



**BORDER FLOWS: A Century of the Canadian-American Water Relationship**  
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## Contesting the Northwest Passage: Four Far-North Narratives

ANDREA CHARRON

Is the Northwest Passage of the Arctic an international strait or historic internal waters? A transnational economic throughway or one country's sovereign territory? The diplomatic and environmental history of the Northwest Passage (NWP) is, in large part, a history of struggles over the answers to these questions. When and how Canadian and U.S. governments have clarified or obscured these questions provides an important window into different narratives about the passage.

While many modern narratives of territorial diplomacy begin with sovereignty over boundaries, transition through struggles to exploit resources, and culminate in environmental protection, the narrative trajectory of the NWP reverses the latter two: it begins with sovereignty over boundaries (a refrain that permeates discussions even today), continues through the Cold War with defence strategies, and eventually transitions to environmental concerns. However, the narrative does not end with environmental concerns; it culminates in the modern era with strategies to exploit natural resources (albeit an effort at responsible development in conjunction with Indigenous peoples).

Through these narratives of the Far North, and the Northwest Passage specifically, I will illustrate the fundamental rethinking of the NWP for Canada—from rugged Canadian periphery to a vulnerable, resource-rich

site of potential for a modern, transnational economy. Changing conceptions of the passage, moreover, reveal both similarities and differences between northern and southern Canadian-American water borders. This chapter is divided into four parts representing the different historical time periods that correspond to different ideas about the NWP. In the nineteenth century until World War I, Canada focused on establishing its claim to the Arctic. World War II and the Cold War period saw a shift in focus to defence of the Arctic from Japanese and Soviet threats. The 1970s and 1980s to the end of Cold War witnessed perceived and new challenges for the NWP from the United States and from pollution. Finally, from the 1990s to the current day, the NWP is referenced in terms of resource development and exploitation. In turn, Canadian characterizations of the NWP have shifted from describing the passage as a frontier to a boundary to an asset that must be protected to one that is instrumental in achieving resource development. This does not represent an end point to discussions. Rather, it is another marker of continually changing ideas about the Arctic and the NWP.

## I. A Nineteenth-Century Frontier: The Initial Claim

Canadians today assume that the NWP has always comprised the notorious Arctic channels linking the Davis Strait to the Beaufort Sea. Legendary stories of doomed missions headed by Munk<sup>1</sup> and Franklin<sup>2</sup> in search of a shorter route to the Far East continue to capture the imaginations of many armchair explorers and perpetuate the idea of the passage as an ice-infested labyrinth to be conquered. Most histories of the NWP begin with the fact that the Hudson's Bay Company owned Rupert's Land, a massive territory that included much of the Canadian prairies, northern Ontario and northern Quebec, as well as the Arctic, including the NWP.<sup>3</sup> Its 1670 charter made the Hudson's Bay Company the "true and absolute Lordes and Proprietors" of Rupert's Land, which was exploited for fur. HBC (or "Here before Christ," as it is vaingloriously referenced, negating the existence of Indigenous peoples who had lived and hunted the land for thousands of years) managed this territory. The potential to govern Rupert's Land in the cause of nation building was unrealized until its sale to Canada in 1869. Having acquired nearly four million square kilometres of land, the young

country was more concerned with linking the East of Canada to the territories of the West than it was with exploring the frozen nether region of the Arctic. As a result, the Arctic NWP was largely ignored in favour of a more generalized “northwest passage” in the form of rail, river, and portage links that fulfilled the promise of westward exploration and travel to the Pacific Ocean, linking the new Dominion.<sup>4</sup>

When Britain transferred the remaining Arctic islands—those not captured under HBC’s charter—to Canada in 1880, the Canadian government’s chief concern was to establish ownership and control over the islands. Several states, including the United States, had designs on the islands and surrounding waters, and the fact that the precise boundaries of the territory were vague did not aid Canada’s claim.<sup>5</sup> At this time, Canada had no navy or coastguard and little administrative presence in the Far North. The NWP continued to be neglected and ignored by Canadian writers and historians—indeed, by most of Canada, for whom the “passage” was still “the northwest passage by land.”<sup>6</sup> Canada needed fertile grounds, not ice-infested waters.

Southern Canadians, therefore, did not actually “discover” the NWP; rather, it was the British and the Norwegians. Between 1576 and 1578, Martin Frobisher (an English privateer or pirate, depending on your point of view) made three voyages to the Canadian Arctic. With each trip he brought back ore and other samples to Britain, attracting the attention and assistance of Queen Elizabeth I and of the Royal Navy. With his 1903–1906 voyage, Roald Amundsen became the first European to traverse the NWP from the Atlantic to the Pacific. The Norwegian’s success was largely due to his cerebral approach, which included studying past expeditions, especially Franklin’s, and learning from their mistakes. Importantly, he was also receptive to learning from the Inuit, who taught him invaluable survival skills that would benefit him and future crews on other polar missions (both North and South).

These and other gripping stories of exploration brought northern adventure and tragedy into popular European culture of the era. For southern Canadians, however, the NWP remained primarily a source of fanciful stories. Meanwhile, the region’s actual inhabitants—mainly Inuit but also Cree and Dene peoples—were badly misrepresented in the media. Robert J. Flaherty’s 1922 black-and-white film about “Nanook of the North” and the 1940s Canadian comic book heroine “Nelvana of the Northern Lights”

provided a glimpse of the Canadian Arctic, but it was a distinctly distorted version.<sup>7</sup> The Canadian Arctic was portrayed as an unspoiled frontier. The achievements of the Inuit as entrepreneurs, artists, and shrewd tacticians were downplayed. Instead, they were portrayed as primitive and simple-minded. Worse still, many Indigenous peoples faced persecution and displacement by the Canadian federal government.<sup>8</sup>

American ideas about the NWP were similar to those of Canadians. U.S. Secretary of State William H. Seward did not purchase his “folly” (Alaska) from the Russians until 1867. Therefore, early American Arctic naval explorations, like the 1850–1851 First Grinnell Expedition (a rescue mission in search of Franklin financed by Henry Grinnell, a wealthy U.S. businessman), were far from the consciousness of the American public, except for those wishing to learn more about the details of the Franklin crew’s demise.<sup>9</sup> The territory mapped by these expeditions, for example, was largely ignored. Later U.S. expeditions by Kane, Hayes, Hall (all in search of Franklin), Peary, and MacMillan (explorers of the 1900s in search of the North Pole) fascinated the U.S. public, but also confirmed their suspicion that the Arctic was a desolate, inhospitable environment that made for incredible, if gruesome, adventures, but not much more.

