

Still Unresolved after Fifty Years: The Northwest Passage in Canadian- American Relations, 1946-1998

ELIZABETH B. ELLIOT-MEISEL

Introduction

"The sailor dream of five centuries:
The Near Way to the Far East is North."¹

Canadians have a near-mystical bond to their Arctic, a frigid vastness that has sparked the Canadian imagination, inspired and shaped a Canadian national identity, and fomented debate over perceived and real challenges to Canadian sovereignty in the region. "Canada's approach to the Arctic is overtly nationalistic,"² and arctic sovereignty is of paramount importance, to be protected and preserved. However, for the United States, the Arctic is first and foremost linked to national security which, due to the interplay of geography, the array of Cold War Soviet threats, and even current technological innovations and military hardware, is understood in this context to mean continental defense. In the United States' effort to maintain continental security, Canadian sovereignty sensitivities have, at times, been slighted, but the intention has not been to deny Canadian arctic sovereignty. In the postwar period, Canada's attempts to grapple with its emotional attachment to the North, and the considerable expense required to occupy and defend it, have been a recurring issue. Nowhere is the poignancy of this dilemma more acute than with the Northwest Passage, that series of waterways connecting the Atlantic and Pacific Oceans north of mainland Canada. The issues and emotions surrounding the Passage remain the same after more than fifty years.

"Sovereignty is *supreme legitimate authority within a territory.*"³ It is one thing to claim authority and have it be recognized as legitimate, and another to maintain the power and the means to protect and enforce the claim. The former is *de jure* sovereignty, the latter *de facto* sovereignty.⁴ Canadian *de jure* sovereignty over its arctic land and islands was internationally recognized by the 1930s. But the case of the arctic waters, specifically both *de jure* and *de facto* sovereignty of the Northwest Passage, remains unresolved even today. Canada has never proclaimed its inten-

tion to exercise exclusive use or presence in the Northwest Passage. But the process of reaching the present Canadian position that the waters of the Canadian Arctic Archipelago, including the Northwest Passage, are "historical internal waters" with no right of passage⁵ has been anything but direct and swift.⁶ In addition, Canada has rarely allocated or committed funds, personnel, or equipment to monitor, defend, or protect the Passage. The United States maintains that the Passage is an international strait with the right of transit passage⁷ and largely immune from the jurisdiction of the contiguous state.

Challenges, real or perceived, have proven to be a periodic thorn in Canadian-American relations. In 1987, the Secretary of State for External Affairs, Joe Clark, declared that the Northwest Passage was "the 'one pure sovereignty issue of truly major proportions.'"⁸ But what is the status of the Northwest Passage in this long-running and still controversial saga in U.S.-Canadian relations? Can there be resolution or will Canada's tentative, underfunded approach and America's unyielding adherence to freedom of navigation perpetuate piecemeal solutions? Is the issue any different today from what it was fifty years ago?

While both the history of and claims to the Northwest Passage have been explored,⁹ this paper argues that now is the time to conclude the heretofore elusive settlement. While not minimizing the complexity of the situation, this paper argues that by evaluating the history of and claims to the Passage, it can be concluded that it is in the best interests of both nations to find a practical, bilateral, narrowly defined solution that recognizes Canada's sovereignty claims, while at the same time addressing the United States' continental security concerns. The basis of this conclusion lies in four factors: Canada's place as a paramount ally and continental partner of the United States, the history of bilateral cooperation for more than fifty years, the geographically unique nature of the Northwest Passage that precludes any arrangement becoming precedent-setting with regard to other straits, and the fact that the Passage is not considered a vital choke point by the United States military. Finally, past decisions and policies concerning the Passage were usually made in response to provocative incidents, when the issue was thrust into the limelight. Today the controversy is relatively dormant and not engulfed in emotional and inflammatory rhetoric, high-visibility maneuvering, political posturing, or the glare of publicity. This situation is precisely the reason why the two allies should act and embark on a negotiated settlement of the dispute.

The Controversy

The Northwest Passage spans the northern reaches of North America and links the Atlantic and Pacific Oceans. There are, in fact, five main routes of the Passage, making its definition difficult.¹⁰ Early exploration began in the fifteenth century, and the nineteenth century saw a sustained search for the Passage, but it was not completely traversed by water until the twentieth century.

The arctic waters offer a unique set of circumstances and challenges in international law, and the legal status of the Northwest Passage is open to debate. Canada claims the Passage is historic internal waters, with no right of passage,¹¹ while the United States maintains it is an international strait with the right of transit passage.¹² There is a direct link between the legal classification of the Passage and Canadian-American relations, and the issue encompasses international law, continental defense, the power of public opinion, the realities of fiscal responsibility, and the intricacies of foreign policy.¹³ The exploitation of the Arctic's natural resources, the perceived challenges to Canadian sovereignty, the responsibility of militarily protecting and utilizing the Passage, the commercial promise of the North, and the responsibility of protecting its fragile environment have heightened the value of the Passage and at times made it a high-profile issue between the United States and Canada. It is with the United States that Canada finds the issue of the Northwest Passage most contentious. On the one hand, the United States wants unrestricted access to the Passage for its military vessels and as a potential commercial route. In addition, the Americans do not want precedent set with the Northwest Passage that could affect the status of other straits around the world.¹⁴ On the other hand, Canadian claims to the water have historically been ambiguous, tentative, and usually reactive, not proactive.

Canada received its arctic north from Great Britain in 1880. It was not until 1973 that the Canadian government finally claimed sovereignty over the Northwest Passage as part of Canada's historic internal waters, but there was no legislation or treaty to support the statement. Claims were not formalized until 1986 with the implementation of straight baselines. Why the delay in claiming sovereignty or developing an arctic waters agenda? Even if one accepts the argument, as this author does, that the issue of sovereignty over the water, especially the Northwest Passage, did not arise until after World War Two, the question remains. The answer is rooted in three dilemmas that have faced Canada throughout its his-

tory: first, defining arctic sovereignty, especially distinguishing between sovereignty over the land and sovereignty over the water; second, allocating limited manpower and financial resources to back up sovereignty claims with concrete programs, projects, equipment, and personnel; and, third, living next to a neighbor with the world's largest economy and with ten times Canada's population, who is eager to operate in the North. Arguably, the first issue has been resolved, but the other two continue to plague Canada. At this time, Canadian claims to sovereignty over the Passage are not backed by an ability to defend, exploit, escort ships, or patrol the Passage year round.

