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The New Ice Age: The Dawn of Arctic Shipping and Canada’s Fight for Sovereignty Over the Northwest Passage

Caitlin O’Leary*

“Westward from the Davis Strait ’tis there ’twas said to lie
The sea route to the Orient for which so many died;
Seeking gold and glory, leaving weathered, broken bones
And a long-forgotten lonely cairn of stones.”¹

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I. INTRODUCTION

For centuries, explorers have sought an Arctic shipping route connecting the Atlantic and Pacific oceans.² An Arctic sea route

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1. STAN ROGERS, *Northwest Passage, on NORTHWEST PASSAGE* (Fogarty’s Cove Music 1981).

2. Kate Dailey, *Franklin Expedition: Will we ever know what happened?*, BBC NEWS (Sept. 8, 2011, 7:44 PM), <http://www.bbc.com/news/magazine-14847091> (detailing British explorer Sir John Franklin’s 1845 expedition to find the Northwest Passage that resulted in his and his 128 crewmen’s deaths).

joining the world's great oceans would facilitate faster travel and more efficient shipping between Europe and North America. One of the most popular of the proposed passages is the Northwest Passage. The Northwest Passage connects the Atlantic and Pacific oceans along the northern coast of North America through the Canadian Arctic Archipelago.³ Five possible routes exist through this waterway that is sandwiched between the Davis Strait and Baffin Bay in the east and the Bering Strait in the west.⁴ The first full transit of the Northwest Passage occurred over a three-year journey from 1903-1906 by Norwegian explorer Roald Amundsen.⁵ Amundsen's excursion showed the promise of a navigable Arctic shipping route stuck in the confines of the harsh climate. Changes in climate throughout the 21st century, along with technological advances, have allowed the main barrier of Arctic shipping—ice—to disappear, leaving a sea route ripe for future commercial shipping.⁶

On September 27, 2013, the historic first shipping voyage across the Northwest Passage occurred.⁷ A Danish bulk cargo ship, the MV Nordic Orion, made its way through the Northwest Passage using it as a transit lane while carrying 73,500 tons of coal from Vancouver, Canada to Finland.⁸ This route allowed the ship to save time, fuel and carbon dioxide emissions.⁹ By traveling through the Northwest Passage instead of the Panama Canal, the MV Nordic Orion took 1,000 nautical miles off of its route and carried 25% more cargo because it is not held to the disbursement restrictions in the canal.¹⁰ The projections for fuel savings alone are estimated around \$80,000.00.¹¹ The MV Nordic Orion's trip produced savings in almost every area imaginable.

The transit of the MV Nordic Orion marks an important place in maritime history. Arctic shipping is now a reality. The advent

3. ARCTIC COUNCIL, ARCTIC MARINE SHIPPING ASSESSMENT 2009 REPORT 20 (2009), available at http://www.arctic.noaa.gov/detect/documents/AMSA_2009_Report_2nd_print.pdf.

4. MATTHEW CARNAGHAN ET AL., CANADIAN ARCTIC SOVEREIGNTY (2006), available at <http://www.parl.gc.ca/Content/LOP/researchpublications/prb0561-e.htm>.

5. See *supra* note 3.

6. *Id.* at 2.

7. Press Release, Nordic Bulk Carriers A/S, Historic Sea Route Opens Through Canadian Arctic Waters (Sept. 19, 2013), available at <http://www.nordicbulkcarriers.com/nwp-project>.

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

of Arctic shipping could usher in a new era of trade. However, despite the potential economic benefits of Arctic shipping, there are many uncertainties that follow. The Northwest Passage is situated in the Arctic water above Canada.¹² Canada claims the Northwest Passage as internal Canadian water.¹³ The United States, however, views the Northwest Passage as international water and contends that freedom of the sea applies. Before the MV *Nordic's* voyage, there were no real consequences to the opposing views of the allied nations. Now that Arctic shipping is coming to fruition, alliances may soon be tested, raising important concerns for national sovereignty, international relations, and the fragile Arctic ecosystem.

This note will analyze the Canada's legal ownership of the Northwest Passage, the current law governing the Arctic, other nation's Arctic claims, and what Canada should do to secure the Northwest Passage under international law.

II. CANADA'S CLAIM TO THE NORTHWEST PASSAGE

Throughout much of Canada's history, its northernmost border was not challenged. Canada has long used rhetoric describing parts of the Arctic as an extension of Canada, but historically there has been no development or presence securing the claim.¹⁴ In 1949, Canada's ambassador to the United States, Lester Pearson, defined the Canadian Arctic as "not only Canada's northern mainland, but the islands and the frozen sea north of the mainland between the meridians of its east and west boundaries, extended to the North Pole."¹⁵ This early Arctic claim was an assertion of jurisdiction over the islands, and it is not clear if Canada intended for it to extend to water in the region.¹⁶

However, when the supertanker *Manhattan* bearing the United States' flag attempted to cross part of the Northwest Passage in 1969, Canada clearly asserted its position as owner of the Arctic waterway.¹⁷ Canada formally declared the Northwest Passage as its own territory and passed anti-pollution legislation over the Arctic waters as a way to assert its control.¹⁸ Since then,

12. See generally Andrea Charron, *The Northwest Passage in Context* 41, CANADIAN MILITARY JOURNAL, (Winter 2005-2006).

13. *Id.* at 42.

