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**Canada and the Northwest Passage:
Intersection of National Sovereignty and
Environmentalism?**

Bakalářská práce

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Abstrakt

Podle nejnovějších vědeckých důkazů odtává ledová pokrývka v Arktidě. Pokud ustoupí na dostatečně dlouhou část roku, mohla by se ze Severozápadní cesty stát ekonomicky výhodná námořní obchodní cesta. To by mohlo ve svém důsledku představovat ohrožení pro Kanadu při jejím nárokování suverenity nad Severozápadní cestou (SZC). Klíčovým prvkem kanadského nárokování suverenity nad SZC je princip *funkčního nároku* skrze uplatňování environmentálních regulací v SZC. Tyto regulace vznikly jako reakce na plavbu amerického tankeru *SS Manhattan* skrze SZC v roce 1969. Tato práce analyzuje tyto události za účelem zhodnocení environmentálních argumentů při nárokování suverenity nad SZC. V roce 2006 nová kanadská vláda nastolila nový, autoritativnější arktický diskurz. Proto je důležité prozkoumat implikace této změny na environmentální argumentační linii. Tato práce tvrdí, že environmentální přístup je stále relevantní. Ovšem zároveň práce tvrdí, že Kanada postrádá adekvátní infrastrukturu potřebnou k vymáhání environmentální regulace a není schopná zajistit další servis. Existuje tak riziko, že SZC bude prohlášena za mezinárodní úžinu v případě, že se zde zvýší námořní provoz.

Abstract

According to latest scientific data the ice cap in the Arctic is receding. If it recedes for a long enough part of the year, it might become feasible to use the Northwest Passage for commercial shipping. That might pose a threat to Canadian claim of sovereignty over the Northwest Passage (NWP). A key component of Canadian assertion of sovereignty over the NWP is based on the concept of *functional claim* via enforcement of environmental regulations in the NWP. These environmental regulations were introduced after the voyage of American oil tanker *SS Manhattan* in 1969 through the Northwest Passage. This thesis examines these events in order to evaluate the role (and importance) of employing environmental arguments in Canadian claim over the Northwest Passage. In 2006, the new Canadian Government presented a shift in the Arctic discourse towards a more hard-line approach. Therefore, it is important to examine the implications of this shift and its impact on the environmental line of argumentation. This text argues that the environmental approach is still relevant and actually the most viable one. But also, this text argues that Canada lacks the necessary infrastructure to enforce the regulations and to provide other shipping services. Thus, it leaves the Northwest Passage in danger of being proclaimed an *international strait* if commercial shipping through the Northwest Passage was to increase.

Klíčová slova

Kanada, Arktida, environmentalismus, Severozápadní cesta, UNCLOS, AWPPA, SS Manhattan, suverenita

Keywords

Canada, Arctic, environmentalism, Northwest Passage, UNCLOS, AWPPA, SS Manhattan, sovereignty

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V Praze dne 10.5.2015

Oliver Cox

Poděkování

Na tomto místě bych rád poděkoval paní Fiřtové za pomoc.

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Introduction

With the polar ice cap receding due to climate change, new economic opportunities are emerging in the Arctic. In summer of 2007, the Northwest Passage – sea route through Canadian Arctic Archipelago- was ice-free for the first time in recorded history. The Northwest Passage (hereinafter the NWP) is under scrutiny of world attention, because an ice-free NWP would present a feasible commercial shipping route. The NWP is historically a subject of a legal dispute: Canada claims the NWP as its *internal waters*. Other countries, led by the USA and the EU, maintain that the NWP is an *international strait* and should be therefore subject to freedom of navigation.

Historically, environmental regulations over the NWP constitute the basis of Canadian claim of sovereignty over the NWP. By proclaiming itself a world “trustee” to protect the fragile Arctic environment on world’s behalf in 1969, Canada was able to assert its *functional claim* over the NWP by showing its administrative presence in the NWP via enactment of environmental regulations in the NWP. That consequently gave Canada enough legal grounds to eventually claim full blown sovereignty over the NWP in 1986. Nevertheless, the environmental regulations continue to constitute a crucial component of Canadian claim of sovereignty over the NWP. The question is: Which is the means and which is the end? Does Canada claim sovereignty over the NWP in order to be able to protect Arctic environment? Or does Canada enforce the environmental regulations because it bolsters Canadian sovereignty over the NWP? This is why it is important to examine the relationship between environmentalism and Canadian claim of sovereignty over the NWP.

This thesis examines the establishment of the environmental regulations over the NWP as the basis of Canadian claim of sovereignty over the NWP on the account of the voyage of the U.S. tanker *SS Manhattan* through the NWP in 1969 and events following. On these events I seek to analyse the principles of how environmental regulations contribute to Canadian claim over the NWP. In the Arctic, there is still a legal vacuum to a large degree. There is no comprehensive “Arctic Treaty” that would prevent Canada from unilaterally asserting its sovereignty over the NWP. Therefore, historical principles and how events had been conducted in the history of the Arctic is still relevant today. Bottom line: In the unlikely event that the issue of the status of the NWP would be taken to the International Court of Justice, how events had been

conducted in the past is the basis of the Courts decision making. History is important in the Arctic.

This research topic is still relevant today, because the Canadian Government under Harper presented a shift in Canadian Arctic discourse from focus on protection of the Arctic environment to a hard-line assertion of Canadian Arctic sovereignty. Therefore, it is important to examine the implications of this shift for the environmental approach. Today, Canada's claim over the NWP is embedded in the UNCLOS treaty. But even under UNCLOS, the NWP can still be proclaimed an *international strait*. A key criterion for a strait to be proclaimed an *international strait* is the amount of uncontrolled international shipping traffic. I argue that effective enforcement of environmental regulations in the NWP is crucial for the NWP to not to be proclaimed an *international strait*. But, Canada has to have adequate infrastructure to enforce the regulations and to provide the services stemming from the commitment. If Canada fails to do so, it might lose its *de facto* sovereignty (control in real terms) over the NWP should commercial shipping increase.

In this thesis I analyse the role of environmentalism in Canadian claim of sovereignty over the NWP. I argue that environmental approach is crucial to Canadian claim over the NWP. I argue that this approach is still important and relevant today. But I also argue that Canada lacks the necessary infrastructure in the Arctic to accommodate commercial shipping through the NWP. Therefore, Canada not only leaves the NWP in danger of being proclaimed an *international strait*, Canada also puts itself at risk of losing *de facto* control of the NWP. That would diminish Canada's ability to protect the Arctic environment.

This thesis is divided in three chapters. First chapter gives a brief introduction to the Arctic discussion in general as all the issues are intertwined in the Arctic. Then the chapter explains the relevant legal aspects (UNCLOS treaty) and historical principles of understanding state sovereignty. The chapter gives a brief historical overview of Canadian Arctic sovereignty.