The Passage and Canadian Sovereignty

It was in the interwar years that Canada and the United States began collaborative efforts in the Canadian North, and during World War Two the Canadians and Americans cooperated on numerous large-scale arctic projects, such as the Northwest Staging Route, the Crimson Route, and the Alaska Highway. For better or worse, continental defense before, during, and even after the war required a combination of American civilian and military personnel, Canadian soil, American financial support, and Canadian cooperation to build and operate the military installations. To an overwhelming degree the collaboration continues to be successful, in no small part due to the spirit of respect and cooperation exemplified on the Permanent Joint Board on Defense (PJBD).¹⁵ The story of the wartime northern activities and the role of the PJBD are beyond the scope of this article, as they primarily dealt with projects on the land, not the water. Suffice it to say, however, that the spirit of cooperation and the recognition by both nations of the necessity for such collaboration on continental defense and security laid the groundwork for postwar cooperation, and hold the key to the present impasse. As Canadian diplomat John Holmes wryly claimed, Canadian "soil is protected not by American generosity but by American self-interest, which is more dependable."¹⁶ Ultimately, both nations have been forced to assess at what point sovereignty is compromised in return for security, when diplomatic sensitivity must be subordinated to military necessity, and which operation and command arrangements facilitate cooperation even at the expense of control.

The postwar strategic significance of the Canadian North could not be addressed without much more complete mapping, charting, and air photography for Canadian military defense planning.¹⁷ Some within the

Canadian military feared that the government's emphasis on sovereignty protection would hinder North American defense programs.¹⁸ Within the government there were officials who publicly warned that Canadian sovereignty and control of northern land and water would be compromised by Canadian-American defense collaboration.¹⁹ Therefore, to assert a presence and solidify its claims, the Canadian government and military agreed that Canada should unilaterally carry out as many projects as possible.²⁰ And yet, the allocation of men, money, resources, and equipment had to be appropriated in light of domestic needs, Canadian foreign policy commitments worldwide, and Canadian public opinion.

The Joint Arctic Weather Stations (JAWS) negotiations in 1946 were a turning-point in northern affairs. The emphasis on sovereignty began to shift from sovereignty over the Arctic land to sovereignty over the water.²¹ The Canadian presence in the arctic waters up to this point had been by the Eastern Arctic Patrol. The role of the Royal Canadian Navy (RCN) in the Arctic was not defined prior to the end of World War Two. The RCN had grown exponentially during the war, and it emerged as the world's third naval power,²² with expertise in antisubmarine warfare (ASW) and convoy escort. The Navy sought to maintain an active profile and Canada moved to assert a northern presence because the Soviet Union was increasingly seen as a threat, and the United States was seeking a renewed foothold in the North. But the role of the peacetime Navy focused on the Atlantic and Pacific Oceans, not the Arctic.²³ The Canadians wanted to exert as much control as possible over the resupply operation of JAWS, but they were limited by the lack of resources. Most notably, the Canadians had neither an icebreaker capable of High Arctic operations nor sufficient personnel to perform the annual missions unilaterally. Thus, the operations were initially carried out by the U.S. Navy and the U.S. Air Force, with Canadian observers aboard.

After the war, the Canadian government established the Advisory Committee on Northern Development (ACND), and in June 1948 a report on arctic sovereignty was requested. However, nowhere were the issues of the limits of the territorial sea, the status of the arctic water, and the application of the sector principle to the water addressed. In the same period, the RCN, with limited resources of men, equipment, and weapons, chose to commit its forces to NATO responsibilities—working against a known enemy—instead of sovereignty assertion—working against a perceived threat by an ally. Canada's NATO responsibilities built upon the RCN's wartime expertise—antisubmarine warfare and protec-

tion of the Atlantic sea lanes. There were RCN officers, however, who were alarmed by the lack of Canadian involvement in the weather station resupply and arctic operations. They noted that the Americans were amassing information and operational experience, while the Canadians merely observed.²⁴

In order to rectify this situation, the Canadians needed an icebreaker capable of transiting the waters of the High Arctic. HMCS *Labrador* first sailed in December 1951 and went north in the summer of 1954. The only Canadian icebreaker capable of transiting the High Arctic, *Labrador* was more than an escort icebreaker for the resupply of the weather stations and the Distant Early Warning (DEW) Line. *Labrador* was a research vessel that operated regularly in the Arctic and supplied both the Canadians and the Americans with important scientific information.

The 1954 transit of *Labrador* through the Northwest Passage was a source of great Canadian pride. *Labrador* was the first deep-draft ship²⁵ and the first naval vessel to transit the Passage. The Canadians lost no opportunity to publicize *Labrador*'s many achievements, but *Labrador*'s high profile did not save it from the Navy's budget axe. In the Arctic, the biggest threat was submarines, and *Labrador* was not suited for anti-submarine warfare.²⁶ In a very controversial move within the Navy, *Labrador* officially became the property of the Department of Transport in 1958. Canada was, once again, left without a military presence in the Arctic waters.

Canada's move to define its position in the Arctic in the 1950s occurred at the same time that the U.S. Navy carried out submarine exercises in the arctic waters, including under-ice transits of the Northwest Passage by nuclear-powered submarines in 1960 and 1962.²⁷ Interestingly, there were no negative comments recorded in the ACND or Parliament after the transits. At the same time, the RCN objectives presented in the 1961 *Brock Report* included the need "to reassert Canadian sovereignty in the Arctic," but the main focus was to be "research and operational evaluation."²⁸

In August-September 1969, the voyage of the converted American tanker, SS *Manhattan* through the Northwest Passage brought the issue of the Passage to the forefront. The discovery of oil at Prudhoe Bay, Alaska, prompted Humble Oil Company's private venture to determine the feasibility of commercial use of the Passage. Humble Oil requested Canadian assistance on the voyage of its converted and arcticized tanker, which the Canadians viewed as acknowledgment of its sovereignty of the

Passage. The Canadians "had no objection on environmental grounds."²⁹ CCGS *John A. Macdonald* escorted the ship, and veteran arctic navigator Captain T.C. Pullen was Canada's liaison officer aboard the *Manhattan*.

