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Canadian Arctic Sovereignty and Security: Historical Perspectives

Edited by P. Whitney Lackenbauer

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Cover: The Mobile Striking Force, an airportable and airborne brigade group designed as a quick reaction force for northern operations, was an inexpensive solution to the question of how Canada could deal with an enemy lodgement in the Arctic. During training exercises, army personnel from southern Canada learned how to survive and operate in the north. In this image, taken during Exercise Bulldog II in 1954, Inuk Ranger TooToo from Churchill, Manitoba relays information to army personnel in a Penguin. DND photo PC-7066.

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Pathetic Fallacy: That Canada's Arctic Sovereignty is on Thinning Ice

Franklyn Griffiths

For a while now, Professor Rob Huebert of the University of Calgary and I have been caught up in a debate about the Northwest Passage. As will become clear at the end of this piece, we agree on certain important things. However, we disagree sharply on whether the undoubted thinning of sea ice in the various waterways that make up the Passage will produce not only an increase in intercontinental shipping, but a shipping-based challenge to Canada's sovereignty over its Arctic waters. Huebert believes that an increased volume of foreign shipping and, consequently, a sovereignty challenge are both very likely, and require sovereignty-affirming action by the federal Government without delay. Some years ago my way of thinking about these things would have been much like Professor Huebert's.

Some years in the future quite a new set of worries about sovereignty will doubtless be raised. Hand wringing about loss of the Arctic is part of the Canadian way. Somehow we never get beyond it to collective action that works. In part, this is because good judgement and a fixation on sovereignty do not sit well together. As we shall see, a predisposition to immoderate and unjustified fear for Arctic sovereignty requires us to exaggerate the threats we face. It chokes the consideration of alternative courses of action. In its small way it stifles ambition and adds unwarranted apprehension to life in this country. If we cannot leave it fully behind, we should at least reduce its hold on us.

It is my view that climate change presents us with no serious sovereignty problem in the Northwest Passage where commercial navigation is concerned. However, we may well have a need to prepare for new security and environmental challenges associated with a gradual increase in summer-months foreign shipping, which offers little or no challenge to Canada's occupancy of the high Arctic Archipelago. Professor Huebert is inclined to alarm about and to defence of the Passage. I am not worried about sovereignty over the Passage, and would instead have us do a better job of looking after the Archipelago in its entirety. In my opinion, what is interesting about our disagreement, and what makes it worth pursuing, is its potential

to prompt new thinking among southern Canadians who would accomplish good things in an Arctic setting from which they are divorced.

Professor Huebert went first with an article, "Climate Change and Canadian Sovereignty in the Northwest Passage," which appeared early in 2002. This paper likened Canada's business prospects in the Passage to those of a straits state: "Singapore has demonstrated that with the proper planning, geographic location on an international strait can bring substantial benefits."[1]

Evidently, a great lot of ships were going to steam through Canada's Arctic waters. How these waters could serve as an international strait and yet remain subject to Canadian sovereignty under international law was, and is, hard to fathom. Huebert's work appeared around the time of a large conference in Ottawa on the "Thinning Ice" theme, which was organized by the Canadian Arctic Resources Committee and others in January 2002. At that meeting I questioned the sovereignty-on-thinning-ice thesis, and later went on to write up my views.[2] Huebert replied in detail, and then we had a further exchange.[3] I now write to inject new considerations and to inquire where this debate may have taken us as of early 2005. In so doing, I seek to drive a few more nails into the coffin of sovereignty-on-thinning-ice thinking, and to see if we might yet broaden the area of agreement by considering the potential for Inuit to provide leadership in a new approach to the Arctic Archipelago.

Opening Statements

Although he had precursors, most notably Colonel Pierre Leblanc when he served as head of [Canadian Forces Northern Area], Professor Huebert started things off by claiming the following in the summary of his winter 2002 piece: "Climate change in the Arctic is a serious challenge to Canadian Arctic sovereignty and security. Climate change has already led to thinning of the ice cover in the Northwest Passage. If this continues, commercial international shipping and other forms of activity in the area will become more viable. If this happens, Canadian control over its Arctic will face two significant challenges. First, current efforts by the Canadian government to maintain sovereignty over the Northwest Passage are unlikely to succeed. Second, Canada will need to substantially rethink its enforcement and surveillance capabilities in the Arctic, which will require significant new expenditures in these areas."[4]

In support of this statement Huebert asserted that if ice conditions became substantially less hazardous, if only for a limited period each year, the Passage would be of "tremendous interest to major shipping companies as

well as the countries that avail themselves of their services."[5] This was because, compared with the route between Atlantic and Asian ports through Panama, sailing via the Canadian Archipelago promised to save thousands of kilometres. Indeed it would.

So, as originally presented by Huebert, the danger was that easier ice conditions and an "ice-free Northwest Passage" for however brief an interval, would change the situation "drastically"[6] and bring major shipping companies to use Canada's Arctic waters for intercontinental navigation on a large scale. Furthermore, the danger was gathering rapidly as a result both of the extent and rate of ice reduction, and of the long lead times required for a coherent Canadian government response.

As some are sure to know, the Arctic waters in question, long regarded as internal by Canada and formally enclosed as Canadian internal waters in 1986, are taken to be an international strait by the US and the EU. In Huebert's view our legal claim to exclusive jurisdiction, or sovereignty, was shaky. It was unlikely to withstand a challenge in the event that changing ice conditions were generally understood to permit economic international shipping through the Archipelago. Accordingly, though it was "impossible to know who will make the first challenge,"[7] Huebert argued there would be a challenge and, as matters stood, the odds did not favour Canada emerging with sovereignty intact. On the other hand, even if sovereignty were upheld, Canada would still be faced with enormous difficulty in responding to pressure for international shipping as the Northwest Passage opened.[8] There was thus a second, but heavily muted, scenario in Huebert's original account: not one where Canada's Arctic sovereignty was faced with speedily approaching peril, but one in which foreign shipping firms made use of the Passage in conformity with Canadian law and regulations.

My response in 2003, in a paper entitled "The Shipping News," identified and criticized what I took to be a whole series of unwarranted assumptions and misreadings in the sovereignty-on-thinning-ice position. The main instances of what I regarded as error and exaggeration concerned (1) sea-ice conditions, (2) the likely calculations of intercontinental shipping firms, and (3) failure to consider the consequences of September 11, 2001 on the politics of the Northwest Passage in Canada-US relations. As well, it was my view that in southern Canada, where the vast majority of us live, there is no social base for constancy on matters of Arctic public policy. Furthermore, though exclusive jurisdiction had to be sustained and defended as a practical matter, the idea of sovereignty was incapable of serving us well in framing the big picture of what was happening, and what needed to be done in the Arctic.

