within the U.S. Government

Within OST, S-2, P-2, and others received a briefing on the planned voyage shortly thereafter. The Coast Guard initiated a discussion of the possibility of such a transit within the Interagency Arctic Policy Group. This group is chaired by the State Department. Canadian sensitivity to the plan was expected for several reasons: 1) no U.S. flag surface vessel, either government or commercial, had sailed in the waters north of the Canadian mainland since 1970; 2) Canada and the U.S. do not agree on the legal status of the waters of the Northwest Passage; and 3) the Canadian public views

the dispute not merely as a lawyers' argument, but as an issue of nationalism. The 1969 transit of the Northwest Passage and 1970 Arctic voyage of the U.S. flag supertanker MANHATTAN resulted in a public outcry and swift passage of the 1970 Canadian Arctic Waters Pollution Prevention Act (AWPPA), which established, among other things, construction and operational controls over all vessels operating in the waters north of the Canadian mainland and out to 100 nautical miles off the coasts of the islands of the Canadian Arctic Archipelago. However, the voyage of the POLAR SEA was not expected to cause a similar outcry as it involved a government icebreaker, not a commercial supertanker, and would be made without prejudice to the Canadian claims over the Northwest Passage. The planned voyage was approved by the State Department and the Canadian Desk sent a cable to the U.S. Embassy in Ottawa on May 21, requesting it notify the Canadian Government.

### Canadian Discussions

The U.S. Embassy contacted Derek Burney, the Assistant Deputy Minister of External Affairs, who is in charge of U.S. affairs. He expressed what the U.S. Embassy described as some fairly low-key concern over possible public reaction. The Canadian Government initially asked the U.S. to request an exemption from the AWPPA in accordance with Section 12 of the Act, which allows the Governor in Council to issue an exemption to foreign public vessels if he believes they are in substantial compliance with the Act. The U.S. Embassy countered that no request for exemption was required because the Northwest Passage is an international strait through which the right of transit passage exists. The two governments agreed to continue to disagree on the status of the Northwest Passage. The U.S. Government agreed to not use the voyage of the POLAR SEA as evidence of the International nature of the strait, while the Canadian Government agreed to not protest the voyage.



## POLAR SEA CHRONOLOGY

Contemporaneous with the notification of the Canadian Ministry of External Affairs, the Chief, Ice Operations Division, contacted his counterpart in the Canadian Coast Guard (an agency of the Ministry of Transport). Once again, the two governments agreed to disagree on the juridical question, but proceeded to cooperate on the practical question of moving the icebreaker from Greenland to Alaska. The Canadian Coast Guard provided the U.S. Coast Guard with updated charts and established a system to provide the vessel with current weather conditions during the voyage. The U.S. Coast Guard offered to take two Canadian Coast Guard captains as guests during the voyage. The offer was later expanded to include an invitation for an official of the Ministry of Indian and Northern Affairs. The offer was accepted. On June 11, the Canadian Government officially responded to the notification of the planned voyage. Among other things, the cable stated: "The Government of Canada welcomes the U.S. offer to proceed with this project on a cooperative basis, and to provide the opportunity for Canadian participation in the voyage."

Approximately three weeks before the voyage commenced, the Canadian press began to publicize it. As public indignation rose, the Canadian government came under attack for apparently doing nothing to protect Canadian honor. Rather than explain to the public the intricacies of international law and why the sovereignty of Canada was not being attacked, the Canadian Government fired off a protest to the U.S. Government. Caught aback, the State Department decided that cancelling the voyage at that late date would jeopardize the U.S. legal position, so the voyage took place as planned. The POLAR SEA departed Thule on August 1, entered the Northwest Passage on August 2, and arrived in the waters north of Alaska on August 11. Belatedly, the Canadian Government granted permission for the voyage on August 1, even though it was never requested. No untoward operational difficulties were encountered during voyage. The actual savings from utilizing the Northwest Passage, as opposed to the Panama Canal, were 30 days sailing time and \$202,000 fuel costs. Both the Thule resupply and the Arctic West Summer missions were fully and successfully completed.

**13. US Coast Guard, Office of Operations Division Chiefs'  
Brief, "Polar Sea Transit of the Northwest Passage,"  
October 30, 1985.**

Richard M. Hayes  
Ice Operations Division  
U.S. Coast Guard Headquarters

On the morning of 1 August 1985 USCGC POLAR SEA (WAGB-11) departed Thule, Greenland enroute Prudhoe Bay, Alaska via the historic Northwest Passage. Several tragically failed voyages and daring rescue attempts during the 19th Century in an effort to find a shorter trade route from Europe to Asia have created an allure for the Northwest Passage that is characterized by a mix of challenge and foreboding. Present day interest in the Passage continues to be focused on marine transportation as it has the potential for becoming a major shipping route for the minerals mined and the oil and gas extracted from the Arctic. Having just completed the Arctic East Summer (AES) resupply mission in Western Greenland POLAR SEA sailed for Lancaster Sound, the eastern entrance to the Northwest Passage (NWP).

The decision to transit the NWP was precipitated by the need for a Seattle-based POLAR-Class icebreaker to meet commitments in both Baffin Bay and the Alaskan Beaufort Sea during the summer of 1985--a need that arose when neither of the two East Coast-based WIND-Class vessels were available for the deployment, and the remaining POLAR-Class icebreaker and GLACIER were getting ready to depart for Antarctica on DEEP FREEZE. Thus, this transit of the POLAR SEA was one born of necessity when the alternative route via the Panama Canal was rejected as taking too long.

Upon entering Lancaster Sound, POLAR SEA rendezvoused with CCGS JOHN A. MACDONALD early on 2 August 1985 and received two Canadian Coast Guard captains who were invited guests of the U.S. Coast Guard for this voyage. POLAR SEA arrived off the village of Resolute, NWT on Cornwallis Island on the morning of 3 August 1985, and remained hove to awaiting the transfer of two Canadian citizens who would accompany the icebreaker through the Passage. One was a representative of the Canadian Arctic native populations from Indian and Northern Affairs Canada, and the other was an employee of INTERA, Ltd bringing synthetic aperture radar (SAR) imagery of sea ice conditions in the western half of the Passage.

Reconnaissance information from the Canadian weather service, the Atmospheric Environment Service, and the SAR imagery indicated the presence of a shore lead in the eastern half of Viscount Melville Sound that could be exploited to delay the inevitable need for POLAR SEA to enter the pack ice and employ her considerable icebreaking prowess to complete the passage.

Early on the morning of 5 August 1985 the icebreaker had reached the terminus of the shore lead on the northern side of the Sound which had extended to the Dundas Peninsula on Melville Island. The SAR imagery had indicated that the small floes in the immediate region, separated by a mixture of brash and blocks, gave way to vast floes to the west, tens of miles in length and characterized as multiyear ice, ten-fifteen feet thick, under pressure. This ice was described by the most experienced hands on the icebreaker as the "hardest, most difficult ice [POLAR SEA had faced] in her career". In fact progress was slowed to only 5 miles in 24 hours at one point. Helicopters were launched to find the optimum route to the entrance to Prince of Wales Strait to the southwest and to the milder ice conditions reportedly to be found once in the Strait. Propelled by a total of 60,000 shp from three gas turbine engines POLAR SEA reached the entrance of the Strait early on the morning of 8 August 1985 having completed the most arduous part of the journey.

The previous evening was marked by a noteworthy event. A Twin Otter aircraft out of Inuvik, NWT bearing a placard identifying it as a charter of the Council of Canadians, a self-styled nationalistic group, buzzed POLAR SEA dropping Canadian flags and a message protesting her transit. No further incident marred the remainder of the journey, and the icebreaker and her justifiably proud crew stood into the Beaufort Sea after having transited an ice-free Amundsen Gulf early on 9 August 1985 bringing an end to POLAR SEA's Northwest Passage.

This Northwest Passage was the first by a U. S. vessel since the icebreaker/tanker SS MANHATTEN was escorted on a roundtrip transit in 1969 by USCGC NORTHWIND, USCGC STATEN ISLAND, and CCGS JOHN A MACDONALD. It is the first solo circumnavigation of the North American continent by a U.S. vessel, and is almost certainly the fastest transit, having been accomplished in slightly less than 7 days. It is also believed to be the earliest in the season that this route has been successfully made.

Unfortunately POLAR SEA's transit of the Northwest Passage was not without controversy. It is common knowledge that the U.S. and Canadian governments have a standing disagreement over the status of the waters of the Northwest Passage. Whereas the U.S. has taken the stance that the Northwest Passage consists of international straits subject to the right of innocent transit, the government of Canada considers the Passage internal

waters within the Canadian archipelago and subject to jurisdiction and regulation commensurate with sovereign rights that are associated with that status.

Three months prior to the transit the U.S. State Department notified the Canadian Ministry of External Affairs of our intent to make a Northwest Passage. The Canadian Government at first reluctantly agreed not to protest the voyage given the understanding that the U. S. would not use it for juridical purposes to bolster its claim to the international status of these waters. Shortly before the cruise, tremendous pressure on the Mulroney government by the public, the press, and the Liberal Party in Official Opposition in Parliament led Canada to lodge a strong protest with the U.S. Government. This eleventh-hour protest took the form of an allegation that the Northwest Passage consisted of internal waters of Canada and that POLAR SEA could not make the Passage without first obtaining permission of the Canadian Government. The decision was made to proceed with the transit in order to meet operational commitments and without seeking Canada's permission so as not to prejudice the U.S. legal stance on the nature of these waters. The day before entering the Northwest Passage the Canadian Government officially sanctioned POLAR SEA's transit.

The voyage took place without incident, notwithstanding the non-threatening protest by the Council of Canadians, under the watchful eye and in the congenial company of three Canadian guests of the U.S. Government who were official representatives of the Canadian Government for this Northwest Passage. CCGS JOHN A. MACDONALD kept company with POLAR SEA from the entrance of Lancaster Sound until Byam Martin Island where she turned off to take up her escort and resupply tasks. Near-daily overflights by Canadian maritime reconnaissance aircraft provided the only other human contact during the Passage.

In the aftermath of POLAR SEA's 1985 transit of the Northwest Passage the issue of Canadian sovereignty claims remain unresolved. After an initial statement of intent by the External Affairs Minister of Canada to take the issue to the World Court, on 10 September 1985 in a statement in the House of Commons he rejected that plan and instead declared that straight baselines would be drawn around the Canadian high arctic islands to shore-up their claims to sovereignty over these waters. In this same speech Mr. Clark announced his government's intent to revive the languishing Polar Class 8 icebreaker project and to authorize its construction. This icebreaker, estimated to cost \$450M Canadian, would be the most powerful non-Soviet icebreaker in the world. The Polar Class 8 would operate in the Canadian high arctic and Canada believes that by her presence there she would lend credibility to claims of sovereignty and would affirm Canada's ability to defend them.

### *From Polar Sea to Straight Baselines*

Although the political issues remain unresolved, both the U.S. and Canada are working together to arrive at mutually agreeable terms for permanently dealing with access to the Northwest Passage. Notwithstanding the above, POLAR SEA completed the transit without mishap, successfully accomplishing her assigned missions in the eastern and western arctic before and after the transit, and adding another chapter to the fascinating history of the Northwest Passage which continues to stir the imagination of the modern arctic mariner and explorer alike.

## **Appendix I<sup>51</sup>**

(1) POLAR SEA departed Thule on the morning of 1 August enroute Prudhoe Bay, Alaska via the Northwest Passage. Embarked at Thule were three technicians from ARCTEC, Inc, 2 civilian Coast Guard employees and one representative from the Naval Civil Engineering Lab at Port Hueneme, California. Actual data collecting was not scheduled for any portion of the transit.