The United States informed Canada that it would also send a Coast Guard ship to assist the *Manhattan*. It did not ask for permission to enter the Passage, as that could be interpreted as recognition of Canadian sovereignty. Seen as a challenge to Canadian sovereignty claims by the Canadian public and media, calls for Canada to assert sovereignty prior to the transit increased.³⁰ But Prime Minister Trudeau portrayed the voyage in a favorable light, going so far as to state "that the Canadian government has welcomed the *Manhattan* exercise, has concurred in it and will participate in it."³¹ At the same time he stated that "the waters between the islands of the archipelago are internal waters over which Canada has full sovereignty,"³² although no legislation accompanied this claim. The outcry by the Canadian public against the transit east and its westward return, however, did not subside and the Trudeau government was forced to take action.³³

The Canadian response was both reactive and concurrently innovative. Canada increased its territorial sea from three miles to twelve miles, making the two entrances of the Northwest Passage—Barrow Strait and Prince of Wales Strait—Canadian territorial waters. In addition, the novel and controversial Arctic Water Pollution Prevention Act (AWPPA) created a 100-mile zone around the arctic islands in which the Canadians claimed the right to regulate shipping.³⁴ The right of innocent passage was not suspended, but the Canadians redefined "innocent passage" to include environmental issues and the potential pollution threat of shipping in the Passage, although they had no ships capable of transiting the High Arctic to enforce the new regulations. Never before had a nation based its authority over the water on environmental concerns. Prime Minister Trudeau made clear that the Canadians were not asserting sovereignty,³⁵ but privately he explained to the Americans that the legislation was also meant "to withstand the immense Canadian public pressure for an assertion of sovereignty."³⁶ R. Gordon Robertson, former Clerk of the Privy Council and Secretary to the Cabinet insists that this approach continued a tradition of Canadian attempts at asserting positions that "would be defensible" and would not lead the Americans to "a plain, flat, denial of Canadian sovereignty."³⁷ Therefore, the AWPPA constituted "functional jurisdiction" not "sovereign jurisdiction."³⁸ The United States, however, immediately rejected the AWPPA. It argued that no state had

the right to extend jurisdiction over the high seas,³⁹ and was concerned about the precedent it might set.⁴⁰ The Canadians acknowledged the unique and controversial nature of the law; and also opposed review of the legislation by the International Court of Justice.

Christopher Kirkey has persuasively shown that the bargaining method employed by the United States and Canada—distributive rather than integrative⁴¹—doomed any chances that negotiations would result in resolution of the status of the Northwest Passage. The Americans, insisting that the Passage constituted an international strait, intent on seeing the issue in a global context, and fearing similar moves by other nations, refused to budge on the issue of freedom of the seas. Canada, equally insistent that the Passage was not an international strait, but rather Canadian waters,⁴² pointed to the unique environment of the Arctic waters, rejected America's sweeping fears, and held its unilateral line of protecting Canadian interests. According to Kirkey, with the AWPPA "Canadian national interests were fulfilled while those of the United States were not,"⁴³ but this is incomplete. There was no closure to the issue, and the confrontational and uncompromising position of both states left elusive a final resolution of the status of the Northwest Passage.⁴⁴

In 1973, and again in 1975, Canada claimed the Northwest Passage and all the archipelagic water as historic internal water, but there was no treaty or legislation. The United States continued to deny this Canadian designation, and the contentious issue remained unsettled. At the same time, a number of states increased their territorial seas. Maritime powers, including the United States, feared once-international straits would become territorial seas, requiring "innocent passage," which meant submarines had to transit on the surface. During the United Nations' Third Law of the Sea Conference (UNCLOS III), negotiated from 1973-1982, the United States and the Soviet Union addressed the issue. They conceded the twelve-mile territorial sea proclaimed by nations around the world (the United States declared a twelve-mile territorial sea in 1988), accepted 200-mile economic zones (the United States declared one in 1983), and recognized more than twelve archipelagic states.⁴⁵ In return, the 1982 Law of the Sea Convention (hereafter LOS Convention) introduced the concept of the "right of transit passage."

The "right of transit passage" replaced "innocent passage" in most cases and was applied to straits with high seas corridors that became territorial seas or internal waters by straight baselines.⁴⁶ While "innocent passage" requires submarines to surface and show the flag, transit passage

permits submarines to pass submerged, and coastal states may not regulate or control passage, except for safety and pollution reasons. Although neither Canada nor the United States has ratified the 1982 LOS Convention, the United States asserts that the right of transit passage is now customary international law,⁴⁷ a position not universally accepted.⁴⁸

Article 234 of the 1982 LOS Convention was the product of the Canadian effort to obtain international recognition of the Arctic Waters Pollution Prevention Act and to strengthen Canada's arctic claims.⁴⁹ While Article 234 dealt solely with pollution and did not deal with the issue of sovereignty, it has been argued that it had "as much to do with sovereignty and international straits as with the environment."⁵⁰ It balanced and addressed the "Canadian concerns for 'functional jurisdiction,' American sensitivities about navigational freedom and Soviet anxieties that the subject of the Arctic should not be opened for general debate."⁵¹ The legal status of the Northwest Passage, however, remained undefined; thus the issue of transit was unresolved.

The controversy surrounding the Northwest Passage arose again in 1985, when the American icebreaker USCGS *Polar Sea* transited the Passage on its voyage from Greenland to Alaska. The Canadian government was notified of the transit and gave its unsolicited permission for the journey. As with the *Manhattan* controversy, the Americans had not asked permission, fearing that such a gesture would set precedent in other contentious waters. But this time they did give "a formal and explicit assurance that the voyage... was without prejudice to Canada's legal position" regarding the Passage.⁵² The Minister of External Affairs, Joe Clark, insisted that the voyage "left no mark on Canada's Arctic sovereignty"⁵³ and Canadian observers were aboard. However, the Canadian public and media did not believe the American claim that the sole purpose of utilizing the Passage was to save time and fuel.⁵⁴ Reminiscent of the *Manhattan* voyage, they viewed the passage as "a direct threat to Canadian sovereignty."⁵⁵