Some of Canada’s northern land boundaries were still not clearly defined by 1900, which had implications for Canadian Arctic maritime boundaries. Canada was slow to contest the Alaska boundary, for example, even though British Columbia maps of the border conflicted with American maps. The Yukon Gold Rush (1897 to 1900s) immediately awakened Canadians to the possible consequences of such territorial disputes. The two countries attempted to resolve the cartographic standoff through the Alaskan Boundary Tribunal of 1903, consisting of three American representatives, a British judge, and two Canadians. The name “Alaska boundary dispute” is somewhat misleading, as this disagreement involved only the panhandle—that is, the part of the boundary that does not follow the 141st meridian west. Both sides agreed that the 141st marked the land boundary north of the panhandle. Because neither Canada nor the United Kingdom had protested the 1825 Anglo-Russian Treaty that defined the boundaries between Russian, American, and British claims in the Pacific Northwest, the United States was on firm legal ground and could invoke the principle of uncontested occupation. Hence, Canadian demands that the boundaries be redrawn fell on deaf ears. The compromise boundary line was

literally the middle ground between American and Canadian positions (at least in the estimation of the United States, since the Canadians were convinced that the boundary disadvantaged them). Significantly, Canada and the United States still disagree on whether or not the maritime boundary ought to extend out from the land into the sea. As a result, there remains, to this day, a fundamental disagreement between the United States and Canada over maritime boundaries in the Beaufort Sea.<sup>10</sup>

In the late nineteenth century, American whalers presented the main “challenge” to Canada’s control of the NWP through their use of Canada’s northern waterways to bring alcohol and other goods into the country without paying duty. This caused a public backlash, including a warning published in an 1891 issue of the *Canada Gazette* to foreign traders about their import responsibilities.<sup>11</sup> With no ports or customs houses in the Arctic in the late 1890s, however, Canadian law was not enforceable—an unacceptable situation for the Canadian government. To combat smuggling and reassert Canadian sovereignty in the North, Canada’s Laurier government initiated a police presence (first the Northwest Mounted Police and later the Royal Canadian Mounted Police [RCMP]) followed by marine expeditions (for example, the *Neptune* [1903–1904] and later the *Arctic* [1904–1911]).<sup>12</sup> Although northern security was never a top concern, especially after the outbreak of World War I, the Canadian government now had a continuous program of patrolling the Arctic NWP by the RCMP by ship and later by the Canadian Forces via air patrols. Thus, in the early days of Canadian history, Prime Minister Louis St. Laurent’s description of the governance of the North as having been performed in “a fit of absence of mind”<sup>13</sup> was probably accurate; the focus was on delineating the land boundaries, followed by establishing a presence in the region. Charting the NWP and solidifying maritime boundaries were still to come.

## II. World War II and the Cold War: A Boundary to Control and Damn the Consequences

With new, bona fide military threats to both the United States and Canada, including World War II, the focus of the Canadian and U.S. governments vis-à-vis the Arctic shifted from establishing legal title to defending North America. Rather than discussing sovereignty, the United States and

Canada focused on defence strategies—the ice-infested Arctic and NWP were used as bulwarks. While letting lie discussions about the legal title of the islands of Canada’s Arctic Archipelago, the Canadian government knew that the marine boundaries and the status of the NWP would need to be solidified someday. For the time being, however, there were far greater concerns.

Japan’s 1941 attack on Pearl Harbor and 1942 occupation of the Alaskan Islands of Attu and Kiska demonstrated the need for stronger domestic defence systems for both the United States and Canada. The long, undefended North was the focus of much of this attention. Both countries operated critical facilities in the region throughout the war, including weather stations, airbases, and the famous Alaska Highway.<sup>14</sup> In the decade after World War II, a new “polar passion” gripped the Canadian and U.S. governments as a different threat emerged in the form of the Soviet Union. The two allies launched unprecedented military and civilian operations, cooperating to defend the North against threats from Soviet long-range bombers, paratroopers, even potential naval invasions via various polar routes—including the NWP.<sup>15</sup> Despite the working alliance, the Canadian ambassador to Washington (and, later, prime minister of Canada) Lester Bowles “Mike” Pearson, warned that Canada must enunciate its claim to the Arctic clearly and unequivocally as questions remained concerning the status of northern boundaries. In a 1946 *Foreign Affairs* article, Pearson noted that “a large part of the world’s total Arctic area is Canadian. One should know exactly what this part comprises. It includes not only Canada’s northern mainland but the islands and frozen sea north of the mainland between the meridians of its east and west boundaries, extending to the North Pole.”<sup>16</sup> This was especially important given the number of U.S. personnel operating in the Canadian North.<sup>17</sup> Pearson’s plea was noted but not acted upon; Canadian attention was elsewhere, fixed squarely on launching the new United Nations, rebuilding Europe, and keeping a wary eye on the Soviet Union.

For much of the Cold War, the Arctic remained a geographic barrier between the Soviet Union and the United States, which were separated by less than one hundred kilometres in the Arctic Ocean. This was a time of increased cooperation between Canada and the United States; the two countries worked to align their respective Arctic policies with their mutual defence interests. This cooperation took the form of projects such as

the Joint Arctic Weather Stations (JAWS),<sup>18</sup> Distant Early Warning (DEW) Line (a series of radar sites), and the North American Air (later Aerospace) Defense Command (NORAD). The NWP was primarily a gateway to the strategically important North American Arctic. Over time, however, Canadians grew weary of the sovereignty threat posed by American involvement in the Canadian Arctic. Now, two threats loomed in the minds of Canadians: the Soviet Union and the United States.