Second chapter is the main body of the thesis. It examines the establishment of the environmental regulations over the NWP as the basis of Canadian claim of sovereignty over the NWP. This is analysed on the account of the events following the voyage of the U.S. super tanker *SS Manhattan* through the NWP in 1969. Then the chapter analyses the process of gaining international recognition for the environmental regulations through the UNCLOS treaty in 1982.

Third chapter examines Canadian discourse towards the Arctic under the Harper Government. The chapter examines the controversies regarding Canadian approach to environmentalism. The chapter gives brief review of Canada's infrastructure in the Arctic.

Methodology and Literature Research

This thesis is an empirical-analytical study of a geographically specific problem in international relations. This thesis analyses the historical relationship between concepts of sovereignty and environmentalism in the context of the NWP. The main body of this thesis is a case study of the *SS Manhattan* voyage through the NWP. At various points of the thesis, methods of discourse analysis are employed by analysing primary documents and speeches of policymakers. Even though it is not the intended aim, this thesis employs methods of comparative study at certain points. The research is based on extensive study of academic publications and articles. The search for academic articles was done via academic databases EBSCO and JSTOR.

International Politics of the Arctic: Coming in from the Cold by British author Peter Haugh is a useful introduction to the study of Arctic affairs. It provides a thorough up-to-date overview of all international-relations concepts and institutions in relevance to the Arctic. The *Arctic Yearbook* is an annual international and interdisciplinary peer-reviewed publication, published online¹. It is a joint project of the Northern Research Forum and the University of the Arctic. Its correspondents are from various countries that have interest in the Arctic (including China). That makes it a valuable platform for academic cooperation concerned with an internationally contested region.

The book *Future History of the Arctic* by Charles Emmerson, the Associate Director of the World Economic Forum, presents a more in-depth examination of Arctic affairs. The book examines Arctic history and geopolitics with focus on realist discourse. Emmerson argues that in the Arctic an armed conflict is plausible, but unlikely. Instead, we will most likely witness securitization and increase in surveillance

¹ <http://www.arcticyearbook.com/> (accessed 5.5.2015)

over the Arctic.² According to Emmerson, the main driver of securitization of the Arctic is the climate change.³

Barry S. Zellen, research director at the U.S. Naval Postgraduate School, examines geopolitics of the Arctic in his book *Arctic Doom, Arctic Boom: The Geopolitics of Climate Change in the Arctic*. The book examines the Arctic through lenses of international relations theories, such as Mackinder's heartland theory. Zellen examines the predominant realist discourse and he ultimately argues that the Arctic will soon become a geostrategic pivot, very much the same way the Mediterranean Sea had been in the Ancient times.⁴

Donat Pharand, professor emeritus of the University of Ottawa, is one of the foremost experts on international law of the sea, especially in relation to the Arctic. Pharand is proponent of Canadian sovereignty over the NWP. It was Pharand who as a legal advisor to Canadian Government recommended enclosing Canadian Archipelago by a straight baseline in 1986. His text *The Arctic Waters and the Northwest Passage: A Final Revisit* is a crucial starting point to the study of the NWP as it lays out the legal complexities of the issue. Pharand stresses out the importance of Canadian infrastructure in the Arctic for Canada to maintain control over its Arctic.⁵

Shelagh. D. Grant, adjunct professor at the Trent Univeristy, is prominent historian of Arctic sovereignty. Her book *Polar Imperative: A History of Arctic Sovereignty in the North America* is a comprehensive account of history of sovereignty in the Arctic. Grant's understanding of sovereignty focuses on the *de facto* sovereignty, the sovereignty in real terms. In the *Polar Imperative* Grant draws attention to the question of indigenous peoples in the Arctic and their importance in Arctic affairs.

Michael Byers holds the Canada Research Chair in Global Politics and International Law at the University of British Columbia. Byers is prominent expert on international law and Arctic sovereignty. In his book *Who Owns the Arctic? Understanding Sovereignty Disputes in the North* Byers gives in-depth insight into Arctic sovereignty disputes. Byers is strong proponent of Canadian Arctic sovereignty. He argues that the USA should allow Canada to claim the NWP as its *internal waters* so

² Charles Emmerson, *The Future History of the Arctic* (New York: PublicAffairs, 2010), 124.

³ Emmerson, „Future History,“ 145-147.

⁴ Barry Scott Zellen, *Arctic Doom, Arctic Boom: The Geopolitics of Climate Change in the Arctic* (Santa Barbara: Praeger, 2009), 146.

⁵ Donat Pharand, „The Arctic Waters and the Northwest Passage: A Final Revisit,“ *Ocean Development & International Law* 38, no. 1-2 (2007): 5.

Canada can effectively prevent illegal immigration through the Arctic.⁶ Byers is strong critique of Harper's Arctic policy.

The book *Breaking Ice for Arctic Oil: The Epic Voyage of the SS Manhattan* by Ross Coen, research worker at the University of Alaska, is important for this thesis as it gives American perspective of the *SS Manhattan* voyage: By the Americans, the voyage is perceived as a story of human technological advancement and as a story of oil development in Alaska.

Arctic Environmental Cooperation: A Study in Governmentality by research professor of the Arctic Centre Monica Tennberg is a comprehensive publication providing detailed account of theories of Arctic environmental governance systems.

Oran Young, professor at the University of California, is prominent expert on environmental governance theories with focus on the Arctic. Young has created many of the theories and typologies we today use to explain why international environmental institutions form and what types of effects they have and the conditions under which they have them. His contributions have been central to the development of the concepts of environmental institutional dynamics, interplay, and scale.⁷ In his text *Arctic Governance - Pathways to the Future*, Young argues that a proposed "Arctic Treaty" is simply unrealistic due to competition of interests in the Arctic. Rather, the fragmented nature of separate environmental regimes should converge by closer intergovernmental cooperation through the Arctic Council.⁸ According to Young, there are two distinct and incompatible international relations discourses in the Arctic: A) The discourse of geopolitics/political realism focuses on aggressive power play between strong state actor with the central focus on the growing competition over Arctic mineral resources. B) The discourse of ecosystem-based management and spatial planning starts from the premise that we should think about the Arctic as a complex and dynamic socio-ecological system. This discourse seeks to avoid the fragmentation resulting from battles over jurisdictional issues, and devise co-operative regimes that make it possible to address interrelated Arctic issues in an integrated manner.⁹ The relationship between

⁶ Michael Byers, Suzanne Lalonde, "Who Controls the Northwest Passage?," *Vanderbilt Journal of Transnational Law* October 42, no. 4 (2009): 1189.

