

Lock, Stock, and ICEBERGS

*A History of Canada's Arctic Maritime
Sovereignty*

ADAM LAJEUNESSE



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Introduction

IN JANUARY 2006, only three days after winning a minority government, Stephen Harper held his first news conference as prime minister of Canada. The campaign had been a close-run affair, dominated by a series of important and controversial issues, from the country's fiscal imbalance and government corruption to abortion and the legalization of gay marriage. The new prime minister spent several minutes laying out his government's path forward on all these matters and then, after the final question was asked, went out of his way to raise one more subject: Arctic sovereignty.

Only a day earlier, the American ambassador to Canada, David Wilkins, had made what must have seemed to him an innocuous comment while taking part in a discussion forum at Western University. Asked about the Arctic waters, the ambassador repeated a long-standing American position: that the United States does not recognize Canadian sovereignty over the Northwest Passage, since it considers that waterway to be an international strait.¹ Harper's response to this simple reiteration was a powerful shot across the bow. To conclude the press conference, he publicly chastised Wilkins, declaring that "it is the Canadian people we get our mandate from, not the ambassador of the United States." He then declared to the assembled media that his government would do everything necessary to defend its sovereignty.²

After a particularly divisive election, the question of Arctic sovereignty must have seemed an attractive note for the prime minister to end on. It is, and has long been, an issue on which Canadians

of all stripes are in almost universal agreement.³ Any challenge to the notion that Canada's sovereignty over the Arctic – both the lands and the waters – is anything but absolute has historically provoked popular indignation and a vigorous government response. Brian Mulroney epitomized this mindset in 1987 when he told Ronald Reagan in no uncertain terms that the Northwest Passage was Canadian, “lock, stock and icebergs.”⁴

This is also official government policy. In 1985, Canada drew straight baselines around the Arctic Archipelago, firmly establishing the waters lying to landward of those lines as historic internal waters. The 2010 *Statement on Canada's Arctic Policy* declares that this “sovereignty is long-standing, well-established and based on historic title, founded in part on the presence of Inuit and other indigenous peoples since time immemorial.”⁵ Comments made by Foreign Affairs officials have even traced this historic title back to the 1880 British imperial order-in-council that transferred the entire region to Canada.⁶

For more than a hundred years, Canadian leaders have displayed the same passion and certainty demonstrated by Prime Minister Harper in defending that sovereignty, dismissing outright any suggestion that the Arctic might be anything but Canadian. Even from the country's infancy, the isolation and unique physical nature of the frozen waters surrounding and running through the Arctic Islands led many Canadians to view them in a different light from similar bodies elsewhere, and to presume a sense of ownership that, at the time, was not supported by law or custom. That attitude never changed. What has changed over the course of the past century is how the country's sovereignty has been perceived, justified, and exercised by successive governments.

The notion that every Canadian government since the late nineteenth century considered the Arctic maritime realm to be historic internal Canadian waters is simplistic and false. In fact, Canadian policy has been anything but static; it has changed and evolved as governments and decision makers continually reassessed what the country's relationship to its Arctic waters should or could be. This

book is a history of that policy and its evolution, from the transfer of the Arctic region from British sovereignty in 1880 to the legislation of the full extent of Canadian historic internal waters in 1985.

Although seemingly a simple task on the surface, defining the nature and extent of the country's Arctic sovereignty has traditionally raised a series of difficult questions, the most basic of which was also the most important: what exactly are the "Arctic waters"? Simply defining that term was, for many decades, a real challenge for Canadian policy makers because on that definition hung the extent and nature of Canada's sovereignty. Today, the Canadian government defines *its* Arctic waters as those lying within straight baselines drawn in 1985. Those waters, which flow through and connect the Arctic Archipelago, constitute an enormous part of the national territory. They make up the fabled Northwest Passage (or passages, for there are in fact many) and serve as the highways that connect the country's 36,563 Arctic islands to one another and to the rest of the world. Yet this has not always been the definition of "Arctic waters." At times, Canadian politicians have cast their sovereignty net far wider. In so doing, various governments have toyed with the notion of counting sea ice as land, of claiming sovereignty over the massive ice islands that float through the Arctic Ocean, or of enclosing the vast frozen "sector" of the Arctic Ocean (which extends north from the mainland to the North Pole) as Canadian territory.