The latter threat appeared in August 1960 with the Atlantic-to-Pacific transit of the U.S. nuclear submarine USS *Seadragon* through Canadian northern waterways. This underwater exploration via the NWP became the catalyst for renewed attention to the exact nature of Canada's maritime Arctic boundaries—especially the NWP. Months of planning went into the *Seadragon* operation. The U.S. military sought Canadian government approval of its plan to traverse the NWP en route from Baffin Bay through the Arctic Basin and Bering Strait to the Pacific Ocean. That the United States had notified Canadian authorities suggests it was keenly aware of Canadian sensitivity over the NWP. To further alleviate concerns, the United States invited the Canadian naval attaché, Commodore O.C.S. Robertson, on the *Seadragon* voyage because of his extensive polar experience.<sup>19</sup> The internal Canadian analysis below is telling, as it highlights the concern of the Canadian government vis-à-vis U.S. activities in Canada's Arctic and the impact of those activities on Canada's view on its legal position of its Arctic maritime boundaries. Every U.S. activity in Canada's North was analyzed through the lens of whether it was a boon or a bust to Canada's position:

This [U.S.] request will greatly strengthen our claim to the waters of the Canadian Archipelago as Internal Waters. It is recommended, therefore, that advantage be taken of this development and that the request be granted in accordance with the Canada–United States agreed clearance procedure for visits by public vessels between Canada and the United States by a reply being sent on a service to service basis.<sup>20</sup>

During the Cold War, the Arctic and the NWP were regions to be protected against military threats and foreign invasions, but little thought was given to solidifying the exact maritime boundaries and/or the environmental



damage caused by this “protection.” For example, the DEW Line radar sites, the majority of which were located on Canadian soil, were notorious pollution dumps; empty oil drums, truck batteries, and chemicals like PCBs, lead, mercury, and antifreeze, not to mention spilled diesel fuel, littered the landscape. There was a decidedly cavalier attitude about the extent of the contamination, with no consideration of the environmental consequences to the land—that is, until the pollution threat seemed to originate from U.S. commercial interests.

### III. 1970–1990: A Region to Protect Environmentally

With few Canadian regulations and/or government statements in place to govern the NWP, and given the heated background discussions that would lead to the UN Convention on the Law of the Sea (UNCLOS), the 1969 and 1970 transits of a modified U.S. supertanker—the *Manhattan*, owned by the American company Humble Oil (part of Exxon)—took on added significance, colouring both the Canadian and the American view of the NWP that persists today. At the heart of the binational imbroglio are different ideas about how to categorize the NWP: the United States thinks of it as Canadian but also as an international strait linking one body of high seas to another, to be used for international navigation. Canada, in contrast, views the NWP as representing “historic, internal waters” and therefore being under the complete control of Canada with no automatic right of navigation. Both arguments had received support in cases adjudicated by the International Court of Justice.<sup>21</sup> In the U.S. view, vessel passage cannot be unduly hindered by the adjacent coastal state. In Canada’s view, the NWP is under the absolute jurisdiction of Canada due to the historic usage of the passage by the Inuit and the importance of the waters that serve to link the Arctic islands to Canada; therefore, vessels may be detained, seized, or inspected as required by it, the coastal state.<sup>22</sup> As a result, when Humble Oil approached the Canadian government with a plan to use the NWP and, specifically, to pilot the oil tanker *Manhattan* through it to test this shipping route, the governments had differing control expectations.

The truly gripping story of the *Manhattan* transits is often lost in the controversy that followed.<sup>23</sup> The largest vessel of its time, it was cut in two

to be retrofitted with a new icebreaking bow, enormous propeller, and other modifications for its Arctic voyages. Scientists and engineers from around the world vied for an opportunity to be part of this historic undertaking. Humble Oil had discovered large oil reserves off the Alaskan North Slope and needed a fast and efficient transport system for shipping the oil to the southern U.S. market. Oil pipelines were a possibility, but an oil tanker had the advantage of variability of destination and economy not offered by a fixed pipeline. The voyages, from Chester, Pennsylvania, to the eastern coast of Greenland to Prudhoe Bay in Alaska via the NWP and then returning to New York Harbor, were billed as feasibility studies. Filled with ballast water (to simulate oil), and greeted by reporters, scientists, engineers, and well-wishers, the *Manhattan's* maiden Arctic voyage was the media event of the day. Rather than asking the Canadian government for permission, which would add credibility to Canada's characterization of the NWP, Humble Oil sought the same sort of concurrence granted the USS *Seadragon* without formally asking permission to transit the NWP. The *Manhattan's* route would stay outside of Canada's three nautical mile (nmi) territorial sea limit while transiting the NWP.<sup>24</sup> For the United States, therefore, the *Manhattan* and its American icebreaker chaperone would sail in the high seas corridor of the NWP, not, therefore, requiring authorization.<sup>25</sup> According to U. Alexis Johnson (then U.S. under secretary of state for political affairs), conceding to Canada's position by formally asking for permission to transit the NWP would give up "worldwide passage, the right of innocent passage, particularly through other archipelagos such as South East Asia, the Philippines [and others] all over the world."<sup>26</sup> Such concessions were unthinkable from a national-interest perspective. The Canadian government reiterated that it considered the waters of the NWP as Canadian internal waters, making a point of giving the United States express permission to transit the passage.<sup>27</sup> A U.S. Coast Guard vessel, the *Northwind*, and the Canadian Coast Guard icebreaker *John A. MacDonald* guided the *Manhattan* through the ice-infested NWP waters. Whereas entrepreneurs saw possibility, the Canadian government was decidedly cautious. Mitchell Sharp, then Canadian secretary of state for external affairs, commented:

This is not a time for wide-ranging assertions of Canadian sovereignty in the Arctic made without regard to the international political and legal considerations [and] there is no necessity for

us to make sweeping assertions to reinforce our position. That might satisfy our ego but would not add a whit to the international acceptability of our position.<sup>28</sup>

Rather, a collaborative approach with the United States was thought to demonstrate that Canada did indeed have adequate control of the NWP—hence the decision to dispatch the CCGS *John A. MacDonal*d to accompany the *Manhattan* on its voyage and provide ice services information. The more immediate concern for the Canadian government was protection of the pristine Arctic environment.<sup>29</sup> The Canadian public, however, took a much more hostile stance toward the transit of the *Manhattan*. Canadian newspapers portrayed the voyage as U.S. exploitation of the Canadian NWP, feeding the suspicions of Canadians who feared becoming too dependent on their superpower neighbour for defence and security.<sup>30</sup> Therefore, any possible suggestion or act that challenged Canadian control of the NWP (whether officially sanctioned or not) was now met with strong public reaction.<sup>31</sup>

The Canadian prime minister of the day, Pierre Trudeau, a lawyer by profession and an avid sportsman (canoeing and underwater diving, in particular), recognized that an oil spill in the Arctic would be a financial and environmental disaster for Canada. The grounding of the U.S. supertanker *Torrey Canyon* on Pollard's Rock, off the southwest coast of Great Britain, in 1967 was a vivid reminder of the dangers of tanker shipping. Her entire cargo of crude oil (more than thirty million gallons) washed up onto the shores of England and France.

