



# ARCTIC SECURITY BRIEFING PAPERS

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## From Defending to Exercising Arctic Sovereignty

***Questions about sovereignty are a constant in Canadian discourse on the Arctic – a current iteration being a study of “Canada’s Sovereignty in the Arctic” by the House of Commons Standing Committee on Foreign Affairs and International Development (FAAE).<sup>1</sup> As of Oct 22, the Committee had held four sessions, heard 15 witnesses, and received four written briefs,<sup>2</sup> and the overwhelming thrust of testimony so far is that Canada does not have an Arctic sovereignty problem. Furthermore, there is an irony in the application of northern sovereignty that the Committee has yet to address – namely, the inescapable reality that, in a challenging region made manageable through international cooperation, part of the responsible exercise of national sovereignty in the Arctic is the willingness to curb purely national prerogatives in favor of regional collaboration and collective well-being.***

### *Invoking sovereignty*

Political calls to be more attentive to Canada’s Arctic inevitably invoke the fragility of sovereignty, a worry that is given an air of credibility by reminders that outstanding territorial disputes mean that the outlines of the geography over which Canada is formally sovereign are yet to be decisively defined. The Beaufort Sea boundary dispute with the United States, and the disputes with Denmark over Hans Island and maritime boundaries in the Lincoln Sea await settlement, but in the meantime they do not undermine Canadian sovereignty or security, and because, as is widely accepted, these disputes will in time be settled by either political or judicial means, the military defence of sovereignty is not part of the equation.

Arctic sovereignty – defined in the brief to FAAE by the Canadian Global Affairs Institute (CGAI) as “the absence of any higher authority”<sup>3</sup> – may not be fragile, but Canada’s national control over its sovereign territory is far from absolute. That’s a truism that applies to all states inasmuch as the responsible exercise of sovereignty regularly means agreeing to limits on national prerogatives in favor of collective interests expressed through treaties and evolving international law. The absence of a higher authority does not mean the absence of outside interference or external influences over national affairs. Economic, political/diplomatic, and security realities impose constraints on individual states that can sometimes be rather severe – but even then, formal or *de jure* sovereignty is not in question.

It is also true, for example, that sovereign states are not always able to exercise control over, or bring services to, all of the territories that are recognized to be under their jurisdiction. It is a mainstay of UN peacekeeping forces in post conflict or conflict mitigation operations that they are mandated to help governments gradually extend their authority and influence to all areas under their jurisdiction – the UN focus being on establishing within the host state’s territory the capacity to provide services, to enforce national laws, to win the support of local populations, and to be a cooperative presence within its international neighborhood.<sup>4</sup> For many states, sometimes called fragile states, those conditions remain aspirations, but they are no less sovereign as a result. A weak state remains sovereign even if, in practical day-to-day terms, parts of its territory are effectively beyond

the government's reach and capacity to deliver services (the examples are unfortunately myriad – Libya, Mali, Somalia, Kenya, DRC, Iraq, Ukraine, and so on). But even stable, wealthy states face limitations. Canadians won't appreciate the parallel, but climate, geography, and competing national priorities have left parts of the Canadian Arctic territory beyond the timely reach of the central government.

As for the defence of sovereignty, it is also commonplace for governments to enjoy uncontested sovereignty over their territory, even though they would not have the capacity to defend it in the event of determined military attack. No country, to use the most extreme example, has the capacity to repel or defend itself against a nuclear attack, but that's obviously not a weakness that undermines national sovereignty. A state can enjoy full sovereignty even without the capacity to withstand physical attack. "Military might" to repel "armed state invaders" or to suppress "armed internal forces contesting government authority,"<sup>5</sup> are not the means by which sovereignty for most states is secured. They rely instead on their own populations and other states voluntarily respecting their territorial integrity and recognizing and honoring their sovereignty. Indeed, voluntary acceptance of state sovereignty is essential to a mutually beneficial international order. The CGAI brief, by academics Andrea Charron and James Fergusson, agrees that sovereignty is increasingly "assumed and enforced via measures short of force or via international courts of law." This reality, they add, "is vital to understanding why no Arctic sovereignty problem confronts Canada...."<sup>6</sup>

### *Establishing sovereignty*

Sovereignty is not a fragile thing. Almost 400 years into the Westphalian order, the sovereignty and territorial integrity of states are highly valued. States under a broad range of circumstances – strong, weak, democratic, autocratic, efficient, dysfunctional – enjoy the international community's consistent recognition and respect for their sovereignty and territorial integrity. And that certainly applies in Canada's Arctic.