Intimately tied to the definition of this claim was the legal foundation of Canadian sovereignty. Simply put, on what basis could or should Canada claim these waters as its own? Under traditional international law, the extent of a nation's maritime sovereignty is determined differently from its sovereignty over land. A country cannot plant a flag in a strait and claim it as its own, nor can it effectively occupy a channel or a gulf. Until at least the 1950s, there was scant precedent in international law to support the sort of sovereignty that most Canadian leaders assumed to be theirs almost by default. As the law of the sea evolved and new precedents were introduced, the country's justification for its sovereignty evolved

as well. Three international law of the sea conferences and decades of bilateral talks with the United States led Canada to develop and solidify the defensible legal position that it maintains today.

Finally, if the Arctic waters were Canadian, then the question arose of what the government was prepared to do about it. What sort of official claim was Canada prepared to advance, and how was it prepared to push its interests on the international stage? During the twentieth century, the country faced a series of sovereignty crises related to the Arctic waters. How it dealt with these, both diplomatically and physically, is an important element in understanding the evolution of the country's policy. These are the central questions that shaped the development of Canada's Arctic maritime sovereignty and defined how the nation has come to consider the Arctic waters its property.

How and why Canadian maritime policy evolved remains contentious. Even more so is the question of how effective that policy actually was in balancing sovereignty with other concerns, such as security and Canada's relations with its allies. Historian Shelagh Grant has long dominated a school of thought that considers Canada's quest to secure its northern sovereignty as having been hindered and endangered by its need to cooperate with the United States on Arctic security projects.⁷ This perspective has been challenged by other scholars, such as Elizabeth Elliot-Meisel and David Bercuson, who have chosen to emphasize the cooperative aspect of that bilateral relationship and the practical defence requirements of the early Cold War.⁸ Historians have largely agreed, however, with the notion that the development of Arctic policy was undertaken in what Prime Minister Louis St. Laurent once described as "a fit of absence of mind."⁹ Jack Granatstein used this phrase as the title for a 1976 article on the subject, in which he argued that Canada's Arctic policy has always been a confusing shambles of contradiction and uncertainty.¹⁰ Franklyn Griffiths likewise defined Canadian policy as reactive and lacking any overriding sense of purpose, while John Honderich went even further, dubbing this indecision a form of "national schizophrenia."¹¹

The most significant and disruptive reinterpretation has come in recent years from historians P. Whitney Lackenbauer and Peter Kikkert, who have laid out a convincing case that the development of Canadian policy was neither schizophrenic nor disastrous but rather a careful, deliberate, and ultimately successful program. According to this interpretation, the ambiguity of Canadian policy did not represent a “fit of absence of mind.” Instead, it was a necessary and well thought out precaution, designed to avoid a direct challenge from the United States to Canada’s ownership over waters that Washington considered international.¹² Apart from being politically embarrassing, such a challenge would have endangered the very sovereignty that any declaration would have been meant to secure.¹³ By avoiding this scenario through careful diplomacy during the 1950s and 1960s, the Department of External Affairs laid the groundwork for the functional approach employed during the 1970s, and finally a declaration of complete sovereignty (and not simply jurisdiction) over all the waters of the Arctic Archipelago in 1985.¹⁴

In fact, the truth of the matter lies somewhere between these competing schools of thought. This is not to say that each is partially correct but rather, paradoxically, that both are simultaneously correct. In the early 1950s, the Canadian government began to work on determining the extent and foundation of the maritime sovereignty it had long taken for granted. From that point until the early 1970s, Canadian policy existed in something like two separate worlds. Behind the scenes, the bureaucracy worked to develop a relatively clear and defensible legal and political position, and this position was maintained and refined over the decades. As Lackenbauer and Kikkert have rightly suggested, the intention of the Department of External Affairs and the other bodies involved in policy development was to quietly strengthen Canada’s claim while avoiding any potentially dangerous political or legal complications.

Unfortunately, this caution prevented the internal process from informing government pronouncements. In public, the consistent and rational approach developed by the bureaucracy was rarely

articulated and Canadian sovereignty was instead characterized by confusion, contradiction, and ambiguity. For decades, political statements were uncoordinated and ill-informed, and were more commonly issued to convey nationalistic credentials than to outline any responsible position. Ultimately, this scattered public approach was counterproductive and undid much of what External Affairs had endeavoured to accomplish in the first place. Although maintaining an ambiguous public policy prevented an outright challenge to Canada's position, it also delayed the establishment of the desired precedent of Canadian ownership. Thus, while Canadian policy may not have been developed in a fit of absence of mind, it was certainly expressed in one.