To protect Canada's North and its NWP, Trudeau adopted the Arctic Waters Pollution Prevention Act (AWPPA) in 1970, five days after the second voyage of the *Manhattan* had commenced and four days after the United States had announced construction of the *Polar Sea* (which was at that time the most powerful nonnuclear icebreaker in the world).<sup>32</sup> What was unique about the AWPPA was that the standards it established for vessels operating in the Canadian Arctic went beyond those ordinarily permitted a coastal state. The AWPPA (Bill C-202) created a 100 nmi pollution-prevention zone in the Arctic—well beyond the 3 nmi territorial limit of the day. Canada exercised exclusive jurisdiction over this area, ensuring that economic development and, in particular, maritime shipping activities conformed to strict regulatory antipollution procedures. The



3.1 CCGS *John A. Macdonald* (right), 1969. Photo courtesy of U.S. Coast Guard Historian's Office.

accompanying regulations set standards for hull type and strength and for navigational and other safety equipment, not to mention standards for the pilot and crew.<sup>33</sup> Such boldness was just another in a series of controversial Canadian decisions that included extending its territorial sea limit to 12 nmi in 1970 and applying straight baselines in various parts of the Arctic in the late 1960s and 1970s until the archipelago was completely enclosed in 1985.<sup>34</sup> Waiting for the international community to negotiate, draft, and agree on international environmental regulations for Arctic waters (the position favoured by the United States) would take years and would not keep Canada's interests at the fore. However, recognizing the novel character of the AWPPA legislation, Canada preempted any court challenges by exempting the AWPPA from the compulsory jurisdiction of the International Court of Justice. The U.S. response was predictable:

The United States does not recognize any exercise of coastal state jurisdiction over our vessels on the high seas and thus does

not recognize the right of any state unilaterally to establish a territorial sea of more than three (nautical) miles or exercise more limited jurisdiction in any area beyond 12 (nautical) miles. We, therefore, regret the introduction of this legislation by the Canadian government, which in our view, constitutes a unilateral approach to a problem we believe should be resolved by cooperative international action.<sup>35</sup>

At the time, four of the circumpolar states (Iceland, Sweden, Norway, and most importantly, the Soviet Union) accepted the Canadian legislation, much to the displeasure of the United States, which had hoped to convene an international conference to discuss the new legislation.<sup>36</sup> The AWPPA was eventually adopted by the international community as Article 234—“Ice-Covered Areas”—in the UNCLOS, but it remains controversial.<sup>37</sup> The decision by the Canadian government in 2009 to extend the reach of the AWPPA to 200 nmi (in keeping with the exclusive economic zone limits) has not helped to quiet detractors of this legislation. Moreover, Canada recently made mandatory its previously voluntary requirement that all vessels over 300 gross tonnage and/or vessels carrying pollutants or dangerous goods (1) report to the Canadian Coast Guard their intention to enter and (2) receive permission prior to navigating the waters covered by the AWPPA—a decision contested by the United States.<sup>38</sup>

Aware of Canada’s sensitivities about its Arctic claims, the United States has let lie the dispute over the maritime boundary in the Beaufort Sea and does not actively fight against Canada’s AWPPA or directly challenge Canada’s categorization of the NWP. However, the United States was not prepared to ask permission for its Coast Guard vessel *Polar Sea* to navigate the NWP in 1985 to resupply the U.S. base in Thule, Greenland. To do so “would jeopardize the freedom of navigation essential for United States’ naval activities worldwide.”<sup>39</sup> Instead, the United States informed the Canadian Coast Guard of the planned voyage and received cooperation. Public sentiment and political capital, however, demanded a firm response from the Canadian government. Following the voyage of the *Polar Sea*, Secretary of State for External Affairs Joe Clark, in a stirring statement on Arctic sovereignty made in the House of Commons on September 10, 1985, announced six measures—including adoption of straight baselines around the Arctic archipelago, an increase of surveillance overflights of

the Canadian Arctic waters, and construction of a polar (read nuclear) icebreaker—to preserve “Canada’s sovereignty over land, sea, and ice.”<sup>40</sup> The icebreaker, however, was never funded. Instead, and largely attributed to the close relationship between then Prime Minister Brian Mulroney and President Ronald Reagan, a newly signed 1988 Arctic Cooperation Agreement with Canada allowed U.S. Coast Guard vessels access to the NWP (for scientific purposes) without prejudice to the legal policies of either state.<sup>41</sup> This means that the United States notifies Canada and asks for consent when its vessels use the passage, but its actions in this regard cannot be interpreted to mean the United States has accepted Canada’s broad legal position on the NWP.

Further, despite having contributed invaluable comments and scholarship to the meetings that led to the creation of the UNCLOS—the main body of law governing the Arctic Ocean (and all global oceans)—the United States failed to ratify it and Canada did so only in 2003. (Russia, in contrast, ratified UNCLOS in 1997.) By the end of the Cold War, therefore, Canada had enacted a series of regulations and acts to elaborate fully on and provide a precise definition of Canada’s historic title to the waters of the NWP. The world recognized the importance of protecting polar regions from environmental marine damage (via the AWPPA and, later, Article 234 of UNCLOS). The United States continued to disagree with the characterization of the NWP, but more pressing matters (including the integration of the new Russian Federation into the world) took precedence.

