

The Arctic : a Global Hot Topic !

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Geopolitics of Arctic. Having ignored the Arctic for so long, especially after the era of “exploration”, non-Arctic nations have suddenly been bitten by the “gold rush” bug. The US Geological Survey has estimated that over 25% of the world’s remaining hydrocarbons are in the Arctic, and there are a number of estimates of sizeable and untapped fish stocks in the Arctic Ocean.

Dans le cadre de ses synergies géopolitiques, le site [diploweb.com](http://www.diploweb.com) vous présente cet article du Professeur Peter Harrison publié dans la revue *Canadian Public Executive* sous le titre *Cooling down Arctic Rhetoric*, en mai 2009. Avec la carte de l’Arctique diffusée dans le cadre de l’Année polaire internationale 2007-2009 (<http://www.ipy-api.gc.ca/>).

Growing interest

In the space of just a few years, the Arctic has gone from being totally ignored to being the flashpoint for a new form of geopolitics. International interest in the Arctic is heating up because, to put it simply, the Arctic is heating up. As the sea ice melts because of the impact of global warming, access to the Arctic Ocean and Arctic shorelines is becoming ever more feasible. While this is of direct interest and potential benefit to the Arctic coastal states - Canada, the US, Russia, Norway and Denmark/Greenland - the sudden interest being shown by many other nations and groupings (e.g. the European Union) is nothing less than astonishing. In recent months there has been a frenzy of policy activity, particularly in Europe, as different players envisage the potential for increased shipping activity, resource development, and the need for enhanced environmental protection.

Having ignored the Arctic for so long, especially after the era of “exploration”, non-Arctic nations have suddenly been bitten by the “gold rush” bug. The US Geological Survey has estimated that over 25% of the world’s remaining hydrocarbons are in the Arctic, and there are a number of estimates of sizeable and untapped fish stocks in the Arctic Ocean. There are many who would like to access these resources, even though the rhetoric is often couched as noble objectives such as the “need to save the polar bear”. While the current level of interest in Arctic issues is high, the level of ignorance is perhaps even higher.

There is a tendency to confuse Arctic issues with those in the Antarctic, and this is largely because many countries maintain a significant scientific presence in the Antarctic in order to preserve their “claim” to a slice of the Continent. The Antarctic is a continent covered in ice, surrounded by the ocean, and is uninhabited. The Arctic, however is an ocean covered in ice, surrounded by land masses which are part of sovereign states. These are enormously important differences. In recent weeks I have addressed a number of audiences in several European capitals composed of Parliamentarians and key decision-makers. In each instance it has been important to underline the fact that the Arctic - especially in Canada - is not *terra incognita*, and that our Arctic regions have been inhabited successfully for millennia by the Inuit and Arctic Athabaskan peoples. It has been equally necessary to note that the Canadian Arctic is part of Canada and is subject to all the laws and regulations of the land - in other words, it is governed. Indeed, in the last thirty years land claims north of 60 have been settled for an area almost the size of the expanded European Union, and the Territory of Nunavut was

created ten years ago. This progress is not well-known in Canada, and is even less so abroad. Perhaps this is why so many otherwise informed people want to seize the opportunity to become involved in “sorting things out” in the Arctic !



Canada’s renewed Arctic focus

In the last few years the Government of Canada has given the highest priority to our Arctic, especially under the rubric of “sovereignty”, The Government’s “*Northern Strategy*” has been outlined in several Speeches From the Throne (especially October 16, 2007), as well as in major speeches by the Prime Minister, the Minister of Indian and Northern Affairs and - most recently - by the Minister of Foreign Affairs (Whitehorse, March 11, 2009) who underscored the international dimensions of the strategy. Canada supports dialogue with other Arctic nations (e.g. Russia) and the strengthening of the Arctic Council of which Canada was the first chair (the Council is composed of the eight Arctic States : Canada, the US, Russia, Finland, Sweden, Norway, Denmark/Greenland and Iceland and permanent representatives of Arctic indigenous peoples ; other jurisdictions are now clamouring to be observers and/or to move from observer to member status). As part of the strategy significant investments are under way in military capacity in the north - an increase in the number of Arctic Rangers ; a military training centre at Resolute ; new ice-capable patrol vessels ; and a deep-water port at Nanisivik.

Infrastructure is being bolstered in a number of ways, particularly with the plan to build a new heavy class icebreaker to replace the CCGS *Louis S. St-Laurent*. Science activities have been promoted through the recent investment in the International Polar Year (IPY) (\$156 million over six years) and the commitment to build a world-class High Arctic Research Stations in Nunavut, thus building on existing investments such as Arcticonet and the CCGS *Amundsen*, Canada’s research icebreaker. Significant resources have also be provided to complete geomapping of potential mineralised zones in the north, and for the delimitation of Canada’s continental shelf. The recent “stimulus” Budget (28 January, 2009) also invested heavily in health facilities and housing in the North, as well as in re-furbishing existing science facilities (\$85 million over two years). On the regulatory front the *Arctic Waters Pollution Prevention Act*, which came into force in 1970 in response to the transit of the *Manhattan* through the Northwest Passage in the previous year, will be updated and its application extended from 100 nautical miles to 200 nautical miles to be coterminous with our Exclusive Economic Zone as defined in both the *Oceans Act* and UNCLOS. Also, vessels will now be required to register with the Canadian Coast Guard (NORDREG) prior to entering Canadian Arctic waters.