Taking the Initiative

The Mulroney government moved quickly to address the public uproar over the voyage. On 10 September 1985, Clark linked "Canada's national identity" with both sovereignty and security, and stated unequivocally that Canada was sovereign over the land, water, and ice of the Arctic.⁵⁶ Conceding that "Canada's legal position was fully protected,

but... ways to exercise [Canadian] sovereignty... found that the Canadian cupboard was nearly bare,"⁵⁷ the government sought to back the rhetoric with concrete policies in "the most dramatic assertion of Arctic sovereignty claims ever made by a Canadian government."⁵⁸ Canada announced it would implement straight baselines in the Arctic, effective 1 January 1986, enclosing the waters of the Arctic Archipelago, including the Northwest Passage. This made the water landward from the baselines "Canada's historical internal waters."⁵⁹ If the Passage is not an international strait and never had been one, as Canada claims, no right of innocent passage exists.⁶⁰ But if it was an international strait prior to the implementation of straight baselines, or if use of the Passage increases and it becomes an international strait, "a right of passage" exists.⁶¹

The Mulroney government also removed Canada's objection to AWPPA review by the International Court of Justice, and announced its intention to discuss arctic issues with the United States. The government, insisting that "Canada is not about to conclude that it cannot afford the Arctic," authorized the construction of a Polar-8 icebreaker to assert Canadian sovereignty in the Arctic, pledged to increase the number of military surveillance overflights in the North, planned to conduct naval exercises in the eastern arctic waters, and introduced legislation to extend Canadian jurisdiction to offshore areas where Canada claims sovereignty.⁶² At the time of the announcement, Canada had no icebreakers that could operate in the Arctic year-round, or operate at all in some parts of the High Arctic.

The Conservative government's 1987 White Paper, *Challenge and Commitment*, noted the "advanced state of obsolescence" and "rust-out" in the armed forces,⁶³ and pledged resources for a Canadian presence in the Arctic. This military presence was to address the issues of continental security and Canadian sovereignty. Committed to a "three ocean navy,"⁶⁴ the government announced its intention to acquire ten to twelve nuclear-powered attack submarines in order to be able to monitor Canadian waters, whether transited by friend or foe.⁶⁵ The Pentagon acknowledged that one impetus for the Canadian submarines might be "to challenge" American subs in disputed arctic waters,⁶⁶ and it was concerned that the allocation of such substantial Canadian funds from a limited defense budget would divert Canadian financial and military resources from its NATO commitments, thus negatively impacting continental security.⁶⁷

The Canadian government's arctic focus also included an arctic waters fixed underwater sonar surveillance system, more long-range mari-

time patrol aircraft, mine countermeasure vessels, replacement of the Sea King helicopters, and an upgrade of the medium-range surveillance aircraft.⁶⁸ But once again, rhetoric was not matched by reality; emotional attachment to the North was not reflected in tangible results. By and large, only negotiations with the United States have been realized, and these discussions have not been completely satisfactory.

The Canadian military has little to show in terms of equipment commitments to the Arctic. The proposals to purchase nuclear-powered submarines and new long-range Aurora aircraft failed to survive the government's budget cuts of 1989.⁶⁹ The Polar-8 icebreaker was canceled in 1990,⁷⁰ leaving Canada with no icebreaker capable of year-round High Arctic transit. The proposed fixed underwater surveillance system, which would have placed acoustic sensors "at three choke points at the entrances to the Northwest Passage," died in 1996,⁷¹ leaving underwater transit of the Northwest Passage nearly impossible to detect. The coastal patrol Tracker aircraft will not be replaced, and the three new Arcturus patrol aircraft are woefully inadequate,⁷² although they are slated to be upgraded, along with the existing long-range Aurora aircraft. Replacement of the Sea King helicopters is still in limbo. The decision to acquire four used *Upholder* class diesel-electric submarines from Great Britain has finally been made. Requested in 1994 but facing an uncertain future, the submarines were not even mentioned in the Procurement section of the 1996 *Defence Planning Document*.⁷³ But pressure for replacements of the three aged *Oberon* class diesel-electric submarines continued and the government announced the deal in April 1998.⁷⁴ While the majority of the submarines will operate in the Atlantic, one has been earmarked for the Pacific. However, no mention was made of Arctic deployment. In fact, the British subs do not have the ability to operate under the ice cap at this time. They must be modified in order to operate in the High Arctic,⁷⁵ but no mention of such modifications has been made.⁷⁶ Consequently, the Canadians still have no naval presence in the High Arctic and no way to detect foreign submarines in the waters it claims.

The 1985 Canadian announcement that it would seek a dialogue with the United States over the Northwest Passage dispute was welcomed by the Americans. Short of "addressing the question of sovereignty,"⁷⁷ the United States sought to resolve outstanding issues in the Canadian Arctic. "Full sovereignty"⁷⁸ recognition was certainly a Canadian goal, but the Mulroney government also had to deal with potentially damaging political ramifications if the government was seen as acquiescing to the

Americans in the Passage.⁷⁹ The close personal relationship between President Ronald Reagan and Prime Minister Brian Mulroney, the Canadian-American “symmetric interdependent relationship,” and the utilization of an “integrative bargaining” process led to the Canada-United States Agreement on Arctic Cooperation in January 1988.⁸⁰ The executive agreement applied to U.S. Coast Guard icebreakers, which will now apply for Canadian permission to transit the Northwest Passage. President Reagan described the agreement as “pragmatic” and one that did not compromise either nation’s legal position on the status of the Passage. Prime Minister Mulroney agreed, but also insisted that it was “fully consistent with the requirements of Canadian sovereignty.”⁸¹ There were, however, obvious weaknesses in the accord.

The agreement dealt only with icebreakers, not any other type of surface ship. Passage in the sea lanes—innocent, transit, and archipelagic—was not defined.⁸² The agreement did not explicitly stipulate that prior approval was required, although the United States did seek prior permission in 1988. The agreement did not recognize Canadian sovereignty over the Northwest Passage, but many agree with Mulroney’s chief of staff, Derek Burney, that “it sure is implicit recognition.”⁸³ Finally, the accord did not address the issue of submarines, although it has been suggested that the United States and Canada have a secret agreement that covers submarine transit in the arctic waters.⁸⁴ In view of the American position on freedom of the seas and the disputed legal status of the Northwest Passage, this “modest” agreement⁸⁵ was possibly the best the Canadians could negotiate. But, ultimately, it perpetuated the status quo, that of neighbors continuing to agree to disagree, and the agreement lacked closure on the issue.⁸⁶

Resolution or Limbo?