Instead, we needed a new approach that relied upon Inuit, in the exercise of Canadian stewardship over the Arctic Archipelago in an era of rapid climate and geopolitical change.

On sea ice, I readily concurred that ice cover was thinning in the Arctic Ocean as a whole, and in the Canadian Archipelago as well. There could be no question about this. Nevertheless, previous, current, and future sea-ice conditions in the Archipelago had to be evaluated on their own, and not as a linear extension of developments in the Ocean. The constricted waters of the Archipelago and those of the open Ocean were different. Relying on Canadian Ice Service data, I argued that summer-months ice conditions in the Northwest Passage had varied greatly and in all likelihood would continue to do so from one shipping season to the next, and also from one subregion to the next across the Archipelago. Referring to future projections generated by the Service, I also argued that even if the rate of ice-cover reduction over the past three decades were to persist into the 2030s, we would still be held to a shipping season of relatively unimpeded access for only eight weeks out of 52 in a given year. It seemed to me, Canadians would be well advised to go on guard whenever they heard talk of an ice-free Northwest Passage.

Furthermore, owing to the way it was calculated, a shipping season of eight weeks would not necessarily consist of 56 consecutive days in which non-ice-strengthened ships could expect to sail as they wished. Instead, the window of opportunity could be substantially less and, yes, substantially more, as ice gathered in or disappeared from one part of the Passage or another. Meanwhile, in addition to needing a forecast of six or seven days' clear sailing to cross the Archipelago, the ship dispatcher would also have to be confident that the forecast for the Passage was good for the number of days needed to travel from, say, an Asian port of departure to the start of Canada's westernmost Arctic waters.

Presented with such uncertainty, it seemed to me that major shipping firms would not find it a tremendously appealing business proposition to make extensive summer-months use of the Northwest Passage in the course of the next 30 years. Three decades and more from now, ice-cover reduction in the Arctic Ocean could make for substantial summertime reductions in transpolar sailing time directly across the Arctic Ocean, as compared with use of the constricted waterways of the Northwest Passage or, for that matter, Russia's Northern Sea Route. And for the period before the 2030s, why did the sovereignty-on-thinning-ice exponent dwell selectively on a climate-driven opening of the Passage, when intercontinental shipping firms also

had the option of relying on an established Russian shipping administration in broadly the same climate-change conditions?

Scrutinized for its assumptions about climate change and shipping, the entire scenario of a commercial shipping threat to Canadian Arctic sovereignty struck me as unrealistic and all but wishful in its desire to construct a threat. To be sure, climate change promised severe stress and even disaster for Arctic wildlife, and much the same for the indigenous peoples of the region. But sovereignty was different. Here, thinning ice presented us with a limited challenge at the very most. On the one hand, there were rogue ship owners and foolish captains who could pose a law enforcement, and not a sovereignty, hazard to Canada and Canadians. On the other hand, we were faced with the potential for a small and slowly increasing number of north-south continental and conceivably also east-west intercontinental voyages, in the summer months, by ship owners and operators who had no business interest in offering a challenge to Canadian Arctic sovereignty.

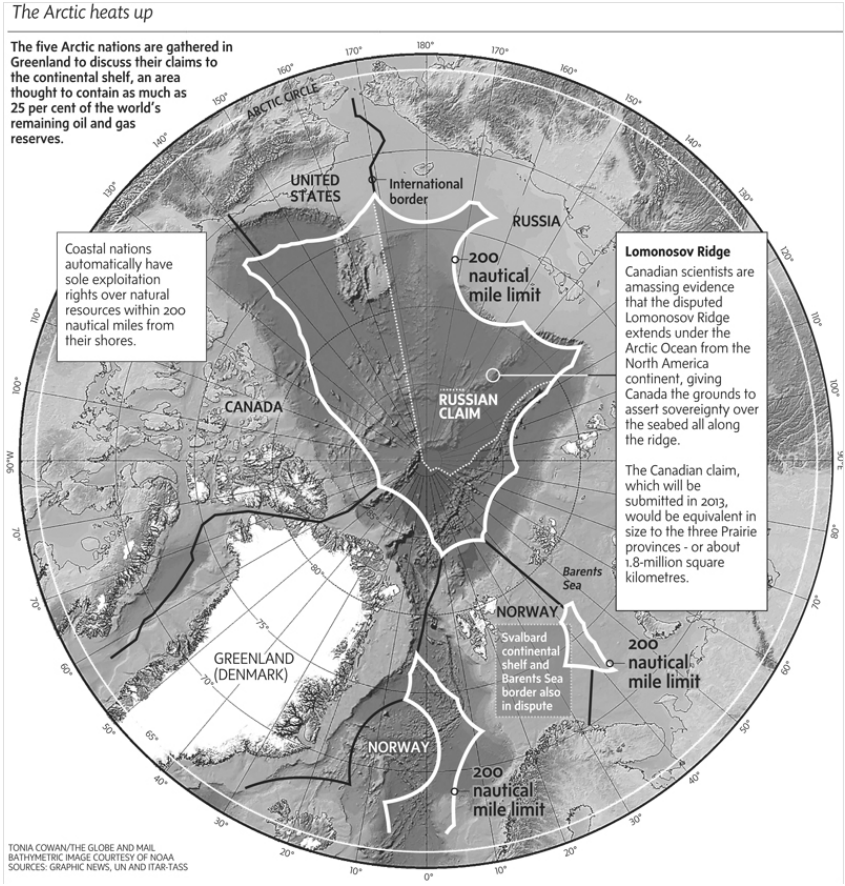
As well, it seemed to me that altered US and Canadian continental security interests after 9/11 could make for wider cooperation than before on Arctic waters issues without prejudice to the opposed claims of the two states in international law. Indeed, I thought we should ask Washington to consider whether its homeland security interests might now be better served by a regime that treated the Northwest Passage not as an international strait, but as internal Canadian waters subject to Canadian law and law enforcement. To all of this Professor Huebert had a rebuttal.

Rebuttals

Huebert's reply in "The Shipping News Part II"[9] strongly supported the proposal to build a new partnership between the federal Government and Canada's Inuit in charting policy for the Arctic Archipelago in its entirety. There was common ground here. Huebert also began to step away from some parts of the original argument. On the other hand, he flatly rejected the notion of talking directly to the US and proceeded to advance new reasons for worry: accelerated rates of ice-cover reduction, an attraction to the Passage by "smaller and, possibly, more risk-oriented shipping companies," and the thought that only a few voyages made without Canadian permission could be enough to invalidate our claim in international law.[10] Further, in his view I favoured "the luxury of waiting [in the belief that] the ice is not melting during our lifetime and ... it is best to leave these concerns to future generations."[11] What I do believe is that if we do not get the underlying evaluation

of the situation right, the public policies we pursue are likely to fall well short of expectation when they do not end in outright failure.