For those of us who have been involved in northern and Arctic issues for the last several decades, and for residents of the three Territories (Yukon, Northwest Territories and Nunavut) and sub-Arctic regions of the Provinces, this re-affirmation of Canada as a leading Arctic nation is welcome indeed.

Other nations are “getting in the game”

So what is it that other nations are up to ? In the last few months a number of important policy statements have been published. In the week prior to his departure, President Bush issued a Presidential Directive on Arctic security matters in which the traditional US positions are repeated in strong terms - the Northwest Passage is an international waterway ; the boundary dispute with Canada in the Beaufort Sea should be given priority ; the Arctic Council should be strengthened ; the US should ratify the United Nations Convention on the law of the Sea (UNCLOS) ; and there is no need for further Treaty-making in the Arctic. The European Commission, following a meeting of EU foreign Ministers in Monaco, which was called during the French Presidency of the EU, has prepared a draft “policy document” for consideration by the European Parliament. France has decided to create an “*observatoire*” for the Arctic under the aegis of the *Conseil National de Recherche Scientifique* (CNRS) and has recently appointed a former Prime Minister (Michel Rocard) as special Ambassador for Arctic and Antarctic issues. Most recently Russia has published its own Arctic policy in which it has set the objective that its resource-rich Arctic territories will become the driving force of the Russian economy within the next decade. The policy also lays out the intent to have significant military presence in the Arctic. Given the media-catching planting of a titanium Russian flag on the seabed at the North Pole, and given recent Russian incursions into other jurisdictions, the focus has been on Russia’s military intentions in the Arctic and has missed their commitment to applying existing international law - particularly UNCLOS.

The concern about pressure from outside led the foreign Ministers of the five Arctic coastal states (Canada, the US, Russia, Norway and Denmark/Greenland) to issue an important joint declaration (the Ilulissat Declaration, May 28, 2008) in which the five states indicate their intention to apply existing laws and Conventions based on sound science, especially for the delimitation of seabed jurisdiction (UNCLOS). They also underscore that existing domestic law and relevant international Conventions, instruments and institutions provide a sufficient basis for dealing with Arctic Ocean issues - and that there is no need for a new “Treaty” which is being peddled by some.

Relations with our Arctic Neighbours

There are many issues facing Canada in the Arctic, both domestic and international. However, it is important to underline the fact other than the 1.3 sq. Km. Hans Island in the Kennedy Channel between Ellesmere Island and Greenland, *there is no challenge o Canada’s sovereignty and jurisdiction over the land mass in the Arctic* (the Hans Island issue is about who owns the island ; the surrounding maritime boundaries have been settled and agreed to in a Treaty between Canada and Denmark in 19). The major issues between Canada, its Arctic neighbours, and other nations all relate to the marine area. Two small parcels of territory are

disputed with Denmark/Greenland in the Lincoln Sea (resulting from the accuracy of maps), and Canada and the US have differences over their maritime boundary in the Beaufort Sea (noted above) - which is only one of almost 400 similar situations around the world. Other than this the two key matters are the status of the Northwest Passage and the extension of Canada's jurisdiction over the seabed and sedentary species.

The Northwest Passage

The Northwest Passage is the stuff of myth and emotion - the dream of many European explorers, rulers and investors to find a shorter route to Asia. Much has been spent on exploration over the centuries, and many lives have been lost. However, the Northwest Passages (there are several different routes) have been trading routes, the source of subsistence, and home for the Inuit for many millennia and have been constantly used and occupied. To repeat the point - it is not *terra incognita*. However, with receding and thinning ice in recent years, the prospect of access to the Passage, and even transit (only a handful of non-indigenous vessels have ever made it across the entirety of the Passage), has revived interest in its potential. Increased access will make resource development such as mining that much easier, and there is already an impact on tourism (especially cruise ships). There is now a need to ensure that these waters are charted, and that the necessary navigational aids are in place. Environmental change, through global warming, is pushing the need for infrastructure development.