⁷ Ronald B. Mitchell, "Oran Young and international institutions," *International Environmental Agreements: Politics, Law and Economics* 13, no. 1 (2013): 1.

⁸ Oran R. Young, "Arctic Governance - Pathways to the Future," *Arctic Review on Law and Politics* 1, no. 2 (2010): 180-184.

⁹ Young, "Arctic Governance," 173-174.

environmentalism and Canadian claim of sovereignty can be interpreted as a conflict of the above mentioned discourses.

1. Understanding Sovereignty and Why Is History Important

1.1. Arctic Discussion

There are a lot of things going on in the Arctic. Each can be examined separately but inevitably they will be interconnected. One issue is influencing the other. This thesis focuses on the role of environmentalism¹⁰ in Canadian claim of sovereignty over the NWP.¹¹

The key question is why every circumpolar country wants to have its share of the Arctic. The answer is simple: The ice is melting. According to the *International Panel on Climate Change* (IPCC) report from 2007, the average Arctic temperatures had increased at nearly twice the global average rate over the past century and Arctic sea ice had shrunk by 3,3% over the previous decade.¹² Thus, with the ice receding, possibilities of new shipping routes appear: The NWP and the eastern Northern Sea Route along the Russian coast. Also, more areas become available for mining and drilling. It is estimated that in the Arctic there are up to 22% of world's undiscovered fossil fuel reserves¹³. The prospect of intensified oil drilling and sea traffic (of which great deal would be carrying the extracted oil) has got obvious implications for the environmental concerns. That bolsters the Canadian argument. On the other hand, it shortens the timeframe in which Canada has to act.

The most important intergovernmental institution concerned with the Arctic environment is the Arctic Council. The Arctic Council identifies six main environmental threats: Persistent organic pollutants (harmful chemicals that travel via

¹⁰ For the purpose of this text I use the term *environmentalism* somewhat vaguely. By *environmentalism* I refer to the sum of concerns for protection of the environment or to policies or intentions addressed to protect the environment. To differentiate from the term *ecology*: "Where the environmental implies a sense of surround, of surroundings, with the observer sharply defined as separate from the surroundings, the ecological, or, more precisely, the human ecological, denotes involvement that whenever possible includes the observer in the field that is being considered." See Monica Tennberg, *Arctic Environmental Cooperation: A Study in Governmentality* (Ashgate Pub Ltd, 2001), 17.

¹¹ The NWP is a sea route through the Arctic Ocean, along the northern coast of North America via waterways through the Canadian Arctic Archipelago, connecting the Atlantic and Pacific Oceans.

¹² IPCC, *Fourth Assessment Report Climate Change*, Intergovernmental Panel on Climate Change, http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr.pdf (accessed 5.5.2015).

¹³ Peter Hough, *International Politics of the Arctic: Coming in from the Cold* (Oxon: Routledge, 2013), 19.

food chain), oil pollution, heavy metals, noise, radioactivity and acidification. However, the greatest risk to the Arctic environment is the oil spill. Oil persists longer in frozen conditions. It can be trapped in the ice and then be released much later when the ice melts. The fish and wildlife in Prince William Sound is still affected by the oil spill disaster that was *Exxon Valdez* accident in 1989.¹⁴ Furthermore, there is still no technically effective way how to contain an oil spill in Arctic conditions. Thus, even a minor spill can be a disaster.¹⁵ However, the most important driving force that influences the Arctic environment is the climate change. For many Arctic species the warming of the Arctic presents a death warrant.¹⁶ Therefore, the discussion on the climate change is closely linked to Arctic affairs.

A great deal of attention is paid to the question of Inuit autonomy in the northern regions. Historically, Canada has been using the Inuit as one of the means to assert its sovereignty over the Arctic. The Inuit have been strong proponents of protection of the environment, as it directly affects their livelihood.¹⁷

There are concerns regarding security and militarization of the Arctic. With the ice receding, international military conflict in the Arctic is unlikely, but plausible.¹⁸ Also, the Canadian Arctic is basically an unguarded border through which a potential terrorist could enter the North America unchecked. Especially if the traffic becomes more frequent.¹⁹

1.2. Understanding Sovereignty

Legal interpretations as they apply to Arctic sovereignty are still evolving and are still based on accepted principles set down in international law.²⁰ And international law is not static, rather it is a living organism. Put bluntly, it only exists as far as other countries comply with it. That is especially important in the Arctic, where there is still a great deal of legal vacuum. Not to mention the fact that the USA still has not adopted the most relevant international treaty available – the *United Nations Convention on the*

¹⁴ Hough, "International Politics," 55.

¹⁵ Kathryn Isted, „Sovereignty in the Arctic: An Analysis of Territorial Disputes and Environmental Policy Considerations“, *Journal of Transnational Law and Policy* 18, no.2 (2009): 368.

¹⁶ Emerson, „Future History,“ 145-147.

¹⁷ Byers, Lalonde, „Who Controls,“ 1169.

¹⁸ Emerson, „Future History,“ 124.

¹⁹ Michael Byers, *Intent for a Nation: What is Canada for?* (Douglas & McIntyre, 2007), 124.

²⁰ Shelagh D. Grant, *Polar Imperative: A History of Arctic Sovereignty in North America* (Vancouver, Toronto, Berkeley: Douglas and McIntyre, 2010), 17.

Law of the Sea (hereinafter the UNCLOS). Therefore, in the Arctic, history and historical principles still play a crucial role.

There are two basic definitions of sovereignty for purposes of this text: *De jure* sovereignty is defined as a supreme power or title over a specific territory by political or legal right. It is the ability of the state to exercise recognized rights of exclusive jurisdiction within a territorially delimited space.²¹ Historically, according to international law, one of the means to claim sovereignty was discovery. If the claim was based on discovery alone, it was considered undeveloped or temporary and could lapse if not followed within reasonable time by “effective occupation.” Other than permanent settlement, effective occupation could be achieved through acts by government such as the provision of basic services, administrative structures for governance and enforcement of a nation’s laws and regulations.²² The last sentence I would like to underline for future reference, because the environmental regulations over the NWP are exactly a continuation of the “effective occupation” principle, or *functional claim* principle.

The term *de facto* sovereignty normally refers to having power “in fact” or in real terms, but usually without the political or legal right inherent in the *de jure* sovereignty. The term is usually applied in the negative, as in the case of a loss of economic, political or military control over a specific area by a sovereign nation to another.²³

To lay out the main problem: Legislation and declarations, unaccompanied by enforcement, will not suffice. The intent of the state to act as sovereign must be expressed in deeds, not merely in words. If it is navigation by foreign ships that endangers the sovereignty, the ships exclusion and subjection to special authorization would constitute the best proof of exclusive jurisdiction.²⁴ In other words, if Canada lacks the infrastructure (ships, radars etc.) to enforce the environmental regulations over the NWP, it endangers its *de facto* sovereignty over the NWP as foreign ships could simply ignore the regulations.