(2) POLAR SEA CHOPPED to CCGDSEVENTEEN at position 74-54.1N 077-00.0W. Arrangements had been made by the United States and Canada to have two Canadian Coast Guard Officers join the POLAR SEA at a designated rendezvous point prior to commencing the transit. The two Canadian Coast Guard officers were embarked onboard CCGS JOHN A. McDONALD. POLAR SEA rendezvoused with JOHN A. McDONALD at the entrance to Lancaster Sound early on the morning of 2 August. The transfer to POLAR SEA was accomplished by using JOHN A McDONALD's helicopter. Upon embarking the personnel, POLAR SEA proceeded to Resolute, NWT where two additional Canadian guests were to be embarked. The transit through Lancaster Sound was ice free, encountering light ice conditions 15 NM south of Resolute early in the morning of 3 August. Mr. Greg MCAVOY, Intera Inc. and Mr. Ruddy COCKNEY, District Manager Indian Affairs North, were embarked on the afternoon of 3 August by the JOHN A. McDONALD's helicopter. In addition, Mr. Larry SOLER, INTERA Inc, also came aboard and gave a briefing on the ice conditions that were to be expected for the remainder of the transit through the Northwest Passage. On conclusion of the brief, he was debarked by the JOHN A McDONALD's helicopter. Current ice information revealed that the most desired route would be to transit the northern portion of Viscount Melville Sound until Dundas Peninsula, Melville Island, then south to the entrance of Prince of Wales Strait. POLAR SEA departed the vicinity of Resolute late on the afternoon of 3 August. POLAR SEA arrived off Dundas Peninsula on the morning of 5 August after an uneventful transit from Resolute. Transit across Viscount Melville Sound to the entrance of Prince of Wales Strait took three days of heavy icebreaking arriving at the entrance to Prince of Wales Strait at midnight, on 8 August. The ice edge was transited south of Princess Royal Islands. The remainder of the Northwest Passage was made in ice free water. Late on the evening of 7 August, prior to making the entrance to Prince of Wales Strait, POLAR SEA was overflowed by a Canadian twin otter from which 2 canisters containing a Canadian flag and a letter to the Commanding Officer opposing the Northwest Passage transit were dropped. One cannister fell short of its mark while the other one landed on the deck.

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<sup>51</sup> This chronology of events begins at the point of the *Polar Sea's* departure from Thule (page 1-4).

After a series of low passes, the aircraft departed the area without further incident.

(3) Arrival at Tuktoyaktuk N.W.T. for debarking the Canadian guests was scheduled for 9 August. However, heavy ice conditions were encountered after transit of the Amundsen Gulf. SOA was reduced to 2-3 kts, with arrival in the vicinity of Tuktoyaktuk being made on the morning of 10 August. Plans had been made to have a Canadian Coast Guard helicopter remove the guests. However, due to operational commitments, the helicopter was not available on the morning of 10 August. One of the Canadians had prior commitments that could not be delayed any further. He arranged via radio for the charter of a commercial helo the afternoon of 10 August. All guests departed on that particular flight.

(4) POLAR SEA proceeded towards Prudhoe Bay upon departure of the Canadian guests. Shortly there after, it was discovered that the starboard hub was leaking hydraulic fluid. While the leakage was abnormal, it imposed no serious restriction on ice breaking capabilities. POLAR SEA arrived in the vicinity of Prudhoe Bay, Alaska on 12 August. The remainder of the guests that were onboard for the Northwest Passage were debarked at that time. While awaiting for the arrival of the next project's personnel, the time was used to accomplish various ships maintenance and repair projects. Five personnel from the Naval Ocean Systems Center (NOSC), San Diego, CA were embarked on 16 August. Departure from Prudhoe Bay enroute the eastern Beaufort Sea was made on the afternoon of 16 August.

e. Beaufort Sea Operations.

(1) The NOSC project was scheduled from 16 August 16 September. The overall scope of operations was to conduct CTD casts from the eastern Beaufort Sea westward to the Chukchi Sea. Due to heavy ice conditions in the eastern Beaufort Sea, the CTD casts were required to began at the 134W longitude line vice the desired 130W longitude line. Generally, the CTD casts were conducted in a North/South creep along predetermined longitude lines. Heavy ice conditions precluded northerly progress at times. Throughout the period, a portable CTD unit was embarked on the ship's helicopters to increase the range and diversity of casts in areas of heavy ice concentrations. On 25 August, one of the NOSC scientist required debarking while in vicinity of Prudhoe Bay due to a worsening medical condition. No special medical requirements were necessary as his condition was not serious.

(2) The remainder of the NOSC project went according to plan with minor setbacks experienced due to heavy ice conditions in several areas of the Beaufort Sea. On 31 August, an inoperative SALARGOS meteorological buoy was recovered at Position 73-09N 151-19W. The buoy had been established by personnel from a now abandoned ice camp in the early part

of 1985. The cause of the malfunction was due to polar bear tampering. On that same day, a crewman became ill and required treatment at a shore based medical facility. POLAR SEA temporarily secured CTD casts and proceeded to Pt. Barrow to MEDEVAC that crewman. Transfer was made on 1 September via Ship's helicopter. The patient and the attending ship's PYA were subsequently transferred to the U.S.A.F. Hospital at Elmendorf AFB, Anchorage via commercial carrier. The PYA rejoined the ship On 3 September. The final CTD cast for the NOSC project was completed on 14 September. NOSC personnel were debarked at Pt. Barrow on 16 September.

(3) Data collecting for the NOSC project was completed on the evening of 14 September. POLAR SEA arrived off Pt. Barrow on 15 September in preparation for the personnel/cargo transfer scheduled for 16 September. The next project involved ARCTEC INC who had arrived in Pt. Barrow on 15 September and were ready to board. Initial plans were to use the ships LCVP to conduct the transfer due to the large amount of bulk cargo that ARCTEC was loading for the upcoming project. However, a gale that lasted from 15-17 September precluded the use of the LCVP due to heavy beach surf. The blustery weather also precluded the use of the ships helicopters. ARCTEC elected to hire a Pt. Barrow based Bell 212 to conduct the transfer of both personnel and cargo. The transfer commenced on the afternoon of 15 September. By that evening, a total of 210,000 pounds of cargo and four personnel had been transferred from Pt. Barrow to POLAR SEA. The Bell 212 was also used to transfer off the NOSC personnel. The remainder of the ARCTEC personnel were transferred using the Bell 212 on 16 September. Upon completion of the personnel transfer, POLAR SEA departed enroute the Western Beaufort Sea.

(4) Leg I involved coring operations using three different types of units; a gravity core, cone and doppler penetrometer. The project lasted from 16-29 September with nine being conducted. Initially, due to the weight of the cone penetrometer, the support structure was determined to be unable to support that weight. Various modifications to the unit were required. These modifications were made in time to make the cone penetrometer operational in the early phases of the data collecting. Coring operations concluded on 25 September. The remaining portion of Leg I entailed scanning sonar tows in the vicinity of the Barrow Canyon. The planned outline for this operation was initially layed out in a series of predetermined legs. However, upon arrival at the project site the ice pack had moved south into this area. The ice concentrations were generally 5-8/10ths first year thin/medium with large floes. This required constant modifications to the towing patterns. While straight legs averaging 8-10 miles in length were desired, this was seldom achieved due to the ice floes. This phase of the Project ended on the evening of 28 September.



(5) Personnel changeout for Leg I and Leg II A was conducted on 29 September in the vicinity of Pt. Barrow. Good weather allowed the transfer to be conducted using the ships helicopters. The Pt. Barrow Search and Rescue Bell 214 assisted in the transfer of cargo. POLAR SEA departed the area late in the evening of 29 September enroute the Beaufort Sea to an operating area approximately 50-100 NM north of Pt. Barrow. Leg II A's scope of operations involved global load testing and environmental data collecting. As in previous operations of this nature, the operations involved profiling ice ridges and gathering the global load data at the conclusion of the profiling. Leg II A concluded on 5 October with a personnel changeout conducted in the vicinity of Pt. Barrow. Leg II B was conducted from 5-13 October in the same area as Leg II A and under the same operating parameters. Personnel from the Leg II B phase were disembarked in the vicinity of Pt. Barrow on 13 October. Four personnel from ARCTEC INC remained aboard for the transit from Pt. Barrow to Prince William Sound, Where Leg III was scheduled.

(6) The hydraulic oil leak from the starboard hub that developed on 10 August was required by OPCODE to be stopped prior to entering Prince William Sound. It was decided that POLAR SEA would make a port call in Kodiak for four days and attempt repairs using the ships divers. POLAR SEA arrived in Kodiak on 19 October and repair efforts commenced immediately. After four days of repair efforts, the leakage rate was reduced to 1 qt/hr. This amount was determined to be unacceptable due to the sensitive ecological environment of Prince William Sound. Based on this, Leg III was cancelled and POLAR SEA was directed to return to Seattle and terminate AWS-85 operations. POLAR SEA departed Kodiak on 23 October enroute Seattle.

(7) During the transit to Seattle, POLAR SEA encountered an intense low off the north coast of Vancouver Island on the early morning of 26 October. The subsequent rough seas resulted in a crewman to lose his balance on the bridge and be propelled into fixed bridge equipment. The individual died shortly after receiving the injuries. The primary cause of death was due to massive head injuries as a result of several impacts to fixed bridge equipment. Two other personnel that were on the bridge at the time of the incident received injuries in their attempt to assist the individual. One individual received an injury a few hours later. While a MEDEVAC using a Canadian helicopter was considered, the tumultuous seas, adverse weather, and grave unstable condition of the individual precluded the MEDEVAC. The condition of the three other injured individuals did not warrant a MEDEVAC for the given weather conditions. They were attended to by the PYA and two of the injured were transferred to a Seattle hospital on arrival at Pier 37 on 27 October.

**14. Memorandum for the Secretary of State for External Affairs, "Sovereignty Discussions with the USA," January 3, 1986**

***LAC, RG 25, vol. 4, file 8100-14-4-2***

L.H. Legault  
Legal Advisor  
and Assistant Deputy Minister  
Legal, Consular and Immigration  
Affairs  
995-8901

CONFIDENTIAL

January 22, 1986  
JFB-0013

Memorandum for The Secretary of State for External Affairs

c.c. Minister for International Trade  
c.c. Minister for External Relations

SUBJECT: Arctic Sovereignty - Discussions with the USA

PURPOSE

The purpose of this memorandum is to report on the Arctic consultations held in Washington on January 10 and 13, to evaluate the options that may be open in the light of these consultations, and to seek instructions regarding the next steps to be taken.

BACKGROUND

[section redacted under Access to Information Act, section 15(1)]

...

Mr. Legault stressed that Canada and the United States had only three-basic options open to them in this matter: confrontation, cooperation, or adjudication. But Canada-USA relations could not afford a confrontation on Arctic sovereignty. The Arctic is for Canada what the Alamo is for Texas. Canadians cannot understand why the United States would call into question Canada's territorial integrity and invite the Soviet navy into

Canada's Arctic waters. It would be a mistake if the United States failed to seize the special importance of the Arctic sovereignty issue to Canada, on the grounds that Canada allegedly always makes much of all its bilateral problems with the United States. It would be a mistake if the United States refused to treat the Arctic archipelago as a unique area, on the grounds that all straits can allegedly be characterized as unique areas. This attitude only created an intellectual strait-jacket from which there was no way out. Clearly Canada's Arctic waters were unique in objective terms, and U.S. and Canadian security interests would be advanced rather than compromised by recognizing this.

Mr. Legault noticed that U.S. officials from time to time had appeared to make a distinction between Canada's sovereignty claim and the straight baseline system used to delimit the claim. This distinction was not particularly attractive to Canada but nevertheless we understood U.S. sensitivities about straight baselines and had attempted to devise an approach that took them into account. Later in the meeting, the draft Joint Declaration and Memorandum of Understanding based on this approach (copy attached) was distributed and explained to the U.S. side, on the clear understanding that it was a "non-paper" that did not carry ministerial approval or constitute a Canadian proposal, but was intended only to focus discussion on concrete issues.