14. *Id.* at 41.

15. *Id.* at 42.

16. *Id.*

17. *Id.* at 43.

18. See Charron, *supra* note 12.

Canada has increasingly become more vocal about its stake in the Arctic. In 2010, Canadian Prime Minister Stephen Harper proclaimed that Canada's sovereignty in the Arctic is a "non-negotiable" priority of the nation.¹⁹ However, it should be noted, that this strong rhetoric is still absent a strong presence in the region.

The United States does not agree with Canada's assertion of control over the Arctic waters of the Northwest Passage.²⁰ The United States avouches that the water meets the classification of international water and freedom of the sea applies.²¹ Other nations, such as Japan and the countries of European Union, have adopted the United States' view that the Northwest Passage is international water.²² The dispute of the ownership of the Northwest Passage is complicated by the absence of a cohesive legal doctrine to solve the discrepancies.

III. APPLICABLE LAW

The Arctic is currently governed by a patchwork of international law. Different treaties and organizations attempt to regulate the Arctic, but they fail to produce a unified doctrine. There are three significant sources of law for the regulations of the Northwest Passage: the United Nations Convention on the Law of the Sea, the Arctic Council, and 1988 Arctic Cooperation Agreement between the United States and Canada.

a. The United Nations Convention on the Law and Sea

The United Nations Conventions of the Law and Sea ("UNCLOS") was created to standardize the international approach to the oceans and waterways. UNCLOS provides guidelines for territorial claims, mineral extraction, pollution, marine tort claims, and many other aspects of international maritime law.²³ UNCLOS is largely an adoption of international common law.²⁴ All of the Arctic nations adopted UNCLOS with the excep-

19. *Arctic Sovereignty 'non-negotiable': Harper*, CBC NEWS, (last visited Aug. 20, 2010), <http://www.cbc.ca/news/politics/arctic-sovereignty-non-negotiable-harper-1.866786>.

20. See Charron, *supra* note 12.

21. *Id.* at 42.

22. See CARNAGHAN, *supra* note 4.

23. See Jay M. Zitter, Annotation, *Construction and Application of United Nations Convention on the Law of the Sea—Global Cases*, 21 A.L.R. 2d 109 (2007).

24. *Id.* at 7.

tion of the United States.²⁵ However, because of its close adherence to customary law, the United States is largely in compliance with UNCLOS by default.²⁶

UNCLOS provides the international forum to adjudicate sovereignty claims of nations.²⁷ Generally, a state has permission to exercise sovereignty up to 200 nautical miles from its baseline, forming an Exclusive Economic Zone (“EEZ”) for the nation.²⁸ The EEZ gives the nation the ability to utilize the resources found within that area. A nation can further extend the EEZ by way of its continental shelf.²⁹ UNCLOS describes the continental shelf as:

the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.³⁰

A nation with exclusive rights over the continental shelves is allowed the sole extraction of resources and control.³¹

Determining if the EEZ extends into the continental shelf is a challenging process. The United Nations established United Nations Commission on the Limits of the Continental Shelf, which is a body that recommends and reviews territory claims that states make for continental self. After a country ratifies UNCLOS, the nation has 10 years to submit its territorial claim to the Commission.³²

UNCLOS views internal waters as a continuation of a state’s land territory.³³ A nation has the ability to set laws, regulate use, exploit resources, and maintain absolute control over internal water.³⁴ The degree of control that a country can assert over a body of water hinges on if it is defined as territorial water.³⁵ Terri-

25. Tessa Mendez, *Thin Ice, Shifting Geopolitics: the Legal Implications of Arctic Ice Melt*, 38 DEV. J. INT’L L. & POL’Y 527 (Summer 2010).

26. *Id.*

27. *Id.* at 543.

28. United Nations Convention on the Law of the Sea, art. 57, 76, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].

29. Mendez, *supra* note 25, at 527.

30. UNCLOS, *supra* note 28, art. 76.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. Mendez, *supra* note 25, at 527.