Huebert's main concession was to recognize that "ice conditions will remain dangerous"; that it "may be correct that most major international shipping companies are not willing to risk a voyage through a dangerous Northwest Passage, given its unpredictability ... but there is no way to know for certain"; and that the "contention of there being a low probability of major shipping companies using the Passage may be correct [even though] the potential for its use still remains high."[12] Finding himself in the domain of the potential as distinct from the probable, when it came not to heavy but even to infrequent intercontinental use of the Passage by reputable marine transportation firms, Huebert also seemed to have found himself with a reduced sovereignty threat. As I see it, the whole sovereignty-on-thinning-ice



Map 16. *Globe and Mail*, 27 May 2008.

scenario was starting to come apart. However, rather than do the right thing and concentrate on seeking out the probable in the midst of uncertainty--indeed, concentrate on his initial recognition that international shipping might respect Canadian sovereignty--he brought on new sea-ice, shipping, and legal potentialities.

Thus he referred to studies, which suggested, albeit thus far inconclusively, that the rate of Arctic sea-ice melt may have been underestimated.[13] If new and higher melt rates were confirmed, Huebert would have had the Government of Canada take "immediate action even if the impacts of the problem are not expected to be felt for 10 to 15 years."[14] My comment is twofold. The key study in question is derived from satellite imagery of the Arctic region. This imagery lacks the resolution to discriminate between summer-months sea-ice conditions in the Canadian Archipelago and those in the Arctic Ocean as a whole. For example, ice-cover reduction in the Archipelago is accompanied by the release into the Passage of multi-year ice. The equivalent of floating steel, multi-year ice is a prime peril for ships that have not been properly ice-strengthened.[15] To infer dramatically eased ice conditions in the Canadian Arctic from observed dramatic change in the region in its entirety is unsound.

As to the shipping challenge that remained when major firms were demoted from probable to potential players, Huebert resorted to all but heroic measures to keep the danger alive. First, he raised, and then quixotically all but dismissed as unsubstantiated fear-mongering, the risk of a rogue company entering the Passage ready to take risks with a substandard vessel in pursuit of profit over safety.[16] As I see it, rogue voyages made seemingly easier by reduced sea-ice cover could well give rise to environmental and other threats to Canada and Canadian Arctic residents. But not to sovereignty threats, any more than thousands of Mexicans moving illegally across the border into the US constitute a challenge to American sovereignty. In both cases the challenge is to law enforcement. To this it may be said that the Canadian case is different in that there is indeed an international dispute over Canada's right to exclusive jurisdiction. My reply is that this particular dispute is not only off the back burner, but off the stove. It will be as good as altogether out of the kitchen if Canada and the US can find their way to new North American security cooperation. Meanwhile, are we to believe that a rogue shipping company whose vessel has been seized by Canada is going to persuade a state to take Canada to the International Court of Justice on a charge whose wording Canada must accept if anything is to go before a panel of Judges? That a series of unimpeded rogue voyages will contribute

significantly to a record of practice, which works against Canada, if and when we went to court with the US or another government? I think not.

To bolster the shipping worry, Professor Huebert (2003) also referred to new Russian and US construction of ice-strengthened container and tanker ships.[17] Ten or more Russian vessels were being built for use on the Northern Sea Route. However, as he noted, Russia's claim to jurisdiction over certain of the waters along the Route ran into difficulties rather like those faced by Canada in the Passage. To me this makes it unlikely that any new Russian ice-capable ships would be used against the Canadian interest. Huebert also raised the potentiality of these vessels being sold to another user for deployment in the Canadian Arctic. Conceivable but remote, I would say. As to the US, he reported the construction of five ice-strengthened supertankers to move oil from Valdez in Alaska to ports on the US west coast. However, he also allowed it was highly unlikely that these ships would be used to take oil regularly through the Northwest Passage to the US east coast.[18] Indeed, if these ships were strengthened for high Arctic use in the dead of winter, it would be for strategic purposes, having little or nothing to do with the economics of shipping in thinning ice. All of which reminds me.

Early in September 1985, I was invited to the Department of External Affairs to lend a hand in drafting the "Statement on Sovereignty," which was read in Parliament on September 10th. Previously I had broken the news that the US icebreaker *Polar Sea* would transit the Northwest Passage in defiance of Canadian sovereignty, which is to say without first asking for permission to cross. In a second op-ed piece in *The Globe and Mail* at the end of August, when the *Polar Sea* was going through and on a day when Cabinet was meeting in Vancouver to consider the acquisition of a Polar-class icebreaker, I had urged we ante up and build a best-in-the-world icebreaker for defence of sovereignty. On reading the draft Statement, which among other things was to announce the Polar 8 icebreaker commitment, I found it short on supporting references to what other countries were doing. So, in went words on the need for Canada to come up to speed in the light of polar shipbuilding in Japan and West Germany. The words went in not to crank up the threat, but because, like Huebert today, I was a true believer in Arctic sovereignty, in vigilance, in paying the price to protect what is singularly precious. However, the words proved later to be inapt and the Polar 8 commitment proved to be unsustainable. Worried words from Huebert about current Russian and US shipbuilding, which could yield new danger for Canadian sovereignty, are almost certainly off the mark today.

In "The Shipping News" (2003) I had also advanced the view that the events of September 11 may have altered the international politics of the Northwest Passage. Both Canada and the US now shared a greatly increased interest in security cooperation against terrorist and related non-traditional threats. Issues that threatened sharply to divide the two countries, most notably the status of the Northwest Passage, had more than ever to be managed to the satisfaction of both, or common security would suffer, as certainly it would if the US ran roughshod over Canada's claim. At the same time, in the new circumstances no state could expect unilaterally to penetrate the security space of North America by contriving the transit of a ship or ships in a way that put Canada's sovereignty claim on the line. An attack on the Canadian interest now necessarily became an attack on the American interest, unless the third state was acting with tacit US support. In the latter instance the US itself would be our problem. Of course Washington could cause us grief. However, I argued, the probability had lessened since 9/11. Instead, both sides were in a better position than ever to lay their Arctic waters differences to rest.

