

TIME TO NEGOTIATE THE NORTHWEST PASSAGE WITH THE UNITED STATES

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It has always been difficult for Canada to discuss the Northwest Passage with the United States, but we have managed to do so when necessary. In 1988, Brian Mulroney persuaded Ronald Reagan that all US Coast Guard icebreakers should seek Canada's consent, by pledging that it would always be granted. With the Arctic sea ice melting at an unprecedented rate and the United States taking a newly cooperative approach to northern issues, the time has come to initiate discussions again.

Les discussions canado-américaines sur le passage du Nord-Ouest ont toujours été ardues, mais quand la situation l'exigeait, les deux pays se sont chaque fois entendus. En 1988, Brian Mulroney avait ainsi convaincu Ronald Reagan d'adopter une politique obligeant tous les brise-glaces de la Garde côtière américaine à obtenir le consentement du Canada pour emprunter le passage, tout en promettant qu'il leur serait systématiquement accordé. Vu l'accélération de la fonte des glaces marines dans l'Arctique et l'adoption par les Américains d'une nouvelle approche coopérative des questions nordiques, l'heure est venue de relancer les pourparlers.

It has always been difficult for Canada to discuss the Northwest Passage with the United States. A northern route to the Pacific Ocean was the holy grail for explorers from Cabot to Hudson and Franklin, whose discoveries helped define our nation. The Northwest Passage is also at the root of Canada's most significant and enduring dispute with the United States. As such, it is a source of both pride and anxiety in our close but asymmetrical relationship.

Nevertheless, we have managed to talk about the Northwest Passage when it has been necessary to do so. In 1988, Brian Mulroney resolved the sovereignty challenge posed by a US Coast Guard icebreaker entering the waterway without requesting Canada's permission. Mulroney persuaded Ronald Reagan that all such ships should seek Canada's consent, by pledging that it would always be granted. As Mulroney himself explained in *Policy Options* earlier this year, the resulting Arctic Cooperation Agreement was one of his four "big ticket" accomplishments vis-à-vis the United States, along with the Canada-United States Free Trade Agreement, NAFTA and the Acid Rain Accord.

Our current prime minister seems to have missed that lesson in pragmatic diplomacy. During his very first press conference as PM back in January 2006, Stephen Harper took aim at then US ambassador David Wilkins for having simply reiterated Washington's long-standing position — that the Northwest Passage is an international strait open to foreign shipping without any need for coastal state consent. "It is

the Canadian people we get our mandate from," avowed Harper, "not the ambassador from the United States."

It was a potentially damaging rebuke, for Wilkins' predecessor, Paul Cellucci, had just a few months earlier revealed that he had asked the US State Department to reevaluate Washington's claim. Cellucci's concern was that terrorists might take advantage of ice-free conditions to enter North America or transport weapons of mass destruction via the continent's longest, largely unguarded coast. Cellucci went so far as to suggest publicly that Canada's position — that the Northwest Passage constitutes "internal waters" where foreign vessels are subject to the full force of Canadian law — might now benefit the United States.

From where I sat, as the leader of an ArcticNet project on the international law and diplomacy of the Northwest Passage, it seemed as if the Prime Minister had just blown off an opportunity to negotiate. Together with my colleague Suzanne Lalonde from the Université de Montréal, we decided to investigate. We flew to Washington to meet with J. Ashley Roach, the straight-shooting diplomat charged with US policy on the Law of the Sea.

Professor Lalonde and I knew that Washington's stance was based on a concern that any compromise on the Northwest Passage might create a precedent for other waterways, for example, the Strait of Hormuz where oil tankers exit the Persian Gulf and freedom of navigation is contest-

ed by Iran. “Couldn’t you sidestep the notion of setting an international precedent,” we suggested, “by accepting that the Northwest Passage is unique?” We pointed to the passage’s considerable length, the frequent presence of sea ice and the resulting near-

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absence of shipping — indeed, between 1906 and 2005, only 69 full voyages had taken place.

Roach replied that the Pentagon was especially concerned about the possibility of a precedent, which we took to mean that the State Department had a less rigid view.

We stressed that conserving access to the Northwest Passage should not be a concern, since Canada would always permit entry to close allies and reputable shipping companies. In 1969, Pierre Trudeau declared that “to close off those waters and to deny passage to all foreign vessels in the name of Canadian sovereignty...would be as senseless as placing barriers across the entrances of Halifax and Vancouver harbours.”

“The United States understands that,” Roach said. “We have excellent relations with Canada.”