The absence of an Arctic sovereignty problem was strongly asserted at the FAAE Committee by *Alan H. Kessel*, Assistant Deputy Minister for Legal Affairs at Global Affairs Canada.<sup>7</sup> For starters, he said "...no one disputes Canada's sovereignty over the lands of the Canadian archipelago, covering in excess of 1.4 million square kilometres and containing more than 36,500 islands." That is the case despite unresolved border and territorial disputes. Kessel characterized the Beaufort Sea boundary dispute with the US, as well as the maritime boundary dispute with Denmark in two small zones of the Lincoln Sea and the conflicting claims by Canada and Denmark regarding Hans Island, as "well managed" (noting, for example, that in May 2018 Canada and Denmark established a "joint task force on boundary issues to explore options and provide recommendations on how to resolve" the outstanding boundary issues). And in later testimony, Prof. Michael Byers of the University of British Columbia, an expert on both the Arctic and international law, suggested the Lincoln Sea disputes are essentially resolved and that the conflicting claims over Hans Island are inconsequential.<sup>8</sup>

Canadian sovereignty over the Northwest Passage is also clear, according to Kessel. He told the Committee that "all waters of Canada's Arctic Archipelago, including the various waterways commonly known as the Northwest Passage, are internal waters of Canada by virtue of historic title." And that title, he said, is reinforced when foreign ships navigate those waters in compliance with Canadian laws and regulations.

In fact, Kessel went further to argue there is no such thing as a Northwest Passage: "I defy you to find the Northwest Passage on the map." He described it as "a combination of channels within the Arctic Archipelago," but for it to be viewed as an international strait under international law it would have had to "have been used as an international strait for navigation." Prof. Suzanne Lalonde of the Université de Montréal told the FAAE there are some seven different routes through the archipelago that can be considered as part of a Northwest Passage.<sup>9</sup> Having been "icebound for 10,000 years," said Kessel, "you can't just simply change it into an international strait as the ice melts."

He also drew attention to the Ilulissat Declaration – the 2008 declaration, reaffirmed in 2018, that commits Arctic States to reliance, not on purely national means, but on existing international law for the peaceful settlement of disputes in the Arctic. It emphasizes the law of the sea as providing for “important rights and obligations concerning the delineation of the outer limits of the continental shelf, the protection of the maritime environment, including ice-covered areas, freedom of navigation, marine scientific research, and other uses of the sea” – a legal framework to which Canada remains committed.<sup>10</sup>

In 1988 Canada and the US agreed to disagree on the status of the Northwest Passage, but in the meantime, “the U.S. essentially asks [Canada] for authority to pass through the passage,” which Canada grants on a per voyage basis. And Kessel argues that inasmuch as Canada authorizes transit through those waters, not only to American vessels but to all traffic, they are Canadian waters.<sup>11</sup>

And all vessels do in fact notify Canada when they transit through the Northwest Passage, according to the Department of Transport’s Director General of Marine Safety and Security, Jane Weldon. She told the Committee that the regulations of the northern Canada traffic services zone (known as NORDREG) have been in place since 1977. They changed from a voluntary to a mandatory reporting system in 2010 and now all vessels that are within or are intending to enter [Canadian] waters are required to notify authorities.<sup>12</sup> When the Chinese vessel *Xue Long* went through the passage in 2017, it notified Canadian authorities, as a scientific research undertaking did not challenge Canadian authority.