With this in mind, "The Shipping News" had suggested that we negotiate an extension of the 1988 Canada-US icebreaker transit agreement to cover the commercial vessels of both countries, and eventually others, without prejudice to the position of any party in international law. As well I proposed talking to the US about making it mandatory for vessels to provide advance notice before entering Canada's Arctic waters, and to do so in a manner which, again, did not prejudice the differing positions in law. Owing to sensitivity on both sides about Canada's jurisdiction, mandatory notification was not something we had insisted upon, even though in its absence a path of least resistance could start to open for illicit entry into North America. On both of these proposals Canada and the US should, I thought, be able to build within a framework of already existing practice, i.e., without either side having to accept less than it presently had in law. At a very minimum, it seemed to me that these issues were worth pursing in private exploratory talks.

Huebert's response was to avoid considering specific proposals and, indeed, to write off the thought of talking to the US. Instead, he referred to US conduct prior to September 11 in order to claim that nowadays, "Americans feel stronger about the principle of freedom of navigation through international straits over any security interests achieved through a Canadianized Northwest Passage."[19] That the Navy might overrule Homeland Security in an internal US discussion today could not, of course, be ruled out. However, it was my belief that we had entered a new world. Just how different and,

indeed, how enabling it might be, we would never discover by resting on the historical record and declining to explore. Resting, however, was Huebert's preference. Accordingly, he cited a post-9/11 remark of the US Ambassador to Canada to claim no change in the American position on the Passage: "We have not resolved that dispute and there's not really a lot of need to do so right now."[20] Similarly, in Huebert's view the United States saw "no need to change its position." There was "nothing to suggest that they have abandoned their opposition to the Canadian claim." Furthermore, should "any vessels attempt to go through the Passage without Canadian permission, it can be expected that [Washington] will support their right to do so."[21] All of this was beside the point.

In exploring opportunities for collaboration under a without-prejudice legal regime, Canada would in no way require the US to alter its position in law, much less to surrender its judgement of the Canadian claim. Nor would the US need Canada to cave in. There would be no talk of "Canadianizing" the Northwest Passage. Nor would anyone seek to resolve the Canada-US dispute. Instead, the two sides would work for improved security cooperation without prejudice to what they might say or do if ever the underlying legal issues came to adjudication. As to the forecast of automatic US support for the right of any vessel to move through the Passage in defiance of Canada's wishes, this we will come to in a moment.

Current Assessment

So, where do we stand as of early 2005? As I see it, Professor Huebert continues to back away from the original argument. At the same time, his sense of alarm over Canadian Arctic sovereignty is now expressed in the prediction of a Canada-US crisis over the Northwest Passage. Meanwhile, sovereignty-on-thinning-ice thinking continues to gain ground in the wider world of Canadian public opinion. All in all, it is a peculiar situation. In addressing it, I need first to acknowledge the influence of the thinning-ice view among Canadians, and then to add certain new considerations, lest Huebert think of regaining some of the ground he has surrendered. These new matters have to do with (1) the economics of intercontinental shipping, (2) the improbability of a court challenge to the Canadian claim, and (3) the distinction between reality and perception where the Northwest Passage is concerned.

Casual conversations and more systematic attention to the media both tell me that sovereignty-on-thinning-ice is becoming the conventional wisdom for those who take note of such things in Canada. Media references to thinning ice are not infrequent. The same applies, if less so, to the men-

tion of endangered Arctic sovereignty. As a first exhibit, consider a double-page map spread in *Nature Canada*,[22] which cites a "year-round passable Northwest Passage." This piece, which is in fact rather restrained, puts me in mind of the September 2002 fund-raising letter of the Canadian Arctic Resources Committee, which takes the Canadian cake for exaggeration. At that time CARC chose to report (emphasis in the original) that the Arctic ice cap was "... melting so quickly that within the next 15 years it's likely that the once impassable Northwest Passage·will be open to shipping *all* year round," and then went on to ask, "Did you know that the U.S. is already questioning Canadian sovereignty over the Arctic Islands? And the lucrative shipping lanes aren't even open yet." As to more recent evidence of concern over thinning ice, it is available in the year-end 2003 issue of *This Magazine*, in a *Toronto Star* editorial of April 2004 which reports predictions of year-round navigation through the Archipelago within a decade or two, and in a CBC *News Online* report of August 2004 from the Canadian ice-breaker *Amundsen*, which drew attention to sovereignty under threat from climate change.[23]

And then, in November 2004, a lengthy summation of the Arctic Climate Impact Assessment was released by the Arctic Council, a governmental forum comprised principally of the eight regional states and international organizations of Arctic indigenous peoples.[24] This report drew new public attention to what can only be called stunning ice and snow reductions across the region. Never mind that it did not differentiate between the Canadian Archipelago and the Arctic Ocean when it came to changing sea-ice conditions, busy Canadians could hardly be expected to hesitate in applying this new Arctic-wide evaluation directly to the Northwest Passage and to the likelihood of sovereignty-challenging navigation there. Indeed, the *Globe & Mail* report on the assessment was headlined, "Arctic melt may open up Northwest Passage."[25]

All of which goes to show that the notion of Arctic sovereignty on thinning ice has real appeal. It is dramatic. It is of proven interest to those who write the news. It fuses climate change and sovereignty into a heady mix which right-thinking Canadians can hardly ignore. Think nothing of snow- and ice-cover loss in our country? It's not on. Do nothing, and raise no budgets for new Arctic operations when sovereignty is threatened? That is also not on, but as the Polar 8 showed, neither is it so easy. Yield to exaggerated fear and mistrust of the US? That is on for some of us. Nevertheless, the vision of Canada's Arctic sovereignty in peril cannot withstand scrutiny. Consider merely what has happened thus far to Huebert's position.

On sea ice, Huebert's initial readiness to speak in terms of an ice-free Northwest Passage gave way, first, to an acknowledgement that we may have underestimated region-wide melt rates but do not yet know for sure. But then, rather than attempt to make the case for a rapid easing of ice conditions in the Canadian Archipelago as well, he reverted strongly to the region-wide picture and to a faster-than-expected reduction in total Arctic ice cover. Citing advance notice of the *Arctic Climate Impact Assessment*, he went on to announce that we would "soon be facing a sovereignty crisis as temperatures rise in the arctic even faster than had been expected."[26] So, now we are talking of crisis, and crisis soon. But what might "soon" mean, when Huebert also quotes the ACIA chairman as saying that the *Assessment*'s models point to a "substantial ice free summer period in the Canadian … north *by the middle of this century*"?[27] (italics added) Evidently the approaching Arctic sovereignty crisis will not have a great deal to do with changing ice conditions in the Northwest Passage. In moving to a "crisis-soon" argument Huebert begins to sidestep thinning-ice considerations altogether.

