



**ARCTIC OCEAN MEETING OF EXPERTS**

Dunsmuir Lodge  
Sidney, British Columbia

**February 23-25, 2006**



## CONTENTS

### **Preface**

### **Introduction**

### **Session Summaries**

#### **Part I Northwest Passage: Law and Policy**

##### *Preliminaries:*

- A Projected Ice Movements in the Passage
- B Projected Commercial Activity
- C Enforcement Capabilities
- D Operational Realities

##### *Northwest Passage and Sovereignty*

- A Canada's Position
- B Regulatory Issues
- C Sovereignty and Transit

##### *The Long and Broad View*

#### **Part II Continental Shelf Issues**

#### **Part III Territorial and Boundary Delineation**

#### **Part IV Concluding Reflections**

### **Conclusion**

- Appendix A Workshop Program
- Appendix B Participants



## **Preface**

Canadians have long had a political sensitivity respecting the “northern frontier.” In recent years, this sensitivity has been heightened by concerns respecting the possible effects of global warming on Arctic ice and the potential consequence of vessel traffic through the Northwest Passage. The public concerns are usually expressed in terms of sovereignty or possible loss of sovereignty.

The Canadian Arctic is best seen as having three components: the islands of the North; the waters that link the islands; and the ocean area adjacent to the Canadian islands in the Arctic Ocean basin. With the exception of Hans Island, there is no sovereignty question regarding the islands and land in Canada’s North and no possibility of Canada “losing” sovereignty over the islands. Respecting the ocean area in the Arctic Ocean basin adjacent to the Canadian islands, the sovereignty of Canada is the same as for the ocean areas adjacent to British Columbia and Atlantic Canada (territorial sea, 200-n. mile zone, and where possible sovereign rights over the continental shelf beyond 200-n. miles). It is the waters between Canada’s Arctic islands, in the Northwest Passage, where there is disagreement between Canada and the United States regarding the use of these waters. Thus the importance of the authority of Canada to control absolutely foreign vessel passage coupled with a need to consider vessel management systems. These issues are intimately tied to ice conditions (and hence to the possible impacts of global warming) and the interests and historic practices of the local population (primarily, the Inuit).

The “Arctic Ocean Meeting of Experts” sponsored by the Department of Foreign Affairs and International Trade looked at these and other issues regarding the Canadian Arctic. The meeting was by invitation only and followed the Chatham House (not for attribution) Rule. The Maritime Awards Society of Canada (MASC) was the facilitator.

The “animateur” for the Meeting, in particular in demonstrating the need for the meeting and conceiving its design, was Dr. Douglas M. Johnston, Professor Emeritus of the Faculty of Law at the University of Victoria and board member of MASC. Due to health reasons, however, he was not able to attend the Meeting. Two months following the Meeting, Professor Johnston passed away.

Professor Johnston had a long engagement with Arctic issues dating back to the late 1960s. The focus of his five decades of Arctic work was on coherent management of the environment, resources and activities in the Arctic, rather than on the more legalistic and political concerns of national sovereignty.

MASC has a similar interest and focus regarding Arctic matters and, if called upon, is willing and able to play again a facilitator role for discussions on these matters.



## **Introduction**

The purpose of the Meeting of Experts was to bring together government officials from the various departments of the Government of Canada with responsibilities for Arctic matters and a handful of knowledgeable academics and other interested members of the public to engage in a “not for attribution” discussion of the key issues that are confronting Canada as a result of the changing environment of the Arctic resulting from global warming trends.

The Workshop was structured so that topics were introduced by pre-selected speakers with conversation to flow thereafter, under the Chatham House Rules. The goal was not to reach a set of conclusions or agree upon a plan of action. Any report of the Meeting was to be by way of summary. It is to be noted that a number of invited participants were unable to attend and this included individuals from governments, other organizations and the public. Of regret was that no one from Inuit communities or the government of Nunavut was able to accept invitations to participate.



## SESSION SUMMARIES

### Part I Northwest Passage: Law and Policy

#### Preliminaries

##### *A. Projected ice movements in the passage*

A review of the extensive scientific work on ice movements emphasized the very great uncertainty underlying any attempt to forecast future conditions. Small changes in temperature are certainly happening and anticipated to continue as global warming persists. These small increases in global average temperatures are much larger in Arctic regions.

