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Arctic Sovereignty: Drawing a line in the water

Last Updated August 2, 2007

CBC News

It used to be, when it came to claims of Arctic sovereignty, that it was the Americans we feared. They, after all, had the multi-hulled icebreakers and nuclear submarines to transit our Northwest Passage virtually at will.

But for a number of years now, Russia has been getting into the hunt as well. And its latest move – a naval manoeuvre currently underway that is designed to plant an actual Russian flag, in a titanium capsule, at the base of the North Pole, 4,200 metres below sea level – raises the international stakes considerably.

Russia's game plan here, which it has made no bones about, is to extend its 200 nautical mile limit almost up to the Pole itself, to claim the vast mineral and energy resources many feel lie underneath the Arctic ice.

The North Pole is considered an international site and is administered by the International Seabed Authority. But if a country can prove its underwater shelf is an extension of its continental border, then it can claim an economic zone based on that.

And that's what Russia is doing by systematically charting the reach of its Lomonosov underwater shelf. As a spokesman for its Arctic and Antarctic Institute said, "It's like putting a flag on the moon."

For Canadians, of course, this is more like waving a red flag in front of a bull.

Canadians have always tended to regard the northernmost reaches of their land as an integral, if isolated, part of the country. The vast and frozen Arctic archipelago even gets its own reference in the country's national anthem: "The true north strong and free."

But how much of "Canada's North" is Canada's? Just about everyone agrees that the many islands that dot the Arctic to the north of Canada's mainland belong to Canada. But what about the water between them? Who, if anyone, has jurisdiction over the waters separating Somerset Island from Devon Island, or Melville Island from Banks Island?

The Canadian government says the jurisdiction is clear – they're Canadian

waters. But the U.S. and some other countries, especially now Russia, don't agree. They see the Northwest Passage as an international strait that any ship should be free to transit. And increasingly, they are seeing the Arctic seabed as a resource to be carved up among certain northern nations.

Who is right?

Under the UN's Convention on the Law of the Sea, which Canada ratified in 2003, coastal countries have the right to control access to the belt of shoreline along their coasts. Barring some exceptions, that belt is 12 nautical miles (22.2 kilometres) wide. But the waterways dividing some of the islands in Canada's north are often more than 96.6 kilometres wide. That would seem to leave plenty of room down the middle for foreign ships.

Even if the world were to agree that Canada's Arctic waters are internal, a country might still lose the right to exercise absolute sovereignty over those waters if they include a "strait used for international navigation."

Donald McRae, a law professor at the University of Ottawa, says Canada must prove two things to win a sovereignty claim over its Arctic waters. "It must be demonstrated that the waters are the internal waters of Canada and that the waters of the Northwest Passage do not constitute an international strait," he wrote in a 1995 paper published by the Canadian Arctic Resources Committee.

Canada is on record as saying it can satisfy both of those requirements. Over the years, Canada has cited several reasons or precedents spelling out why its Arctic waters should be considered entirely "internal."

An International Court of Justice ruling in 1951 established that the 12-mile limit could be extended in some instances. Countries could draw a straight baseline across coastal areas dotted with many islands and basically declare that all the water between that line and the mainland is internal, even if it lies outside the 12-mile limit. The ruling was about a case involving Norway, but some observers say Canada's geographic case is similar.

Occupied territory

When it comes to Arctic sovereignty, Canada also points out that the waters separating most of the islands in Canada's Arctic are frozen over most of the year. Inuit hunt and spend large amounts of time working and even living on the ice – in effect turning it into an extension of the land.

We also boast the only year-round site of human habitation closest to the North Pole at Alert, a military base at the northern tip of Ellesmere Island. A

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formidable presence, Alert is more than 700 kilometres north of the nearest Inuit town at Grise Fiord (and more than 4,300 kilometres north of Toronto, just to give an example of how far north it is.)

But it is still 817 kilometres from the Pole and the Russians are edging closer on that front as well. Since 1994, they have staffed year-round a research base called Ice Station Borneo on the deep Arctic ice, only 60 kilometres from the Pole.

If ice counts for our Inuit, when it comes to international negotiations over the Arctic, then it might count for the Russian researchers as well.

As for whether the waters of the Northwest Passage can be considered an international strait under maritime law, one study reported that there were just 11 foreign transits between 1904 and 1984. Because it has not been an international navigation or shipping route, many observers say it fails the required "use" test.

But other analysts say Canada's sovereignty case is weak and it may lose if tested in international courts. Even worse, the critics say, is that Canada hasn't been doing enough to declare and enforce its jurisdiction.

That explains the Harper government's election promise to build new Arctic icebreakers and a new northern deepwater port at a site still to be determined. But successive Canadian governments have all made elaborate northern promises, most of which have never been fulfilled. Sovereignty. 'Use it or lose it'

When it comes to the U.S., at least, Ottawa and Washington may disagree on the issue of whether the Arctic waters are internal, but the dispute rarely boils over.

However, whenever the dispute has surfaced, it has garnered more than its fair share of headlines. When the U.S. sent the oil supertanker Manhattan through the Northwest Passage in 1969, environmentalists and others were outraged by the implications. Canada responded by bringing in the Arctic Waters Pollution Prevention Act, in which Canada asserted the right to control navigation in waters extending 161 kilometres offshore. The government was clearly alarmed by the prospect of an environmental disaster should a tanker spill its contents in the sensitive area.

The most direct challenge to Canada's sovereignty in Arctic waters came in

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1985, when the U.S. sent its icebreaker Polar Sea through the Northwest Passage without informing Canada or asking permission. The political skirmish that followed led to the 1988 Arctic Co-operation Agreement between the two countries. Boiled down to its essence, the agreement said the U.S. would not send any more icebreakers through the passage without Canada's consent, and Canada would always give that consent. The wider issue of whether Canada's Arctic waters were internal or international was left unresolved.

While most of the Arctic sovereignty disputes are Canada-U.S. affairs, Denmark has also weighed in. The Danish navy recently occupied Hans Island, a barren hunk of rock between Ellesmere Island and Greenland that Canada claims as its territory. For now, the countries agree to disagree on Hans Island's status.

The dispute over whether Canada has sovereignty over Arctic waters may seem like an academic dispute. After all, they are locked in ice for the vast majority of the year.

Two points here. The first deals with security. Even though the Arctic waterway is frozen over most of the year, military subs are able to make the trip year-round by simply diving under the ice (and there are reports that many countries have secretly sent their subs through). Right now, we cannot routinely detect submarine transits through those waters. Critics say the world is right to wonder how we can claim an area as our sovereign territory if we don't patrol or monitor it more thoroughly.

The second point is about the ice. Plainly put, the Arctic ice is thinning at an alarming rate. Because of global warming, there are predictions that the Northwest Passage may be open for large parts of the summer in as little as 15 years.

Critics say that risks turning the Northwest Passage into the commercial sea route that explorers began searching for in the 15th Century. They say the rest of the world is sure to take more notice of a shipping route between Asia and Europe that would be 5,000 kilometres shorter than the current route through the Panama Canal