A similar divide characterized the manner in which successive Canadian governments handled the issue of sovereignty with foreign governments. In public, Canadian politicians maintained an unyielding position, accepting no compromise on the subject in order to be seen as defending and preserving Canadian sovereignty. In this respect, Prime Minister Harper's statements on the subject in January 2006 differ little from the positions taken by his predecessors for decades. In private, however, discussions with foreign governments (particularly the United States) were characterized by compromise, practical accommodation, and cooperation. When the more aggressive politics of Canadian nationalism threatened to impede important joint defence or scientific ventures, the inconvenient issue of sovereignty was, for the most part, quietly pushed aside.

This is not to say that Canada ever truly surrendered on the question of sovereignty; External Affairs was simply forced to demonstrate some delicate footwork while finessing the issue. In the 1950s and 1960s, Canada was fortunate to have the United States as its partner in continental defence because the US government was equally interested in avoiding an awkward conflict with its ally. Washington knew that a direct challenge to Canadian sovereignty would damage that valuable relationship and saw no need to risk continental defence for a bit of tundra and ice. For decades, State Department officials and US military officers joined

their Canadian counterparts in waltzing around the issue of sovereignty, always seeking to maintain their legal position but without stepping on the other's toes by forcing the issue. Even into the 1970s and 1980s, after the US government had begun to publicly dispute Canadian sovereignty, military operations were never used as a means of pressing that challenge home or embarrassing the Canadian government.

Throughout the Cold War, joint defence operations, resupply missions, and submarine voyages in the northern waters demonstrated how close this partnership really was. It was a working relationship that survived Cold War tensions, legal disputes, and political clashes, and coexisted surprisingly well with the sometimes aggressive positions staked out by Canadian and American politicians in public. This friendly relationship with the United States gave Canada not only breathing room to develop its Arctic policy but also the ability to get away with its confused jumble of Arctic policy pronouncements for decades.

That policy evolved in three distinct phases. From the late nineteenth century to the early 1950s, Canadian governments assumed ownership and exercised some minimal control over the northern waters. On the ground (or ice), the Royal Canadian Mounted Police (RCMP) and other officials asserted Canadian authority by regulating foreign whaling activity and sometimes treating the Northwest Passage as national terrain. Since activity in the region was negligible and there were no foreign challenges on the horizon, no one ever made a concerted effort to understand the extent or the basis of that control, and there seemed little need to worry about such technical details. This lack of clarity was magnified by the degree of uncertainty still surrounding Canadian sovereignty over the islands of the Arctic Archipelago – areas that drew far more government attention than the waters surrounding them.

The second phase began early in the Cold War. As American military traffic in the Arctic increased, the government bureaucracy, led by the Department of External Affairs and the interdepartmental Advisory Committee on Northern Development (ACND), was forced to begin clarifying the country's position in the North. By

the mid-1950s, a rough outline of a coherent policy had formed. This involved a claim to the waters of the Arctic Archipelago and abandonment of many of the more exaggerated claims to the Arctic Ocean. Yet this policy was never publicized and no government felt confident enough to make any sort of detailed or coherent public statement, or even to coordinate the myriad of often contradictory political statements being made by both the Liberal and Conservative Parties. As Lackenbauer and Kikkert have noted, much of the reason for this reluctance to advance a clear policy stemmed from External Affairs' concern over the potential American reaction. Yet, although this concern was always an important one, it was never more than half of the problem.

No government ever examined the question of Arctic sovereignty in isolation. From the late 1940s onward, the matter was always considered within the context of the country's broader maritime claims. Within this framework, the Arctic waters were only of tertiary importance, despite any political rhetoric to the contrary. Until 1969, the principal maritime concern of every government was the question of Canadian sovereignty over its Atlantic waters, primarily the Gulf of St. Lawrence and the Bay of Fundy, as well as its international fishing rights outside of Canada's territorial limits. Of secondary concern were the unresolved maritime issues in the Pacific: Hecate Strait, Dixon Entrance, and Queen Charlotte Sound. The status of the Arctic waters was not the country's top priority; in fact, it was dead last.

The importance of this relationship between the Arctic waters and Canada's other maritime claims to the south has been hinted at by other authors, but it has never been fully appreciated.¹⁵ This connection was not peripheral; rather, it was one of the most important elements in determining the country's approach to the Arctic. Throughout the 1950s and 1960s, Canada was engaged in bilateral negotiations with the United States while playing an active role in two United Nations law of the sea conferences. The country's goals were to secure a wider territorial sea, enhanced fisheries jurisdiction, and the right to enclose those "special maritime areas" off the East and West Coasts as internal Canadian waters. Throughout

this period, Canadian negotiators faced an uphill battle in achieving any sort of international consensus or in winning concessions from the United States and other countries. Thus, no government was anxious to introduce the controversial question of the Arctic waters into an already delicate and complex diplomatic process.