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torial waters exist up to 12 nautical miles from a country's baseline and the state can set laws, regulate use, and draw resources.³⁶ The main difference between territorial and internal waters is the right of innocent passage.³⁷ If water is classified under UNCLOS as territorial, rather than internal, then all foreign vessels have the right to traverse the water absent fishing, pollution, espionage, or firing weapons.³⁸ If a body of water is classified as archipelago water, then UNCLOS designates it as a hybrid of internal and territorial water.³⁹ A nation is still granted the utmost control and sovereignty of the water that internal waters permits, but the right of innocent passage still exists.⁴⁰

Canada ratified UNCLOS in 2003.⁴¹ In December 2013, on the 10-year deadline, Canada submitted its territorial claim to established United Nations Commission on the Limits of the Continental Shelf.⁴² Canada's expansive claim, which will be discussed later in the note, has not been ruled on. The recommendation of the Commission will have a large impact on the future of Canada's Arctic policy. It should be noted, however, that the United States, Canada's biggest challenger to the Northwest Passage, is not a party to UNLCOS. Canada's control over the Northwest Passage will pivot upon the definition that is given to its water by the international governing body. Adherence to the definition granted to the Northwest Passage may depend on whether a nation is a party to UNCLOS.

If there is a dispute in a territorial claim, UNCLOS also allows for resolutions under Part XV of the treaty.⁴³ UNCLOS allows a nation who signed, ratified, or acceded to UNCLOS to have disputes decided over an interpretation of UNCLOS.⁴⁴ The country may chose to find resolution by either the International Tribunal for the Law of the Sea, the International Court of Justice, *ad hoc* arbitration, or a special arbitral tribunal.⁴⁵ Disputes

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. Charlie Gills, *Who Owns the North Pole?*, MACLEAN'S (Jul. 25, 2011), <http://www2.macleans.ca/2011/07/25/who-owns-the-north-pole>.

42. UNCLOS, *supra* note 28, at part XV.

43. *Id.*

44. Permanent Court for Arbitration. *Ad Hoc Under Annex VII of the United Nations Convention on the Law of the Sea*, available at http://www.pca-cpa.org/showpage.asp?pag_id=1288.

45. *Id.*

over territory under UNCLOS often take years to decide.⁴⁶

If Canada's claim over the Arctic, including the Northwest Passage, is approved, then it will have legitimate legal backing behind its claim of ownership over Northwest Passage's water. While the United States is not a party of UNCLOS, the backing of the United Nations will provide strong allies for Canada if other nations attempt to infringe on its Arctic claim. However, if a dispute were to grow between the United States and Canada, they lack the proper venue of the UNCLOS tribunal options to find resolution to their issues, opening up the possibility of non-diplomatic forum for dispute resolution.

b. Arctic Council

The Arctic Council is an intergovernmental body established for the nations who have a vested interest in the Arctic. In 1996, the Ottawa Declaration established the Arctic Council as a means for cooperation between the Arctic states.⁴⁷ The Arctic Council is comprised of Canada, Russia, Sweden, Norway, Finland, Denmark, Iceland, and the United States.⁴⁸ Organizations of indigenous people from the Arctic nations can maintain spots as permanent participants on the Arctic Council, but not members.⁴⁹ The Arctic Athabaskan Council ("AAC") is the permanent participant of the Arctic Council that represents the interests of American and Canadian First Nation members. The AAC now represents an estimated 45,000 people from the Arctic region.⁵⁰ Nations that are interested in the Arctic but that do not border it, such as China, are also allowed permanent participant spots.⁵¹

The Arctic Council is a cooperative body that functions to produce policy. In 1996, the Arctic Council produced its first binding treaty of a search and rescue agreement between the nations.⁵² The treaty divided the Arctic into eight zones and tasked each par-

46. See *Barb. v. Trin. & Tobago*, 27 R.I.A.A. 147 (Perm. Ct. Arb. 2006), which was instituted in February 2004 and decided by a final award rendered on April 11, 2006.

47. *About the Arctic Council* (April 7, 2011), <http://www.arctic-council.org/index.php/en/about-us/arctic-council/about-arctic-council>.

48. *Id.*

49. *Id.*

50. *Permanent Participants* (April 27, 2011), <http://www.arctic-council.org/index.php/en/about-us/permanent-participants>.

51. *Id.*

52. Steven Lee Myers, *Cooperation Is Pledged by Nations of the Arctic*, N.Y. TIMES, May 12, 2011, http://www.nytimes.com/2011/05/13/world/europe/13arctic.html?_r=1&.

ticipant to coordinate rescue missions in their respective zone.⁵³ The Arctic Council successfully produced agreements between the nations on search and rescue, pollution clean up, and basic environmental standards. Regarding the more contested issues, such as territory claims or shipping rights, the Arctic Council has been silent. It is unknown whether the Arctic Council will react to acts of aggression or territorial claims within the Arctic.