The United States has an historic commitment to freedom of navigation and today, as “a global maritime power,”⁸⁷ national security, economic interests, and worldwide commitments to allies necessitate a “national strategy... built on... deterrence, forward defense, and alliance solidarity.”⁸⁸ To achieve these ends, the United States insists upon largely unimpeded transit around the world. Consequently, it is not difficult to understand American opposition to creeping jurisdiction over the high seas and the threat of closure at strategic choke points. The right of transit passage is viewed as “crucial to the maintenance of world peace and

order."⁸⁹ And yet, as noted above, "alliance solidarity" is an American priority, and further, the United States military does not include the Northwest Passage among its list of vital straits or choke points.⁹⁰

The United States denies Canadian claims to the Northwest Passage, and it is also unwilling to accept special privileges in the Passage in return for recognition of Canadian sovereignty. While the United States concedes that the Northwest Passage is unique,⁹¹ it fears that negotiating an arrangement would establish a precedent that it is unwilling to extend to other states.⁹² The Passage is an issue of precedent and principle, not one of national security. In fact, in November 1997, the U.S. Navy announced that arctic operations would be greatly scaled back since the Cold War is over and the USN submarine fleet has been "downsized."⁹³ Thus, with military cuts in both nations, and limited resources for security of the arctic waters, it is in the best interest of these allies to find a compromise solution to the outstanding issue of the Northwest Passage.

The Canadian Navy maintains that "sovereignty stems from the state's position as final authority over matters within its territory."⁹⁴ The question, then, is what constitutes "final authority?" Canada could explore the option of exercising authority and control by granting permission and setting standards for arctic activities, but not operating the ships required for defense, enforcement, and surveillance. Cooperation need not undermine sovereignty, as many Canadians fear, and cooperation enhances the security of the continent. Canadian security today is augmented by the United States' commitments to *continental*, not just United States, defense,⁹⁵ and the Canadian Navy has stated that collective security will remain vital to Canadian security.⁹⁶ Already, the two nations have special bilateral military agreements,⁹⁷ and the 1996 *Defence Planning Document* placed "promoting Arctic security" under the subheading "defending North America in cooperation with the United States."⁹⁸

The outstanding historical dilemmas noted at the beginning of this paper are especially relevant to the issue of the Northwest Passage. Canada has claimed sovereignty, but sovereignty includes a commitment to "effective occupation."⁹⁹ The question is whether this effective occupation needs to be exercised solely by Canada. The maintenance of sovereignty is costly, and Canada's budget priorities and budget constraints preclude monitoring the arctic waters alone. Canada continues to suffer from the "commitment-capability gap" that the 1987 White Paper promised to close.¹⁰⁰

"Breaking through in the Arctic is one of the navy's toughest challenges."¹⁰¹ The Navy acknowledges that closing the "commitment-capability

bility gap" will be "a hard sell with the Canadian public and the Media."¹⁰² And, while the Canadian public is vocal against an American presence in the Canadian North, it is unwilling to fund expensive projects to assert and defend Canada's arctic sovereignty claims. Proposals for nuclear-powered submarines, a three-ocean navy, Polar-8 icebreakers, the arctic underwater surveillance system, and new arctic patrol aircraft have all been left on the cutting-room floor of Canadian budgets, with little, if any, protest from the Canadian public. Public resistance to funding expensive projects has, no doubt, been buttressed by the end of the Cold War, but the Navy dreads the possibility of having no submarines able to operate in the High Arctic. Even the recent decision to buy the *Upholder* class submarines does not alleviate this concern. Unless the subs are modified to permit under-ice capabilities, Canada will remain compelled to rely on its "allies to protect [its] underwater interests,"¹⁰³ and be forced to abandon "all pretensions of being able to assert sovereignty in the Arctic [O]cean."¹⁰⁴

If Canada decides to enforce its sovereignty claims, it will have to match its emotional nationalist attachment to the Arctic with the concrete allocation of personnel, money, and resources. Although the Liberal government of Jean Chrétien appointed Canada's first Arctic ambassador, Mary Simon, and helped establish the eight-member circumpolar Arctic Council, Canada's northern nationalism has few tangible symbols today. Canada has no icebreaker or submarine capable of patrolling the High Arctic, no means to detect submarines in the water it claims, and no way to rescue a ship or submarine in distress in the Far North. Canada cannot fulfill its own navy's requirement that defense of Canadian interests necessitates a presence that "involves a capability for surveillance, patrol and response.... [which are] the building blocks of national sovereignty."¹⁰⁵

The Canadian public insists that the United States stay out of its domestic affairs and respect its sovereignty claims. For any Canadian government, these demands make cooperative defense efforts difficult at best, as the government tries to secure the nation's defense and at the same time keep defense costs within a realistic budget. The United States needs to be concerned with the domestic realities of the Canadian government, especially when American actions can trigger repercussions that hinder United States continental defense efforts. Recognizing Canadian sovereignty claims to the Northwest Passage is not a case of the United States acquiescing to a friend. As John Herd Thompson notes, "[n]ations have

no friends, only interests"¹⁰⁶ and it is certainly in the interest of continental security that no tension exist between the United States and Canada. Support of Canadian sovereignty would be an example of cooperative allied efforts, in which both sides "win." This integrative bargaining method, as Christopher Kirkey has shown, has precedent in Canadian-American relations in the Northwest Passage.

It certainly can be argued that the Canadians have the stronger incentive to resolve the issue of the Passage than does the United States. U.S. Navy submarines could continue to ply the waters of the Passage undetected, and there is nothing militarily, and little diplomatically, that the Canadians can do, even if they are aware of the transits. But such an attitude is misguided. The issue for the Canadians is not military, or even particularly diplomatic; it is domestic. The domestic political fallout for the Canadian governments during the *Manhattan* and *Polar Sea* voyages made it abundantly clear that such moves are a political liability for the sitting Canadian government, regardless of party affiliation. This is not an issue that can be ignored or minimized by the United States; there is a high price to pay for permitting American passage and the perceived challenge to Canadian sovereignty of the strait. It is certainly not in the United States' best interest to have the Canadian government defensive about its cooperative efforts with the United States or diverting its scarce resources on sovereignty patrols, as opposed to needed military measures. The United States cannot afford to alienate the Canadians or see a Canadian government elected that is less willing to work with the Americans. In this case, geography, history, and alliance support a solution. Additionally, as the Americans learned with the World War Two cooperative defense projects, a modicum of American sovereignty sensitivity resulted in the United States getting nearly all it wanted from the Canadians in terms of defense cooperation. Therefore, a bilateral exploration of solutions to the impasse could hark back to the spirit of cooperation and consensus experienced by the PJBD.