²¹ Franklyn Griffiths, "Canadian Arctic Sovereignty: Time to Take Yes for an Answer on the Northwest Passage", in *Northern Exposure: Peoples, Powers and Prospects for Canada's North* (Montreal: IRPP, 2008): 3.

²² Grant, "Polar Imperative," 12.

²³ *Ibid.* 13.

²⁴ Donat Pharand, „The Arctic Waters and the Northwest Passage: A Final Revisit,“ *Ocean Development & International Law* 38, no. 1-2 (2007): 5.

1.3. History of Canadian Arctic Sovereignty

History of Canadian Arctic sovereignty began in 1880 when the United Kingdom transferred the ownership of the Arctic islands to the still young Dominion of Canada. It was uncertain if the British claim to the islands was secure to give in the first place. The claim to the islands was considered secure, but neither the British nor Canadian explores ever laid claim to the waters of the archipelago.²⁵

In an attempt to lay claim to unexplored or uncharted lands, Canada introduced the Sector Theory in 1907 by declaring the maritime boundaries in the Arctic as an extensions of its mainland boundary along the longitudinal meridians, claiming a wedge-shaped area all the way to the North Pole. But this theory is more a “political proposition” than a legal right. This theory has no validity in international law for the acquisition of title, not even for land areas, and there is no clear evidence that Canada has ever legally relied on it to support a claim to Arctic waters.²⁶ From 1922 the Royal Canadian Mounted Police had been patrolling the northern territories. By doing so they were pursuing the *functional claim* principle. That greatly contributed to Canadian assertion of sovereignty over the Arctic.

During the Second World War the Canadians cooperated with the USA on extensive military operations in the Arctic. This was one of the periods when Canada lost *de facto* sovereignty over its Arctic as the number of American military and civilian personnel outnumbered the Canadian population of the Yukon and Northwest Territories combined.²⁷

Canadian *de facto* sovereignty over its Arctic was somewhat in question throughout the Cold War era. From 1957, Canada had been cooperating with the USA on setting up a Distant Early Warning (DEW) line of radars and station against the potential Soviet threat in the Arctic. Canada had only limited degree of control over American military and supply ships. In 1964, Canada established a three-mile maritime territorial zone in the waters around the Canadian Archipelago by passing the Sea and Fishing Zones Act. Throughout the 60's Canada lost *de facto* sovereignty over its Arctic due to the fact that most of the oil drilling permits had been held by foreign (mostly

²⁵ Pharand, “Arctic Waters,” 7.

²⁶ Michael Byers, *Who Owns the Arctic? Understanding Sovereignty Disputes in the North* (Vancouver: Douglas & McIntyre, 2009), 42.

²⁷ Grant, „Polar Imperative,“ 13.

American and British) capital.²⁸ Also, foreign submarines had very likely been navigating the NWP. That presented potentially a great danger to Canadian sovereignty over the NWP. At the time, Canada did not possess any technical capability to detect foreign submarines in the Arctic waters.²⁹

The Inuit have traditionally played a major role in asserting Canadian sovereignty. Basically, by claiming that “the Inuit are Canadians,” Canada is again pursuing the “effective occupation” principle as the Inuit have been using the Arctic for their livelihood since time immemorial.³⁰ Canada addressed the Inuit question by creating Nunavut territory in 1999. The Inuit ceded land ownership for offsetting autonomy and income from oil industry revenue.

As a consequence of the voyage of American oil tanker *SS Manhattan* through the NWP in 1969, Canada introduced environmental regulations over the NWP in 1970. It also extended its *territorial waters* from 3 to 12 nautical miles. By doing so, it effectively created two gateway-choke points at the entrances of the NWP. After similar voyage of American icebreaker USCGC *Polar Sea* in 1985, Canada drew a straight baseline around the Canadian Arctic Archipelago. By doing so, Canada for the first time officially claimed the waters of the archipelago as *internal waters*. All of these acts have been opposed by the USA and some European countries. In 1988, Canada and the USA signed the *Arctic Cooperation Agreement* where they basically “agreed to disagree” on the status of the NWP.³¹ That was possible at the time, because the NWP was frozen and useless for most of the year. That is now changing.

1.4. Legal Aspects and UNCLOS

This thesis does not seek to interpret complexities of the strictly legal aspects of the issue. Nevertheless, some basic facts have to be stated: A claim to the waters and a claim to the archipelago (i.e. to the landmass) are two different issues. You have to own the land in order to be able to claim the adjacent waters. In this case, Canadian claim to

²⁸ Ibid. 13.

²⁹ Byers, Lalonde passage, „Who Controls,“ 1176.

³⁰ Ibid. 1169.

³¹ SALE, R. AND E. POTAPOV, *The scramble for the Arctic: Ownership, Exploitation and Conflict in the Far North* (London: Frances Lincoln, 2010), 148.

the Canadian Arctic Archipelago is considered secure and settled.³² Unlike the claim to the adjacent waters (i.e. claim to the NWP) which is subject to the international law and to contentious opposition of other countries.

Under current international law, as codified under the UNCLOS treaty³³, there are following categories of sea waters: A) *Internal waters*. Bays, lagoons, gulfs etc. The country has got absolute sovereignty over the waters. There is no entry without the country's permission. B) *Territorial waters*. Up to 12 nautical miles from the coastline. The country has got absolute sovereignty, but the waters are from now on subject to the right of *innocent passage*³⁴. That means that foreign ships can freely transit the waters. Everything outside *territorial waters* is considered *international waters* (or *high seas*). Nevertheless, the UNLOS differentiates further categories were a nation state maintains certain rights. C) *Contiguous waters*. Between 12-24 nautical miles from the coastline. The country can only exercise control over immigration, customs, pollution prevention etc. D) *Exclusive Economic Zone (EEZ)*.³⁵ Up to 200 nautical miles from the coastline. The country has got authority over maritime and seabed resources. The country has got the priority over others to conduct economic and research activities.

Canada claims that the NWP is its *internal waters*. The legal precondition for this claim is the straight baseline that Canada drew around the archipelago in 1986. There is legal debate whether Canada had the legal right to do so. The merit of the discussion is whether the NWP was an *international strait* before it was enclosed by the baselines in 1986.³⁶ The prevailing legal opinion is that the NWP was not an *international strait* at the time; therefore Canada had the right to draw the baseline around the Canadian Archipelago and claim the NWP as its *internal waters*.³⁷ But, even under the UNCLOS, the NWP can still become an *international strait*. The UNCLOS gives two ambiguous requirements to fulfil the legal definition of *international strait*³⁸:

³² Suzanne Lalonde, "Increased Traffic through Canadian Arctic Waters: Canada's State of Readiness," *Revue judiciaire Thémis*, Vol. 38, No. 1 (2004): 58.