#### **IV. Present Day: Resources to Develop**

Fast forward to 2016 and the situation remains unchanged: a political impasse exists based on principles and precedents. The United States maintains that the NWP represents an international strait (although it has not pressed its point by defiantly sending ships through) and Canada maintains that it is historic internal waters. In fact, a Canadian Conservative member of Parliament suggested renaming the NWP the “Canadian Northwest Passage” to reinforce its position.<sup>42</sup> Pressure is mounting to “solve” this impasse—especially from European and Asian commercial vessel operators interested in shaving off thousands of miles from their routes to destinations like Tokyo and Rotterdam by taking the increasingly ice-free NWP shortcut versus the usual and more reliable, but longer, Suez

Canal route.<sup>43</sup> The realization of the “shortcut” came at a time when the world was becoming alarmed at the dramatic impact of climate change on the world’s environment and people. The poles suffer these effects most glaringly, and a clarion call by NGOs, world leaders, and citizens was made throughout the 1990s and 2000s to reverse the effects of climate change. Canada and the United States responded to such calls by joining the Arctic Environmental Protection Strategy (AEPS) in 1991—a declaration that sought to commit the eight Arctic states (the United States, Russia, Canada, Norway, Denmark, Iceland, Sweden, and Finland) to a joint action plan that would reverse pollution levels in the Arctic. The immediate concern was the damaged, fragile Arctic ecosystem that had been ravaged by decades of contamination and dumping of organic contaminants, oil, heavy metals, radioactive materials, and acidifying substances.<sup>44</sup>

The AEPS morphed into the Arctic Council in 1996 when Canada proposed that sustainable development be added to the agenda in addition to a focus on the environment. The creation of the Arctic Council has resulted in a marked, international shift away from the political and military categorization of the NWP to a focus on these twin goals: sustainable development and environmental protection. As a result of this shift in attention, the narrative of the NWP within Canada changed; the passage went from something to be claimed (early 1900s) to something to control and protect (Cold War) to something to develop responsibly (today). For Canada, this shift contributed to a subtle change from describing the NWP as integral to Canadian identity using emotional language (creating a rally-round-the-flag effect) to a more practical discussion, acknowledging that the NWP is geographically part of Canada and focusing on what is best for Canada and northern residents. What is helping to ensure the protection of the NWP and cement these shifts in describing it is the granting of Permanent Participant status to groups representing Indigenous peoples on the Arctic Council, as well soliciting input from northern residents and nongovernmental organizations in Arctic policy planning—a far cry from the days when only the Canadian federal government made the decisions.

Canada’s four overriding priorities vis-à-vis the passage and the Arctic today are (1) environmental protection against pollutants and spills, (2) safe Arctic shipping, (3) increasing and coordinating search and rescue capabilities, and (4) responsible Arctic resource development. These priorities are echoed in Canada’s Northern Strategy and Arctic Foreign



Policy<sup>45</sup>—although sovereignty is still one of the four “pillars”—and are also reflected in the U.S. Arctic Region Policy released in January 2009 as National Security Presidential Directive 66 (NSPD-66) and implemented in 2013 with a national strategy.<sup>46</sup> There is an air of optimism and anticipation concerning the possibilities that the NWP and the Arctic hold. The Arctic Council consults scientists, analysts, and Indigenous peoples from all eight Arctic states and decisions are made by consensus. The Arctic Council is responsible for drafting/negotiating a number of landmark documents including the Arctic Marine Shipping Assessment (2009), the Agreement on Cooperation in Aeronautical and Maritime Search and Rescue in the Arctic (2011), a new agreement on marine oil-pollution response (2013), and an Arctic Coast Guard Forum (2015).<sup>47</sup> These reports and agreements document the Arctic’s shift from an area of “low” to “high” politics and from “high” to “low” military security in a short period of time.

The United States insists it is no longer a reluctant Arctic nation. Indeed, the secretary of state’s participation at a number of Arctic Council meetings and the current U.S. chairmanship of the Arctic Council (2015–2017) represent the seriousness with which the United States and Canada view the Arctic, the NWP, and the potential of these areas.<sup>48</sup> Approximately 800,000 people live in Alaska and the Canadian Arctic. Both Canadian and American laws and policies require extensive consultation with the Aboriginal populations concerned before major projects can commence.<sup>49</sup> Increased activity on the NWP could potentially be a major boon for remote Indigenous communities which would benefit, financially, from these ventures. Northern Indigenous peoples are increasingly able to organize and articulate their demands, and Indigenous groups, like the Inuit Circumpolar Council, have created documents outlining their preferred terms of governance for the Arctic and NWP.<sup>50</sup> Furthermore, the Idle No More movement in Canada is helping to bring public attention to the rights of Indigenous peoples.<sup>51</sup> The fact remains, however, that no ports exist in Canada’s Arctic (the port in Churchill, Manitoba—technically not in the Arctic—has been closed by its American owners).<sup>52</sup> All goods brought in by sea must be transferred to barges and unloaded by tractors on beaches—an unbelievably dangerous, slow, unpredictable, and archaic means of resupply management. Even in Iqaluit, Nunavut’s capital, residents are dependent on a causeway built in the 1940s by the U.S. military. Vessels that run out of fuel need to be refuelled at sea given the absence of docking



facilities. Meanwhile, many other Arctic towns across the circumpolar world, especially Nordic ones, are thriving because of sizeable population bases, decent infrastructure, and predictable resupply operations—all factors that Canada lacks in its Arctic.

How does the northern Canadian-American water border differ from its southern counterparts? Obviously, there are material differences. The North provides an interesting duality in terms of water scarcity and abundance; water is abundant, but often in the form of ice. Ice is essential for the Inuit and the ecosystem of the Arctic but a challenge for commercial interests. Still, there are conceptual similarities between northern and southern border waters. As is the case in other places examined in this volume, water diplomacy vis-à-vis the NWP revolves around fundamental questions about what a water resource is and to whom it belongs. Perhaps even more than the southern border, the northern water border is steeped in history, culture, and the identity of northerners—a fact often ignored or overlooked by decision makers in the South. Furthermore, like many other continental border flows, northern border waters can lead to both conflict and cooperation, but the latter requires compromise and a reevaluation of the role the NWP will play.