Precedent exists for "distinctive law of the sea regimes," and as the Arctic is indeed unique, this avenue for resolution is available.¹⁰⁷ To dismiss this argument¹⁰⁸ is to overlook both the tradition of Canadian-American cooperation and the merits of bilateral solutions. Bilateral, special-exception agreements need not set a negative precedent.¹⁰⁹ Ronald Reagan himself maintained that the 1988 arctic accord "sets no precedents for other areas."¹¹⁰ This position could even be extended to the point of sovereignty recognition and United States navigation rights in the Northwest Passage.

Cost- and security-sharing ideas include a Canadian-American Northwest Passage Coast Guard Patrol,¹¹¹ an arctic command (ComNavForArctic) which includes a high-ranking Canadian officer,¹¹² and a NORAD for the water.¹¹³ Other ideas proposed are the periodic stationing of Canadian officers on U.S. Navy nuclear-powered submarines during arctic sovereignty patrols, assigning a Canadian to submarine Western Atlantic (COMSUBWESTLANT) operations staff, and jointly operating an under-ice detection system in the Arctic.¹¹⁴ In addition, the idea of an "Article IV Antarctic Treaty-type solution" has been advanced.¹¹⁵ Naval cooperation is both fiscally and politically "inexpensive,"¹¹⁶ but the latter is true only if the issue of the Passage remains dormant. An "unauthorized" USN transit would undoubtedly inflame public opinion and media headlines, and resurrect a public relations and sovereignty nightmare for the government.

Conclusion

The recurring and complex issue of the Northwest Passage symbolizes both Canada's identification with the North and its traditional dilemma of backing sovereignty claims with an active presence. Sovereignty must be more than verbal assertions, and security must include both military and environmental protection. Canada cannot expect the United States to leave the Arctic, and thus the continent, militarily vulnerable. And at first glance it is certainly understandable that the United States fears that a special relationship with Canada will be construed as precedent-setting and open America's insistence on freedom of the seas to scrutiny. But the reality is that Canada is, arguably, the United States' staunchest ally, there is a history of defense measures, and cooperation has been greatly facilitated when the United States has shown sensitivity to Canadian sovereignty claims. Not supporting Canada's sovereignty claims is not in the United States' or North America's best interest.

The issue of the Northwest Passage and its solution are best understood in the historical, as well as the contemporary, context. Its resolution lies in the history of bilateral cooperation of the past fifty years. There is undoubtedly an arctic imperative,¹¹⁷ and the issues of sovereignty and security cannot be ignored. A bilateral agreement should be negotiated while the issue of the Passage is not politically volatile. Any agreement must be grounded in international law and recognize the security, economic, and environmental importance of the Passage. It would guaran-

tee Canadian sovereignty, address American defense concerns, and facilitate the Canadian-American cooperation that has developed and flourished in the second half of the twentieth century.

NOTES

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1. Vilhjalmur Stefansson, *Northwest to Fortune: The Search of Western Man for a Commercially Practical Route to the Far East* (New York: Sloan & Pearce, 1958), 336.

2. Robert Friedheim, "The U.S.-Canada Arctic Policy Forum: Impressions from the American Co-Chair," *Arctic* 39 (1986): 362.

3. D. Philpott, "Sovereignty: An Introduction and Brief History," *Journal of International Affairs* 48 (1995): 357. Emphasis in text.

4. H. Black, *Black's Law Dictionary* (St. Paul, MN: West Publishing, 1983), 221, 216.

5. Canada, House of Commons *Debates*, 10 September 1985, 5: 6463.

6. Donat Pharand, *Canada's Arctic Waters in International Law* (Cambridge: Cambridge University Press, 1988), 110.

7. William Schachte, "International Straits and Navigational Freedoms," *Ocean Development and International Law* 24 (April-June 1993): 186.

8. H.H. Denton, "Things Are Heating Up Over the Arctic," *Washington Post National Weekly Edition* (1 June 1987): 19.

9. Donat Pharand, *Canada's Arctic Waters in International Law*; Donat Pharand, "Canada's Jurisdiction in the Arctic," in Morris Zaslow, ed., *A Century of Canada's Arctic Islands, 1880-1980* (Canada: Royal Society of Canada, 1981); Donald R. Rothwell, "The Canadian-U.S. Northwest Passage Dispute: A Reassessment," *Cornell International Law Journal* 26 (1993): 331-72; William Schachte, "International Straits and Navigational Freedoms," 179-95; Joel Sokolsky, "Canada and the Cold War at Sea," in W.A.B. Douglas, ed., *RCN in Transition: 1910-1985* (Vancouver: University of British Columbia Press, 1988); Joseph T. Jockel, *Security to the North: Canada-U.S. Defense Relations in the 1990s* (East Lansing, MI: Michigan State University Press, 1991); Christopher Kirkey, "The Arctic Waters Pollution Prevention Initiatives: Canada's Response to an American Challenge," *International Journal of Canadian Studies* 13 (1996): 41-59; Christopher Kirkey, "Smoothing Troubled Waters: The 1988 Canada-United States Arctic Co-operation Agreement," *International Journal* 50 (1995): 401-26; Philip Briggs, "The Polar Sea Voyage and the Northwest Passage Dispute," *Armed Forces and Society* 16 (Spring 1990): 437-52.

10. See Pharand, *Canada's Arctic Waters*, 189-201; and Rothwell, "Northwest Passage Dispute," 352-53.

11. House of Commons, *Debates*, 10 September 1985, 5: 6463.

12. Rothwell, "Northwest Passage Dispute," 347.

13. Canada's oldest claim, but not recognized in international law, is the sector principle. Donat Pharand, "Canada's Jurisdiction in the Arctic," 118. In addition, its claim based solely on "historic waters" is weak. Donat Pharand, *The Law of the Sea of the Arctic: With a Special Reference to Canada* (Ottawa: University of Ottawa Press, 1973), 62. The two International Court of Justice cases with the greatest impact on the Northwest Passage are the 1949 *Corfu Channel* case, which defined an international strait, and the 1954 *Anglo-Norwegian Fisheries Case*, which recognized the right to institute straight baselines along convoluted coasts. The Canadians maintain that the Passage does not fit the Court's functional definition of an international strait, that of a "useful route" for international use, [Pharand, *Arctic Waters*, 225] while the United States insists that "potential use" is an applicable criterion for determining an international strait [Schachte, "International Straits," 184]. The 1958 Territorial Sea and Contiguous Zone Convention incorporated the *Fisheries Case* and the use of straight baselines, but stated that formerly high seas that became internal waters because of straight baselines had to permit innocent passage. Since Canada has not ratified the Convention, Canadian legal expert Donat Pharand has argued that Canada's institution of straight baselines around the Arctic waters on 1 January 1986 can rely on the *Fisheries Case*, in which newly enclosed waters that become internal need not permit innocent passage. Pharand, *Arctic Waters*, 155, 228.