Nevertheless, the recent Arctic Impact Climate Assessment suggests that even by the year 2080, winter ice patterns similar to now are likely to persist. Much greater disparity surrounds estimates of likely summer ice patterns.

Wind patterns are likely to be of greater relevance than temperature when it comes to prospects for shipping. With thicker ice pressed up against Canadian shores, shipping prospects are lessened. Current global circulation models do not have enough resolution to offer useful estimates on this point. Moreover, a great deal of dispute attends model predictions of ice thickness.



### *B. Projected Commercial Activity*

It is very expensive to operate vessels in the Arctic. Both uncertainty and variability pose challenges. Commercial viability hinges on *not* having to rely on icebreakers. If variability is too great, there is no economic or commercial appeal to operations there. Industry's goal is to survive—operators are not there for the challenge or the fun (as increasing tourism or scientific-expedition activity might be).

In general the safety record is good, and overall reliability is excellent. Underwriters need better education on this point.

It is important to distinguish the question of transit, a through route, from the question of destination traffic or North-South traffic. It seems clear that North-South traffic in general will increase, perhaps very significantly, particularly as one anticipates the impacts of future developments in pipeline or rail facilities and northern economic development more generally. But it is unclear—perhaps unlikely—that there will be significant increase in traffic along a Northwest Passage 'highway' in any near term, despite the publicity and enthusiasm for an 'ice-free' Northwest Passage. Variability remains a critical feature.

When the traffic is to and from a Canadian destination, port state controls clearly apply directly.

For traffic from Europe to Asia, it may well be that the Northern Sea Route will allow more reliable commercial shipping, but Russian regulations make such transit very expensive. At present there is a requirement to request permission to use the Northern Sea Route, and there are significant pilotage challenges



### *C. Enforcement Capabilities*

The region is a busy place, with 150,000 high latitude air flights every year, in addition to increasing vessel traffic.

Traditional military threats in the Arctic are giving way to concern for non-traditional security threats. One response has been the development of Joint Task Force North (JTFN), with Immediate Response Units (IRU) deploying a menu of capabilities. A strategy of relying on extensive networking and communications to stream or filter targets to identify high attention items enables distributing resources in light of anticipated needs for response.

There is interest from many other countries in the region. China has oceanographers working in the Arctic. The International Polar Year (IPY) 2007 - 2008 will generate much greater interest. An informative review of some aspects of US interests can be found in a final report from a 2001 symposium on naval operations in what is characterized as “navigable but ice-infested” waters, accessible at

<http://www.natice.noaa.gov/icefree/FinalArcticReport.pdf> .

### *D. Operational Realities*

The Canadian Coast Guard is the largest Special Operating Agency in Canada, with a very wide range of activities in the Arctic. It carries a ‘whole of government’ responsibility, with a requirement to support all Government of Canada maritime activities, including sovereignty and maritime security functions. The CCG is a civilian operation without any direct





enforcement responsibilities or capabilities. The RCMP are there to carry out enforcement and CCG undertakes routine armed contingency patrols with the RCMP.

In 2005, there were 86 voyages by 67 vessels, including 7 transits of the NWP (with 100 such transits recorded in history to date), not including small vessel traffic or sub-surface traffic. Recreational traffic and adventure tourism is increasing rapidly, with corresponding expansion of CCG responsibilities for monitoring, search and rescue operations.

It needs to be emphasized that this region is the world's harshest and most unforgiving marine operating environment (with the possible exception of the Antarctic) and an extraordinarily sensitive and vulnerable ecosystem. It is not becoming 'ice-free' but the navigation seasoning is lengthening somewhat, with increased variability. Navigation remains a very serious business, with any failures carrying significant human and environmental consequences.

Looking ahead, global maritime economics, more than the ice situation, will be the prime driver determining future Arctic marine traffic. Regardless of changing ice, Canada will need autonomous, survivable, ice-capable, multi-mission sovereignty and logistical platforms (popularly known as icebreakers). The security situation is evolving in the direction of increasing roles and increasing needs, including with respect to Marine Domain Awareness (MDA) functions.



## Northwest Passage and Legal Sovereignty

### *A. Canada's Legal Position*

This session provided a background on the international legal situation regarding the Northwest Passage. The government of Canada maintains that all of the waters between the islands of the Arctic Archipelago are internal waters such that Canada has absolute authority and jurisdiction respecting all activity (including the passage of vessels) in those waters and that the waters in question include the Northwest Passage.