³³ *United Nation Convention on Law of the Sea (signed 10.12.1982; effective 16.11.1994)*, *United Nations Treaty Series no. I-31363*, available at http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm (accessed 5.5.2015).

³⁴ According to UNCLOS, *innocent passage* is "the right to freely transit the waters during a time of peace unless they endanger peace, good order or security." see UNCLOS part II, section 3.

³⁵ UNCLOS, part V.

³⁶ Byers, Lalonde, „Who Controls," 1170.

³⁷ Pharand, "Arctic Waters," 28.

³⁸ Although the Third Law of the Sea Conference managed to agree on a legal regime for "straits used for international navigation," it could not agree on a definition of such a strait. Consequently, existing customary international law must be relied on, mainly as interpreted and applied in the *Corfu Channel*

Firstly, the strait has to be connecting two oceans or EEZs. Secondly, there has to be some amount of uncontrolled international traffic through the strait. The former requirement is clearly met: The NWP is connecting the Atlantic and the Pacific oceans. The latter requirement is the contentious point of the whole discussion. And this is exactly where the environmental regulations and Canada's ability to enforce them come in. Nevertheless, it is likely that the NWP will eventually be proclaimed an international strait due to increasing amount of international shipping traffic through the NWP. At this point, it appears that the only uncertainty is the time at which this would take place.³⁹

2. Environmentalism as a Vehicle of *Functional Claim* over the Northwest Passage

2.1. Environmental Concerns in pre-*Manhattan* Period

Even though instrumentalization of environmental concerns in 1969 had an air of innovation about it, it was not the first time Canada had invoked environmentalism in international relations. Some of the very first actions as an independent actor on the world stage had been connected to environmental concerns: "Nature protection (...) offered the opportunity to mark a nation's diplomatic capacity."⁴⁰ In 1909, Canadian Government negotiated the *Boundary Waters Treaty*, which established an intergovernmental committee meant to oversee the use and development of water resources along the Canada-United States border. In 1926, Canada created the Arctic Island Preserve covering all land and water north of 60th parallel to protect the wildlife and indigenous peoples.⁴¹ This was an act of state that implicitly supported Canadian *de facto* sovereignty over the area. In the interwar period, the Canadian Ministry of Marine

case of 1949. In that case, the International Court decided that an international strait had to meet two criteria: One pertaining to geography and the other to the function or use of the strait. There is legal debate on the concrete criterions. In other word, the legal definition of *international strait* is ambiguous. See Pharand, "Arctic Waters," 30-35.

³⁹ Donat Pharand, *The Northwest Passage: Arctic Straits* (Dordrecht: Martinus Nijhoff Publishers, 1984), 110.

⁴⁰ David Meren, Bora Plumtre, "Rights of Passage: The Intersecting of Environmentalism, Arctic Sovereignty and the Law of the Sea, 1968-82," *Journal of Canadian Studies* 47, no. 1 (2013): 175.

⁴¹ Pharand, „Arctic Waters," 25.

and Fisheries set forth an initiative to create an international treaty regulating fishing for Pacific Halibut, whose stock were being depleted at the time. This set an important precedent. It was the first time such a treaty was negotiated and signed by Canadian Government without British presence.⁴² Concerns for the environment had been used as an instrument to present Canada as an independent actor on the world stage.

The Oil Pollution Convention (OILPOL) in 1954 was the first international treaty trying to protect the seas by banning discharge of oil from oil tanker in specified marine zones. At the conference, Canada also presented itself as a strong independent actor alongside the U.S. and the UK and (unsuccessfully) pushed for total prohibition of ships discharging their oil waste into oceans. Also, Canada argued for recognition of the fact that in the unique polar geography an oil spill would cause more severe and more permanent damage to the ecosystem than in warmer climates. Canada likened the Arctic environment to a “haemophilic”, where wounds would heal slowly, if at all. Prime Minister Trudeau remembered this argument and invoked it later in 1970 when defending the environmental regulations over the NWP.⁴³

These were instances in the pre-*Manhattan* period when Canada employed environmental concerns to strengthen its national sovereignty.

2.2. SS Manhattan Voyage

The Arctic was long considered a potential source of oil. The Conservative Government of John Diefenbaker was promising an Arctic boom in its 1958 “Road to Resources” campaign. The Government issued exploration permits all across Canadian Arctic. In the mid-1950’s, Geological Survey of Canada undertook Operation Franklin to promote the geological potential of oil on Canada’s Arctic islands. First results from commercial drills came in 1961 and 1962 and both were negative.⁴⁴ A promised new Arctic black gold rush appeared to be a failure. But by that time, influenced by the promotion campaign, most Canadians had accepted the idea that development and riches of the Arctic was something what differentiated them from their southern neighbours.

⁴² Meren, Plumtre, „Rights of Passage,“ 175-176.

⁴³ Allen R. Coen, *Breaking ice for Arctic oil: the epic voyage of the SS Manhattan through the Northwest Passage* (Fairbanks: University of Alaska Press, 2012), 75.

⁴⁴ Emerson, „Future History,“ 177.

“Northernness” became part of Canadian identity.⁴⁵ That increased sensitivity to any affront to their country’s Arctic sovereignty.

Another rush for exploration permits was sparked in 1967, this time in the waters of the Canadian Archipelago (previous exploration had been concerned mainly with the islands). Much of the investment came from American companies. That gave rise to worries about Canada losing *de facto* sovereignty in the waters of the Archipelago due to being overwhelmed by American capital. To offset American presence, Canadian Government provided financial support to the Panarctic Oil Company, a consortium of smaller Canadian companies. This competition for exploration permits was vividly covered in the media. That further bolstered growing anti-American sentiment of Canadian public.⁴⁶

Then, in 1968, the company ARCO announced a major oil discovery at Prudhoe Bay, on the North Slope of Alaska. The field was estimated to contain 10 billion barrels of oil, which would make it the largest discovery of oil in the history of North America.⁴⁷ The announcement was initially welcomed by both American and Canadian Governments. For the USA, and especially for the state of Alaska, this promised a future of economic prosperity. Canadians were enthusiastic about it as well, because they were expecting equivalent discoveries in the Beaufort Sea and Mackenzie Delta. But an obvious problem presented itself shortly after. How to transport the oil to the world market? There was the option of a pipeline (an option that eventually became reality in 1977 after being endorsed by U.S. president Nixon). But that option was not without its perils. First of all, a similar experiment project of the Canola Pipeline from the Second World War had been considered an economic failure.⁴⁸ Then there was the issue of unresolved aboriginal land claims, which would have to be settled before constructing a pipeline through disputed lands. Therefore, the American company Humble Oil (today part of Exxon-Mobil), which joined ARCO in developing the Prudhoe Bay oilfield, went on to examine another possibility of transporting the oil. In October 1968, Humble Oil announced in the press its plan for a feasibility test voyage through the NWP. The company’s super tanker *SS Manhattan* was to be upgraded to be able to navigate ice-covered waters. The journey through the NWP was planned from

⁴⁵ Carl Berger, “The True North Strong and Free”, in Peter Russel (ed.) *Nationalism in Canada* (Canada: McGraw Hill, 1966).