The Canadian scholar, Adam Lajeunesse of St. Francis Xavier University’s Mulroney Institute of Governance, briefed the Committee<sup>13</sup> on three basic requirements for declaring national sovereignty over coastal waters beyond the 12-mile territorial zone – that they are under the state’s exclusive jurisdiction, have been such over an extended period, and the arrangement has the agreement or acquiescence of other states. On the first two of these, Canada’s exclusive control over the waters of its Arctic Archipelago has been consistent and unchallenged. Given the US position, acquiescence of the international community is less clear, nevertheless, no state has directly challenged Canada’s claim – and that means, he says, there has been implicit foreign recognition of Canadian sovereignty over the waters of the Arctic Archipelago for some 70 years.<sup>14</sup>

### *Exercising sovereignty*

The primary concern in Canada’s north is thus not to protect, or militarily defend, sovereignty that is being actively challenged, rather, it is to exercise sovereignty effectively in the service of the people of Canada, especially the people of the Arctic, and in support of a stable functional regional community that encompasses all of the Arctic.

The primary contribution of the Canadian Armed Forces to the exercise of sovereignty involves credible domain awareness, aiding those civil authorities that are mandated to meet the needs of Canadian citizens in the north, including search and rescue, and helping to fulfill Canada’s obligations to the region and the international community, for example, in marine protection and management. Major-General William Seymour, Deputy Commander, Canadian Joint Operations Command, Department of National Defence, told the Committee that Canada’s sovereignty is not under attack or under threat. “We have sovereignty in Canada,” and “...our key [defence] interest in the north is maintaining an awareness of what’s going on up there and having a presence year-round both to be able to see what’s happening and to respond to what’s going on.”<sup>15</sup>

Operation Limpid<sup>16</sup> is the domestic, all-domain, surveillance operation that helps authorities “understand what’s going on in the airspace, the waterways and underneath the ocean.” NORAD is involved in maritime domain awareness, as well air domain awareness and control. In response to a question about submarine detection capabilities, Gen. Seymour first reminded the Committee that “this is not the 1960s, 1970s or 1980s, when Russian submarines might be lurking behind every corner.” Now, given advances in weapons technology,

Russian forces do not have to venture much beyond their own territorial waters to launch weapons against North America from their home bastions within their territory or slightly outside. “The notion that Russian submarines, for example..., would have to travel underneath the ice in Canada's north to do their business is technologically out of date.” So, when asked whether Canada has “complete knowledge” of what’s happening below the surface in Canada’s Arctic waters, Gen. Seymour noted that the level of awareness pursued is influenced by the level of threat, with threat assessed on the basis of intent as well as capability. By that judgement, he said, there is no threat and he acknowledged that the Canadian authorities do not have “complete knowledge” of what is happening in all domains all the time (for example, they cannot have “complete knowledge” of what is happening on land throughout Canada on any particular day). Thus:

“We allocate resources to understand what's going on in the environment based on the threat that's posed to us. ...In terms of applying resources to understand what's going on in the underwater domain, resources are applied, some of which I can't talk about, but there are capabilities that Canada and the U.S. have to understand what's going on there.”

As for Russian bombers, he said their operations within Canadian air defence identification zones represented “a posturing activity rather than as something of necessity in terms of an attack on the North American landmass. They can take off from their bases in Russia and launch their missiles well outside the range of our CADIZ and our fighters, so from an operational perspective, ...they have a much broader area from which they can operate to hit their targets.”

Multiple levels of government, along with local community partners, are involved in monitoring the region (in knowing “what’s going on up there”) and in what the Department of Transport’s Jane Weldon called the “collaborative whole-of-government efforts”<sup>17</sup> to maintain presence and an effective response. The Coast Guard is prominent among those collaborators.<sup>18</sup> For example, when it manages Arctic icebreaker operations during the navigation season it also delivers supplies (with the assistance of on-board helicopters) to indigenous communities which rely on those icebreakers for the timely arrival of fuel, building materials, vehicles and other goods for which delivery by aircraft is too costly.