An attempt to approach the territorial claims among Arctic nations occurred in 2008 at the Arctic Ocean Conference in Ilulissat, Greenland.⁵⁴ The conference exclusively featured the five coastal states of the Arctic: Canada, Russia, Norway, Denmark, and the United States.⁵⁵ The conference produced the Ilulissat Declaration that reiterated the need for cooperation between the Arctic states for environmental protection, rescue, and the sharing of information. The five nations pledged they “will work to strengthen this cooperation, which is based on mutual trust and transparency, inter alia, through timely exchange of data and analyses.”⁵⁶ There was no mention in the declaration for the settlement of overlapping territory claims that still exist today. The Ilulissat Declaration failed to produce the much-needed territorial clarity for the Arctic. Attempts at an intergovernmental organization for the Arctic have failed to produce policy beyond the areas of scientific research, search and rescue, and pollution.

c. 1988 Cooperation Agreement

As stated above, the height of Arctic tension between the United States and Canada occurred in 1985 when an ice breaker bearing the United States’ flag attempted to cross the Northwest Passage.⁵⁷ This prompted Canada to publicly declare the Northwest Passage, and all water within the outer boundaries of the Canadian Archipelago, as internal water.⁵⁸ The United States, however, refused to accept this claim. The United States has taken the position, and still does to this day, that the Northwest Passage is international water and is subject to the concept of freedom of the sea. The two allies attempted to ameliorate their

53. *Id.*

54. *The Ilulissat Declaration*, Arctic Ocean Conference (2008), http://www.oceanlaw.org/downloads/arctic/Ilulissat_Declaration.pdf.

55. *Id.*

56. *Id.*

57. Michael Sternheim, *Regulating the Northwest Passage*, 10 *LOY. MAR. L.J.* 173 (2010).

58. *Id.*

incompatible positions with the 1988 Cooperation Agreement.⁵⁹

The agreement calls for cooperation in navigation with ice-breakers and with sharing information.⁶⁰ It also provides that all of the United States' navigation of this area will be done with consent of Canada. However, the agreement states "nothing in this agreement of cooperative endeavor between Arctic neighbors and friends nor any practice thereunder affects the respective positions of the Governments of the United States and of Canada on the Law of the Sea in this or other maritime areas or their respective positions regarding third parties."⁶¹ The agreement between Canada and the United States is one that has allowed for the sharing of information, research, and development. With regards to the more contentious issue of ownership, the 1988 Cooperation agreement falls short; it is essentially an agreement to disagree. As the Arctic ice continues to melt and arctic shipping continues to emerge, the agreement to cooperate may no longer be feasible.

Canada has attempted to assert dominance over the Northwest Passage in every aspect of international law that it has partaken in. Canada is a signatory to UNCLOS and has recently submitted its vast territorial claim encompassing water up to the North Pole; Canada is a leader on the Arctic Council; and, despite the inconclusive nature of the 1988 Cooperation Agreement, Canada structured the agreement to allow it to be the dominant nation over the United States by requiring Canadian consent for United States' transit. Canada continues to bolster its claim by weaving Arctic sovereignty into its nation's narrative, such as when the Prime Minister described it as a "non-negotiable" priority for the nation.⁶² However, much of Canada's action is just talk, and while the amalgamation of international law tends to lean towards its favor, the existence of differing opinions still leaves the sovereignty of the Northwest Passage undecided. Canada needs action and development to accompany its words, as there are other nations that are developing the Arctic at astonishing rates with presences that may silence Canada's rhetoric.

IV. RUSSIA'S ARCTIC EXAMPLE

Russia is actively developing the Arctic territory around it. The Arctic Ocean is comprised of two sea routes: the Northwest

59. Agreement on Arctic Cooperation, U.S.-Can, Jan. 11, 1988, T.I.A.S. 11565.

60. *Id.*

61. *Id.*

62. *See supra* note 19.

Passage and the Northern Sea Route.⁶³ The Northern Sea Route, sometimes referred to as the Northeast Passage, is the Arctic-shipping route that follows Russia's northern coast. Russia's claim to the Northern Sea Route is not as contested as the Northwest Passage as it more clearly falls within Russia's EEZ. Russia made its bid to UNCLOS for Arctic territory four years after its ratification of UNCLOS, only to have the Commission send it back for lack of scientific proof.⁶⁴ Russia's Arctic enthusiasm was not slowed by the return of its UNCLOS bid.

Russia continues to this day to be the most active Arctic nation. Even though its latest UNCLOS bid has not been approved, the Russian government is taking action with the assumption that it will be. In 2007, it was discovered that Russia had taken steps to mark its prospective territory by placing a titanium Russian flag on the seafloor at the North Pole.⁶⁵ Canada's Arctic position of cooperation, compliance, and rhetoric are in stark contrast to Russia's position of independence, innovation, and action. The UNCLOS Committee factors in national presence when deciding boundaries that gives significance to Russia's possessive actions.