But to whom does the Northwest Passage belong ? Here again it is important to underline a significant, but often overlooked fact. *There is no challenge to Canada's ownership of the Northwest Passage*. What is in potential dispute is how the water column is used. Canada has drawn straight baselines around the Arctic shoreline (the archipelago) from which our 200 nautical mile Exclusive Economic Zone (EEZ) is calculated, and considers the Northwest Passage to be "*internal waters*" which come under the exclusive control of Canada. Others, particularly the United States, apply a different doctrine and argue that the Passage is an "*international strait*" where Canadian rules apply but the principle of "*innocent passage*" applies (thus arguing that therefore there is no need to seek Canada's permission to transit) applies. Much has been made of this difference of view. In reality there have been very few transits of the passage, and mostly by icebreakers. While Canada and the US have agreed to differ on the status of the Northwest Passage, and will continue to do so, the US in fact seeks Canada's permission (e.g. for its icebreakers) and Canada automatically grants it.

The seabed is not being "grabbed"

The bigger emerging issue is - who owns the Arctic Ocean seabed, and who will have control over the resources beneath ? This has given rise to a lot of rhetoric about how the Arctic coastal nations are "slicing things up between themselves", and doomsday scenarios about the impact on the environment of "uncontrolled development", and has led to calls for a broader set of international controls. The fact is, as underlined in the *Ilulissat Declaration*, the Arctic coastal states have every intention of applying the rule of law. The *existing* Exclusive Economic (and Fisheries Management) Zones of the Arctic coastal states as defined pursuant to the

United Nations Convention on the Law of the Sea effectively close of the centre of the Arctic Ocean. The management of the resulting “doughnut hole” of the high seas should certainly be the subject of international dialogue, even if management regimes can be created under existing mechanisms, including the International Maritime Organization (IMO).

Regarding the seabed, Article 76 of UNCLOS allows coastal states to extend their jurisdiction beyond their 200 nautical mile EEZ “to the outer limits of the Continental Shelf” based on scientific proof of the “*natural prolongation of the land mass*”. The Canadian scientific analysis is well under way under the direction of the Geological Survey of Canada (Bedford Institute of Oceanography) in cooperation with the Canadian Hydrographic Survey (DFO), the Department of Foreign Affairs, and others. In addition, Article 234 of the Convention (the “Canada Article”) allows for special protection of ice-covered waters. These provisions apply equally to all those who have ratified the Convention, which Canada did in 2003, and those who have yet to ratify it but respect its intent (particularly the US). Article 76 does not discriminate between different ocean environments, and all coastal jurisdictions have the right to maximize their claim, with a total possible claim of 350 nautical miles from the baseline or 100 nautical miles from the 2500 metre isobath (line of constant depth) - whichever is most favourable. But herein lies the rub - if each of the Arctic Ocean coastal states extends its jurisdiction to the maximum extent possible, and they will, virtually all of the Arctic Ocean seabed will be within one national jurisdiction or another. Two deep ocean areas - one in the Canada Basin, the other in the Amundsen Basin - will be all that is left of the Arctic Ocean seabed “commons”, and it is unlikely that these ice-covered areas will see development any time soon.

This may seem unfair to some jurisdictions, and perhaps this is the driver behind the desire to develop “other forms of governance”. The fact is that this is the result of applying the law and attendant rules which were negotiated with the world community over several decades. It is not “free-lancing”, and it is certainly not “slicing things up” in an uncontrolled way. If there is to be a “gold rush” it will be within existing sovereign jurisdictions and it is to be hoped that all of them, like Canada, will implement sound regulations governing eventual resource development.

Given the renewed interest in the Arctic and the willingness of a variety of countries and their desire “to be involved”, the question is - so what really is the challenge, and how can they contribute ? The answer is in two ways. First of all there has always been significant cooperation on Arctic science, and much more needs to be known. This can be enhanced even further as countries like China and South Korea (which is shortly launching a new science icebreaker which will see service in both the Arctic and the Antarctic) develop their capacity. Canada’s new High Arctic Research Station can be the mechanism for such cooperation, and models such as the recently signed Memorandum of Understanding with the United Kingdom to cooperate in the use of facilities and exchange of scientists can be developed. The second area for cooperation is a lot more practical. If there were to be an environmental disaster in the Arctic basin - such as a pipeline breaking or a vessel sinking - it is doubtful if any one country could deal with this in isolation. It would thus be highly desirable for the international community to build on the forthcoming Arctic Council “Arctic Marine Shipping Assessment” and ongoing work by the International Maritime Organization (IMO) to develop practical strategies for enhanced search and rescue and environmental clean-up in the Arctic Ocean.

Our home and native land

The idea that all of the Arctic Ocean is “open to everyone” is quite pervasive. At the end of a recent presentation I made to French lawmakers and officials, which included the points made above, I was asked by the representative of a major French newspaper (who clearly hadn't listened) “*why should the world 'entrust' the Arctic to Canada ?*” My answer was simple : “*parce-que c'est chez nous*”.

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P.-S.

PhD, University of Washington. Since 1st June, 2008 Dr. Peter Harrison has been the Skelton-Clark Fellow (Queen's University, Canada). Prior to this he was Senior Associate Deputy Minister of Indian and Northern Affairs Canada where he was responsible for the Northern Affairs Program (NAP) and the Inuit Relations Secretariat (IRS).