The commissioner of the Coast Guard, Jeffery Hutchinson, told the Committee that in maritime domain awareness and management the Coast Guard works with the Canadian Armed Forces (including through NORAD), Transport Canada, Canada Border Services Agency, and the Royal Canadian Mounted Police through the Marine Security Operations Centres, or MSOCS, to detect and assess marine based threats. He said the Coast Guard also provides ice information and routing advice, harbour breakouts, flood control, support for scientific and commercial shipping escorts, emergency search and rescue, and environmental protection services.<sup>19</sup>

### *Limiting sovereignty*

The point has already been made that there are already myriad limits on sovereignty. Formal jurisdiction certainly doesn’t mean untrammelled control over decisions and choices within a defined geography. And limits on national prerogatives are frequently, as in the European Union, understood to be an advantage. In the Arctic as well, the responsible exercise of hard-won sovereignty has come to be understood as inevitably accepting, even championing, some constraints on national prerogatives in favor of collective action in the interests of a larger regional good. Through formal agreements,<sup>20</sup> for example, states of the region agree to rely on each other for assistance in search and rescue and for oil spill cleanups. Through the recently signed Arctic Fisheries Agreement,<sup>21</sup> the Arctic Ocean states and major fishing states agree to prohibit fishing in the central Arctic Ocean for at least 16 years, until scientific studies can clarify the nature and level of fish stocks and determine what levels of fishing could be sustainable.

In other words, in the Arctic, sovereignty and security questions are only partly answered by the formal jurisdictional clarity and frontier management of state centric sovereignty and national defence. Millennia of occupation without reference to contemporary boundaries, along with rapidly changing environmental, economic, and social conditions, have spawned unique and surprisingly (given the states involved) robust disciplines of state cooperation and collaboration in the region. Anxiety about sovereignty may be a staple of the politics of the Arctic, but another recurring theme is an exceptional strain of international cooperation – the notion that the Arctic can not only avoid the conflicts and controversies that confront the powers in other parts of the world, but that the Arctic actually has potential as a model of regional cooperation. That leads some analysts to see in the Arctic a socially and politically constructed asset of international cooperation that might be modelled and mobilized in times of crisis in other regions that might well benefit from a reset in relations. Russian and American cooperation on the international space station has value beyond the specifics of space travel and experimentation, and is thus a global asset. Similarly, says Finnish academic Lassi Heininen, Arctic cooperation has value in modelling alternative possibilities for East-West relations – a human-made asset to be kept on hand and used when needed.<sup>22</sup>

Arctic states “have intentionally negotiated a regional order predicated on a more cooperative framework than they pursue with each other elsewhere.”<sup>23</sup> An Arctic rigidly divided into fortified sovereign stove pipes will fail the people of the Arctic. The Arctic has so far enjoyed a security climate of minimal military tension, and as the Polish academic Michał Łuszczuk of Maria Curie Skłodowska University in Lublin points out, the challenge now is “to keep it that way” by developing a range of “forums for discussing hard and soft security issues, confidence-building, and military cooperation.”<sup>24</sup>

## Notes

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<sup>1</sup> <http://www.ourcommons.ca/Committees/en/FAAE>

<sup>2</sup> <http://www.ourcommons.ca/Committees/en/FAAE/StudyActivity?studyActivityId=10158962>

<sup>3</sup> Andrea Charron and James Fergusson, “Arctic Sovereignty: Preoccupation vs. Hoeland Governance and Defence,” Canadian Global Affairs Institute, September 2018. [www.cgai.ca](http://www.cgai.ca)

<sup>4</sup> UN. Department of Peacekeeping Operations - UN. Department for Field Support - DPKO-DFS/DPET/Policy and Best Practice Service, 2017-06-12.

<sup>5</sup> Terms used by Charron and Fergusson, September 2018. [www.cgai.ca](http://www.cgai.ca)

<sup>6</sup> Andrea Charron and James Fergusson, September 2018. [www.cgai.ca](http://www.cgai.ca)

<sup>7</sup> Alan H. Kessel, Assistant Deputy Minister, Legal Affairs, Global Affairs Canada, FAAE, Evidence, 14 June 2018.

<sup>8</sup> Michael Byers, Professor, Department of Political Science, University of British Columbia, FAAE testimony, 17 October 2018.