In 2011, Russian President Vladimir Putin expressed his desire to turn the Northern Sea Route into a trade route of "international significance and scale."⁶⁶ Russia has a growing permit system that allows ships to cross the Northern Sea Route. In 2012, Russia granted 46 permits; by mid-September 2013, Russia had already granted 531 permits for that year.⁶⁷ An example of this occurred on August 8, 2013, when the Chinese cargo ship *Yong Sheng* embarked from northeastern China to the Netherlands by way of the Northern Sea Route with a scheduled voyage 13 days less than the traditional voyage through the Straits of Malacca and the Suez Canal.⁶⁸ Russia is actively building its infrastructure to attract more Arctic travel. Russia currently has 16 deep-

63. Barret Weber, *Increased Shipping in the International Arctic? An Overview*, 43 J. MAR. L. & COM. 301, 306 (2012).

64. Charlie Gillis, *Who owns the North Pole?*, MACLEAN'S (Jul. 25, 2011), <http://www2.macleans.ca/2011/07/25/who-owns-the-north-pole>.

65. *Id.*

66. Nadia Rodova, *Russia's Northern Sea Route: Global Implications*, PLATTS (Sept. 26, 2013), <http://www.platts.com/news-feature/2013/oil/euro-nsr/index>.

67. *Id.*

68. Mia Bennett, *Chinese cargo vessel takes to the Arctic's burgeoning Northern Sea Route*, ALASKA DISPATCH NEWS (August 24, 2013), <http://www.adn.com/article/20130824/chinese-cargo-vessel-takes-arctics-burgeoning-northern-sea-route>.

water ports in the Arctic and nuclear icebreakers on patrol.⁶⁹ In November 2013, Russia debuted a new nuclear powered icebreaker that is one of the largest of its kind.⁷⁰

Contrast that with Canada, which has no ports above the Arctic Circle and icebreakers operating with aged technology.⁷¹ With no Arctic territory officially claimed by any country under UNCLOS, it seems that the Arctic is turning into a wild west for taking. According to the World Bank, in 2013, Canada's military budget expenditure, as measured by percent of GDP, was just 1.0%; United States' military budget was 3.5 %; and Russia's military budget was 4.2%.⁷² Canada is not only behind other Arctic nations in technology and action, but also on the resources needed for Arctic control.

V. WHY CANADA NEEDS TO TAKE CONTROL

The voyage of the MV Nordic Orion marked the first time a cargo ships safely traveled through the Northwest Passage. The unprecedented global climate changes appear to aid maritime ambitions. The National Oceanic and Atmospheric Administration issues an annual "Arctic Report Card."⁷³ The trend over the annual reports is a "persistent warming trend that began over 30 years ago"⁷⁴ Arctic sea ice is described in terms of extent.⁷⁵ Arctic ice in the summer of 2013 had a minimum extent that was 1.12 million km² below the 1981-2010 average minimum ice extent.⁷⁶ Canada's apprehension to assert itself over its Arctic territorial claim does not fit well with the aggressive nature of the melting Arctic ice.

a. *Benefits of Arctic Shipping*

As the MV Nordic Orion's voyage through the Northwest Passage illustrated, there is tremendous cost-effective benefits to be

69. Chris Sorensen, *Frozen out of Arctic Shipping*, MACLEAN'S (Oct. 31, 2013), <http://www2.macleans.ca/2013/10/31/frozen-out-of-arctic-shipping/>.

70. *Russia lays down world's largest icebreaker*, RT (Nov. 5, 2013, 9:31 AM), <http://rt.com/news/world-biggest-icebreaker-russia-275/>.

71. Sorensen, *supra* note 69.

72. *Military Expenditure*, THE WORLD BANK available at <http://data.worldbank.org/indicator/MS.MIL.XPND.GD.ZS>.

73. *Executive Summary*, Arctic Report Card: Update for 2013 (Nov. 21, 2013), http://www.arctic.noaa.gov/reportcard/exec_summary.html.

74. *Id.*

75. *Id.*

76. *Sea Ice*, Arctic Report Card: Update for 2013 (December 17, 2013), http://www.arctic.noaa.gov/reportcard/sea_ice.html.

gained from Arctic shipping. Beyond cutting down miles, emissions, and costs, ships using the Northwest Passage can avoid the risky Horn of Africa that has recently been plagued with pirates.⁷⁷ It is believed that Arctic shipping has the ability to decrease East-West transit time between Europe, Asia, and North America by up to 40%, and in doing so will reduce fuel consumption and carbon emissions.⁷⁸ It is slightly ironic to travel through the Northwest Passage, which is largely made possible by global warming, can be used to decrease carbon emissions and pollution in the future. Canadian control over the Northwest Passage will allow Canada the ability to control the emerging shipping market just above its borders.