The fundamental disagreement between the United States and Canada over the categorization of the NWP has existed for decades and remains a point of contention. Old ideas about the NWP—namely, to protect it from foreign shipping, indeed, from any non-Arctic state involvement—are also slow to die.<sup>53</sup> Like most U.S.-Canada disagreements, bilateral negotiations are the usual *modus operandi*. Canada and the United States continue to work together, via survey work on the continental shelves in the Arctic and Atlantic, for instance, and extensive military cooperation via NORAD. The insistence of the Canadian government that the NWP is “not predicted to become a viable, large-scale transit route in the near term” is easing pressure to make a final determination of the status of the passage.<sup>54</sup> The search for energy sources and a number of other projects, like the open pit Mary River mine project in the North, will require the NWP as a transportation route.<sup>55</sup> Regardless of the classification of the NWP, issues of neglect abound: basic navigational and hydrographic services are still lagging, and regulations governing shipping in polar regions are insufficient generally.<sup>56</sup> The difference now is that Canada and the United States are recognizing

these capability gaps openly and, through the Arctic Council, forging a more cooperative approach.

Canadian policy and the narrative of the NWP have shifted. Rather than focusing solely on staking a claim to the passage based on woolly adventure stories and ad hoc reactions to U.S. conduct there, the Canadian (and U.S.) emphasis is on responsible development—a phrase taken from one of three declarations issued by the Inuit Circumpolar Council.<sup>57</sup> This may mean that Canada has to consider the position of the United States and the European Union, which require the right of transit passage through international straits. Certain fundamental questions have yet to be asked: Does changing the categorization of the NWP affect its “Canadianess”? Or has Canada finally embraced the notion that it will best serve the NWP by protecting its marine species with the help of allies where it can, allowing commercial activity that benefits Indigenous and non-Indigenous Canadians, and making it the world standard in polar safety and navigability? If history is any guide, the collective narrative of the NWP remains a work in progress.

## Notes

- 1 In 1619, Jens Munk (Norwegian), under the auspices of King Christian VI (King of Denmark-Norway), set out to transit the NWP. Only Munk and two of his sixty-four crew survived the cold, famine, and scurvy. The Canadian island off of Baffin Island is now called Jens Munk Island.
- 2 Sir John Franklin (UK) fared worse than Munk. Franklin’s voyage began in 1845. All of his men died of similar causes when the expeditions of his two ships became ice-locked for multiple seasons. He is commemorated by several geographic features around the world, including Canada’s Franklin Strait in the Arctic.
- 3 Rupert’s Land was named for Prince Rupert, the cousin of the King of England, Charles I. Prince Rupert was granted the charter of the “Governor and Company of Adventurers of England trading into Hudson’s Bay”—the full name of the HBC.
- 4 For an excellent discussion, see Janice Cavell, “The True Northwest Passage: Explorers in Anglo-Canadian Nationalist Narratives,” *The Northern Review*, no. 32 (2010): 5–34.
- 5 Janice Cavell, “‘A Little More Latitude’: Explorers, Politicians, and Canadian Arctic Policy during the Laurier Era,” *Polar Record* 47, no. 243 (2011): 289–309, esp. 292–93.

- The concern was ownership and control of the islands more so than the waters, as they were considered unnavigable by all but a few, very hearty explorers.
- 6 See Cavell, "True Northwest Passage."
  - 7 Robert Flaherty's films can be seen on YouTube. See Samantha Arnold, "Nelvana of the North, Traditional Knowledge, and the Northern Dimension of Canadian Foreign Policy," *Canadian Foreign Policy Journal* 14, no. 2 (2011): 95–107. The character of Nelvana is described as a superheroine based on a mythological Inuit woman. She was dressed in a miniskirt to give her mass appeal. Nelvana followed in the tradition of the white princess or goddess governing over "primitive" or "lost" peoples, specifically the "Eskimos"—a pejorative and southern term for Inuit. See *Truth and Reconciliation Commission of Canada: Calls for Action* (Winnipeg: TRC, 2015), [http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls\\_to\\_Action\\_English2.pdf](http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf).
  - 8 Many Inuit children, beginning at the turn of the nineteenth century, were sent to day and residential schools and thus deprived of their family, language, and country food, and some were exposed to sexual and other forms of abuse. As well, eighty-seven Inuit from Inukjuak and Pond Inlet were "relocated" to Grise Fiord and Resolute Bay in the High Arctic in the 1950s. In March 1996, based on the recommendations of the Royal Commission on Aboriginal Peoples (1994) and other studies, the Canadian government paid a \$10 million trust on behalf of the High Arctic relocatees and finally, on August 18, 2010, apologized formally. See "Apology for the Inuit High Arctic Relocation," Indigenous and Northern Affairs Canada, last modified September 15, 2010, <http://www.aadnc-aandc.gc.ca/eng/1100100016115/1100100016116>. In 2015, the TRC, chaired by the Honourable Justice Murray Sinclair, released its public report about what happened in Indian residential schools and provided recommendations for building a new relationship between Aboriginal peoples and Canadians; see *TRC: Calls to Action*.
  - 9 On the Arctic in U.S. culture, see Michael F. Robinson, *The Coldest Crucible* (Chicago: University of Chicago Press, 2006).
  - 10 Canada and the United States disagree on where the Beaufort Sea should be divided by the Alaskan-Yukon border. Canada prefers that the boundary follow a straight line to the North Pole along 141st meridian west, while the United States would locate the boundary line perpendicular to the Alaskan coast, out to a distance of 200 nmi (370 km/230 mi), following a line of equidistance from the coast. This remains a managed dispute that will likely be solved via bilateral discussions.
  - 11 Cavell, "A Little More Latitude," 293.
  - 12 *Ibid.*, 296–99, 301–4.
  - 13 Canada, Parliament, House of Commons, *Debates*, 22nd Parl., 1st sess., December 8, 1954, p. 698. St. Laurent, prime minister of Canada from 1948 to 1957, made the remark on the occasion of the creation of the Department