As to shipping, Huebert's expectations have been scaled down radically. Initially, the traffic was to be great enough to make Canada into something of an Arctic Singapore. Then, only a number of rogue shipping companies and some Russian and American ice-strengthened bulk carriers posed the threat. Now, the crisis-soon scenario effectively reduces the threat to one shipping firm: "As soon as any company wishes to go through ... it will need to 'pick a side.' It will either take the American position and not ask the ... Canadian Government for permission to enter these waters, or it will ask permission, thereby supporting the Canadian ... position."[28] Either way, the argument now goes, one ship owner is capable of forcing the United States and Canada into a confrontation. Furthermore, Huebert claims that, "... even if the shipping company does not ask permission, the United States will find itself required to defend the rights of the company, even if it did not want to do so at the time."[29] I disagree with all of this, and will now show why. Note, however, that, as in the case of sea-ice conditions in the Passage, Huebert has all but abandoned the original sovereignty-on-thinning-ice position on the volume of shipping that is to be expected.

As I see it, the principal reason not to worry about a single-company challenge in the Northwest Passage is that no reputable firm will attempt to run the Canadian Archipelago in the decades-long period before the option of summer-months transpolar navigation presents itself. In making it clear why this should be so, I would like to lay to rest, once and for all, the expectation that responsible shipowners will risk non-strengthened vessels

in Canada's Arctic waters. My point of departure is Huebert's original claim that "substantial savings for shipping companies, which translates into reduced costs for the products that are shipped,"[30] can be realized by using the Northwest Passage for bulk transport between Atlantic and Pacific ports.

If Canada's Arctic waters are to offer a viable alternative to existing routes for intercontinental navigation, non-ice-strengthened containerships--not tankers, tramps, or rogues--will have to take up the opportunity. In considering what the savings and risks might be for a top-of-the-line firm, let us imagine a 2,800-unit or relatively small box ship currently using the Suez Canal to carry general cargo on regular voyages between Yokohama and Rotterdam. She weighs 35,000 tonnes, is not ice-strengthened, and cost about $35-million to launch a couple of years ago. For amusement, let us call her the *Suzie Q*. Owned by a reputable firm, the *Suzie Q* ordinarily sails 24/7 at 16 knots on the high seas, and does so at a rate of $23,000.00 per day on a timecharter basis plus fuel. The timecharter rate includes amortization, regular insurance, crew, port, periodic drydocking and maintenance, and a profit margin. As to fuel, let us say it costs $175.00 per tonne at 40 tonnes per day. As distinct from tramp ships, which sail from one job to the next, wherever it happens to take them, the *Suzie Q* is part of a highly competitive industry in which every day gained and lost on a set and, therefore, economic route is what it is all about.

The *Suzie Q* has the choice of proceeding from Japan to the Netherlands via Suez, or the Northwest Passage. Should she sail the Passage, there could be substantial added insurance payable against holing, accident not involving ice, environmental liability, search and rescue, and litigation, all with the inevitable deductibles. Just how much it costs to insure for a transit of the Northwest Passage, and what the deductibles are, is hard to say since as yet there is no orderly market for a venture like this. Still, how do the two routes compare? Are fears over sovereignty supported by the prospect of substantial savings to shipping firms who might be moved to challenge Canada?

The distance from Yokohama to Rotterdam via the Northwest Passage is about 7,600 nm or nautical miles (all distances and indeed all numbers cited here being approximate). Via the Suez Canal it is 11,200 nm (12,500 nm via Panama), and is done in about 30 days at 16 knots. The Passage, therefore, offers a saving of 3,600 nm over Suez. As well, there is a charge for use of the Canal. For a laden ship the size of the *Suzie Q*, the toll would work out to around $125,000.00. This amount would be saved by using Canadian waters, that is, as long as Canada refrained from levying a transit fee of its own.

Of the 3,600 nm saved over the Suez route, some 1,600 would be in the open ocean, and about 2,000 in the Archipelago and its western and eastern approaches. Assuming a steady 16 knots over a total of 5,600 nm of open ocean, the *Suzie Q* would do that part of the distance in 14.6 days. Assuming, purely for the sake of illustration, a steady speed of 16 knots across 2,000 nm of entirely ice-free Canadian and North American waters, she would make the Arctic transit in 5.2 days and, thus, the entire voyage in just under 20 days. The result would be a saving of ten days over Suez, to which the shipowner would add the equivalent of four days in avoided tolls. Darting through the Northwest Passage at 16 knots accordingly yields a total saving of something like 14 days. This amounts to about $420,000.00 per voyage on a daily timecharter of $23,000.00 plus fuel at $7,000.00 *per diem*. Extremely inviting, it would appear, but also extremely problematic.

A rate of 16 knots in virtually open water with no multi-year ice or fog, and with sufficiently reliable advance notice to allow for time in transit from Yokohama to Arctic North American waters, all of this could conceivably be achieved by the *Suzie Q* on occasion. However, in no way on a regular basis. For the ship owner, presented with a favourable ice report, there would still be the risk of an unfavourable turn in ice conditions, in the likelihood of delay, and in the possibility of accident. All the while, the Government of Canada could not be expected to set aside the hard won provisions of the Arctic Waters Pollution Prevention Act until the ice was all but gone from the Archipelago on a regular basis. In principle, this could mean allowing last-minute transits by non-strengthened ships in ideal conditions if and when they occurred. But otherwise Canada would insist that vessels be appropriately strengthened, thereby imposing a huge annual amortization expense on the carrier, certainly huge enough to wipe out summer-months gains over Suez. And then there are the insurers. They reportedly charge two to three times the openwater rate for vessels traversing Russia's Northern Sea Route.[31] It is hard to see them accepting greatly less than $100,000.00 in covering last-minute rapid transits of a Northwest Passage – whose waters have still to be fully charted. So now we are down to about $320,000.00 saved by the *Suzie Q*'s owners, should they be foolish enough in the first place to consider streaking through the Northwest Passage with a high-value ship.

The Northwest Passage is not a rapid transit system. To state what should be apparent to anyone considering the potential for foreign navigation in Canada's Arctic waters, the appeal of the Passage for intercontinental voyages by non-ice-strengthened ships depends very heavily on ice conditions. Suppose conditions were judged capable of causing delay to the point

of reducing anticipated average speed to seven knots (168 nm per day). In this case, the North American Arctic traverse would take the *Suzie Q* 12 days, resulting in a total voyage of some 27 days. The saving over Suez would add up to three days sailing plus four days' equivalent in tolls avoided, for a total of $210,000.00 per voyage in less than perfect conditions. Subtract from this $100,000.00 for insurance, together with additional sums for satellite-based ice reconnaissance and the services of an ice navigator for the Canadian portion, and the potential saving over Suez might well come down to $100,000.00. For this kind of money, and when other safer ways are available, an intercontinental shipping firm would not sail a route whose appeal varies from year to year and, indeed, from day to day during a summer-months shipping season.