National shipping routes provide tremendous economic benefits for countries. Currently, Egypt's Suez Canal brings in around \$5 billion in revenue for Egypt a year accounts for 10 percent of the world's shipping traffic.⁷⁹ The Suez Canal is an extreme example juxtaposed with current state of the Northwest Passage; nevertheless, it shows the immense financial gain available from a national shipping route.

b. Environmental Risks

The ability of Arctic shipping to potentially decrease carbon emissions worldwide should not overlook the danger of disturbing the fragile, untouched ecosystem of the Arctic. Maritime travel has the risk of bringing invasive species and pathogens to the Arctic ecosystem.⁸⁰ As the Northwest Passage is largely unregulated right now, there is no protection against rogue ships disrupting the ecosystem of the area. Canadian regulation over the Northwest Passage will allow them to decide which portions of the Northwest Passage are open for transit and which should remain closed.⁸¹ For example, part of the Northwest Passage is known as

77. See Peter Chalk, *Piracy Off the Horn of Africa: Scope, Dimensions, Causes and Responses*, 16 BROWN J. WORLD AFF. 89, 90 (Spring/Summer 2010) (discussing the re-emergence of maritime piracy on the Horn of Africa where in 2008 and 2009 46% of all global incidents of piracy were recorded).

78. Heather A. Conley et. al., *Arctic Economics in the 21st Century*, Center for Strategic and Int'l Studies, 32 (July 2013), http://csis.org/files/publication/130710_Conley_ArcticEconomics_WEB.pdf.

79. Julie Berwald, *Under the Ships in the Suez Canal*, N.Y. TIMES (Nov. 12, 2014), http://www.nytimes.com/2014/11/13/opinion/under-the-ships-in-the-suez-canal.html?_r=0.

80. See Conley, *supra* note 78, at 39.

81. Adam Lajeunesse, *A New Mediterranean? Arctic Shipping Prospects for the 21st Century*, 43 J. MAR. L. & COM. 521 (2013).

Lancaster Sound.⁸² Lancaster Sound functions as a migration route for 85% of the world's narwhal.⁸³ Increased traffic in this section of the Northwest Passage could have tremendous and potentially devastating effects on an entire species. Sovereignty for Canada will mean that it can control which vessels can enter the Northwest Passage and which channels of they will use.

Manmade disasters from increased transit also pose a grave environmental risk. The Arctic Council has worked together to set up some standard clean up protocol for the Arctic, but Canadian governance of the Northwest Passage would allow them to set even more stringent standards if they see fit. It should also be noted that records show Russia has deposited solid radioactive wastes in the seabed of the Arctic region from 1959 to 1993.⁸⁴ There are a lot of high stakes for this untouched and unregulated part of the world, and indecisive international politics may not serve as the most effective model for the potentially traumatizing impact to the Arctic environment.

c. Voice for Canadian Aboriginals

The development of the Arctic will have far reaching effects beyond just maritime gains. It is estimated that there are currently about 113,000 Canadians living in the area of the Canadian Arctic with approximately 64,506 of those Canadians being Aboriginal natives to the region.⁸⁵ The natives to the Canadian Arctic are mostly comprised of the First Nations, Inuit, and Metis people.⁸⁶ The Canadian Aboriginals have resided in the area since prehistoric times, utilizing land stretching all the way up to ice over the Northwest Passage to sustain their livelihood.⁸⁷ The historical ties to the region give credence to Canada's claim of ownership, but it should also foster a duty to the Canadian government to protect historic land of these communities.

The Arctic Council has allotted spots for Native groups to have seats as permanent participants. This means that they do not have voting rights. There are currently six indigenous people's organizations on the council: Aleut International Association, Arc-

82. *Id.*

83. *Id.*

84. Yvonne Chi, *Oceans in the Nuclear Age: The Need for Comprehensive International Environmental Regulations*, 40 *ECOLOGY L.Q.* 517 (2013).

85. Kevin Du, *Santa Claus is Canadian, Eh! Canada's Ice Rush to Claim the North Pole*, 30 *WIS. INT'L L.J.* 832 (Winter 2013).

86. *Id.*

87. *Id.*

tic Athabaskan Council, Gwich'in International, Inuit Circumpolar Council, Russian Association of Indigenous People of the North, and the Saami Council.⁸⁸ However, these groups of people are very dependant on using soft power. Canadian control of the Northwest Passage and international recognition will give more control to the Aboriginal Canadians who have the most substantial claim to the land. The 64,506 Aboriginals in the Canadian Arctic will participate in a national government that controls their historic land and waterways. The Canadian indigenous community will not longer have to lobby at the international community for recognition, but will now have a voice in the proceedings and development of the land that belongs to them. Canada needs to flex its sovereignty over the Arctic claim, not only for the vast economic benefits to come, but because they are in the best position to be stewards of their citizen's land and culture. Russia, under President Vladimir Putin, has begun cracking down on indigenous rights in the Arctic of Russia.⁸⁹ Canada's preservation of native culture and rights could provide a positive model for other Arctic nations to follow.