⁴⁶ Grant, “Polar Imperative,” 345-346.

⁴⁷ Emerson, “Future History,” 178.

⁴⁸ Grant, “Polar Imperative,” 344.

the east to west direction; to the Prudhoe Bay and back with the end of the journey in the city of Manhattan. That presented the Canadian Government with a (perceived) direct challenge to its Arctic sovereignty and provoked a strong, almost hysterical, reaction from Canadian media and public.

To understand all the motives that drove the strong reaction of Canadian public, another factor has to be taken into account: In April 1968, Pierre E. Trudeau replaced Lester Pearson as the Prime Minister of the Liberal government. A new foreign policy was declared as an extension of national policy.⁴⁹ That did not mean departure from internationalist tradition. It meant for the nationalism to go “hand in hand” with internationalism. Also, there was a generation change with the old generation of policymakers being replaced by a new generation that did not remember the World War era of Canada-USA cooperation.⁵⁰ This foreign policy approach shift further bolstered Canadian nationalism and anti-American sentiment of the time. Together with the above mentioned- an image of Canadian Arctic wealth and a perceived encroachment by U.S. capital- these were the primary factors driving the strong reaction against the possible affront to Canadian Arctic sovereignty presented by the *Manhattan* voyage.

The secondary factor was concerns for the environment. In the 1960's, ecological thinking in general permeated into the international politics of Western Europe and North America and subsequently permeated into public consciousness.⁵¹ A contentious issue of the 1960's was the acid rain. Crucial point was discovery of the fact that causes of the acid rain, such as waste fumes from burning fossil fuels and sulphur dioxide, need not have to be produced in the country that suffered from the acid rains. The polluting country could have been hundreds of kilometres away from where the acid rain fell. In other words, it was recognized that “pollution does not respect borders.”⁵² Due to atmosphere dynamics, northern states such as Canada were especially suffering from the acid rains. This caused higher sensitivity to environmental issues. Another issue that brought environmental concerns to the forefront of public attention was the proposed plan for a trans-Alaskan oil pipeline in 1968. It was in consideration to run some parts of the pipeline through Canadian land. Also, the

⁴⁹ Hector I. Mackenzie, „Canada's Nationalist Internationalism: From the League of Nations to the United Nations,” in *Canadas of the Mind: The Making and Unmaking of Canadian Nationalism in the Twentieth Century*, ed. Norman Hillmer and Adam Chapnick (Kingston: Queen's University Press, 2007): 89-109.

⁵⁰ Grant, “Polar Imperative,” 346-347.

⁵¹ Hough, *International Politics*, 51.

⁵² *Ibid.*, 51.

pipeline would require settlement of aboriginal land claims, as the pipeline would be going through their (disputed) land. All this gave rise to environmental pressure groups, who were concerned with ecological consequences of running the pipeline through naturally valuable areas.

In 1967, a U.S. super tanker *Torrey Canyon* hit a shoal south off British coast. The resulting oil spill was unprecedented. The entire cargo of crude oil, some thirty million gallons, was discharged into the sea. The oil spill spread across British coast and it reached the coast of France as well.⁵³ The incident pointed out the inadequacy of outdated standing regulations for oil tankers set up by the 1954 OILPOL treaty. On one hand, the trans-boundary nature of the oil pollution stressed out the need for international cooperation. But on the other hand, it gave reasoning to unilaterally implementing more stringent marine pollution measures in international waters when the international regime was insufficient to protect sovereign nation's interests.⁵⁴ International Maritime Organization (IMO), overseer of the OILPOL treaty, called in a new conference in 1969 in Brussels to address the issue. This chain of events later provided useful arguments and a useful platform for the Trudeau Government when arguing for international recognition of the environmental regulations over the NWP.

When put in context of the voyage of the *SS Manhattan*, the *SS Manhattan* was analogically perceived by the Canadian public as an U.S. (i.e. foreign) tanker that would despoil *their* fragile Arctic environment in case of an accident. As expressed in a newspaper comment: "If the *Manhattan* succeeds, other oil-laden vessel will follow in her wake. Before that happens Canada must be ready to receive and control them; for it is Canada's northland that would be despoiled if the ice won and the tanker lost."⁵⁵ This comment could very well apply even to today. It was precisely this dynamics from the public that later provided the Canadian government with another justification when unilaterally imposing environmental regulations over the NWP. Concerns for sovereignty and environment have merged.

Nevertheless, the initial intent of the Trudeau government was to downplay the incident in order not to go into serious conflict with the U.S. As commented by Mitchel Sharp, Canadian Secretary of the State for External Affairs: "This is not a time for wide-ranging assertion of Canadian Sovereignty in the Arctic made without regard to the

⁵³ Coen, "Breaking Ice," 69.

⁵⁴ *Ibid.*, 69.

⁵⁵ *Globe and Mail* cited in Meren, Plumtre "Rights of Passage," 14.

international political and legal considerations (...) That might satisfy our ego but would not add a whit to the international acceptability of our position.”⁵⁶ But the public and political opposition was outraged nonetheless, no small part due to factors stated above. The ignition spark that caused the outrage was the refusal of the company Humble Oil to ask for official Canadian permission. Neither did the U.S. administrative. By asking for Canadian permission, the U.S. would be recognizing Canadian *de facto* sovereignty over the NWP. They refused to ask for permission on the grounds that the voyage was not planned to be taken through Canadian *territorial waters*. This was true because, at the time still, Canada officially claimed only 3 nautical miles from the coastline.⁵⁷ Therefore, according to the plan, the *Manhattan* was to stay on the high seas throughout the voyage. The U.S. state department even notified Canadian government that the voyage had no intention of staking a claim on the NWP and that the voyage was merely undertaking a feasibility study.⁵⁸ Nevertheless, *SS Manhattan* was to be accompanied by the U.S. coastguard icebreaker USCGS *Northwind* to provide assistance.