It is the position of the United States that the Northwest Passage is a "strait used for international navigation" such that a right of transit passage exists for vessels in the Passage. The United States has protested Canada's assertion that the waters of the Canadian Arctic Archipelago are historic internal waters and has protested the 1985 establishment by Canada of baselines around the Archipelago which delineate the claimed historic waters.

Reference was made to the 1988 Canada-US Arctic Cooperation Agreement whereby US coast guard vessels seek authorization from Canada before using the Passage, but the Agreement makes it clear that such actions are "without prejudice" to the legal position of both Canada and the United States. The Agreement maintains the legal status quo while allowing for important cooperation between the two States.



The international legal framework of the dispute was noted: Canada's historic waters claim; the validity of the 1985 Canadian baselines; the possibility of innocent passage rights existing even in the case that the baselines are valid; whether the Northwest Passage is (or may become) an international strait; and the relationship between internal waters and international straits.

Canada's goal is clear – to ensure that its laws and actions (including enforcement) are consistent with the position that all of the waters within Canada's Arctic Archipelago are internal waters. This does not preclude use of the waters for navigation by foreign flag vessels, rather it requires a Canadian involvement with all foreign vessels seeking to navigate (or engaged in navigating) the Northwest Passage.

### *B. Regulatory Issues*

The "Canadian clause" in UNCLOS and the Arctic Waters Pollution Prevention Act (AWPPA) claimed sovereignty for one purpose only—environmental protection—not the whole bundle of rights that constitutes a claim for sovereignty. The "Canadian clause" permits states with ice-covered waters to create and enforce more stringent regulation, because of the vulnerability of such regions. The AWPPA pursues "functional sovereignty", focused on environmental regulation. 'Zero discharge' regulations apply in the Antarctic and Arctic.

To enforce compliance, there is a need to know of activities (surveillance) and a capacity to do something about it (enforcement capabilities).



### *C. Sovereignty and Transit*

The NWP will be sufficiently free of ice at some point, and some foreign vessels will wish to use it; the eventuality of an international shipping route of some sort at some time is a contingency that must be addressed. The issue is regulation and enforcement for environmental protection and security. Given the fragile nature of the Arctic, and the environmental and social stresses of climate change and economic development, it would be desirable to have the strongest, most unequivocal and incontestable legal regime possible for such purposes.

Canadian domestic law already provides the strongest available legal regime, but is hindered by two factors: insufficient investment in surveillance and enforcement capacity, and opposition to Canada's claim that the NWP constitutes Canadian internal waters. Such opposition may fall away in this new environment of enhanced security concerns if Canada demonstrates credible capacity to police its northern waters effectively.

The situation in the Canadian archipelago, including the NWP, is distinguishable from other areas claimed or recognized as international straits. Canada is not considering closing the NWP to international shipping, but is simply seeking to maximize the protection of the environment and assurances of continental security. The full application of Canadian law offers a win-win situation for all governments and corporations that wish to act responsibly.



It is no longer useful to frame issues around the NWP as a sovereignty problem; the questions have to do with enforcement and stewardship, environmental and social. It is crucial to bring Nunavut and Inuit communities into the discussion. It is also crucial to pursue a continental approach toward the strengthening of the security perimeter, recognizing that the US is unlikely to accept arguments with respect to aboriginal rights or environmental agreements in the Arctic as strong reasons for recognizing the application of Canadian domestic law in the North West Passage.

#### The Long and Broad View

A pro-active, long-term national policy for the Northwest Passage is needed.

The development of a visionary NWP policy could be a task for a working group to be formed as part of the Oceans Task Group under Phase II of the Oceans Action Plan, or indeed could flow from a participatory planning process resulting from designation of the NWP as a Large Ocean Management Area under the *Oceans Act*.

Canada should also promote development of more extensive regional sea arrangements. The Arctic Council has been useful and positive in many ways. There would be potential benefits of an extended ocean-related agreement that



reaches to regional standard-setting, for example with respect to seabed activities, land-based sources of pollution, atmospheric pollution and ocean dumping. On the other hand, the task would not be easy; it is unclear what would be the best model or framework to adopt, or the scope of issues covered (marine environmental protection, fisheries and living resources, sustainable development, indigenous rights). Such work might be linked both to Canada's own Arctic strategies and International Polar Year projects related to polar sea governance.