In his opening remarks, Mr. Smith read from a prepared statement (copy attached) that reiterated U.S. concerns about Canada's maritime sovereignty claim in the Arctic. The United States welcomed Canada's offer to cooperate and was ready to take it up, provided that such cooperation was without prejudice to the legal position of either side. Referring to the protest note which the United States had intended to give to Canada just before Christmas, Mr. Smith said that his government felt compelled to state its legal position publicly, as Canada had done "so emphatically" in your statement to Parliament on September 10. The United-States was surprised at the Canadian reaction to what was regarded as a "routine reservation of legal position". If a diplomatic note created political difficulties for Canada, the United States would be prepared to state its position instead, in a letter from Mr. Shultz replying to your letter of September 10. Mr. Shultz's letter would propose a framework for cooperation based on "our mutual overarching interests in continental security and in environmental protection." At the same time, it would clearly state U.S. reservations about Canada's straight baselines and Canada's maritime sovereignty claim in the Arctic.

After the U.S. side had had an opportunity to review Mr. Legault's non-paper in private, Mr. Smith characterized it as a constructive step which for the most part did not differ from the U.S. approach and could provide the basis for a "deal" between the two countries. While all the paragraphs of the paper had elements that presented problems, these were generally "manageable". (In reply to a question from Mr. Legault, Mr. Smith and the

Deputy General Counsel for the Joint Chiefs of Staff said that they thought it might be possible to distinguish U.S. Coast Guard icebreakers from warships for purposes of applying some Canadian laws and regulations.)

The United States, however, had one "fundamental" problem with the non-paper. Paragraph 3 of that document, after noting U.S. disagreement with Canada's application of the straight baseline system to the waters of the Arctic archipelago, states as follows: "Nevertheless, in view of the unique circumstances pertaining to these waters, the Government of the United States of America recognizes Canada's sovereignty over them; dependently of and without reference to the straight baseline system". The United States cannot agree to this wording, as, it cannot accept that all of the Arctic archipelago waters (i.e., those beyond a 12-mile belt around each island) fall within Canadian sovereignty. The addition of the words "or jurisdiction" after the reference to "sovereignty", however, would make the statement acceptable to the United States (in other words, the United States was prepared to recognize Canadian environmental jurisdiction within the archipelago beyond a 12-mile belt around each island). Moreover, if the reference to Canadian Arctic waters in paragraph 2 of the non-paper was broadened to include the 100-mile pollution prevention zone established under the Arctic Waters Pollution Prevention Act, the additional words "or jurisdiction" would become more appropriate even from the Canadian perspective, given that Canada only claimed functional jurisdiction and not outright sovereignty within this 100-mile zone seaward of the straight baselines.

Mr. Legault welcomed the positive U.S. reaction to his proposal and hoped that it might allow the two sides to continue discussions regarding a possible accommodation. The additional words "or jurisdiction" proposed by the United States raised fundamental difficulties for Canada, however, and might well prove to be the straw that breaks the camel's back. The concessions Canada might be able to make in respect of modalities to facilitate U.S. navigation were predicated on U.S. acceptance of Canadian sovereignty. Without that acceptance, concessions on modalities became far more difficult.

Mr. Smith replied that the matter was equally critical for the United States. It was impossible for his government to agree that the waters of the Northwest Passage were "like Lake Winnipeg". Meanwhile there was increasing pressure to issue a statement of the U.S. legal position. Some risk attached to postponing the matter much longer, and the U.S. side wished to get it out of the way well in advance of the next bilateral summit in March: "It would be unfortunate if the President had to state the U.S. position at the Summit."

Mr. Legault emphasized that it would be unwise to foreclose any possibilities of an accommodation by a U.S. communication that might be seen as a protest against Canada's Arctic baselines. He suggested that a solution might be found by means of a communication that formally reserved U.S. rights, while falling short of a protest, for such time as bilateral talks on a possible accommodation might continue. This would be a kind of "holding action". If the bilateral talks succeeded, there would be no need for further U.S. action. If the talks failed, the United States would be free to take such action as it decided necessary, without having suffered prejudice to its position the interim. Mr. Legault also suggested that such a holding action might best take the form of a letter from Ambassador Niles to Under-Secretary Taylor.

Mr. Smith expressed interest in pursuing this suggestion and undertook to give the U.S. response at the supplementary talks to be held on January 13. Meanwhile, he agreed that the United States would inform other Western maritime powers with which it was consulting on law of the sea matters (e.g., U.K., FRG and Japan) that talks with Canada were under way and that the United States was not protesting Canada's Arctic baselines at this time.

#### JANUARY 13 TALKS

On Monday, January 13, Ambassador Gotlieb followed up the discussions held on January 10, first by calling on Admiral Poindexter, National Security Council adviser, and secondly by hosting a working lunch for senior U.S. officials concerned with the Arctic issue (Under Secretaries of State Armacost, Ridgway and Negroponte, Under Secretary of Defence Ikle, and Messrs. Smith and Medas).

In his call on Admiral Poindexter, Ambassador Gotlieb emphasized that the Canadian public's reaction to the voyage of the Polar Sea was so overwhelming that the Canadian Government had had no alternative but to act as it did on September 10. He gave a brief review of the on-going discussions and made a strong case regarding the unique circumstances pertaining to the waters of the Arctic archipelago

The Admiral's reaction did not betray any sympathy for Canada's concerns until the Ambassador (in response to a query about Canada's strategic interest in the U.S. navy's global freedom of movement) was able to point out that Canadians could not understand why the United States would insist on opening Canada's Arctic to passage by the Soviet Union. Poindexter appeared to be impressed by this security argument.

At the working lunch that followed, Ambassador Gotlieb stressed that the U.S. refusal to recognize Canadian sovereignty -- by insisting on the addition of the words "or jurisdiction" -- might well prove fatal to any possibility of accommodation. This was a vital issue for Canada, and one to

which the Prime Minister was deeply committed. Indeed, if the issue could not be resolved in any other way, it might well prove necessary for Mr. Mulroney to raise it with President Reagan at the March Summit. Canada understood the traditional U.S. position that lay behind the refusal to recognize Canadian sovereignty but was asking the Administration to change that position in respect of a unique area and in a context that protected U.S. interests in navigation through Canadian Arctic waters.

Mr. Legault suggested that the decision to treat these waters as a unique case did not depend on legal factors but on political will. There was no necessary opposition between Canada's Arctic sovereignty concerns and U.S. global strategic concerns, which in fact were shared by Canada. If the two countries failed to act together, however, they could create an artificial opposition between these concerns, and a very real conflict between Canada and the United States. To act together we must agree on the fundamental question of sovereignty. Cooperation on any other basis would almost certainly be rejected in Canada.

The U.S. side countered that if political will led to recognition of Canada's sovereignty, other countries would have grounds to appeal to that same political will. Our interlocutors were clearly disturbed by any prospect that the Prime Minister might raise this matter with the President. In their view, this would not bring about a change in the U.S. position but could make the issue unmanageable. In an apparent shift from global to regional and bilateral preoccupations, they expressed some concern that the Canadian non-paper did not provide for indefinite or perpetual U.S. rights of navigation through Canadian Arctic waters.

Without making any commitment on the subject of indefinite or perpetual rights, the Canadian side indicated that the duration of any agreement or understanding could be further reviewed. Again without commitment, there was some discussion of an alternative approach that would consist of an agreement or understanding that dealt only with practical modalities and was silent on the question of sovereignty, neither rejecting or affirming it (although the United States would presumably wish to make clear that it did not accept Canada's baselines). Finally, returning to the question of a U.S. holding action as discussed on January 10, the two sides reviewed and agreed upon the text of a draft letter in which the United States would reserve all its rights pending the conclusion of the current talks, while avoiding any protest as such.

#### WHERE DO MATTERS NOW STAND?

The January 13 talks left open the question whether the two sides would pursue the search for an accommodation on practical modalities

without explicit U.S. recognition of Canadian sovereignty, or whether this issue might be raised with President Reagan by Prime Minister Mulroney.

On the first point, the Canadian side did not close any doors but made it very plain that such an approach may well be impossible for Canada. The U.S. view, as conveyed in a subsequent telephone conversation with the deputy chief of mission in Ottawa, is that the ball is now in Canada's court. Ambassador Niles will be writing to Mr. Taylor in the near future to convey the U.S. reservation of its rights in accordance with the holding action agreed to in Washington.

On the second point, the U.S. side expressed strong reservations about the utility and wisdom of raising the Arctic issue at the bilateral Summit. This view has since been confirmed by the U.S. deputy chief of mission, who indicated, however, that it would clearly be necessary for the two leaders to be prepared to deal with the issue as a public relations question but not as a substantive agenda item in March.

The latest round of talks has temporarily staved off any protest from the United States and other maritime states that might wish to follow the U.S. lead in reacting against Canada's baselines. The amount of time we have bought however, can only be measured in weeks or at most in months.

On the substantive side, the United States has gone further than ever before in its willingness to accept Canadian regulation and management of shipping through the waters of the Arctic archipelago. The sticking point remains explicit recognition of Canadian sovereignty over the waters of the Arctic archipelago. Canada is thus left with two basic options, which are examined below.

### WHERE DO WE GO FROM HERE?

Confrontation on the Arctic sovereignty question appears to be as undesirable to the United States as it is to Canada. While U.S. officials have again indicated that their Coast Guard may wish to make another transit of the Northwest Passage in 1986, they have also suggested that the Coast Guard can be controlled under the appropriate circumstances. Their view seems to be that they will do their part to avoid a confrontation but that Canada bears the greater responsibility in ensuring such a result. In this respect, our two basic options may be described as follows.

#### Option 1

Reach the most favourable accommodation possible on practical modalities without explicit recognition of Canadian sovereignty.

The United States appears to be prepared to accept Canadian authority to manage and regulate shipping through the waters of the Arctic

archipelago. Certainly it would accept full application of Canadian laws in respect of commercial navigation. The treatment of government-owned ships would present some problems, but these would probably be manageable, especially now that the United States appears to be willing to make some distinctions between Coast Guard icebreakers and warships proper. An accommodation along these lines would represent a major achievement. It would, however, leave the question of sovereignty unsettled. The difficulties thus raised for Canada could be attenuated in some measure if the following conditions were met: (i) if the practical accommodation went as far as possible in the direction of de facto recognition of Canadian sovereignty (and was not based on a distinction between sovereignty and jurisdiction as proposed by the United States); (ii) if the United States would accept that such an accommodation made it unnecessary to take a position either for or against Canadian sovereignty or the Canadian Arctic baselines, and (iii) if protests from other maritime powers might be avoided on this basis. This combination of circumstances would not only be consistent with Canadian sovereignty but would materially advance Canada's sovereignty claim. It would, of course, be more open to criticism than an accommodation based on explicit recognition of Canadian sovereignty, and an appropriate communications strategy would be required. Achievement of the three conditions listed above, however, may prove very difficult.

### Option 2

Press the issue of explicit recognition at the Prime Ministerial-Presidential level and, if this effort proves unsuccessful; propose adjudication by the International Court of Justice.

This approach has the advantage that it would-avoid any possible criticism that Canada sacrificed full and unfettered sovereignty on the altar of bilateral cooperation. In reality, of course, it offers no certainty that Canada would in the end come any closer to achieving its sovereignty objectives. It is difficult to assess whether President Reagan would be prepared to overrule his advisers on an issue allegedly affecting the global strategic interests of the United States, and order them to yield to Canada's demand for explicit recognition of its sovereignty over the waters of the Arctic archipelago. If we have nothing to lose by trying, then we should give serious consideration to doing so. U.S. officials, of course, have suggested that we do have something to lose but have not been very precise in seeking to warn us off. As a kind of sub-option, we could presumably have the question raised at the Summit without tying ourselves to a proposal to adjudicate in the event that explicit recognition of sovereignty was not obtained from the President, thus leaving ourselves free to revert to Option 1 if necessary. We must recognize, however, that once the issue was unsuccessfully raised at this level, a satisfactory version of Option 1 might be harder to achieve. Moreover, it is conceivable that a proposal to



adjudicate could help tip the balance in favour of explicit recognition. Certainly the United States is not anxious to have this (or any other) matter referred to the International Court of Justice. The end result, however, might simply be a continued refusal to grant explicit recognition *plus* a refusal to adjudicate -- although the United States would presumably be uncomfortable in being seen to reject adjudication and resort to the naked exercise of power in what would clearly be a legal dispute with its closest friend, ally and neighbour.