On the other hand, Humble Oil asked Canadian Coast Guard to provide them with information about ice and whether conditions. Also, they accepted an official Canadian representative on board of the *Manhattan*. U.S. Coastguard also actively consulted with the Canadian Coast Guard and they accepted support of the Canadian icebreaker CCGS *John A. Macdonald* to accompany the voyage. This acceptance of considerable Canadian assistance, it was argued by the Canadian Government, prevented any potential damage to Canadian claim over the NWP.⁵⁹ By providing these services Canada exhibited its *functional claim* of asserting *de facto* sovereignty over the NWP. Apparently, this was not enough to satisfy outraged Canadian citizens.

2.3. Arctic Waters Pollution Prevention Act

During the voyage, the *Manhattan* got repeatedly stuck had to be broken free by the Canadian icebreaker. The icebreaker had to circle closely along the length of the *Manhattan*. By doing so it broke the ice that trapped the *Manhattan* and gave it enough

⁵⁶ Cited in Coen, “Breaking Ice,” 66.

⁵⁷ Pharand, “Arctic Waters,” 10-11.

⁵⁸ Byers, Lalonde, “Who Controls,” 1149.

⁵⁹ *Ibid.*, 1150.

space to reverse and develop momentum to batter the ice and move forward.⁶⁰ This exercise had to be repeated during the voyage several times. The U.S. icebreaker could not help. It experienced problems itself and had to fall back and take an easier route. That was eventually the case for the whole expedition as the originally planned route through the northerly McClure Strait was frozen so hard that the *Manhattan* could not break the ice. Thus, the expedition took a more southern route through the narrow Prince of Wales Strait. But that took the expedition into undisputedly Canadian-claimed *territorial waters* (as opposed to the plan). That suggests that a potential commercial waterway would be going through Canadian *territorial waters* anyway.⁶¹ During the return voyage, all vessels experienced problems with heavy ice slush in Viscount Melville Sound. Another Canadian icebreaker CCGS *Louis St. Laurent*, just newly commissioned on water, had also come to aid. Also, almost at the end of the return voyage, the *Manhattan* hit a rock-hard ice floe. The collision left a hole in its hull “big enough to drive a truck through.”⁶² That fortunately resulted only in a loss of ballast water, as the double layer hull was designed for this kind of accident. No serious damage was done nor did any oil spill occur. Nevertheless, it illustrated the dangers of navigating ice-covered waters. That provided arguments for environmentalists, because had it been a lesser ship than *Manhattan* or had *Manhattan* been loaded with oil as it normally would, an oil spill catastrophe might have very well been the result of the collision.⁶³

Firstly, the expedition illustrated exactly how principles of *de facto* sovereignty work. It appears that the expedition could not have been conducted without the assistance of the Canadian icebreaker. That is of course an unfair observation to a certain degree. The *Manhattan* voyage was a test voyage. It was not properly built to withstand such harsh environment because nobody knew at the time how to construct ships this large to be ice-covered waters worthy (not enough power in reverse engines etc.). The voyage was to prove not only the feasibility of transporting oil through the NWP but also it was a technical-scientific experiment to collect new data on navigating ice-covered waters. Still, it illustrates the principle of how the infrastructure contributes to Canadian *de facto* sovereignty over the NWP. A principle that is still valid today. But

⁶⁰ Coen, “Breaking Ice,” 106.

⁶¹ Meren, Plumtre, “Rights of Passage,” 178-179.

⁶² Coen, “Breaking Ice,” 153.

⁶³ Sale, Potapov, “The Scramble,” 150.

then, the newest icebreakers in the Canadian fleet are still the CCGS *John A. Macdonald* and CCGS *Louis S. St-Laurent*.

Secondly, the voyage presented the Trudeau Government with an ample justification to introduce environmental regulation over the NWP. As was explained above, the Canadian public and political opposition were not satisfied with Government's performance and they called for stronger assertion of Canadian sovereignty. Another response from the Government was clearly needed. Trudeau did not want to go into conflict with the U.S. by declaring a full blown declaration of sovereignty over the NWP. Instead, Trudeau chose to capitalize on the fact that concerns for Canadian Arctic sovereignty have merged with concerns for the environment. Thus, a less aggressive course of action was chosen: In October 1969, Trudeau announced that Canada will introduce a legislation protecting the Arctic waters from oil pollution. Trudeau proclaimed Canada a world "trustee" of the Arctic environment: "We do not doubt for a moment that the rest of the world would find us at fault, and hold us liable, should we fail to ensure adequate protection of that environment from pollution or artificial deterioration."⁶⁴ It was not a sweeping declaration of sovereignty over the NWP that would anger the U.S. (though the U.S. has opposed the environmental legislation nevertheless). Rather it was to be a regulatory legislative that asserted sovereignty more implicitly along *functional* lines.⁶⁵ By showing administrative presence of the state by enacting and enforcing the environmental regulations over the NWP, Canada would be implicitly exercising its *de facto* sovereignty over the NWP.

Trudeau Government embarked on a mission to defend the proposed legislation and to gain international recognition for it. Trudeau Government made a point of not stressing out the issue of sovereignty while doing so. Instead, they made a strategy of focusing on the importance of protecting the environment. Trudeau repeatedly reminded Canadian press that oil in the Arctic waters would have "disastrous consequences (...) incalculable in their extent."⁶⁶ On a tour around Australia he declared that "brake-up and sinking of oil tankers (...) make ludicrous the word 'spill' (...) the issue is of life itself."⁶⁷ At the OILPOL conference in November 1969 in Brussels, just one month after Trudeau announced plans for the environmental regulations over the NWP, Canada

⁶⁴ Cited in Coen, "Breaking Ice," 67.

⁶⁵ Meren, Plumtre, "Rights of Passage," 178.

⁶⁶ Cited in Meren, Plumtre, "Rights of Passage," 180.