## **Part II                      Continental Shelf Issues**

This panel involved a discussion of Canada's continental shelf area beyond 200nm in the Arctic Ocean. Pursuant to the Law of the Sea Convention, Canada is obligated to submit information on the outer limits of its continental shelf area beyond 200nm to the Commission on the Limits of the Continental Shelf. Within the Convention, there is a complex formula to guide a State in determining the outer limit of its shelf. The formula involves criteria such as the foot-of-the-slope, sedimentary thicknesses, isobath determinations and distinctions between oceanic and submarine ridges.

Regarding the Arctic Ocean, the Russian Federation has made a submission to the Commission and the Commission has indicated the desirability of a re-submission by the Russian Federation. The information on the Russian Federation's outer limit submission is relevant to Canada since it may impinge on possible Canadian claims to



continental shelf areas in the Arctic Ocean; how the Russians deal with the underwater ridges of the Arctic may be instructive for Canada. While not directly related to the Arctic Ocean, other States (Brazil, Australia and Ireland) have made submissions of information to the Commission of materials regarding the outer limit of their continental shelves.

The scientific and technical data seen as necessary for a Canadian submission to the Commission regarding its Arctic Ocean outer limit are not yet available. The government of Canada is undertaking work to acquire as much of the necessary data as possible. Cooperation with Denmark/Greenland in data gathering is underway. The assessment is that Canada may proceed with submitting information respecting the outer limits of the shelf for the Atlantic coast area to the Commission and make its submission regarding the Arctic Ocean area at a later point.

The role of the Commission was discussed. The Commission's role is to assist States to apply the formula to determine the outer limit of the continental shelf. The Commission, unlike a court, has no authority to impose its views on a State. Moreover, it is only the outer limit that is involved. Canada's exclusive international authority over the continental shelf beyond 200nm is unaffected by the work of the Commission except as regards the delineation of the outer limit.



### **Part III Territorial and Boundary Delineation Issues**

The sole land territorial issue in Canada's Arctic concerns "ownership" of Hans Island. Despite the high profile given this insignificant island in recent months, little was said in the workshop about the dispute between Canada and Denmark. Two things were noted: (a) because of the existing maritime boundary agreement between Canada and Denmark in the area around Hans Island, resolving the ownership of Hans Island would make little difference regarding ocean space; and (b) Canada and Denmark are in discussions regarding the dispute and these discussions will not affect the good relations between the two States.

In the Lincoln Sea there are overlapping claims to maritime space between Canada and Denmark. The principal issue in dispute is the Canadian protest of several decades ago regarding baselines constructed by Denmark and used in the determination of an equidistance line that is the outer limit of Denmark's claimed EEZ. Canada's claimed EEZ in this area is based on an equidistance line constructed not taking into account the Danish baselines. The area in overlap is not that great and the dispute, while not on the agenda between Canada and Denmark, is not seen as being a hindrance to bilateral cooperation.





In the Beaufort Sea there are overlapping claims to maritime space between Canada and the United States. The claim by the United States is based on an equidistance line, whereas the Canadian claim is a straight-line extension of the Yukon-Alaska land boundary. On a regular basis the United States issues permits for hydrocarbon exploration in the overlapping area and Canada protests the permits. The possible presence of hydrocarbon resources in the overlapping area has long made this dispute of special interest. However, the Beaufort dispute is no more active today than in the past and no direct discussions are taking place between the two states. The dispute is being “managed” in that it is not causing significant difficulties between the states. However, the Beaufort Sea is an area that is figuring more prominently in Canada-US relations and the maritime boundary dispute needs to be watched.

#### **Part IV Concluding Reflections**

A brief summation of the Workshop was provided which touched on the usefulness of the endeavour, the progress that was seen as being necessary, and some of the steps that might be taken in pursuing such progress.