## CONCLUSION

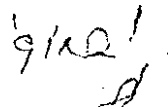
There are risks for Canada in both options 1 and 2 or any variations that might be brought to them. The factors to be assessed in determining our next move are complex and will require further legal and political analysis.

Important decisions will be required soon. Accordingly we should appreciate being given an early opportunity to meet with you and review the basic positions we have identified in general terms, in the light of the Government's overall objectives. We would also like to obtain your views as to when and how you might wish to raise these bilateral aspects of the Arctic sovereignty question with your colleagues.

May we have your comments, please.



L.H. Legault  
Legal Adviser  
and Assistant Deputy Minister for  
Legal, Consular and Immigration  
Affairs



original signed by: J.H. Taylor

**15. Draft Treaty in “Memorandum to the Secretary of State of External Affairs,” January 9, 1986**

***LAC, RG 25, vol. 4, file 8100-14-4-2***

WITHOUT PREJUDICE  
FOR DISCUSSION, PURPOSES ONLY

JOINT DECLARATION AND MEMORANDUM OF UNDERSTANDING  
BY AND BETWEEN THE GOVERNMENT OF CANADA AND THE  
GOVERNMENT OF THE UNITED STATES OF AMERICA RELATING  
TO COOPERATION IN ARCTIC WATERS

1. Conscious that both countries share certain special interests and responsibilities as neighboring Arctic coastal states, the Government of Canada and the Government of the United States of America recognize the need to cooperate in the Arctic region, especially in relation to the following objectives:

- a) the protection of their individual and mutual security interests;
- b) the development of safe navigation Arctic waters, while ensuring the preservation of the unique environment of this region and enhancing the well-being of its inhabitants;
- c) the encouragement of scientific research contributing to Arctic navigation and to knowledge of the Arctic environment.

2. Considering that the waters adjacent to the mainland and islands of the Canadian Arctic are covered with ice for all or most of the year, so that they have been occupied by Canada's Inuit people from time immemorial and have obstructed the development of international navigation, the Government of Canada has traditionally regarded them as historic internal waters over which Canada exercises full sovereignty. The precise limits of these waters (hereinafter referred to as "Canadian Arctic waters") have been defined by the Government of Canada by means of straight baselines as set out in Order in Council P.C. 1985-2739 of September 10, 1985.

3. The Government of the United States of America does not agree that the straight baseline system is applicable in law to the Canadian Arctic waters described above. Nonetheless, in view of the unique circumstances pertaining to these waters, the Government of the United States of America

recognizes Canada's sovereignty over them, independently of and without reference to the straight baseline system.

4. The Government of Canada will facilitate commercial navigation by United States ships through Canadian Arctic waters in accordance with and subject to Canadian laws and regulations, which shall apply equally and without discrimination to the nationals and ships of both countries. The Government of the United States of America, in accordance with and subject to United States laws and regulations, will similarly facilitate commercial navigation by Canadian ships through those Arctic waters off the coast of Alaska that are subject to the sovereignty or jurisdiction of the United States.

5. Both governments will facilitate navigation through their respective Arctic waters by ships owned or operated by the other government and engaged in non-commercial service, in accordance with and subject to the applicable laws and regulations of either government within its own territory or jurisdiction not inconsistent with principles of sovereign immunity. Navigation by such ships will be subject also to prior notification through Coast Guard or Service channels and to any applicable defence arrangements.

6. Ships owned or operated by the United States Government and engaged in non-commercial service will be deemed to comply with standards equivalent to standards prescribed under Canadian regulations in respect of design, construction, equipment, manning, cargo carriage and related matters, and be exempted from Canadian regulations in respect of the compulsory use of pilots, ice navigators, and icebreaker assistance. Reciprocal treatment will be afforded to such ships owned or operated by the Canadian Government in the event that the United States should adopt regulations on these matters for United States Arctic waters. For these purposes, the two governments will consult and cooperate closely with respect to the assessment and mutual recognition of Arctic ship standards.

7. Each government will bear international responsibility for any loss or damage caused as a result of passage through the Arctic waters of the other country by its government-owned or operated ships engaged in noncommercial service. In particular, this responsibility will extend to costs incurred as a result of discharge from such ships, including containment, clean-up and disposal costs incurred by either government.

8. The Coast Guard authorities of the two countries will cooperate in matters of concern to the development of safe navigation in their respective Arctic waters. Such cooperation may extend, for instance, to research and development programs, in the field of Arctic transportation; the conduct of ship trials in ice; the sharing of data on icebreaker design and operations; the coordination of marine pollution contingency plans and icebreaking, pilotage and search and rescue services; and the provision of aids to

navigation, including facilities and services for communications, position-fixing and ice reconnaissance. The two governments may, as appropriate, enter into subsidiary arrangements and establish consultative mechanisms for the purposes of such cooperation.

9. The military authorities of the two countries will cooperate in matters of concern to defence in relation to Canadian and United States Arctic waters and adjacent waters, in accordance with the provisions of the North Atlantic Treaty and the principles applicable to arrangements between the two countries for the joint defence of North America. Such cooperation may extend, for instance, to surveillance of activities which may be prejudicial to the security and defence of the two countries, the exchange of information arising from such surveillance, and the deployment and operation of such fixed or mobile defensive systems as may from time to time be required to detect and prevent such activities in Canadian and United States Arctic waters. To this end, arrangements may be made between the military authorities of the two countries to facilitate joint or collaborative operations by their respective naval forces in the Arctic region.

10. The competent authorities of the two countries will cooperate in scientific research, contributing to knowledge of the Arctic environment and its protection and preservation. They may, as appropriate, enter into subsidiary arrangements for the purposes of such cooperation.

11. This joint declaration and memorandum of understanding is without prejudice to the views of either government concerning the nature and extent of coastal or flag State jurisdiction in areas not covered by this memorandum.

12. This joint declaration and memorandum of understanding will become effective upon signature. It will be subject to review every five years and will remain in effect for fifteen years and thereafter until terminated by 12 months written notice given by one government to the other.

**16. Edward G. Lee Ed. *Canadian Yearbook of International Law*, “Canadian Practice in International Law during 1985 - At the Department of External Affairs,” 1986**

INTERNATIONAL COURT OF JUSTICE

On September 10, 1985 the Permanent Representative of Canada to the United Nations made the following declaration:

On behalf of the Government of Canada,

- 1) I give notice that I hereby terminate the acceptance by Canada of the compulsory jurisdiction of the International Court of Justice hitherto effective by virtue of the declaration made on 7 April 1970 in conformity with paragraph 2 of Article 36 of the Statute of that Court.
- 2) I declare that the Government of Canada accepts as compulsory ipso facto and without special convention, on condition of reciprocity, the jurisdiction of the International Court of Justice, in conformity with paragraph 2 of Article 36 of the Statute of the Court, until such time as notice may be given to terminate the acceptance, over all disputes arising after the present declaration with regard to situations or facts subsequent to this declaration, other than:
  - (a) disputes in regard to which the parties have agreed or shall agree to have recourse to some other method of peaceful settlement;
  - (b) disputes with the Government of any other country which is a member of the Commonwealth, all of which disputes shall be settled in such manner as the parties have agreed or shall agree;
  - (c) disputes with regard to questions which by international law fall exclusively within the jurisdiction of Canada.
- 3) The Government of Canada also reserves the right at any time, by means of a notification addressed to the Secretary-General of the United Nations, and with effect as from the moment of such notification, either to add to, amend or withdraw any of the foregoing reservations, or any that may hereafter be added.

**17. Prepared Statement by the US Delegation [for meetings with Canadian representatives], January 10, 1986,**

***LAC, vol. 5, file 8100-15-4-2 (s)***

-- The U.S. Government has been struggling with this Arctic issue over the past few months

-- In all of our considerations we have had at the forefront of our thinking cooperation with Canada, in general, and in the Arctic, specifically.

-- We have a legal difference, but we have wanted to avoid a confrontation about that difference and instead to use the present focus on the Arctic to build a stronger cooperative relationship with Canada in the Arctic. Thus, we have sought a solution that is without prejudice to either side's legal position, and one that looks at our practical interests in the area and that builds cooperative arrangements for the future.

-- We are still of this view, and that is the spirit in which we approach our talk today.

-- At the last informal meeting, we spoke of a future arrangement that would be without prejudice to our different legal viewpoints. You would be able to describe it as consistent with your position. We would be able to say we had not recognized your position.

-- We also indicated that we would need to put on the record at some point our legal position, since Canada has done so emphatically in Foreign Minister Clark's September 10 Statement, his letter to the Secretary, and in the straight baseline Order in Council itself.

-- We have not yet made a legal reservation to your baselines announcement, but we need to do so at some point if we are to maintain our position over time that we have not recognized your claim.

-- We have been surprised by the Canadian reaction to what we regard as a routine reservation of legal position, which we had proposed to get out of the way at an early stage; nevertheless, we deferred the sending of the note until we could have another informal talk.

-- If a diplomatic note creates political difficulties for Canada which will inhibit negotiation of an overall solution, we are prepared to use a different vehicle.

## *From Polar Sea to Straight Baselines*

-- The alternative we intend to pursue is to send a reply to Mr. Clark's September 10 letter. That letter clearly stated Canada's legal point of view, but it also proposed cooperative arrangements regarding Arctic waters, particularly with respect to continental security.

-- At that time Canada clarified to us, including in a telephone conversation between Mr. Clark and the Secretary, that references in the September 10 letter and statement that these arrangements would have to be "on the basis of full respect for Canadian sovereignty" did not set out a precondition for negotiations.

-- We welcomed Mr. Clark's proposal with that clarification.

-- Accordingly, we have envisioned a framework for U.S./Canada cooperation in the Arctic that would be based upon our mutual overarching interests in continental security and in environmental protection.

--Within this framework we could address:

- maritime defense
- commercial navigation
- icebreaker operations
- environmental protection

-- For instance, the Permanent Joint Board on Defense could serve as a forum for discussion of some of the military defense and navigation issues.

-- Thus, in our letter we would outline these interests and make some specific proposals for cooperation.

-- At the same time, the letter would also state clearly our reservation to your straight baseline and maritime sovereignty claim in the Arctic.

-- Nonetheless, the letter would make clear that the purpose of our proposals was not simply to establish a framework within which we could finesse our legal difference, but a framework in which we could establish cooperative programs of mutual benefit consistent with the interests of our two countries.

-- We believe that such an approach, outlined in our letter, which clearly indicates our interest in overcoming our legal difference, and sets forth the prospects for cooperation that we see, would perhaps be the best way to move us forward.

-- Our real interest is in cooperation with Canada, particularly on mutually shared strategic objectives. The intent of this letter is to open a dialogue

### *From Polar Sea to Straight Baselines*

while making clear that the dialogue will have to be without prejudice to U.S. or Canadian positions on legal rights in Arctic waters.

-- These are our remarks at this stage. We would be interested in your reaction to them, and in anything else you might wish to say on this matter.

Wang BHL I.D. #47



## **18. Talking Points [for Canadian officials], “Canadian Arctic Sovereignty,” May 29, 1986**

### **CANADIAN ARCTIC SOVEREIGNTY**

#### **ISSUE:**

On September 10, 1985, the Secretary of State for External Affairs made a statement in the House of Commons on Canadian sovereignty. Among the measures announced by Mr. Clark were an order in council establishing straight baselines around the outer perimeter of Canada's Arctic archipelago and the construction of a Polar Class 8 icebreaker.