14. Ronald Reagan in *Public Papers of the Presidents of the United States: Ronald Reagan* (Washington: Government Printing Office, 1989), 566. Of specific concern are the straits of Malacca and the Strait of Hormuz [Christopher Kirkey, "The Arctic Waters Pollution Prevention Initiatives," 45.] For a list of the sixteen straits deemed of strategic significance by the United States, see Friedhelm Kruger-Sprengel, *The Role of NATO in the Use of the Sea and the Seabed* (Washington, DC: Woodrow Wilson International Center for Scholars, 1972), 24.

15. The PJBD was one result of the August 1940 Ogdensburg Agreement, announced by President Franklin Roosevelt and Prime Minister Mackenzie King. This advisory board consisted of an American section and a Canadian section for a total of twelve members, both civilian and military. Headed by a civilian, the Board was not subordinate to either military. It worked on the basis of consensus and made recommendations to its respective governments. The Board's mandate "was to 'consider in the broad sense the defense of the north half of the Western Hemisphere' and to make 'studies relating to sea, land and air problems.'" Stanley Dziuban, *Military Relations Between the United States and Canada, 1939-1945* (Washington, DC: Department of the Army, 1959), 46. See also Hugh Keenleyside, "The Canada-US Permanent Joint Board on Defence, 1940-1945," *International Journal* 16 (Winter 1960-61): 50-77; C.P. Stacey, "The Canadian-American Permanent Joint Board on Defence, 1940-1945," *International Journal* 9 (Spring 1954): 107-24.

16. John Holmes, "Is There a Future for Middlepowermanship?", in J. King Gordon, ed., *Canada's Role as a Middle Power* (Canada: Canadian Institute of International Affairs, 1966), 23.

17. Directorate of History [hereafter DHist], Chiefs of Staff Committee, Minutes of 396th Meeting, 17 July 1947

18. Shelagh Grant, "Northern Nationalists: Visions of a New North, 1940-1950," in Kenneth Coates and William Morrison, eds., *For Purposes of Dominion* (North York, ON: Captus University Publications, 1989), 64

19. Hugh Keenleyside, "Recent Developments in the Canadian North," *Canadian Geographical Journal* 39 (1949): 156-76; Shelagh Grant, *Sovereignty or Security: Government Policy in the Canadian North, 1936-50* (Vancouver: University of British Columbia Press, 1988), 191.

20. DHist, Advisory Committee on Northern Development [hereafter ACND], 16 February 1953.

21. Gordon Smith, interview with author; 17 October 1991; Graham Rowley, interview with author, 21 October 1991; R.A. J. Phillips interview with author, 22 October 1991.

22. S.M. Davis, "The "St. Laurent" Decision: Genesis of a Canadian Fleet," in Douglas, *RCN in Transition*, 188.

23. National Archives of Canada [hereafter NAC], RG 25 1989-90/029, Box 10, file 7-AB(S), pt 1, Lt. Commander G.F. Todd, "Some Naval Aspects of the Post-Hostilities Problems, 28 October 1943.

24. NAC, RG 24, vol 11431, file ILRC 1660-408/sub 2, T.A. Harwood, Lt.-Cdr. RCN (R) and P. Eng, "Some Observations of Icebreaker Operations During the Summer of 1952," no date.

25. A ship with at least thirty feet between the waterline and the keel

26. J.M. Leeming, "HMCS *Labrador* and the Canadian Arctic," in J.A. Boutillier, ed., *The RCN in Retrospect, 1910-1968* (Vancouver: University of British Columbia Press, 1982), 307; Tony German, *The Sea Is At Our Gates* (Toronto: McClelland and Stewart, 1990), 258.

27. Lt. Cmdr. Nathaniel F. Caldwell, USN, *Arctic Leverage* (New York: Praeger, 1990), 44, 45. Interestingly, Commodore O.C.S. Robertson, former commander of *Labrador* served as the Ice Pilot for USS *Seadragon's* 1960 transit of the Passage, making him the first person to transit the Passage both on and below the surface. David Robinson, "HMCS *Labrador*: First Warship to Circle North America," http://www.dnd.ca/navy/marcom/history/lab_e.htm.

28. Joel Sokolsky, "Canada and the Cold War at Sea," in Douglas, *RCN in Transition*, 221.
29. Joseph T. Jockel, *Security to the North*, 28.
30. Ivan Head and Pierre Elliott Trudeau, *The Canadian Way* (Toronto: McClelland and Stewart, 1995), 31.
31. *Debates*, 15 May 1969, 8: 8721.
32. *Debates*, 15 May 1969, 8: 8720.
33. William Morrison, "Eagle Over the Arctic," in K.S. Coates and W. Morrison, eds., *Interpreting Canada's North* (Toronto: Copp Clark Pitman, 1989), 179; Head and Trudeau, *Canadian Way*, 35-46.
34. *Debates*, 8 April 1970, 6: 5626.
35. David Larson, "United States Interests in the Arctic Region" *Ocean Development and International Law* 21 (1990): 178.
36. Head and Trudeau, *Canadian Way*, 55.
37. R. Gordon Robertson, interview with author, 13 January 1992.
38. Harriet Critchley, "Canadian Naval Responsibilities in the Arctic," in Douglas, ed., *RCN in Transition*, 283.
39. Ronald Purver, "Aspects of Sovereignty and Security in the Arctic," in Donald McRae and Gordon Munro, eds., *Canadian Oceans Policy* (Vancouver: University of British Columbia Press, 1989), 168.
40. Larsen, "United States Interests," 179.
41. Kirkey, "Arctic Waters," 41. Distributive bargaining is a "zero-sum" process, whereas integrative bargaining finds parties seeking "to reach mutually optimal outcomes for all parties concerned." *Ibid.*, 57, 6n.
42. Secretary of State for External Affairs, Mitchell Sharp, *Debates*, 16 April 1970, 5955.
43. Kirkey, "Arctic Waters," 56.
44. Even with the 1988 Arctic Cooperation Agreement, negotiated by the integrative bargaining method, classification—and thus sovereignty—of the Passage remains open to debate. See Kirkey, "Smoothing Troubled Waters," 401-426.
45. Clyde Sanger, *Ordering the Oceans: The Making of the Law of the Sea* (Toronto: University of Toronto Press, 1987), 84.