- of Northern Affairs and Natural Resources.
- 14 Shelagh Grant, *Sovereignty or Security: Government Policy in the Canadian North (1936–1950)* (Vancouver: UBC Press, 1988).
  - 15 Kenneth C. Eyre, “Forty Years of Military Activity in the Canadian North, 1947–1987,” *Arctic* 40, no. 4 (1987): 294.
  - 16 Lester B. Pearson, “Canada Looks Down North,” *Foreign Affairs* 24 (July 1946): 638.
  - 17 At the height of World War II, over 33,000 American military and civilian personnel operated in Canada’s North. James Eayrs, *In Defence of Canada*, vol. 3, *Peacemaking and Deterrence* (Toronto: University of Toronto Press, 1972), 349.
  - 18 JAWS comprised five stations located in the Arctic and staffed by U.S. and Canadian personnel between 1946 and 1972. On a related research project by Whitney Lackenbauer, Peter Kikkert, and Daniel Heidt, see the Joint Arctic Weather Stations (JAWS) Project website, accessed August 9, 2016, <http://www.lackenbauer.ca/JAWS>.
  - 19 For a wonderful account of Commodore Robertson’s career in the Arctic, see Jason M. Delaney and Michael Whitby, “‘The Very Image of a Man of the Arctic’: Commodore O.C.S. Robertson,” *Canadian Naval Review* 4, no. 4 (2009): 25–29, <http://naval.review.cfps.dal.ca/archive/1928859-6427241/vol4num4art6.pdf>. Commodore Robertson was the former commanding officer of the HMSC *Labrador*—the Royal Canadian Navy’s first icebreaker, which transited the NWP—and he joined the crews of several U.S. missions in the Arctic.
  - 20 See Janice Cavell, ed., *Documents on Canadian External Relations, 1960*, vol. 27 (Ottawa: Foreign Affairs and International Trade Canada, 2007), documents 663–65.
  - 21 For a summary, see Andrea Charron, “The True North Stronger and Freer with Help,” in *Defence Requirements for Canada’s Arctic*, ed. Brian MacDonald (Ottawa: Conference of Defence Associations Institute, 2007): 24–35, [http://www.cdainstitute.ca/images/vimy\\_paper2.pdf](http://www.cdainstitute.ca/images/vimy_paper2.pdf).
  - 22 Ted McDorman, *Salt Water Neighbors: International Ocean Law Relations between the United States and Canada* (New York: Oxford University Press, 2009); Ted McDorman, “Canada’s Ocean Policy Framework: An Overview,” *Coastal Management* 40 (2012): 133–44, esp. 136.
  - 23 For a wonderful overview of the *Manhattan’s* voyage, see Ross Coen, *Breaking Ice for Arctic Oil: The Epic Voyage of the SS Manhattan through the Northwest Passage* (Fairbanks: University of Alaska Press, 2012).
  - 24 *Canadian Territorial Sea and Fishing Zones Act*, S.C. 1964, c. 22. Section 3 provided for the 3 nmi territorial sea.
  - 25 For a discussion of the various legal views of archipelagos and transit rights, see Sophia Kopela, *Dependent Archipelagos in the Law of the Sea* (Leiden: Martinus Nijhoff, 2013): 209–27.
  - 26 Quoted in Christopher Kirkey, “The Arctic Waters Pollution Prevention Initiatives: Canada’s

- Response to an American Challenge,” *International Journal of Canadian Studies*, no. 13 (1996): 45.
- 27 See Michael Byers and Suzanne Lalonde, “Who Controls the Northwest Passage?” *Vanderbilt Journal of Transnational Law* 42, no. 2 (2009): 1148–50.
- 28 Quoted in Coen, *Breaking Ice*, 66.
- 29 Although Gordon Robertson, then clerk of the Privy Council and secretary to the cabinet, was of a different opinion: “The ultimate objective was to establish and get international recognition for Canadian sovereignty over the waters of the Canadian Arctic archipelago. That was the overall objective. . . . There was also a legitimate concern about the consequences of oil spills or even just pollution from ships operating [in the area] and we did want to have some means for controlling those possibilities, but we also recognized that if we did something of that kind and if it was legitimate and if we carried out jurisdiction in a respectable and responsible way, that would over a period strengthen the claim that there was effective Canadian administration of these waters and therefore provide a better basis for an overall claim for sovereignty at some appropriate time.” Quoted in Kirkey, “Arctic Waters Pollution Prevention,” 43. After the decision of the International Court of Justice in the Anglo-Norwegian Fisheries case, plans had been developed for implementing straight baselines in the Arctic, but these were put on hold by the Pearson government. See U.S. Dept. of State, *Foreign Relations of the United States, 1964–1968*, vol. 12, *Western Europe*, ed. James E. Miller (Washington, DC: U.S. Government Printing Office, 2001), 678–714. The civil service wanted to go ahead with the baselines, but then Prime Minister Pierre Trudeau and his foreign policy advisor, Ivan Head, preferred the environmental stewardship approach, so the baseline approach was delayed until 1985.
- 30 This is often referred to in the literature as the “defence against help” security dilemma, first articulated by Nils Orvik. A weaker state, like Canada, often fears that its more powerful security assurer—in this case, the United States—will also become a threat. See Donald Barry and Duane Bratt, “Defense against Help: Explaining Canada-U.S. Security Relations,” *American Review of Canadian Studies* 38, no. 1 (2008); published online November 11, 2009: 63–89.
- 31 Ivan Head and Pierre Trudeau, *The Canadian Way: Shaping Canada’s Foreign Policy, 1968–1984* (Toronto: McClelland & Stewart, 1995): 25–64.
- 32 John Kirton and Don Munton, “The Manhattan Voyages and their Aftermath,” in *Politics of the Northwest Passage*, ed. Franklyn Griffiths (Montreal: McGill-Queen’s University Press, 1987), 93.
- 33 In addition, in March 2000, the Marine Liability Act (MLA) was introduced. The MLA places absolute responsibility and liability for safety, damages, and pollution on the owners and/or operators of vessels and on owners of docks, canals, and ports. Vessel owners and operators are responsible for such things as the safety of their crew and passengers, their cargo,