#### **BACKGROUND:**

There is a long-standing difference of view between Canada and the USA with respect to rights of passage through the waters of the Arctic archipelago. In Canada's view, the territorial sea in the Arctic is measured from straight baselines encircling the outer perimeter of the archipelago. The waters within this perimeter are internal by virtue of historic title and neither the right of innocent passage nor the right of transit passage applies. Canada has made it clear, however, that it will allow passage of foreign vessels, subject to controls and safeguards.

In the view of the USA, Canada's sovereignty over these waters is limited to a 12-mile belt of territorial sea around each Arctic island. The USA is also of the view that Canada's sovereignty is subject to a right of transit passage.

## TALKING POINTS

- Canada is determined to exercise full sovereignty over the historic internal waters of the Arctic archipelago and is prepared to uphold its position before the International Court of Justice if necessary.
- These Canadian internal waters have now been delineated by straight baselines that became effective on January 1, 1986. The Government is also moving forward with plans for the construction of a Class 8 icebreaker and other measures to ensure effective control of Canadian Arctic waters
- Canada's claim is well-founded in law and fact. It establishes no precedent that might be cited to justify interference with international navigation in other parts of the world because it is based on unique circumstances:
  - the Canadian Arctic archipelago is unlike any other archipelago in the world in geographical terms;
  - these waters are covered with ice for all or most of the year;
  - they have been used and occupied like the land itself by Canadian Inuit people from time immemorial;
  - they have not been customarily used for international navigation and the Northwest Passage does not constitute an international strait.
  - they are, moreover, subject to the environmental jurisdiction of Canada in any event pursuant to the so-called "Arctic exception" under the 1982 Law of the Sea Convention.
  - Canada will encourage the development of international navigation in Canadian Arctic waters, but only subject to the controls and other measures required for Canada's security, for the preservation of the environment, and for the welfare of the Inuit.

[page redacted under Access to Information Act, section 15(1)]

TALKING POINTS

(Responsive)

- The legal foundation for the baselines is Canada's historic title and relevant principles of international law. The baselines simply delineate the outer limit of that title.
- Successive Canadian governments have declared their intention to open Canada's Arctic waters to safe navigation for the shipping of all nations, subject to the conditions required for Canada's security, for the preservation of the environment, and for the welfare of the Inuit and other local inhabitants.
- Canada could not accept that Soviet warships have a right to free transit in the Arctic archipelago waters.
- The Canadian claim establishes no precedent that might be cited to justify interference with international navigation in other parts of the world because it is based on unique circumstances.
- Canadian and American officials have held a number of preliminary and informal discussions on cooperative arrangements in the Arctic. These exploratory consultations are continuing.

**19. Public Papers of the President of the United States  
Ronald Reagan, 1987, Book 1 (US Government Printing  
Office), “Informal Exchange with Reporters in Ottawa,  
Canada,” April 5, 1987**

[Document edited to exclude sections unrelated to the Arctic]

Q. Well, do you agree with the Prime Minister that they own the Arctic—lock, stock, and iceberg? [Laughter]

*The Prime Minister.* I said that's ours—lock, stock, and iceberg. [Laughter] I think that's a question of sovereignty, and that's our position. I've discussed it with the President before, and that position will be unchanged at any time.

Q. Will he agree with you?

*The Prime Minister.* You'll find out.

Q. How do you feel on the prospect of a trade agreement?

*The Prime Minister.* Well, thank you, Helen [Helen Thomas, United Press International]. Thank you, Helen.

**20. Public Papers of the President of the United States  
Ronald Reagan, 1987, Book 1 (US Government Printing  
Office), Interview with Foreign Television Journalists  
Prior to the Venice Economic Summit, May 27, 1987**

[Document edited to exclude sections unrelated to the Arctic]

*Canada's Role in the Arctic*

Q. Can I ask you about another emerging strategic ocean, and that is the Arctic Ocean, where Soviet subs, as you know, are very busy these days.

*The President.* Yes.

Q. Is the United States ready to recognize the Canadian claim to sovereignty up there in its own interest—that is, so that the Canadians can perhaps use subs to intercept and keep track of the Soviets?

*The President.* We honestly want to find an answer to that. Now, on one side—that sort of holds back completely accepting the Canadian position—is the international precedent that, again, would be set if something that by definition is international water could be closed by the nearby countries. There are other chokepoints on the trade routes in the world where that could easily be invoked if the pattern was set. On the other hand, from the Canadian viewpoint, I have to say that that is unique, that area. When you look at the Canadian islands and the extent to which they dominate those waters, and know that a great many of those islands year round are connected by a solid ice cover upon which there are many people who live above those waters on that ice, that this is a little different than the other situations in the world. And we sincerely and honestly are trying to find a way that can recognize Canada's claim and yet, at the same time, cannot set that dangerous precedent that I mentioned.

**21. Speech by the Right Honourable Joe Clark, Secretary of State for External Affairs, Tromsø, Norway, December 9, 1987.**

Ladies and Gentlemen,

The Canadian Government recently conducted a thorough review of Canada's international relations, the first for 16 years. This time we were determined to open up the debate on foreign policy to all Canadians. From Saint John's in the East to Victoria in the West to Yellowknife in the North Canadians came forward with their views and concerns. They touched on every aspect of our foreign policy. They told us in no uncertain terms that Canadians remain as internationalist, as global in their world view as ever. Maybe more so.

One of the areas stressed in that review was the North. In hearings before the Parliamentary Committee an Inuit leader, Mark Gordon, argued forcefully that one of the problems with the North is that too often Northern policies are developed in isolation by southerners in capital cities in temperate zones. It is striking for me, and I expect for most of the Canadians in the room, that we are meeting here in Tromsø - that Tromsø is near the 70th parallel, well north of the Arctic Circle, indeed north of mainland Canada.

It is true that in Canada the majority of our population lives close to our border with the United States. But that fact does not diminish Canadians' sense of the North. Although the high Arctic may be more real to those who live there than to others, the North and the Arctic are a singular influence in the self-image of all Canadians. In the evocative words of a famous Canadian folk-song:

"Mon pays, ce n'est pas un pays, c'est l'hiver."

It is fitting that Norwegians and Canadians are meeting here this week. As we were reminded so memorably last night, 500 years before Columbus was even born Norsemen were exploring and settling in Canada-to-be.

Other countries came to settle the Americas. Through accidents of history Canadians came to speak English and French and not Norwegian! But Nordic peoples continued to fish and explore in Canada's North. They came more frequently in the late nineteenth century as the search for a northwest passage intensified. A Norwegian, Amundsen, finally found it. Larsen, the first Canadian to navigate that passage, was Norwegian born. Many islands and waterways are named after Norwegian explorers such as

Nansen and Sverdrup. In fact we are probably lucky that today Norway lays no claim to the Northern half of Canada!

Norwegians joined in the massive flood of immigration to Canada between the 1880s and 1930. They have adapted to Canadian society with ease, while retaining elements of their distinctive culture and their language.

Norwegians contributed so much to Canadian society because our societies and our values are strikingly similar. I think our common Northern environment is a key-factor: we each developed the difficult parts of our respective continents.

Canadians and Norwegians have common attitudes towards the individual and towards the individual's relationships with family, nature, God and one's fellow man. That is not simply a coincidence. It is a product of our common geography. Harsh climate and the challenge of survival breed an attitude of sharing, of cooperation, of responsibility.

We are both democratic societies, but more importantly, we believe in the same type of democracy. We believe passionately in freedom and in justice. We believe that collectively society has a duty to ensure the rights of minorities, to protect the weak and to maintain high standards of health, welfare, education and safety. In Northern climates government must provide services, strengthen the economy and protect the environment.

As Northern societies, we are both geographically remote: most of Canada from the heartland of North America, Norway from the European heartland. Politically and militarily we are neither the largest nor the smallest of states. We are both especially dependent on the international economic and political order. These realities have made both of us strong defenders of collective and international institutions such as NATO, the OECD and the UN system. In a world of superpowers and giant economic blocs, nations like Canada and Norway understand and can support each other.

This symposium has had sessions on resource development, historical trends, defence, legal issues and indigenous peoples. I want to address some Northern issues of particular concern to Canada and my government. These are issues where we seek Norwegian understanding, experience and wisdom - issues on which we can cooperate in the broader international community.

A northern dimension to our foreign policy is not new for Canada. In 1882 Canada was a participant in the first International Polar Year. Since then international cooperation in northern regions has been a special Canadian concern.

## *From Polar Sea to Straight Baselines*

Our government's response to the joint parliamentary review of international relations focused on four broad themes of a "comprehensive northern foreign policy". These themes are:

- \* affirming Canadian sovereignty
- \* modernizing Canada's northern defences
- \* preparing for the commercial use of the Northwest Passage, and
- \* promoting enhanced circumpolar cooperation.

The overwhelming Canadian challenge is geography, a vast, unique realm of land and water and ice.

The waters within the Arctic archipelago are not like warm waters which are used for international navigation. Our waters are in fact frozen most of the year - navigation as on the high seas is impossible. The shoreline is where open water meets solid ice, not where water meets land.

Indeed, Canadian Inuit live on this ice for part of the year: for them it is home. So whether terra firma or aqua firma Canada claims sovereignty over this entire area. In 1985 our government established straight baselines around the perimeter of the Arctic archipelago. This defines the outer limits of Canada's historic internal waters.

To open our Arctic waters we are building the world's largest icebreaker - a class 8 vessel. That ship will be used to keep open waterways and ports that are now closed part of the year. It will facilitate commerce and the development of our Northern resource potential.

We are improving the entire infrastructure that is needed for the control and development of the North. We are developing the means to provide basic information on weather, tides, currents, and ice conditions. We are developing aids to navigation and communications. We are evolving regulations for shipping, development and the protection of the environment. We are discussing with the United States an agreement whereby they would acknowledge the need to seek Canadian consent prior to passage by an American icebreaker through Canadian northern waters. Major efforts to protect the northern environment go back to 1970 when we passed the Arctic Waters Pollution Prevention Act.

All of these measures are essential for safe navigation in the Arctic. They are consistent with the Government's pledge to facilitate shipping in our internal archipelagic waters subject to our sovereignty, security and environmental requirements and the welfare of the inhabitants of the North.



We have also done extensive work in oil and gas exploration and development. Last summer we shipped oil from the Arctic. Lower oil prices have curtailed but not stopped that work. Our research and development in Northern resources is a continuing investment in the future.

When I say we are taking these measures, I mean the federal and the territorial governments, because the governance of our North is a partnership of national and local governments. Indeed, one of the most significant developments in Canada's North is the deliberate and gradual devolution of power and responsibility from Ottawa to Northern governments. Our government has also accelerated negotiations of aboriginal land claims - a complex process of fundamental importance to our northern peoples.

Another trend of enormous importance is growing circumpolar cooperation between countries north of the Arctic Circle.

- in the 1960's, we played a leading role in the formation of the International Permafrost Conference
- in 1971, we participated in the Canadian-Scandinavian workshop on caribou and reindeer
- in 1976 we reached agreement on the conservation of polar bears
- in 1983 Canada and Denmark reached agreement on environmental cooperation
- in 1984 Canada and the USSR agreed on exchanges in Arctic sciences
- in the 1980's, we supported the development of the Inuit Circumpolar Conference
- and most recently, Canada and Norway have intensified our commitment to cooperation in the field of science and technology.

So Canada has been actively involved in northern initiatives for a long time and my government is committed to intensifying its relations with Arctic neighbours.

We wish to see peaceful cooperation among Arctic Rim countries developed further. We were therefore encouraged when General Secretary Gorbachev stated at Murmansk on October 1 that the Soviet Union wished to increase its bilateral and multilateral cooperation in the Arctic. We have noted his suggestion of cooperation on energy, science and the environment among other areas.

We are pleased that he indicated the Soviet Union's interest in the creation of an Arctic Sciences Council, towards which Canada, Norway and other countries have been working. I understand you have been discussing this proposal and the concept of an Arctic Basin Council.