Nor would the outlook for a challenge improve if owners went to the expense of acquiring or leasing modestly ice-strengthened ships, such as those capable of navigation in Baltic or St. Lawrence first-year ice. These ships cannot handle the multi-year ice that appears with increasing frequency in the Canadian Archipelago. Strengthening up to lower-level Arctic class would certainly increase safety in ice and the length of the shipping season. But, either way, the year-round amortization cost would blow away any advantage gained from summer-months use of strengthened ships on the Northwest Passage route as compared with Suez and, for that matter, Panama.

This is by no means to say that reputable shipping companies will never present a challenge to Canadian Arctic sovereignty. Certainly they could. But the challenge would stem from strategic concerns having little to do with the economics of shipping in conventional vessels, and much to do with year-round navigation using heavily ice-strengthened bulk carriers. To be precise about this, we have long lived with a potential American need to run oil and natural gas through Canadian Arctic waters on a regular basis. The danger here continues to owe nothing to thinning ice except insofar as Canadian exaggeration about easing conditions might now contribute to a US misperception of the Northwest Passage as ice-free.

In sum, there is no good business reason for a reputable firm to mount the single-ship challenge that Huebert is telling us to expect. On the contrary, the crisis-soon scenario is without motivated actors where major companies are concerned. Nor does the prospect of a credible challenge to Canadian Arctic sovereignty fare any better when rogue firms are pressed into service.

In the particular context of interest to us here, the word "rogue" suggests an unstrengthened ship run by a fly-by-night owner who does at least two of

the following four things: sails with no insurance; carries illicit cargo; operates without direct reference to competing commercial carriers; and is ready, if necessary, to abandon or otherwise lose his vessel. The rogue would not be primarily concerned to save money by taking the shorter route between Asia and Europe. Rather, he would want, above all, to avoid detection in moving illegal migrants or, for that matter, surface-to-air missiles for use to the south. In no way, therefore, would he take sides on the matter of permission to enter Canadian waters, as called for by Huebert's crisis scenario. Quite the contrary, he would be sure not to ask permission. Nor, in a post-9/11 environment, would the US or any other maritime power "find itself required," as Huebert puts it, to defend the rights of the owner and oppose Canada in the event it enforced the law on a rogue in Canadian Arctic waters.

If we are still determined to find ships that might, before long, force a Canada-US Arctic waters crisis, we could turn from rogues to what might be called occasional vessels. To begin, we might consider tramp ships: more or less properly insured, carrying fair cargo like grain or wood, plying no set route, sometimes prepared to take risks, but not to lose the ship in ice. As matters stand, such vessels move in and out of Canadian waters without transiting the Passage, for example in sailing between Europe and the port of Churchill on Hudson Bay. Not strengthened against ice, they find that the length of the shipping season is effectively determined for them by the insurance companies. How anyone of these ships might also find it economic to head further north on an intercontinental voyage that brought Washington and Ottawa to a clash over the Canadian claim is hard to imagine. Let us nevertheless assume that the necessary ice-condition and business requirements are met and a tramp ship does come through the Archipelago. Even then, a key feature of the crisis-soon scenario fails to apply.

Huebert envisages a "take-sides" situation in which the shipowner has to decide whether or not to request Canadian permission to enter. If permission is requested, he says, the US will be forced to challenge the company (whatever that may mean) and presumably Canada, or otherwise abandon its position on the Passage and set an unfortunate precedent for freedom of navigation elsewhere.[32] However, permission or not is not an issue for commercial ships, because Canada does *not* require them to ask for permission to enter its Arctic waters.[33] The "take-sides" event that Huebert predicts is not on. Accordingly, the crisis-soon scenario for Canada and the US in the Northwest Passage must rely on the expectation that Washington would not challenge the company but, on the contrary, defend the rights of the company, even if it did not ask for permission to enter the Passage.[34]

As matters stand, the few ships that do transit the Northwest Passage are part of a slow and largely trouble-free increase in intercontinental navigation by what might be called non-cargo vessels. Tugs tow barges and drilling rigs between Atlantic and Pacific locations. Tourist ships appear in growing numbers. Marine scientific activity increases. As well, yachts and adventurers make their way as ice conditions permit. Activities like these have been going on for years without the US finding reason to mount a defence of ship owners' interests. Indeed, Canada denied entry to a German scientific research ship, the *Polar Stern*, without Washington or, for that matter, the European Union finding it necessary to challenge Canadian sovereignty. Nevertheless, preconditions could arise for Canadian law-enforcement activity – for example in obliging an inadequately strengthened cruise ship to turn back under the terms of the *Arctic Waters Pollution Prevention Act*. The US, for its part, could object to the Canadian action. But in such a way that would bring on the definitive clash that Huebert anticipates? I cannot envisage a confrontation here any better than I can in looking at tramp, rogue, and top-of-the line shipping operations. The crisis-soon scenario shares the larger unreality of the thinning-ice thesis. This brings me to Huebert's distinction between perception and reality in the Northwest Passage.

To the degree that ice-condition and shipping-related data contradict the sovereignty-on-thinning-ice argument, other considerations must be advanced if we are to keep worrying. Huebert[35] states that, "... the precise date the Northwest Passage becomes ice free for an extended period in the summer is not as important as the perception that it is becoming ice free and shipping is possible." Similarly, "It does not matter ... whether or not the Northwest Passage or the Northern Sea Route is truly ready for shipping. All that will be required is that someone believes that it is the case. That is why the 'thinning ice' thesis must be taken seriously." If this were true, the thinning-ice advocate would actually be helping to bring on a sovereignty crisis by minimizing uncertainty and exaggerating the extent to which an ice-free Northwest Passage will soon be of interest to shipping firms. Be that as it may, key Canadian government agencies are not persuaded by the thinning-ice thesis. Nor are officials in the US Ice Service, Navy, and other departments. Whereas the Office of Naval Research co-sponsored a 2001 meeting and report on "Naval Operations in an Ice-Free Arctic," a follow-on meeting in 2005 will consider naval operations in an "ice-reduced" Arctic. If the US Navy is steering clear of the misperception that the Passage is becoming truly ready for naval operations and commercial shipping, we may expect the American Government as a whole to steer clear. Canadians, rather than dwelling on a

similar misperception and its crisis-soon corollary, might well explore the opportunity for new Arctic North American security cooperation.[36]