- and any pollution created. The MLA, which applies to all incidents governed by Canadian maritime law, provides a uniform method for establishing liability that balances the interests of ship owners and passengers. The MLA extends north of latitude 60° north. In the event of an inconsistency between the MLA and the provisions of the *Arctic Waters Pollution Prevention Act*, or any regulation made under it, the MLA prevails to the extent of the inconsistency. See Transport Canada, “List of Marine Transportation Acts,” accessed January 18, 2016, <http://www.tc.gc.ca/eng/acts-regulations/acts-marine.htm>.
- 34 Applying straight baselines is another method of calculating a coastal state’s maritime boundaries. While used widely, it is not the method preferred by the United States, which has adopted the normal baseline method.
- 35 Kirkey, “Arctic Waters Pollution Prevention,” 52.
- 36 *Ibid.*, 55.
- 37 Article 234 reads, in full, that “Coastal States have the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance. Such laws and regulations shall have due regard to navigation and the protection and preservation of the marine environment based on the best available scientific evidence.” UN Convention on the Law of the Sea, accessed August 11, 2016, [http://www.un.org/depts/los/convention\\_agreements/texts/unclos/part12.htm](http://www.un.org/depts/los/convention_agreements/texts/unclos/part12.htm).
- 38 The Northern Canada Vessel Traffic Services Zone (NORDREG) is the tracking system for certain vessels operating in Canadian Arctic waters. See “Vessel Traffic Reporting Arctic Canada Traffic Zone (NORDREG),” Canadian Coast Guard, last modified June 24, 2013, [http://www.ccg-gcc.gc.ca/eng/MCTS/Vtr\\_Arctic\\_Canada](http://www.ccg-gcc.gc.ca/eng/MCTS/Vtr_Arctic_Canada).
- 39 U.S. Dept. of State, *Foreign Relations of the United States, 1969–1976*, vol. E-1, *Documents on Global Issues, 1969–1972*, ed. Susan K. Holly and William B. McAllister (Washington, DC: U.S. Government Printing Office, 2005).
- 40 Canada, Parliament, House of Commons, *Debates*, 33rd Parl., 1st Sess., September 10, 1985, pp. 6462–4.
- 41 Agreement on Arctic Cooperation, Can.-U.S., January 11, 1988, 1852 U.N.T.S. 31529.
- 42 MP Daryl Kramp (Prince Edward-Hastings) put forward a private member’s bill (Motion No. 387) in 2009. The time provided for the consideration of business expired, and the order was dropped to the bottom of the order of precedence on the order paper. Canada, Parliament, House of Commons, *Debates*, 40th Parl., 2d sess., October 5, 2009.

- 43 The NWP is “ice-free” only in the summer months.
- 44 *Arctic Environmental Protection Strategy* (Rovaniemi, Finland, June 14, 1991), 20–23.
- 45 Both documents are available on the Global Affairs Canada website, accessed 11 August 2015, <http://www.international.gc.ca/arctic-arctique/index.aspx?lang=eng>.
- 46 The U.S. Senior Arctic Official, who represents the United States in most Arctic Council contexts, is based in the Office of Ocean and Polar Affairs within the Bureau of Oceans and International Environmental and Scientific Affairs, which falls under the State Department. See United States, *National Strategy for the Arctic Region*, May 2013, [http://www.whitehouse.gov/sites/default/files/docs/nat\\_arctic\\_strategy.pdf](http://www.whitehouse.gov/sites/default/files/docs/nat_arctic_strategy.pdf).
- 47 All documents and updates can be found on the Arctic Council website, at <http://www.arctic-council.org>.
- 48 “U.S. Chairmanship of the Arctic Council,” U.S. Dept. of State, October 29, 2015, <http://www.state.gov/e/oes/ocns/opa/arc/uschair/index.htm>. The theme of the U.S. term (2015–2017) is “One Arctic: Shared Opportunities, Challenges, and Responsibilities.”
- 49 The need for this consultation was set out in two documents: President Bill Clinton’s “Consultation and Coordination with Indian Tribal Governments” (Exec. Order No. 13175, November 6, 2000) and the Millennium Agreement (April 11, 2001). The Millennium Agreement recognizes tribes in Alaska and provides a framework for cooperation between federally recognized tribes and the State of Alaska. North Star Group, “Millennium Agreement Review,” accessed August 11, 2016, <http://www.ruralgov.org/wordpress/wp-content/uploads/2015/01/14-12-17-NSG-Millennium-Agreement-Review.pdf>
- 50 A Circumpolar Inuit Declaration on Sovereignty in the Arctic (2009) and A Circumpolar Inuit Declaration on Resource Development Principles in Inuit Nunaat (2011) are both available at the Inuit Circumpolar Council Canada website, accessed August 18, 2016, <http://www.inuitcircumpolar.com/declarations.html>.
- 51 For example, many of the documents are available on the Idle No More website, accessed January 18, 2016, <http://www.idlenomore.ca>.
- 52 Bartley Kives, “Trudeau Government Still Mulling Port of Churchill Options,” *CBC News*, August 4, 2016, <http://www.cbc.ca/news/canada/manitoba/carr-churchill-port-1.3707953>.
- 53 China, South Korea, Japan, India, Singapore, and Italy joined the UK, France, Germany, Poland, the Netherlands and Spain as non-Arctic state observers of the Arctic Council in 2015. This list represents major shipping and export states.
- 54 Government of Canada, *Statement on Canada’s Arctic Foreign Policy: Exercising Sovereignty and Promoting Canada’s Northern Strategy Abroad* (Ottawa: Government of Canada, 2010), 12.
- 55 See “Location and Project History,” Baffinland Iron Mines Corporation website, accessed January 18, 2016, <http://www.baffinland.com/the-project/location-and-project-history>.

- 56 U.S. Coast Guard, *Report to Congress: U.S. Coast Guard Polar Operations* (Washington, DC: USCG, 2008).
- 57 See Leona Aglukkaq, “Canada’s Second Chairmanship of the Arctic Council” (address, Arctic Frontiers Conference, Tromsø, Norway, January 21, 2013), <http://www.arcticfrontiers.com/downloads/arctic-frontiers-2013/conference-presentations/monday-21-january-2013/62-03-leona-aglukkaq/file>.