VI. CANADIAN GOVERNANCE OVER THE NORTHWEST PASSAGE

Canada has loudly proclaimed its believed possession of the Northwest Passage and has strategically worked with international law to make itself a leader in compliance with the law. The voyage of the MV Nordic Orion, coupled with the success of the Northern Sea Route, shows that Arctic shipping is possible. What distinguishes the Northwest Passage from the Northern Sea Route, however, is the lack of infrastructure in the Northwest Passage. If Canada wants to become the Arctic maritime superpower that it strives to be under international law, then it must create the infrastructure not only to facilitate the growth, but also to protect it from other nations. Currently there are 66 combat ready icebreakers divided amongst 6 Arctic nations.⁹⁰ Russia's

88. *Saami Council*, POST ARCTIC COUNCIL (Apr. 15, 2011), <http://www.arctic-council.org/index.php/en/about-us/permanent-participants/saami-council/123-resources/about/permanent-participants>.

89. Mike Blanchfield, *Canada, Russia Work Well in Arctic Despite Other Differences: John Baird*, HUFFINGTON POST, Jan. 11, 2014, http://www.huffingtonpost.ca/2014/01/11/canada-russia-arctic_n_4580352.html.

90. Interview by Tom Clark with Hillary Rodham Clinton, U.S. Secretary of State, in Ottawa, Can. (Mar. 29, 2010), available at <http://www.state.gov/secretary/20092013clinton/rm/2010/03/139207.htm>.

placement of its flag on the North Pole is evidence of its creeping maritime claims. China, a non-arctic state, operates the largest non-nuclear icebreaker in the world and in 2009 China's State Council approved the construction of a \$300 million icebreaker.⁹¹ If Canada does not have the resources to regulate the passage, its sovereignty will be infringed upon. This may also have trickling effects to the national security of Canada as Russia and China become the dominant Arctic forces.

Canadian governance over the Northwest Passage has the potential to usher in great financial and security benefits, but there is a cost that Canada must provide in exchange. Canada will be responsible for safe travels through the passage, which will require ice-reporting systems and icebreaker services clear the way for other ships.⁹² Accurate ice reporting is essential for safe travel in the Arctic. This has required Canada to invest in more ice breakers and in better reporting systems, as the Canadian Ice Service only has one aircraft that is limited in the number of hours that it can fly for radar ice reconnaissance due to its limited budget.⁹³ Ensuring the safe passage of ships will also require more general infrastructure improvements. Suggestions to the improvements that Canada needs include radio and radar beacons, lighted marks, radar reflectors and various buoys to mark off safe passage" and increased mapping.⁹⁴ However, these are just the requirements for providing for safe passages. If Canada wants to become a true maritime giant in the Arctic, it will need to develop ports and fueling stations as well. An advantage to creating these services is that it gives Canada increased control in the area as they will also now be able to deny the services to unwanted travelers.

VII. CANADA'S OPTIONS FOR CONTROL

a. Canadian-American Arctic Cooperation

In recent years, the rhetoric of the United States regarding the Arctic appears to have shifted. A March 29, 2010, Tom Clark of Canada's CTV Power interviewed then-Secretary of State Hillary Clinton and shed insight into possible changes of Arctic Policy. When Clark asked Secretary of State Clinton if she could

91. *China's Arctic Ambitions*, N.Y. TIMES (May 24, 2010), <http://ideas.blogs.nytimes.com/2010/05/24/chinas-arctic-ambitions/>.

92. See Lajeunesse, *supra* note 81.

93. *Id.*

94. *Id.*

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foresee a time when the United States might recognize Canadian sovereignty over the Northwest Passage in exchange for joint management of the water, Clinton responded, "I think that's what we're beginning to discussing seriously."⁹⁵ While Clinton's answer is vague, the ambiguity of the answer is different than previous definitive declarations from the United States about Canada's ownership of the Northwest Passage.⁹⁶ Clinton further emphasized the need for cooperation in the Arctic, specifically terms of search-and-rescue and sharing information.⁹⁷ Clinton stated that the United States is trying to avoid an arms race for the Arctic and is now giving much attention to the Arctic.⁹⁸

President Obama has furthered the United States' emphasis on the Arctic. On July 10, 2010, President Barack Obama issued Executive Order 13547 Stewardship of the Ocean, Our Coasts, and Great Lakes.⁹⁹ Executive Order 13547 calls for promoting the United States' maritime policy by "cooperating and exercising leadership at an international level" and "pursuing the United States' accession to the Law of the Sea Convention."¹⁰⁰ This, again, shows the executive branch's commitment to the Arctic and federal policy recognizing the importance of cooperation on the global issue.

However, this change in rhetoric might be the only real change in United States' Arctic Policy. In 2012, a Congress voted against ratifying UNCLOS.¹⁰¹ The United States still does not recognize of the Northwest Passage as Canadian waters. However, in February 2014, the United States announced that Secretary of State John Kerry will name a high-level individual to serve in the new position of Arctic ambassador.¹⁰² This further illustrates Pres-

95. *See supra* note 90.