Thanking him for his candour, we left for our next meeting — with four diplomats at the Canadian Embassy. Once there, we sketched the outlines of our discussion with Roach. The Canadian emissaries looked at each other with visible regret, and then the most senior of them said: “I’m glad you went to the State Department. We’re not allowed to talk about the Northwest Passage with the United States.”

In July 2007, Harper announced that between six and eight ice-strengthened “Arctic/Offshore Patrol Ships” would be built for the Canadian Navy, that a deepwater facility for the ships would be built at Nanisivik, Nunavut,

and that a Canadian Forces Arctic Training Centre would be established at Resolute, Nunavut. The Prime Minister declared: “Canada has a choice when it comes to defending our sovereignty in the Arctic. Either we use it or we lose it.”

The message to the international community was clear: Canada was not interested in compromising on its go-it-alone position.

Subsequent developments, however, have made that position less credible than it was before. First, the Prime Minister’s Arctic promises are being fulfilled very slowly. The Arctic/Offshore Patrol Ships have been delayed; the Navy informed potential contractors in June 2009 that the “letter of intent” stage was on hold indefinitely. The delay seems to be at least partly explained in a February 2010 cable from the US Embassy to the State Department, released by WikiLeaks, which states that the program is “driven by political rather than military imperatives, since the Navy did not request these patrol ships.” Only now, four years after the promise was made, does it seem likely that contracts for the vessels will be awarded soon as part of the National Shipbuilding Procurement Strategy.

Work on the naval facility at Nanisivik has yet to begin, despite the existence of a concrete and steel wharf built 25 years ago to serve a now-disused lead and zinc mine. A Department of National Defence spokesperson recently told the Canadian Press that construction will commence in 2013 and finish in 2016, nine years — and at least three federal elections — after the commitment was made.

As for the Arctic Training Centre, that facility too was already in existence in July 2007. For decades, the Polar Continental Shelf Program has managed contemporary and pleasant

accommodations and a storage facility at Resolute for Arctic scientists. The building is now used by the Canadian Forces for several months each winter, when not needed by researchers. In February 2011, Public Works and Government Services Canada issued a tender for additions to the accommodations and storage hangar. However, the planned additions, which include a “stand-alone modern laboratory facility,” are clearly directed as much at science as at the military training.

A second, fundamental development occurred in September 2007, when an unprecedented melting of Arctic sea ice took the lowest coverage that season to 1 million square kilometres below the previous record. The entire Northwest Passage was open to shipping for the first time, including the shortest and most navigable route through M’Clure Strait. The passage was open again in September 2008 and 2010. Now, the 2011 melt is tracking toward a new record, with the US Snow and Ice Data Center reporting a lower extent of Arctic sea ice on July 13 than has ever been recorded on that date.

At this rate, the Arctic could experience a complete, late season melt-out of sea-ice within the next five to ten years, and with it the permanent loss of the thick, hard multi-year ice that poses the greatest risk to shipping. Indeed, imagery from the European Space Agency’s new Cryosat satellite shows that the multiyear ice is already gone from much of the Arctic Ocean, and is thinning rapidly wherever it remains. Before long, the Northwest Passage will resemble the Baltic Sea or the Gulf of St. Lawrence, where ice-strengthened vessels and icebreaker-escorted convoys can operate safely throughout the year.

Already, we are seeing a sharp upturn in Arctic shipping. Again, during the first century of navigation through the Northwest Passage, from 1906 to 2005, there were just

69 full voyages. Yet it took just five more years, from 2006 to 2010, for the next 69 full voyages to occur, with 18 taking place in each of 2009 and 2010.

Increased shipping brings with it security and environmental risks such as

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smuggling, terrorism and oil spills that can easily cross boundaries. Neither Canada nor the United States, with its own long Alaskan coastline, is able to address these challenges adequately without cooperation. The distances in the Arctic are too great, the population too small, the amount of economic activity too limited and the environmental changes too abrupt and deep reaching for either country to be able to make all of the necessary improvements in policing, search and rescue, oil spill response and other basic services.

In February 2008, former US ambassador Paul Cellucci and I led a “model negotiation” on northern shipping. The goal of the two-day exercise — conducted by two teams of non-government experts — was to discuss the issues, identify possible solutions and make joint recommendations aimed at both governments. The teams agreed that the long history of US-Canada cooperation in the Arctic indicates the potential for bilateral agreement, as does the history of cooperation on shipping through other waters under national jurisdiction, such as the St. Lawrence Seaway and the Strait of Juan de Fuca.