Professor Huebert cited the American Ambassador in Ottawa to deny the potential for Canada-US collaboration on Arctic-waters issues. Mr. Cellucci, however, said some new and interesting things about Canadian Arctic sovereignty on a trip to Iqaluit in October 2004.[37] There he suggested in an interview that the Northwest Passage might better be left to Canada. Coming from an American ambassador, this was noteworthy. Cellucci reasoned that at a time when the US saw everything through the prism of terrorism, it could be safer with the Passage under Canadian control. This view he had communicated to Washington. "So, perhaps when this ... is brought to the table again we may have to take another look at this." Of course the Ambassador does not make the policy. Nonetheless, there is a signal here. It should be explored, and with it the potential for change in the US thinking about the Northwest Passage in an era of homeland security. It is collaboration, not the unfounded and overwrought expectation of a sovereignty crisis that ought to command our attention now, and in future dealings with the United States on the Arctic waters of North America. What I said about without-prejudice arrangements a couple of years back[38] still holds true and is hereby reaffirmed.

Conclusion

In my view the whole idea of sovereignty on thinning ice is a fallacy, and a pathetic one at that. We could well do without it. However, and here I must concede, not until an alternative is at hand. In truth, sovereignty is the first language of southern Canadians as they consider Arctic affairs. Say "Arctic" and "sovereignty," and an entire field of meaning is accessed without effort. Until we evolve and get used to a new idiom, the old vocabulary will be with us. Furthermore, it has to be recognized that Canadians' readiness to fixate on Arctic sovereignty, wrong-headed as it is, does serve us in our dealings with the US. That informed Americans know Canada would go ballistic in the event of a confrontation, much less a defeat, over the Northwest Passage is surely a factor for stability in the agree-to-disagree regime. Still, we could help ourselves by looking afresh at the idea of sovereignty to see whether, aside from its effects in Canadian-American relations, it might also be made to serve us better in the Canadian Arctic itself.

For most of us, if and when we happen to think about it, sovereignty amounts to the legitimate and exclusive right in law to control what goes on in a territorially delimited space. Accordingly, we set ourselves up to deal with what I call old-style legal sovereignty problems with old-style hardware.

But there is another and more political meaning to the idea of sovereignty. It highlights the capacity of the sovereign to choose freely and autonomously in exercising the legal right to exclusive jurisdiction.

For example, consider the potential for loss of sovereignty when, in the absence of any great increase in the volume of intercontinental shipping through the Passage, we are faced with the risk of foreign control over the shipment of Canadian hydrocarbons and hard minerals southwards from the Canadian Arctic. Any such shipping would, of course, be done in conformance with Canadian law. The ships would doubtless be operated by firms registered in Canada. Year-round resource transportation from the Canadian high Arctic by heavy icebreaking ships would, therefore, pose no challenge to sovereignty in the legal sense of the term. However, the capital required for resource extraction as well as transportation might well be substantially non-Canadian. The same could apply to the requisite technology, shipbuilding capacity, and operational expertise, all of which would have a cutting-edge quality. The less the Canadian content in such things, the more Canada's Arctic physical capabilities, appreciation of how to operate in its own space, sources of scientific and other intelligence, and ability to resist adverse local environmental and social consequences would all suffer. Possible net effect: reduced Canadian ability to determine what goes on in its Arctic waters and, on certain of its high Arctic islands as well. The sovereign would be reduced in the Arctic without anyone anywhere having made the slightest reference to title in international law. Carried to an extreme, this kind of thing could leave us with all but unchallenged title to a Canadian Arctic over which we had lost all effective control.

To the extent it is agreed that Arctic sovereignty in the legal sense is well in hand, political sovereignty and capacity building for choice are the real challenges of the coming years. If so, our needs today are transitional. In no way slighting preparedness to deal with direct foreign threats to exclusive jurisdiction, we should also be gathering new capacity to maximize the benefits, within Canada, of international collaboration into which we have entered voluntarily. We should also prepare to anticipate, avert, and minimize unwanted environmental and social effects of any resource- and shipping-related activity in the Archipelago. None of this can be well done in reactive fashion that is without a larger vision, ambition, and plan for what we wish to accomplish in the northernmost parts of our country.

One way of starting towards a vision may be to think of Canada as keeper of the Northwest Passage – keeper as distinct from loser, but also keeper in the sense of taking care of. Consistent with the need to make a transition from

one understanding of sovereignty to another, we might also begin to define the agenda for policy in the two interrelated domains of Canadian action as keeper. Now, however, is not the moment to open a discussion of Canadian priorities as keeper of the Passage – whether we need new icebreaking and remote sensing capability, greatly improved bathymetry (underwater depth charting), stepped-up scientific research in key problem areas, a larger Inuit representation in the Arctic workforce, or federal government insistence that Canadian Arctic resource transportation be done in Canadian-owned ships. Certainly fair game for comment by anyone who is interested, matters such as these are best ordered in a discussion in which all the interested parties have a direct say. That we have no such way of proceeding, and that we need one, are points on which Professor Huebert and I agree.

We should build a stronger capacity for collective choice in the Canadian Arctic. This we could do by establishing a new Arctic consultative process which allows all the principal players – federal government departments, territorial governments, above all that of Nunavut, and interested private-sector and civil-society actors – to thrash out a consensus on the priorities for action with little or no new money any time soon. Call it a consultative committee on the future of the Archipelago. Such a body would aim to create enduring coalitions in support of priority measures for stewardship and occupancy of the high Arctic Archipelago in its entirety. I say include the Government of Nunavut first of all because Inuit know the area best. They are constant in their attachment to it in ways that southerners cannot equal. In partnership with the Federal Government, they will insist on an exercise of control which is not remote but sensitive to local conditions, not agitated about a distant place but grounded in that place.

Pathetic fallacy is ordinarily a literary contrivance. An author employs it to achieve heightened emotion by mirroring a protagonist's inner state, usually one of turmoil, in surrounding nature. In Canada, we have the unusual phenomenon of a pathetic fallacy that is being lived. A number of us have unwittingly contrived to reinforce our inner state of agitation about the future of Canada as a distinct society by contemplating the effects of climate change on the Arctic, and on the Northwest Passage in particular. A pathetic fallacy of sovereignty on thinning ice does resonate quite nicely. People are not only persuaded, but also predisposed to go along with it. However, this kind of thing does not help us act coherently and consistently in the Arctic. We get nowhere treating our Arctic as a derivative of our relationship with the United States. Far better that we southerners move forward with Inuit, and with confidence in our ability to succeed together, in the high Arctic Archipelago.