We have noted his interest in the development of cultural links among Arctic peoples. In circumpolar relations few things are as important as contacts between the Inuit, the Arctic native peoples of Canada, Greenland, the United States and the Soviet Union. It is our hope that the Soviet Union will agree for the first time, to attend the next Inuit Circumpolar Conference in 1989 and the Inuit Youth Camp in 1988, which Canada will host.

So we welcome Mr. Gorbachev's interest in the North. But we need - and have asked for - clarification on what it means in practice. And we will continue to pursue our own goals and interests in the Arctic.

The Murmansk speech also brings us to the issue of peace and security. The world watched last night the scene in Washington as General Secretary Gorbachev and President Reagan signed an agreement for the first-ever reductions in nuclear weapons. This historic disarmament agreement is solid proof of an improvement in East-West relations.

Peace and security are vital issues as well in the world's North. It is just since the 1950's that the Arctic has become a focus of military activity, and thus of more strategic concern for all of us.

Canada and Norway share membership in NATO. We both know that collective defence is necessary to deter aggression and to protect our way of life.

NATO has given us an unprecedented generation of peace. The Alliance is indispensable for defence and for encouraging arms control and disarmament. While the dynamics of East-West relations may change, while relationships may change even within the West, Canada's commitment to NATO has increased.

Each Alliance partner must strive to maximize the efficiency and effectiveness of its contribution. Shortly after its election Prime Minister Mulroney's Government launched a review of Canada's defence policy. We found there was a serious gap between our commitments and our capabilities. We are taking steps to close that gap. We found our reserves were inadequate, our equipment out of date. These problems are being addressed.

We also found that our commitments were too numerous, scattered, and inefficient. We could certainly deploy troops in northern Norway. However, a recent exercise demonstrated that sustaining them would not be militarily feasible. The attempt to do so would also weaken substantially our forces in Central Europe.

You are well aware of the resulting decisions. In Europe, Canada's efforts are now to be concentrated on the Central Front. That will make our Alliance contribution more effective. And that will strengthen the Alliance - and the ultimate security of Norway - as a whole.

Of course Canada will continue to commit a battalion group to the Allied Command Europe Mobile Force for the protection of the northern flank.

In the Atlantic we are upgrading substantially the naval and air resources essential to maintaining sea lines of communication from North America to Western Europe through the acquisition of nuclear-propelled submarines and of modern surface vessels.

In our North we are replacing our outdated northern radar network by a modern North Warning System. Our air fields are being upgraded. More aircraft are being deployed, the number of surveillance flights increased. More military exercises are being held in the North. Surveillance systems are being developed to detect potentially hostile submarines.

The nuclear submarines we are acquiring for Atlantic and Pacific operations will also be used to detect and counter hostile naval activity in the Arctic, especially under ice where no other method of exercising control is effective.

In his Murmansk speech, Mr. Gorbachev proposed:

- 1) creation of a nuclear-weapon-free zone in Northern Europe
- 2) limitation of military activity in the waters of the Baltic, North, Norwegian and Greenland Seas
- 3) examination of a total ban on naval activity in mutually agreed zones.

Canada is interested in developing realistic policies aimed at enhancing the security and stability of the Arctic region but we have serious reservations about these proposals. Our installations in the North, which I described earlier, are all defensive. Proposals to demilitarize our North would imply that we abandon our defences.

Similarly, proposals to declare the North a nuclear-weapon-free zone or to restrict naval movements in areas such as the Norwegian Sea overlook the fact that the nuclear-weapons threat is global, not regional. Both East and West have massive nuclear forces capable of mutual annihilation - weapons on land, sea and air, all over the globe.

Some may be in the Arctic. Some may pass over the Arctic. But the threat relates to the East-West rivalry, not the Arctic. Declaring the Arctic a nuclear-weapon-free zone or restricting certain naval movements there would do nothing to reduce the threat from these weapons. It would be destabilizing for other regions.

Mr. Gorbachev appears to focus exclusively on the Western Arctic without discussing the Barents Sea or other waters adjacent to the USSR. He does not offer any detail as to how a ban of naval activity would be verified or enforced. Obviously, it would be inappropriate to discuss the Western Arctic and not the Soviet Archipelago.

Finally, Mr. Gorbachev's words do not reflect the actions of his government. Unlike Canada or the Nordic countries, the Soviet Union has an enormous concentration of military forces and weapons in the Arctic region.

In Canada's view, the best prospects for progress toward enhanced security in the Arctic lie in a balanced, step-by-step approach to arms control and disarmament. Our security in the Arctic is a direct function both of the solidarity and cohesion of the Alliance, the climate of East-West relations and progress toward balanced reductions of nuclear weapons.

The North is deeply embedded in the consciousness of Canadians. The North conveys images of breathtaking beauty and of climatic extremes. We have contradictory impressions of vast natural resources locked in an incredibly fragile environment. We seek both modernization in the North and the preservation of traditional ways of life. We seek to protect the precious ecology and beauty of the North, while making it accessible to those from the South.

Throughout our history we have also had Northern dreams, often dashed on this harsh environment. I hope that we have drawn some lessons from our experience. I would like to suggest a few.

The first lesson is the crucial importance of cooperation. Only seven countries have territory north of the Arctic Circle. Only five of them border on the Arctic Ocean. While the North may be important to all of them, the vast majority of the populations of all these countries lies far to the south of the Arctic Circle.

If there is to be progress in meeting the challenges of the North, there must be a sharing of information, ideas, experience and technology by the few countries concerned. Canada and Norway are especially qualified to take the lead in sharing. Indeed, this seminar is of particular importance to

developing that cooperation. Canada would consider hosting a further meeting of Northern countries in 1988 or 89.

Second, we should exploit improvements in East-West relations to pursue peaceful cooperation among all Arctic nations. The Soviet Union occupies 50% of the Arctic shoreline. Although it is ahead of us in some areas of development, it has much to learn from us in other areas. We share problems such as the environment that demand cooperation.

Canada intends to expand its Arctic programs with the Soviet Union and with other Arctic countries. Together we can develop this challenging landscape, protect this fragile environment. Indeed, cooperation in the North can help build confidence, it is a bridge between our societies.

The third lesson is that we must all learn from the Inuit and the Saami, the people who have lived for many centuries in the North. And we can learn lessons that are relevant far beyond the Northern environment. Let me quote Robert Williamson, a Canadian anthropologist who has devoted his life to the study of the North.

"In the Canadian Arctic ... I found peace. It was the Inuit people there, and their values. They lived interdependently ... They knew that their survival depended on harmony and cooperation. They had found ways of minimizing suspicion, channeling stress positively, and withdrawing with integrity from potential conflict".

These are lessons, we all must learn. In the North and in the whole world. Thank you.

**22. Public Papers of the President of the United States  
Ronald Reagan, 1987, Book 1 (US Government Printing  
Office), "Statement by Assistant to the President for  
Press Relations Fitzwater on the Canada-United States  
Agreement on the Arctic," January 1, 1988**

The Canadian Secretary of State for External Affairs, the Right Honourable Joe Clark, and the Secretary of State, George Shultz, today concluded an agreement on cooperation between Canada and the United States in the Arctic. The agreement affirms the political will of the two countries to cooperate in advancing their shared interests in Arctic navigation, development, and security. It signals the importance which the two countries attach to protection of the unique and fragile environment of the region and the well-being of the inhabitants of the north.

The agreement signed today marks the culmination of 24 months of discussions between the two governments. "This is an important step forward for Canada in the north," Prime Minister Mulroney said today. "While we and the United States have not changed our legal positions, we have come to a practical agreement that is fully consistent with the requirements of Canadian sovereignty in the Arctic. It is an improvement over the situation which prevailed previously. What we have now significantly advances Canadian interests." President Reagan stated: "This is a pragmatic solution based on our special bilateral relationship, our common interest in cooperating on Arctic matters and the nature of the area. It is without prejudice to our respective legal positions and it sets no precedents for other areas."

**23. Agreement Between the Government of Canada and the Government of the United States of America on Arctic Cooperation, Signed January 11, 1988 in Ottawa.**

1. The Government of the United States of America and the Government of Canada recognize the particular interests and responsibilities of their two countries as neighbouring states in the Arctic.
2. The Government of Canada and the Government of the United States also recognize that it is desirable to cooperate in order to advance their shared interests in Arctic development and security. They affirm that navigation and resource development in the Arctic must not adversely affect the unique environment of the region and the well-being of its inhabitants.
3. In recognition of the close and friendly relations between their two countries, the uniqueness of ice-covered maritime areas, the opportunity to increase their knowledge of the marine environment of the Arctic through research conducted during icebreaker voyages, and their shared interest in safe, effective icebreaker navigation off their Arctic coasts:
  - The Government of the United States and the Government of Canada undertake to facilitate navigation by their icebreakers in their respective Arctic waters and to develop cooperative procedures for this purpose;
  - The Government of Canada and the Government of the United States agree to take advantage of their icebreaker navigation to develop and share research information, in accordance with generally accepted principles of international law, in order to advance their understanding of the marine environment of the area;
  - The Government of the United States pledges that all navigation by U.S. icebreakers within waters claimed by Canada to be internal will be undertaken with the consent of the Government of Canada.
4. Nothing in this agreement of cooperative endeavour between Arctic neighbours and friends nor any practice thereunder affects the respective positions of the Governments of the United States and of Canada on the Law of the Sea in this or other maritime areas or their respective positions regarding third parties.

*From Polar Sea to Straight Baselines*

5. This Agreement shall enter into force upon signature. It may be terminated at any time by three months' written notice given by one Government to the other.

IN WITNESS WHEREOF, the undersigned, duly authorized to that effect, have signed this Agreement.

DONE in duplicate, at Ottawa, this 11th day of January, 1988, in the English and French languages, each version being equally authentic.

JOE CLARK

For the Government of Canada

GEORGE P. SCHULTZ

For the Government of the United States of America



**24. House of Commons, *Debates*, 2<sup>nd</sup> Session, 33<sup>rd</sup>  
Parliament, January 18, 1988.**

**ORAL QUESTION PERIOD**

*[English]*

**SOVEREIGNTY**

**CANADIAN ARCTIC - SIGNING OF CANADA-UNITED STATES  
AGREEMENT**

**Right Hon. John N. Turner (Leader of the Opposition):** Mr. Speaker, my question is for the Prime Minister and it concerns misleading statements made by two of his Ministers on defence matters.

First, I would like to deal with statements made by the Secretary of State for External Affairs who stated in the House of Commons on September 10, 1985, in response to opposition prodding, that there is - and I use the Secretary of State's own words - "no substitute for Canada's full sovereignty over the waters of the Arctic ... Full sovereignty is vital to Canada's security - it is vital to Canada's identity ... We will accept no substitute ... Any co-operation with the United States shall only be on the basis of full respect for Canada's sovereignty." Those were the words of the right hon. gentleman.

In view of the fact that last week the Secretary of State for External Affairs negotiated and signed an agreement with the United States which fails to recognize Canadian sovereignty over the Arctic, which makes no mention of American submarines patrolling our waters, and which in effect clearly weakens Canada's legal claim to the Arctic, why would the Prime Minister tolerate a senior Minister and colleague negotiating and signing an agreement with the United States which clearly violates a declaration and undertaking that he gave to the House of Commons?

**Right Hon. Joe Clark (Secretary of State for External Affairs):** Mr. Speaker, before that agreement was signed the United States did not acknowledge its need to seek Canada's consent before the transit through our Northwest Passage of U.S. government owned or operated ice-breakers.

As a result of that agreement, the United States now acknowledges and has a legal obligation to seek Canada's permission before there is a transit through our Northwest Passage of government owned or operated

ice-breakers. That is a small but significant step forward in emphasizing Canada's control over our North. As the Leader of the Opposition will understand, one of the ways to establish sovereignty is not to talk about it in empty phrases, as the Liberal Party did for so many years, but actually to go out and assert control. That is what we are doing.