**MARITIME AWARDS SOCIETY OF CANADA**

**Arctic Ocean Meeting of Experts**

**Dunsmuir Lodge  
Sidney, British Columbia**

**February 23-25, 2006**

**Reception:**

**Thursday, February 23, 7:00 to 9:00 - Hospitality Suite**

**Day One (Feb. 24) Panorama Room**

**I THE NORTHWEST PASSAGE: LAW-AND-POLICY ISSUES**

8:30 a.m. Welcome (Rod Dobell)  
Introduction (Louis Simard)  
A few matters of protocol and logistics  
(Peter Chance)

8:40 a.m. **Preliminary Considerations**

**A. Projected Ice Movements in the  
Passage**

(chair: Rod Dobell)

(presenter: Humfrey Melling)

9:00 a.m. Discussion

- 9:15 a.m.      **B. Projected Commercial Activity**  
(chair: Rod Dobell)  
(lead speakers: David Snyder and John Murphy)  
- Arctic shipping industry  
- other commercial interests
- 9:50 a.m.      Discussion
- 10:20 a.m.      Break
- 10:40 a.m.      **C. Enforcement Capacities**  
(chair: Ken Summers)  
(lead speaker: Lt. Col. Drew Artus)
- 11:10 a.m.      Discussion
- 11:20 noon      **D. Operational Realities**  
(chair: Ken Summers)  
(lead speaker: Gary Sidock)
- 11:50 p.m.      Discussion
- 12:15 p.m.      Lunch
- 1:30 p.m. **The Northwest Passage and Legal Sovereignty**
- A. Canada's Legal Position**  
(chair: Louis Simard)  
(lead speakers: Ted McDorman and Donat  
Pharand)  
                 - internal waters  
                 - closing lines  
                 - consented transit  
                 - the challenges
- 2:10 p.m.      Discussion

2:25 p.m.

## **B. Regulatory Issues**

(chair: Roger Kerans)

(lead speakers: Rob Huebert and Victor Santos-Pedro)

- optional v. mandatory
- destination v. transit navigation
- the special case of non-commercial vessels
- environmental regulatory regime

3:00 p.m.

Discussion

3:15 p.m.

Break

3: 30 p.m.

## **C. Sovereignty and Transit in the Passage**

(chair: Don McRae)

(lead speakers: Michael Byers and Suzanne Lalonde)

Some basic policy questions

- e.g.
- is “sovereignty” (in some sense) the fundamental issue?
    - just how politically controversial (e.g. in the State Department and the US Senate) are Canada’s Arctic baselines today?
    - should Canada’s existing transit regulations be made mandatory?
    - what kind of enforcement mechanism would be necessary to make an expanded regulatory regime effective?
    - what special role would the Territories have in the maintenance of such a regime?
    - what would be the international implications of such a regime?
    - what contingency strategy should the Canadian government have in place for

an emergency (e.g., denial of US access to Saudi Arabian oil supplies)?  
- what kind of national debate in Canada should be expected in an emergency situation of that kind?

4:15 p.m. Commentator (Frank Griffiths)

4:30 p.m. Discussion

4:45 p.m. **The Long and Broad View**

(lead speakers: David VanderZwaag and Ted McDorman)

- circumpolar governance challenges and opportunities
- global approaches to addressing regional concerns
- environmental stresses
- global approaches to addressing regional concerns
- PSSAs and other “remedies”
- Canadian interests and goals

5:15 p.m. Discussion

5:45 p.m. Adjournment

7:00 p.m. Dinner

## Day Two (Feb. 25) Arbutus Room

### **II CONTINENTAL SHELF ISSUES**

8:30 a.m. (chair: Frank Griffiths)  
(lead speakers: Louis Simard, Ron McNab  
and Ted McDorman)

- A. Current Research
- B. The Submission Process
- C. Legal Issues (Canada-Russia)

9:00 a.m. Discussion

9:45 a.m. Break

### **III TERRITORIAL AND BOUNDARY DELINEATION ISSUES**

10:00 a.m. (chair: Rob Huebert)  
(lead speakers: Louis Simard and Don McRae)

- A. Hans Island
- B. Lincoln Sea
- C. Beaufort Sea

10:20 a.m. Discussion

10:45 a.m. **Final Reflections** (chair: Louis Simard)

General Discussion

11:30 a.m. Adjournment



**ARCTIC OCEAN MEETING OF EXPERTS**

Dunsmuir Lodge  
Sidney, British Columbia

**February 23-25, 2006**

**Participants:**

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University of British Columbia

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University of Toronto

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**Secretariat**

Chance, Commander Peter (Retired)  
Founding President and Member of MASC Board

Johnston, Judith

**Observers**

Lt (Navy) Lorraine Sammut  
Flag Lt. to Rear Admiral Roger Girouard  
Justin Nankivell (student)  
Kerry-Lynn Nankivell (student)  
Nathan Nankivell (student)  
Barbara Hardy (student)