96. As recent as 2006, David Wilkins, the United States Ambassador to Canada, denied any international support for Canadian baselines and reasserted that the Northwest Passage is an international straight; see Letter from David Wilkins, United States Ambassador to Canada, to Peter Boehm, Assistant Deputy Minister, N. Am., Dep't of Foreign Affairs & Int'l Trade (Can.) (October 27, 2006) *available at* www.state.gov/documents/organization/98836.pdf.

97. *See supra* note 90.

98. *Id.*

99. Exec. Order No. 13547, 75 Fed. Reg. 43,023 (Jul. 22, 2010).

100. *Id.*

101. Melissa Renee Pegna, *U.S. Arctic Policy: The Need to Ratify a Modified UNCLOS and Secure a Military Presence in the Arctic*, 44 J. MAR. L. & COM. 169, 176 (2013).

102. Becky Bohrer, *State Department Plans Arctic Ambassador*, ASSOCIATED PRESS (Feb. 14, 2014), <http://news.yahoo.com/state-department-plans-arctic-ambassador-19>

ident Obama's emphasis on Arctic policy and the attention the United States is directing towards this region.

Almost all of the multinational agreements over the Arctic use the phrase cooperation. The Arctic Council, Ilulissat Declaration, and the 1988 Cooperation Agreement all illustrate the need for cooperation in this unchartered territory. It is together that the best environmental protection, safety patrol, and scientific exploration can come. The United States and Canada are perhaps two of the closest allies on the global stage. They both will benefit greatly from an Arctic shipping route as it will give rise increased commerce and security in North America. Beyond the benefits, the United States and Canada face similar threats from Arctic shipping. Both nations may face national security threats and disruption to the fragile ecosystem as a result of the newly opened northern frontier. It is in Canada and the United States' best interests to secure the Arctic and ensure that there is a comprehensive governance system in place instead of the loosely overlapping, unenforceable international treaties.

Based on the more cooperative tone that the United States has taken in recent presidential administrations regarding Canadian governance of the Northwest Passage, Canada should look into moving forward into a new or modified joint agreement with the United States regarding the Northwest Passage.

b. International Treaty

One of the biggest hurdles to Canadian sovereignty in the Arctic is the absence of uniform law for the territorial claims. Though the United States is not a signatory to UNCLOS, recognition from the United Nations regarding its territorial claims could give Canada the sovereignty over the Northwest Passage that it has long dreamed of. If Canada is able to establish an EEZ it will have official recognition and sovereign rights to the waters within that zone. It must do this based upon the guidelines set forth in UNCLOS. Under UNCLOS, if other nations do not adhere to Canada's claim, then Canada will have the ability to bring suit in the International Court of Justice.¹⁰³ Under Canada's UNCLOS claim, it will be allowed to establish twelve-miles of sovereignty over its coastal waters.¹⁰⁴ Further, Canada can claim sovereignty

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103. See *supra* note 44.

104. See Mendez, *supra* note 25.

over 200 nautical miles from its shores.¹⁰⁵ A special provision in UNCLOS, Annex II, allows states with claims in the Arctic to increase sovereignty claims beyond the 200-mile boundary when they submit claims supported by scientific evidence to show that the Continental shelf exceeds the 200 nautical miles.¹⁰⁶

After waiting its full 10 years to submit its claim to UNCLOS and gathering extensive scientific research, Canada submitted its bid in December 2013.¹⁰⁷ The territory that Canada claimed was roughly 1.75 million km², which is equivalent to 20% of Canada's land mass or roughly three prairie provinces in size.¹⁰⁸ Canada's bid is based upon significant research of measuring the depths of the seabed floor, the thickness of the sediment, and the distances of continental slopes.¹⁰⁹ As mentioned above, Russia's UNCLOS bid was rejected from lack of scientific evidence. Instead of devoting the 10 year gap to gaining time and money for research, Russia harnessed its efforts towards the development of ports and icebreakers.

Getting approval from UNCLOS regarding the territory could give Canada the legitimacy it needs to protect its claim and could aid in embracing the dawn of Arctic shipping. However, UNCLOS claims take a long time for approval. As Canada continues to sit in limbo for approval, Russia is developing the Northern Sea Route at astonishing rates. Canada's best measure is to unite with the United States for the immediate future and operate with the larger budget and support of an ally. Then, if Canada's claim is approved, it is not left unable to defend itself against other Arctic nations.

105. *See supra* note 28.

106. U.N. Convention on the Law of the Sea (Dec. 10, 1982), http://www.un.org/depts/los/convention_agreements/texts/unclos/closindx.htm.

107. Michelle Zillio, *Shelf watch 2013: Canada set to claim massive new seabed territory*, IPOLITICS (Jan. 5, 2013), <http://www.ipolitics.ca/2013/01/05/shelf-watch-2013-canada-set-to-claim-massive-new-seabed-territory/>.

108. *Id.*

109. *Id.*