**Mr. Prud'homme:** Bring back Flora.

*[Translation]*

REQUEST FOR CLARIFICATION OF ALLEGED CONTRADICTION  
RELATING TO AGREEMENT SIGNED WITH UNITED STATES

**Right Hon. John N. Turner (Leader of the Opposition):** Mr. Speaker, by his actions, by signing the contract with the United States, the Minister contradicted the clear statement he made in the House. I repeat, he said: "We will accept no substitute. Any co-operation with the United States shall only be on the basis of full respect for Canada's sovereignty". That was quite clear. There was no misunderstanding.

I repeat: Why did the Secretary of State for External Affairs mislead this Parliament during the debate? Why did he negotiate and sign an agreement with the United States that clearly contradicts what he said before the Parliament of Canada?

**Right Hon. Joe Clark (Secretary of State for External Affairs):** Mr. Speaker, the Leader of the Opposition is repeating in French the question he just put in English. Maybe he never heard of simultaneous translation. It's a fact of life in Canada, and it is also a fact there has been no change in the Canadian position on our sovereignty and our control over the North. The change is that before the agreement was signed with the United States, the U.S. did not recognize it was necessary to seek and obtain Canada's consent before they could go through with icebreakers controlled or directed by the U.S. Government. It was not necessary before, but now it is. That is a step forward, a very concrete step, and concrete steps help demonstrate our sovereignty.

**Mr. Turner (Vancouver Quadra):** Mr. Speaker, the Minister is as vague in French as he is in English, and as contradictory in either language. He is to be commended for his bilingualism.

**25. Department of External Affairs, “News Release: U.S. Icebreaker Polar Star Enters Canadian Waters Under Canada-U.S. Arctic Cooperation Agreement,” October 6, 1988.**

No. 219  
1988

October 6,

U.S. Icebreaker Polar Star Enters Canadian Waters Under Canada-U.S. Arctic Cooperation Agreement

The Secretary of State for External Affairs, the Right Honourable Joe Clark, announced today that the Canadian Government granted its consent, under the Canada-United States Arctic Cooperation Agreement, to a United States request to have the U.S. Coast Guard icebreaker Polar Star enter Canadian waters to refuel and effect repairs to one of its turbines. The Canadian Coast Guard has offered to have its icebreaker, the John A. MacDonald, proceed to American waters to assist the American vessel.

The Polar Star sustained damage while assisting, in U.S. waters, the Canadian Coast Guard icebreakers Martha L. Black and Pierre Radisson. Unable to continue on its westward journey from its location off the Alaskan coast due to extremely heavy ice conditions, the Polar Star turned eastward and, with the consent of the Government of Canada, may enter Canadian waters this weekend.

If ice conditions continue to be impassable in the western Arctic, American authorities will request Canadian consent to have the Polar Star transit through the Northwest Passage on its way out of the Arctic. The Canadian Government's response would take into consideration the requirements as set out under the Canada-USA Arctic Cooperation Agreement signed on January 11, 1988.

The USA authorities have undertaken to ensure that the Polar Star will operate in conformity with the pollution control standards and other standards under the Arctic Waters Pollution Prevention Act. In addition, the United States has provided an undertaking to be responsible for any costs incurred in the unlikely event of any pollution caused by the Polar Star.

The Canadian Government is grateful for the assistance provided by the Polar Star to Canadian icebreakers and is pleased to help facilitate the return of the Polar Star from the Arctic.

**26. Text of U.S. Note No. 425, October 10, 1988.**

TEXT OF U.S. NOTE NO. 425  
[October 10, 1988]

The Embassy of the United States of America presents its compliments to the Department of External Affairs and refers to the Agreement between the Government of the United States of America and the Government of Canada on Arctic Cooperation, signed by Secretary of State Shultz and Secretary of State for External Affairs Clark in Ottawa on January 11, 1988.

As provided by the terms of that Agreement, the government of the United States hereby requests the consent of the Government of Canada for the United States Coast Guard Cutter "Polar Star," a polar class icebreaker, to navigate within waters covered by the Agreement, and to conduct marine scientific research during such navigation. Any information developed would be shared with the Government of Canada, as envisioned by the Agreement on Arctic Cooperation.

On September 28, while immediately north of Point Barrow, the "Polar Star" responded to a call from the master of the Canadian Coast Guard icebreaker "Martha L. Black," to assist the Canadian icebreaker "Pierre Radisson" and "Martha L. Black," in accord with the policy of cooperation embodied in the Agreement on Arctic Cooperation. The "Polar Star," which was then enroute from Point Barrow, Alaska, to Seattle, Washington, rendezvoused with the nearby Canadian icebreakers to assist them in their transit to Victoria, British Columbia. Unusually heavy ice caused the "Pierre Radisson" and the "Martha L. Black" to abandon their operational plan and to proceed east toward Saint John's, Newfoundland, via the Northwest Passage.

After having rendered assistance to the Canadian icebreakers through October 1, which required it to change its own operational plans, the "Polar Star" now finds itself compelled by heavy ice conditions, adverse winds and engineering casualties to proceed east through the waters of the Northwest Passage in order to exit the Arctic, as did the Canadian icebreakers.

The Government of the United States would welcome the presence of a Canadian scientist and an officer of the Canadian Coast Guard on board the "Polar Star" and would also be pleased if a Canadian Coast Guard vessel were to choose to accompany the "Polar Star" during its navigation and conduct of marine scientific research in the Northwest Passage.

*From Polar Sea to Straight Baselines*

"Polar Star" will operate in a manner consistent with the pollution control standards and other standards of the Arctic Waters Pollution Prevention Act and other relevant Canadian laws and regulations.

Costs incurred as a result of a discharge from the vessel, including containment, cleanup and disposal costs incurred by the United States or Canada and any damage that is an actual result, will be the responsibility of the United States Government, in accordance with international law.

In view of the necessity for prompt action by the "Polar Star" due to deteriorating weather conditions, the Government of the United States requests a prompt reply to its request for the consent of the Government of Canada to the "Polar Star's" navigation of waters covered by the Agreement on Arctic Cooperation.

The Embassy of the United States avails itself of this opportunity to renew to the Department of External Affairs the assurance of its highest consideration.

Embassy of the United States of America  
Ottawa, October 10, 1988

TEXT OF CANADIAN RESPONSE TO U.S. NOTE NO. 425  
[October 10, 1988]

The Department of External Affairs presents its compliments to the Embassy of the United States of America and has the honour to refer to the Embassy's Note No. 425 of October 10, 1988, in which, pursuant to the terms of the Agreement between the Government of Canada and the Government of the United States of America on Arctic Cooperation, signed on January 11, 1988, the Government of the United States requests the consent of the Government of Canada for the United States Coast Guard cutter "Polar Star", a polar class icebreaker, to navigate within waters covered by the Agreement, and to conduct marine scientific research during such navigation.

The Department notes the assurance provided by the Embassy that the "Polar Star" will operate in a manner consistent with the pollution control standards and other provisions of the Arctic Waters Pollution Prevention Act and other relevant Canadian laws and regulations and that costs incurred as a result of a discharge from the vessel, including containment, cleanup and disposal costs incurred by the United States or Canada and any damage that is an actual result will be the responsibility of the United States Government in accordance with international law.

The Department has the honour to inform the Embassy that the Government of Canada consents to the "Polar Star's" navigation within waters covered by the Agreement.

The Department has the further honour to inform the Embassy that the Government of Canada also consents to the conduct of marine scientific research during such navigation. The Department notes that the information obtained in such research will be shared as envisioned in the Arctic Cooperation Agreement.

The Department is pleased to inform the Embassy that the Canadian Government has scheduled the Canadian Coast Guard icebreaker "John A. MacDonald" to accompany the "Polar Star" during its navigation in the Northwest Passage. Canadian authorities will also be pleased to make available an officer of the Canadian Coast Guard to be on board the "Polar Star" during this journey.

The Department of External Affairs avails itself of this opportunity to renew to the Embassy of the United States of America the assurances of its highest consideration.

**27. Department of External Affairs, Statements and Speeches, Joe Clark: "Sovereignty in an Interdependent World," November 21, 1988.**

I would like to address the question of Canadian sovereignty, what it is, whether it is threatened, what the government is doing to defend and strengthen it. In particular, I want to talk about the North, where our sovereignty has been an issue.

Let me begin with a definition. Sovereignty is a concept of law. It is the legal condition necessary for the inclusion of particular lands and waters within the boundaries of a particular independent country. It is a matter of who is in charge.

Canada has no real problems with sovereignty over our land. All the land, including islands, that Canada claims is recognized internationally as Canadian. There are some questions of where borders run but that is a problem common to most nations, a problem of frontiers, not sovereignty.

But Canadian sovereignty has been questioned regarding some waters in our North. Canada views as internal the waters that lie between the islands of the Arctic archipelago, and between those islands and the mainland. Some of those waters are known as the Northwest Passage.

Throughout our mandate we have received much advice on how to defend and buttress sovereignty in the North. It has come from the Parliamentary Committee that we asked to review our foreign policy. It has come from Canadians from coast to coast, in letters, submissions and conversations. It has come in useful studies such as the one on The North and Canada's International Relations that was published earlier this year by the Canadian Institute for International Affairs. That is a piece of a work which I would recommend to anyone with an interest in our North. We thank these Parliamentarians and these citizens because much of that advice has been useful. Much of it has, in fact, been adopted.

Let me review what this government has done in the North and more specifically what we have done to reinforce our sovereignty in the North. The two issues are linked because the resolution of any competing claims will come in time through negotiations and international law. Our case will be reinforced by the steps we are taking to demonstrate Canadian activity, Canadian presence and Canadian control. Canada's claim will be judged by the actual things we have done to demonstrate use and control of our own North. There are six significant steps we have taken to strengthen Canada's sovereign claim to the lands and waters of our North.

## *From Polar Sea to Straight Baselines*

- On September 10, 1985, we drew straight baselines around our Arctic islands confirming that the waters between them, and between them and the mainland, are internal.
- On the same date we withdrew our reservation to allowing our claim to be tested, if we wish, before the International Court of Justice. We prefer a negotiated settlement but we have confidence that we would win if our position was argued in court.
- On January 11, 1988, George Shultz and I signed the Canada-United States Arctic Cooperation Agreement ensuring that from then on American icebreakers would require prior Canadian consent to enter waters we consider to be Canadian including the Northwest Passage.
- Last November the government awarded a contract in Vancouver to design a Polar 8 Icebreaker. It will be the largest in the world. It will be an important element in ensuring safe navigation in the North and Canadian control of that navigation.
- It is our North and we are providing the infrastructure necessary for the safe use of it: aids to navigation, ice reconnaissance, coordination of Northern activities, conservation, protection of the environment. We have created a new national park on Ellesmere Island; established two months ago the Canadian Polar Research Commission; and, separately, put in place an Arctic Marine Parks and Sanctuaries Commission.
- In defence of our independence and our sovereignty we are expanding airfields, upgrading radar systems, deploying sonar systems, increasing surveillance flights and holding more military exercises in the North. We are acquiring nuclear-propelled submarines for defence, surveillance and control of our Northern waters. While that is not the primary role of those submarines, it is an important one, because they alone can operate under ice.

The fact is we have done more to assert Canadian sovereignty in the North in four years than any other Canadian government. We will do more, as our means allow.

I mentioned our recent agreement with the U.S.A. on Arctic navigation in the waters of the Arctic Archipelago. The immediate



background to that negotiation was the 1985 voyage of the U.S. icebreaker Polar Sea through the Northwest Passage.

We regard these waters as internal by virtue of historic title. They are covered by ice most of the year; they are part of a continuous landmass, they have never been used for international navigation, and they have long been used by native Canadians. The U.S., on the other hand, is concerned that if this passage is declared internal, then other countries may make similar claims regarding waters actually used for international navigation.