Notes

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1 Rob Huebert, "Climate Change and Canadian Sovereignty in the Northwest Passage," *Isuma* 2/4 (Winter 2001-2002) 2(4):93. In a similar vein: "If it's handled correctly, you sit on an international strait, take a proactive stand, and profit nicely." Usha Lee McFarling, "Melting Ice, Winds of Change," *Los Angeles Times*, 19 January 2003.

2 Franklyn Griffiths, "The Shipping News: Canada's Arctic Sovereignty Not on Thinning Ice," *International Journal* 58/2 (Spring 2003): 200-222.

3 Rob Huebert, "The Shipping News Part II: How Canada's Arctic Sovereignty is on Thinning Ice," *International Journal* 58/3 (2003): 295-308; Franklyn Griffiths, "Is Canada's Arctic Sovereignty Threatened?" *Arctic Bulletin* (World Wildlife Fund) 1/4 (March 2004): 15-16; Rob Huebert, "The Coming Arctic Maritime Sovereignty Crisis," *Arctic Bulletin* 2/4 (July 2004): 22-24.

4 Huebert, "Climate Change and Canadian Sovereignty,"86.

5 Huebert, "Climate Change and Canadian Sovereignty," 91.

6 Huebert, "Climate Change and Canadian Sovereignty," 91.

7 Huebert, "Climate Change and Canadian Sovereignty," 91.

8 Huebert, "Climate Change and Canadian Sovereignty," 91, 94.

9 Huebert, "Shipping News Part II": 295-308.

10 Huebert, "Shipping News Part II," 298, 300-02, 305.

11 Huebert, "Shipping News Part II," 298.

12 Huebert, "Shipping News Part II," 308, 302, 305.

13 Huebert, "Shipping News Part II," 300. The principal reference here is to J.C. Comiso, "A Rapidly Declining Perennial Sea Ice Cover in the Arctic," *Geophysical Research Letters* 29/20 (2002): 17.1-17.4. Huebert might also, but does not, consult "Accounts from 19th-century Canadian Arctic Explorers' Logs Reflect Present Climate Conditions," *Eos* 84/40 (2003): 410-412.

14 Huebert, "Shipping News Part II," 300.

15 In Lancaster Sound, for instance, there has been a 76 percent increase in the seasonal coverage of multi-year ice during summer since 1971, albeit from very low levels to begin, as old ice that has lost salt drifts east and south through the Archipelago. John Falkingham et al, "Trends in Sea Ice in the Canadian Arctic." Paper presented at the 16th IAHR Symposium on Ice, Dunedin, New Zealand, 2-3 December 2002: 6-7. More generally, as young-ice cover is reduced, the way is opened for larger amounts of multi-year ice to drift into the Archipelago from the Western Arctic pack and Beaufort Sea.

16 Huebert, "Shipping News Part II," 302, 303.

17 Huebert, "Shipping News Part II," 303, 304.

18 Huebert, "Shipping News Part II," 304.

19 Huebert, "Shipping News Part II," 306.

20 Huebert, "Shipping News Part II," 306

21 Huebert, "Shipping News Part II," 307.

22 "Bearings: What's Happening to our Arctic Sea Ice?" *Nature Canada* 32/3 (Winter 2003-2004): 28-29.

23 Gordon Laird, "On Thin Ice," *This Magazine* 37/3 (November/December 2003): 32-37; Editorial, "Guarding the Arctic," *Toronto Star*, 5 April 2004; CBC, "Mapping More of the Northwest Passage Question of Canadian Sovereignty: Scientists," CBC News Online, 17 August 2004.

24 Arctic Council, *Arctic Climate Impact Assessment: Overview Report* (Cambridge: Cambridge University Press,

2004). This being the executive summary of a vast study published in 2005. See <http://amap.no.acia> for further detail.

25 Joe Friesen, "Arctic Melt may Open up Northwest Passage," *Globe & Mail*, 9 November 2004.

26 Huebert, "Coming Arctic Maritime Sovereignty Crisis," 23.

27 Huebert, "Coming Arctic Maritime Sovereignty Crisis," 24.

28 Huebert, "Coming Arctic Maritime Sovereignty Crisis," 24.

29 Huebert, "Coming Arctic Maritime Sovereignty Crisis," 24.

30 Huebert, "Climate Change and Canadian Sovereignty," 91; Huebert, "Shipping News Part II," 300.

31 Julius Strauss, "Polar Thaw Opens Arctic Sea Route," *Daily Telegraph*, 4 March 2004.

32 Huebert, "Coming Arctic Maritime Sovereignty Crisis," 24.

33 What we do require, at a minimum, is advance notification by any ship intending to arrive at a Canadian port, Arctic ports included. This requirement is laid out in section 221 of the new marine transportation security regulations, which implement the International Ship and Port Facility Code of the International Maritime Organization (IMO). *Canada Gazette* 138 Part II, 2 June 2004. As of November 2004, some Canadian government officials interpreted the new regulations to require mandatory prior notification by masters of all ships entering Canadian waters, whether or not they intend to land. Others regarded the IMO Code as an instrument intended for the regulation of ships arriving at ports. On this view, commercial vessels in direct transit through the Passage would be exempt from the requirement to provide prior notification. Meanwhile, the Canadian Coast Guard reports only three transits of the Northwest Passage by foreign vessels in the 2004 season – one by the Russian cruise ship Kapitan Khlebnikov, two by pleasure craft which took two years each to complete the voyage, and all three of which provided notification prior to entry. Canada's capacity for surveillance of its Arctic waterways is, however, such that a ship or ships refusing to give notification could have made the transit in 2004 without detection. Again, the problem here is one of enforcement, not sovereignty. On security grounds alone, it should quickly be set right.

34 Huebert, "Coming Arctic Maritime Sovereignty Crisis," 24.

35 Huebert, "Coming Arctic Maritime Sovereignty Crisis," 23-24.

36 Naval as well as commercial collaboration is briefly considered in Franklyn Griffiths, "New Illusions of a Northwest Passage," in *International Energy Policy, the Arctic and the Law of the Sea* eds. Myron H. Nordquist, John Norton Moore, and Alexander S. Skaridov (Dordrecht: Martinus Nijhoff, 2005): 303-9.

37 Canadian Press. "U.S. Protected by Canadian Control over Northwest Passage: Cellucci," 2004.

38 Franklyn Griffiths, "The Northwest Passage in Transit," *International Journal* (1999), 269-72.

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