<sup>9</sup> Suzanne Lalonde, Professor, Faculty of Law, Université de Montréal, FAAE testimony, 17 October 17.

<sup>10</sup> Alan H. Kessel, 14 June 2018.

<sup>11</sup> Alan H. Kessel, 14 June 2018.

<sup>12</sup> Jane Weldon, Director General, Marine Safety and Security, Department of Transport, FAAE Evidence 19 September 2018.

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<sup>13</sup> Adam Lajeunesse, “Canada’s Sovereignty in the Arctic,” Brief to the Standing Committee on Foreign Affairs and International Development, St. Francis Xavier University, Mulroney Institute of Governance, June 2018. Available through the Standing Committee: <http://www.ourcommons.ca/Committees/en/FAAE/StudyActivity?studyActivityId=10158962>

<sup>14</sup> Adam Lajeunesse, June 2018.

<sup>15</sup> Major-General William Seymour, Deputy Commander, Canadian Joint Operations Command, Department of National Defence, FAAE Evidence, 19 September 2018.

<sup>16</sup> “Operation LIMPID is the Canadian Armed Forces (CAF) mission to detect threats to Canada’s security as early as possible. The CAF keeps a routine watch over Canada’s air, maritime, land, space, and cyber domains. It also maintains a physical presence in some areas.” It “makes use of the following CAF services and groups:

Sea: The Royal Canadian Navy provides maritime domain awareness.

Air: The Royal Canadian Air Force provides aerospace domain awareness in coordination with the Canadian NORAD Region.

Land: The Canadian Joint Operations Command’s Regional Joint Task Forces provide land domain awareness. They link up with Provincial emergency services. The Canadian Rangers also provide support.

Space: The Canadian Space Operations Centre coordinates space domain awareness data.

Cyber: The Canadian Forces Network Operations Centre coordinates cyber domain awareness.

Areas of Surveillance

North Pacific West Central East Atlantic

Joint Task Force North (JTFN) Surveillance Area

JTFN leads CAF operations in the North (including Yukon; Northwest Territories; and Nunavut. “JTFN’s surveillance area for maritime operations extends to the North along Greenland’s territorial borders. It reaches north to the pole. In the west it extends to the border of Yukon and Alaska. JTFN’s maritime region also includes: Hudson Bay; Ungava Bay; and James Bay. JTFN’s total surveillance area covers nearly 8.8 million square kilometres.”

<http://www.forces.gc.ca/en/operations-canada-north-america/op-limpid.page>

(last modified, 20 March 2018)

<sup>17</sup> Jane Weldon, 19 September 2018.

<sup>18</sup> Jeffery Hutchinson, Commissioner of the Canadian Coast Guard, Department of Fisheries and Oceans, FAAE, Evidence, 19 September 2018.

<sup>19</sup> Jeffery Hutchinson, 19 September 2018.

<sup>20</sup> Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic; Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic.

<sup>21</sup> Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean, signed in Ilulissat on October 3, 2018 by Canada, Norway, Russia, the United States, China, Iceland, Japan, the Republic of Korea, the European Union and Denmark in respect of Greenland and the Faroe Islands.

<sup>22</sup> Lassi Heininen, “High Arctic Stability as an Asset for Storms of International Politics – an Introduction,” *Future Security of the Global Arctic: State Policy, Economic Security and Climate*, edited by Lassi Heininen, University of Lapland, Finland (Palgrave Macmillan, United Kingdom and United States, 2016).

<sup>23</sup> Regional Order in the Arctic: Negotiated Exceptionalism, Heather Exner-Pirot and Robert W. Murray, “Regional Order in the Arctic: Negotiated Exceptionalism.” <https://tidsskrift.dk/politik/article/download/97153/145904/>

<sup>24</sup> Michał Łuszczuk, “Military Cooperation and Enhanced Arctic Security in the Context of Climate Change and Growing Global Interest in the Arctic,” *Future Security of the Global Arctic: State Policy, Economic Security and Climate*, edited by Lassi Heininen, University of Lapland, Finland (Palgrave Macmillan, United Kingdom and United States, 2016).