On January 11, 1988, I announced an agreement on Arctic cooperation that met Canada's goals. Neither side moved from its stated position on the principle of sovereignty, but the agreement is entirely consistent with our position on sovereignty. What that agreement accomplished is that, from then on, the U.S.A. would ask our permission for American icebreakers to use Arctic waters.

That means they cannot enter waters we claim without our prior consent. We have achieved control over U.S. icebreakers in our waters, and there can be no repetition of the Polar Sea incident. We gained a substantial increase in effective control, and that is a significant step forward.

Recognition of this new fact came just this month. An American Coast Guard icebreaker, the Polar Star - in fact, the sister ship of the Polar Sea - was attempting to sail around northwestern Alaska to return to its home port in Seattle. It could not do so because of impossible ice conditions in those waters.

As a result the American Government - in accordance with our new agreement - sought our consent to have that vessel transit the Northwest Passage to the Atlantic Ocean. After satisfying ourselves as to the ship's condition and after receiving an American undertaking on environmental liability for its journey, we gave our consent. That American ship, accompanied by a Canadian Coast Guard icebreaker and with a Canadian Coast Guard officer on board, is now en route to the more hospitable waters of the North Atlantic.

A further important step in asserting control over our Arctic waters has come through U.S. recognition that their commercial vessels are subject to the provisions of the Arctic Waters Pollution Prevention Act of 1970. That means that a U.S. commercial tanker like the Manhattan, which sailed through the Northwest Passage in 1970, is also now subject to Canadian control.

A country asserts its independence and sovereignty by being active internationally. Being engaged in the world is not to surrender sovereignty but to assert it. That is true about treaties on the ozone layer, or treaties about trade, or agreements about the movement of caribou or icebreakers.

## *From Polar Sea to Straight Baselines*

Agreements with Canada are a recognition by other countries of Canada's independence. This makes a foreign policy that protects and advances Canadian interests in the North especially important for this country.

Here is what Canada has done:

- In the 1960s, we played a leading role in the formation of the International Permafrost Conference and our cooperation with Northern neighbours on science and technology is increasing;
- We have participated in numerous international efforts and agreements to protect the Arctic environment and its wildlife. Just over a year ago, we successfully negotiated an agreement with the United States designed to protect and safeguard the magnificent porcupine caribou herd that migrates through the Yukon and Alaska.
- In the 1980s, we supported the development of the Inuit Circumpolar Conference; Canada hosted the Inuit Youth Camp this year;
- In 1987, we opened an Honorary Consulate in Greenland, reflecting the growing relations between our Government and peoples;
- In 1987, I led a delegation of Canadians - from the federal government, the private sector and from the Territorial Governments of the North - to an historic seminar on Northern issues in Tromsø, Norway where we and our Nordic neighbours discussed environmental, economic development, defence and cultural questions relating to our North. I hope we will be able to carry the Tromsø process a step forward with a follow-up meeting in Canada next year.

The issue of circumpolar cooperation of course raises the question of our relations with our huge Northern neighbour across the Pole.

We are the only nation in the world that has as neighbours both superpowers. There are changes within the Soviet Union that require sensitive and careful Canadian attention. Some of them affect the wider world interest of the Soviet Union - we are, for example, encouraged that the Soviet Government now shows more interest in strengthening the United Nations system, and in resolving some regional conflicts. We continue to press the Soviet Union to respect its commitments under the Helsinki Final Act. In other specific areas, cooperation is increasing.

Our police and customs authorities collaborated in making a major seizure of illegal drugs. Canadian and Soviet space scientists have teamed with French and American colleagues to produce SARSAT - the space based satellite search and rescue system. We are developing a broader programme of Canadian-Soviet space cooperation. The USSR is one of our leading trading partners, and that trade is becoming more sophisticated, particularly in the oil and gas industry and in the provision of services. Overall, the potential for bilateral cooperation is enormous, and some of it affects the North especially. That's why we were particularly struck by some of the intriguing proposals made by General Secretary Gorbachev a year ago in a speech in Murmansk, and reiterated in Krasnoyarsk.

Mr. Gorbachev called for better cooperation on the environment, on resource development, on scientific cooperation and, for the first time, on multilateral cooperation. We are pleased with these positions because we have long worked towards such cooperation in the North.

In fact, his proposal for a meeting of Arctic scientists has been overtaken by events - such a meeting has taken place earlier this year in Stockholm. Efforts to develop a framework for Arctic scientific cooperation which includes the Soviet Union are proceeding and we are having increasing success with that country in resource development.

Mr. Gorbachev called for cooperation among Arctic peoples. At that time the USSR had never allowed its Inuit to attend Inuit conferences, which led to some genuine skepticism about his call for cooperation. However, it is now my understanding that Soviet Inuit will attend the 1989 Inuit Circumpolar Conference. This is something Canada has long worked for, and we welcome this example of international glasnost.

Next month, a Canadian delegation will travel to Moscow for negotiations on an Arctic cooperation agreement. It is our hope that such an accord would provide for a broad range of exchanges in the scientific and environmental fields. We have also been encouraged by Mr. Gorbachev's publicly expressed concerns over air pollution in the Arctic. A concern which should open doors for multilateral discussions on the problem of Arctic haze - a subject of very real importance to us.

At Murmansk Mr. Gorbachev also made some security proposals, some new, some restatements of previous Soviet positions. They include: The creation of a nuclear-weapon free zone in Northwestern Europe; The limitation of military activity in certain waters; And the examination of a total ban on naval activity in mutually-agreed zones.

Secretary Gorbachev's northern security proposals have aroused considerable enthusiasm in some quarters. They have contributed to his portrayal as the man of peace, and Western leaders as obstacles to peace. Today I want to discuss the substance of his proposals and not their use as

propaganda. But it is important, throughout this process, to judge what the Soviets are doing as well as what they are saying. What I am asking, in these cynical times, is that Westerners accord Mr. Gorbachev at least the same scepticism they apply to Western leaders who speak of peace.

Let me begin with some basic facts that come immediately to mind when the Soviet Union's northern security proposals are more carefully scrutinized.

The Soviet Union is the only Northern nation with an extensive and permanent deployment of nuclear weapons in the Arctic. In the North-western quadrant of the Soviet Union, the Kola Peninsula boasts a military arsenal that is enormous.

It includes about one quarter of the Soviet Union's strategic nuclear capacity -its submarine launched missiles and strategic bombers. The Soviet Northern fleet, based there, includes 126 submarines, of which 90, incidentally, are nuclear-powered: 38 of those vessels carry in them 580 submarine launched ballistic missiles.

It also includes 12 cruisers, an aircraft carrier, 18 destroyers, 17 frigates and an array of smaller naval surface vessels.

Soviet land forces in the northwest Arctic region, more than 13 full divisions, would amount to two full armies when mobilized with a complement of 2,000 artillery pieces.

So any steps towards weapon reductions in the North would require a massive change in Soviet deployments, we would therefore be very interested in seeing the details of what Mr. Gorbachev proposes.

Even if the Soviet Union were to withdraw those armies, dismantle that fleet, reduce and destroy its ballistic missiles and bomber squadrons in the Arctic, that would not remove the threat to Canada. The simple fact is that the shortest distance between the Soviet Union and the United States is over the Arctic. This would be one axis of attack but it is not, of course, the only one given the threat from other Soviet bases, aircraft and naval forces. That threat can come from any direction - on, over or beneath the waters, including those of the Arctic Ocean.

It is, therefore, a great myth to think that reducing armaments in the Arctic would make North America or even our own North safe. The threat to Western security is global. Reducing our Northern defences would do nothing to reduce the threat from global strategic weapons. On the contrary, in weakening deterrence it would be destabilizing. It would make the world less safe, not more.

The place to address the global problems of armaments is in the negotiations on arms control and disarmament under way in Geneva and Vienna. In the context of the Soviet-American Strategic Arms Reduction Talks, Canada has advocated the negotiation of effective limits on air- and sea-launched cruise missiles, weapons which could increasingly threaten us directly, as intercontinental missiles do now. We are pleased that at the Washington Summit there was agreement to tackle this problem. Our NATO Allies, including the Danes and Norwegians, agree fully that Arctic security cannot be dealt with in isolation. This is a NATO issue not a Northern issue, and we will stand fast with our Allies.

The other alternative some would advocate for Canada - neutrality - also deserves comment in this regard. Let me quote from the recent study by the Canadian Institute for International Affairs:

"Neutrality would be a hollow option, because we could not defend it, and doing nothing about our own defence would be incompatible with our self-respect and prejudicial to our sovereignty and security. Moreover, the only defence policy that makes sense in the nuclear age is the prevention of war through deterrence. Therefore it is in Canada's interest to cooperate with other members of NATO in the collective defence of Western Europe, the North Atlantic, and North America and in the protection of the U.S. nuclear deterrent force. The Arctic has a particular bearing on this latter role ..."

While our eastern and western sea boundaries in the Arctic are to be settled eventually with our neighbours, let me repeat then that Canada has only one major sovereignty challenge and that concerns Arctic waters. Step-by-step we are making significant progress in strengthening our claims to those waters. We are doing so by expanding Canada's control, presence, activity and international cooperation in the North.

Even taking this dispute into account, Canada is and will remain as free, independent and sovereign a country as any in the world. As such we enter those international agreements that are on balance advantageous and, as a sovereign nation, we can withdraw from them if we choose.

Living and working in the global village naturally involves obligations. That is true of the UN and NATO, of the GATT and the Free Trade Agreement, and it is true of agreements on pollution and a hundred other issues. That is what international order is all about. But the agreements we have signed and the organizations we have joined help preserve and enhance our security, our independence, our prosperity and our way of life. They may limit the freedom of unilateral action for all countries who sign them but they do not limit sovereignty.

### *From Polar Sea to Straight Baselines*

Isolation has never been a Canadian option. Internationalism has long been a Canadian tradition. We will maintain that tradition. And we will protect and enhance Canadian sovereignty on your behalf.

## About the Editors

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Dr. Lajeunesse is the author of the Dafoe Prize winning book *Lock, Stock and Icebergs: A History of Canada's Arctic Maritime Sovereignty*. He has co-authored books on China's Arctic interests and the evolution of northern military operations, as well as numerous articles and publications on northern defence, development, shipping, governance, and maritime policy.

**ROB HUEBERT, Ph.D.**, is an associate professor at the University of Calgary as well as a senior research fellow with the Centre for Military and Strategic Studies and a fellow with the Canadian Global Affairs Institute. In November 2010, he was appointed director to the Canadian Polar Commission and reappointed in December 2012.

Dr. Huebert publishes on the issue of Canadian Arctic Security, Maritime Security in a variety of defence and foreign policy journals. He was co-editor of *Commercial Satellite Imagery and United Nations Peacekeeping* and *Breaking Ice: Canadian Integrated Ocean Management in the Canadian North*.

His most book, written with Whitney Lackenbauer and Franklyn Griffiths, is *Canada and the Changing Arctic: Sovereignty, Security, and Stewardship*. He also comments on Canadian security and Arctic issues in both the Canadian and international media.



# From Polar Sea to Straight Baselines: Arctic Policy in the Mulroney Era

**Adam Lajeunesse and Rob Huebert**

DCASS Number #11, 2017

In 1985 the American icebreaker USCG *Polar Sea* made its way through the Northwest Passage, enroute to Alaska after completing a routine re-supply in Greenland. What was intended to be a simple transfer turned into a political controversy as Canadian newspapers and politicians accused the Americans of violating the nation's Arctic sovereignty. The result was a radical shift in Canada's maritime policy as the government of Brian Mulroney drew straight baselines around the Arctic Archipelago, making clear for the first time in history where Canada's Arctic waters began and ended.

This volume examines the development of Canada's Arctic policy in the lead-up to the voyage of the *Polar Sea* and how that event catalysed Canadian decision making. It covers the subsequent negotiations with the United States over the status of those waters and the resulting agreements which remain in place in the 21<sup>st</sup> century.



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*Series Editors:* P. Whitney Lackenbauer and Adam Lajeunesse

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