We made nine concrete recommendations, including that the two countries collaborate on developing parallel rules and cooperative enforcement mechanisms for notification and interdiction in the waters north of Alaska and Canada, as well

as on the establishment of shipping lanes, traffic management schemes and oil spill response plans. We recommended that the two countries make maximum use of the considerable legal powers they already possess over vessels, either those sailing

to or from Canadian or American ports or those registered in one or the other country. And we recommended that the two countries establish a US-Canada Arctic navigation commission, following the model of the International Joint Commission, which has dealt with transboundary freshwater issues since 1909.

Our recommendations were delivered to high levels within the two governments, including directly to then US Secretary of State Condoleezza Rice. Yet as far as I know, no comparable official discussions have yet taken place. This unfortunate conclusion is reinforced by the fact that, in January 2009, George W. Bush issued a presidential directive that reiterated the traditional US position:

The Northwest Passage is a strait used for international navigation, and the Northern Sea Route [north of Russia] includes straits used for international navigation; the regime of transit passage applies to passage through those straits. Preserving the rights and duties relating to navigation and overflight in the Arctic region supports our ability to exercise these rights throughout the world, including through strategic straits.

Bush’s directive on the Arctic was issued just days before he handed over the presidency to Barack Obama.

The Obama administration has not officially rescinded the document, but it has taken a markedly different, highly cooperative approach to Arctic politics.

The new approach began with an effort to “reset” the relationship with Russia, the former Cold War adversary.

In April 2010, Obama and Russian President Dmitry Medvedev signed a treaty — New START — committing the two countries to reduce their stockpiles of nuclear weapons and submit to new verification measures. It was a development of no small importance for the Arctic, given that most of Russia’s nuclear missile submarines are based north of the Arctic Circle at Severomorsk.

Parallel to this, there have been a series of Arctic-specific initiatives, including the US-led negotiation of a multilateral search-and-rescue treaty designed to coordinate responses to shipping and aviation disasters. The US, Russian and Canadian militaries have also partnered in exercises aimed at preparing for any hijacking of a civilian aircraft in Arctic airspace. And although previous US administrations opposed the creation of a permanent secretariat for the Arctic Council, the Obama administration’s support for the idea has made it possible. The United States is now working within the Arctic Council and the International Maritime Organization to develop cooperative mechanisms for oil spill cleanups and fisheries management, as well as safety standards for polar shipping.

All of this multilateral cooperation is supplemented by bilateral cooperation between the United States and Canada. For four summers now, the US Coast Guard has dispatched an ice-breaker to the Beaufort Sea to map the ocean floor in tandem with a Canadian vessel. Diplomats from the two countries are now discussing possible solutions to the disputed maritime boundary north of Alaska and the Yukon.



Photo by Michael Byers

The Russian cruise ship *Lyubov Orlova* in August 2010, off Baffin Island. The ship failed a Transport Canada inspection, and the company that owned it went bankrupt shortly afterwards. It was arrested at St. John's and will likely be sold for scrap. Incidents like this are why Canada needs to maintain jurisdiction over the Northwest Passage, argues Michael Byers.

The Obama administration seems to understand that Harper's Arctic rhetoric has always been directed at Canadian voters and not at foreign governments. As Ambassador David Jacobson explained in a January 2010 cable released by WikiLeaks: "Conservatives make concern for 'The North' part of their political brand...and it works." In the same cable, the US envoy noted: "That the PM's public stance on the Arctic may not reflect his private, perhaps more pragmatic, priorities, however, was evident in the fact that during several hours together with Ambassador Jacobson on January 7 and 8, which featured long and wide-ranging conversations, the PM did not once mention the Arctic."

To be fair, Harper was necessarily in constant campaign mode during five years of minority governments, and this made risky any steps that could be portrayed as possible sellouts of Canadian Arctic sovereignty — including ordinary diplomatic discus-

sions of long-standing disputes. Perhaps only now, with a majority government and a bit of partisan breathing room, can Harper at last pursue the opportunity created by Cellucci six years ago.

Twenty-three years after Mulroney successfully engaged Reagan, it is time to talk about the Northwest Passage again. The Americans are willing, as Jacobson's January 2010 cable makes clear:

At this juncture, for Canada to advance its "sovereignty" interests there is a need to focus on bilateral and multilateral partnerships with its Arctic neighbors. Among the Arctic coastal states (and perhaps among all countries) Canada and the United States typically have the most closely aligned policy interests and generally share a common viewpoint on international law and common

objectives in multilateral fora (such as the Arctic Council). From Canada's point of view, if the two countries can find bilateral common-ground on Arctic issues, the chance for Canadian success is much greater than going it alone against the interests of other countries or groups of countries.

The door to negotiations is open. It is time to discuss the commitments — on access, policing and search and rescue — that the United States might reasonably wish from Canada, in exchange for recognizing our "internal waters" claim.

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