46. The right to implement straight baselines was upheld by the International Court of Justice in its 1951 *Anglo-Norwegian Fisheries Case* and the 1958 UN Territorial Sea and Contiguous Zone Convention.

47. Schachte, "International Straits," 185; Richard Grunawalt, "United States Policy on International Straits," *Ocean Development and International Law* 18 (1987): 445.

48. Pharand, *Arctic Waters*, 233-34.

49. The United States insists, however, that the AWPPA is broader than Article 234, and thus "is not fully sanctioned by it" Purver, "Sovereignty and Security," 168.

50. Sanger, *Ordering the Oceans*, 113.

51. *Ibid.*, 70-71.

52. *Debates*, 10 September 1985, 5: 6463

53. *Ibid.*

54. Jockel, *Security to the North*, 29.

55. Rothwell, "Northwest Passage Dispute," 343.

56. *Debates*, 10 September 1985, 5: 6463.

57. *Ibid.*, 5:6562-63.

58. Purver, "Sovereignty and Security," 170.

59. *Debates*, 10 September 1985, 5: 6463.

60. Pharand, *Canada's Arctic Waters*, 234.

61. Rothwell, "Northwest Passage Dispute," 360; Pharand, *Canada's Arctic Waters*, 234-35.

62. *Debates*, 10 September 1985, 5: 6464.

63. Canada, Department of National Defence, *Challenge and Commitment*, 43, 45.

64. Joel Sokolsky, *Defending Canada: U S - Canadian Defense Policies* (New York: Priority Press Publishers, 1989), 16.

65. Denton, "Things Are Heating Up Over the Arctic," 19.

66. Richard Halloran, "U.S. Suspicious of Canada's Plan for Nuclear Subs," *The New York Times* (4 May 1987): A14.

67. Charles Doran, "Sovereignty Does Not Equal Security," *Canadian Institute for International Peace and Security* 2 (Autumn 1987): 9; Denton, "Things Are Heating Up Over the Arctic," 18-19. Even with the end of the Cold War, the American perspective of Canada's role has not changed. The United States values Canada's participation in peacekeeping and multinational forces worldwide. The Americans want Canadian resources focused on these roles as opposed to increased spending on continental defense and sovereignty protection. J. Sokolsky and David Detomasi, "Canadian Defense Policy and the Future of Canada-United States Security Relations," *The American Review of Canadian Studies* 24 (1994): 549.

68. Canada, Department of National Defence, *Challenge and Commitment*, 51, 55, 57.

69. Jockel, *Security to the North*, 57.

70. Donald McRae, "Arctic Sovereignty: Loss by Dereliction?" *Northern Perspectives* 22 (Winter 1994-95): 8.

71. Paul Koring, "Collenette Drops Plans to Monitor Arctic," *Globe and Mail* (3 February 1996): A3.

72. Jockel, *Security to the North*, 59.

73. *Canadian Defence Planning Document*, 1996, [http://www.dnd.ca/eng/dp/Sel_Pol/DefPln96/defplane.htm], 3.3.1 Maritime.

74. Halifax (CP), "Eggleton Confirms Submarine Purchase," http://www.canoe.ca/NewsArchivesAp98/candigest_apr6.html.

75. Jockel, *Security to the North*, 172-73.

76. "Submarines for Canada's Navy," 6 April 1998, http://www.dnd.ca/eng/archive/apr98/sub_b_e.htm. "Submarine Contracts Signed," 6 July 1998, http://www.dnd.ca/eng/archive/jul98/sub_n_e.htm.

77. United States State Department in Briggs, "The Polar Sea Voyage," 446.

78. Clark, *Debates*, 10 September 1985, 6463.

79. Kirkey, "Smoothing Troubled Waters," 406.

80. *Ibid.*, 401-02.

81. United States, *Public Papers of the Presidents of the United States: Ronald Reagan* (Washington, DC: United States Government Printing Office, 1990), 1988: 25.

82. Larsen, "United States Interests," 183.

83. Kirkey, "Smoothing Troubled Waters," 419; see also Bill McAllister, "U.S. Breaks Diplomatic Ice to Aid Ship," *Washington Post* (11 October 1988): A1, A9; and Briggs, "Polar Sea Voyage," 448.
84. Larsen, "United States Interests," 182.
85. Jockel, *Security to the North*, 32.
86. Briggs, "Polar Sea Voyage," 449; Rothwell, "Northwest Passage Dispute," 346.
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88. Admiral James Watkins, USN, "The Maritime Strategy," U.S. Naval Institute *Proceedings Supplement* (January 1986): 4.
89. Schachte, "International Straits," 182.
90. Friedhelm Kruger-Sprengel, 24-30; see also Ken Booth, *Law, Force and Diplomacy at Sea* (London: Allen and Unwin, 1985), 98-99.
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92. Jockel, *Security to the North*, 27.
93. *Newsday*, "U.S. to Pull Attack Subs from Arctic," *Omaha World-Herald* (16 November 1997): 15A.
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99. Pharand, *Canada's Arctic Waters*, 230.
100. Canada, DND, *Challenge and Commitment*, 43.
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103. *Adjusting Course 1997*, Conclusion:2.
104. Ibid.
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108. William E. Westermeyer and Kurt M. Shusterich, eds., *United States Arctic Interests: The 1980s and 1990s* (New York: Springer-Verlag, 1984), 18.
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110. Reagan in Kirkey, "Smoothing Troubled Waters," 418.
111. Briggs, "Polar Sea Voyage," 449.
112. Capt. Leonard A. LeSchack, "ComNavForArctic," *U S Naval Institute Proceedings* 113 (September 1987): 77.
113. Joel Sokolsky, "The US Navy and Canadian Security," *Canadian Institute for International Peace and Security* 2 (Spring 1987): 11; Paul George, "Arctic Defence Too Hard to Handle?" *Globe and Mail* (12 March 1987): A7.
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