The final stage in this evolution was ushered in by the 1969 voyage of the icebreaking supertanker SS *Manhattan*. The *Manhattan*'s transit was an experimental voyage designed to test the feasibility of shipping Alaskan oil through the Northwest Passage. Even though it was never intended as a challenge to Canadian sovereignty, Washington's public insistence that the passage constituted an international strait showed just how tenuous Canada's position really was. That the *Manhattan* might be the first of many similar transits seemed a real possibility. External Affairs had long taken comfort in the Arctic's relative isolation, and used that dearth of activity to justify postponing any serious action on the issue. With the Northwest Passage apparently on the verge of becoming a major commercial shipping route, that equation quickly changed. An upsurge of popular nationalism and a new sense of urgency quickly catapulted the Arctic waters from the least to the most important of the government's maritime priorities.

The voyage of the *Manhattan* was therefore a decisive pivot in the evolution of maritime policy, and beginning in the early 1970s the government approached the issue very differently. Lackenbauer and Kikkert point to the 1950s and 1960s as the time when quiet diplomacy began to lay the foundation for Canada's Arctic sovereignty. In fact, that process truly began only after the *Manhattan*. It was in the 1970s that Canadian bureaucrats, politicians, and diplomats finally established a clear public position on sovereignty – namely, that the waters of the Arctic Archipelago were historic internal Canadian waters. Statements of this nature did not constitute a direct claim per se, since they were not backed by legislation, but they did represent official policy and began the necessary harmonization of that policy within the government and across party lines. These statements also represented a consistent program of public communication. No longer would one minister contradict

on Tuesday what another had said on Monday, and no longer would the basis of Canadian sovereignty depend on the changeable preferences of whichever party was in power at the time. Public statements were now clear on what the country claimed and what the basis for that claim was.

This public clarity was the most important outcome of the *Manhattan* crisis, far more important than the Arctic Waters Pollution Prevention Act or the military assets sent north to demonstrate Canadian control in the wake of the crisis. With Arctic sovereignty as the country's principal maritime objective, Canada spent the 1970s engaged in quiet diplomacy in an effort to secure enhanced functional control over the region while laying the diplomatic groundwork for an official, public delineation of the waters as internal. By the early 1980s, the legal, political, and diplomatic foundation was established, and External Affairs was, for the first time, pressing for a straightforward, official declaration of sovereignty. Although this declaration had to wait for another sovereignty crisis – this time precipitated by the 1985 voyage of the US Coast Guard icebreaker *Polar Sea* – this voyage served only to force the implementation of a decision that had already been made.

By drawing straight baselines around the Arctic Archipelago in 1985, the Canadian government was not technically claiming sovereignty but rather delineating the historic internal waters that it had, theoretically, always claimed. Nevertheless, this was the first time that Canada had ever legislated any sort of official position on ownership over those waters.¹⁶ This act therefore represented the culmination of over a century of different Canadian claims to the polar seas, making official what had for so long been informal, ambiguous, and uncertain. The response was anticlimactic. As had long been feared, the United States and much of the international community did not recognize the validity of this action. Yet there was no aggressive response, no overt challenge, and no American vessels were sent into the disputed waters to hammer home that rejection. Four decades of close military and scientific cooperation in the Arctic, a strong bilateral relationship, and the changing

strategic circumstances of the late Cold War meant that Canada was able to stake its claim largely without incident.

Canadian sovereignty remains contentious, however. To Canadians, the waters of the Arctic Archipelago are historic internal waters – essentially as Canadian as the Ottawa River running below the Parliament buildings. The United States, on the other hand, continues to view the Northwest Passage as an international strait open to transit by any vessel, with Canadian powers limited to certain jurisdictional rights provided for under the commonly accepted law of the sea.¹⁷ Other states have been more circumspect in their positions, but some have indicated a preference for the American position over the Canadian.¹⁸ The history of Canada's quest to secure its Arctic sovereignty is therefore unfinished, and will remain so until either the international community can be brought to accept the Canadian position or Ottawa is forced to accept the existence of the right of transit passage through its waters. Crucial to understanding the complex nature of Arctic sovereignty, and even the future history of the region, is an understanding of its past. *Lock, Stock, and Icebergs* is a history of the development of that sovereignty, from the earliest police patrols in Hudson Bay to the deployment of nuclear submarines nearly a century later. At its core, this book is an attempt to answer the crucial questions that have long defined this evolution: What is it that Canada has tried to claim? On what basis could it make that claim? Most importantly, what was Canada prepared to do about it?