⁶⁷ Cited in Meren, Plumtre, "Rights of Passage," 180.

had already been arguing for the right to enforce more stringent domestic environmental measures unilaterally. Canada was dissatisfied with the outcome of the conference. Canada argued that the outcome presented little progress in oil pollution prevention regime. As commented by the Canadian Secretary of the State for External Affairs Mitchel Sharp: “(the Brussels conference) was so little oriented towards environmental preservation and so much oriented in the interests of ship and cargo owning states.”⁶⁸

The environmental regulation over the NWP was passed by the Canadian Parliament in April 1970 in the form of the *Arctic Waters Pollution Prevention Act* (AWPPA). The introduction and passing of the act was sped up by three events of the 1970: Humble Oil announced second voyage of *Manhattan* through the NWP. There was an oil discovery on the Tuktoyaktut Peninsula in the Northwest Territories. And most importantly, there was a breakup of the Liberian tanker *Arrow* off coast of Nova Scotia which resulted in a major oil spill.⁶⁹ The breakup of the tanker confirmed worries of the Canadian public about the oil spill scenario: A foreign ship despoiling Canadian territory (even though the accident did not happened in the Arctic). The AWPPA was also accompanied by an act extending Canadian territorial waters from three to twelve nautical miles. That effectively created two “gateways” to the NWP at entrances of the passage where the distance between islands was less than 24 miles. This extension was not as controversial as the AWPPA because at the time already 57 coastal states have been claiming the 12-mile territorial waters.⁷⁰ By no means was either of the acts meant to shut off shipping or other commercial development of Canadian Arctic. The Arctic still presented future economic prosperity of Canada. Canada’s intent was not to allow only those ships failing to meet the AWPPA regulations.⁷¹

The AWPPA created 100 nautical mile offshore zone over which Canada had authority to enforce anti-pollution measures.⁷² The AWPPA created sixteen Shipping Safety Control Zones where entering ships had to conform to Canadian standards of construction and navigation procedures. Also, the zones designated ice-breaking capability categories required to navigate respective zone at various time of year and with regard to ice conditions. Pollution prevention officers were given authority to stop

⁶⁸ Cited in Coen, “Breaking Ice,” 70.

⁶⁹ Grant, “Polar Imperative,” 353.

⁷⁰ Pharand, “Arctic Waters,” 26.

⁷¹ Byers ,Lalonde, “Who Controls,” 1157.

⁷² AWPPA, R.S.C. 1970 (1st Supp.), c. 2, amended S.C. 1977-78, c. 41.

vessels not complying with the regulations and eventually to seize their cargo or order the ship to leave the shipping zone.⁷³ The AWPPA also included a ban on dumping waste into Arctic waters under threat of a financial penalty.⁷⁴

Upon passing of the AWPPA, Trudeau defended the strategy that they have taken: “(the AWPPA) is not an assertion of sovereignty. It is an exercise of our desire to keep the Arctic free of pollution.”⁷⁵ Mitchel Sharp summed up: “The Arctic waters bill represents a constructive and functional approach to environmental preservation. It asserts only the limited jurisdiction required to achieve a specific and vital purpose. It separates a limited pollution control jurisdiction from the total bundle of jurisdiction which together constitute sovereignty.”⁷⁶

The AWPPA was nevertheless immediately opposed by the USA. The USA perceives their freedom of navigation as imperative to their national economic interest and security.⁷⁷ In order not to deepen the conflict with the USA, government and military vessels were exempt from the AWPPA. Nevertheless, the USA was worried that the unilateral declaration of AWPPA might cause a precedent and result in similar unilateral actions by less responsible states than Canada.⁷⁸ The fact is that AWPPA was unprecedented unilateral action in international law. Therefore, Canada issued a reservation that it would not allow to be taken to the International Court of Justice (ICJ) over the enactment of AWPPA. Some historians have noted that this unilateral action might have presented a stark departure from traditional Canadian internationalism.⁷⁹ On the contrary, Trudeau Government had argued that they are actually taking action ahead of international law on behalf of humankind, where international law failed to develop and to take into account changing technical progress in regard to the Arctic (i.e. to take into account pollution from emerging shipping traffic).⁸⁰ As Trudeau stated: “Where no law exists or where law is clearly insufficient, there is no international common law applying to the Arctic seas, we are saying somebody has to preserve this area for

⁷³ AWPPA, §§ 14(1), 15(4), R.S.C., ch. A-12.

⁷⁴ AWPPA, §§ 18-19, R.S.C., ch. A-12.

⁷⁵ Cited in Lalonde, “Increased Traffic” 61.

⁷⁶ Lalonde, “Increased Traffic,” 62.

⁷⁷ Kevin Du, “Santa Claus is Canadian, eh! Canada’s Rush to Claim the North Pole and the Northwest Passage,” *Canada’s Ice Rush* 30, no. 40 (2013): 841.

⁷⁸ Du, “Santa Claus is Canadian,” 842.

⁷⁹ Coen, “Breaking Ice,” 73.

⁸⁰ Grant, “Polar Imperative,” 352-354.

mankind until international law develops.”⁸¹ Canada subsequently put much effort into gaining international recognition for the AWPPA- to develop the international law through UNCLOS.

The AWPPA was not a sweeping declaration of sovereignty. It was claim of sovereignty asserted along *functional* lines. As explained in the first chapter, in order for this *functional claim* to turn into *de facto* sovereignty, that is sovereignty in real terms and not just on the paper, Canada has to have physical means to enforce the regulations. Also, Canada has to have the capability to provide the services stemming from the responsibility of bearing it upon itself to be world trustee of the Arctic environment (e.g. to be able to deal with an oil spill). Therefore, it is peculiar that the AWPPA was not accompanied by any Government initiative to address the issue of enforcement. No additional resources were allocated towards the Arctic infrastructure with the enactment of the AWPPA.⁸²

The *Manhattan* voyage presented Canada with a very convenient line of argumentation to assert its sovereignty over the NWP. It does not matter that it was done indirectly through the AWPPA. As explained in the first chapter, this is exactly how assertion of sovereignty through actions of the state works. Environmentalism became the basis of Canadian *functional claim* over the NWP. That does not necessarily mean that Trudeau’s Government rhetoric was insincere when they were downplaying the issue of sovereignty and claiming that their intention was to protect the Arctic environment. On the contrary, Canada had been arguing for more stringent anti-pollution measures already at the OILPOL conference in 1954. Also, Trudeau’s Government actions were consistent with opinion of Canadian public. Nevertheless, the fact that AWPPA implicitly supports Canadian sovereignty over the NWP was very convenient for Canada. Therefore, the most fitting characterization of the events is *environmentalism of convenience* for Canada.⁸³

⁸¹ Cited in Lee Clark, “Canada’s Oversight of Arctic Shipping: The Need for Reform,” *Tulane Maritime Law Journal* (2008): 86.

⁸² Lalonde, “Increased Traffic,” 63.

⁸³ Meren, Plumtre, “Rights of Passage,” 174.

2.4. UNCLOS and the “Arctic Clause”

Canada’s endeavour to gain international recognition for the AWPPA was achieved through the UNCLOS treaty of 1982. The UNCLOS provisions sought to balance state sovereignty, freedom of navigation and protection and preservation of the environment.⁸⁴ Crucial for Canada was the Article 234 (dubbed “the Arctic Clause”) which conferred authority on Arctic coastal states to adopt special laws and regulations in ice-covered areas. The inclusion of the Article 234 in the UNCLOS was widely understood by the state parties as international recognition of Canada’s AWPPA since the AWPPA is exactly the kind of regulation the Article 234 allows for.⁸⁵ A key fact is that the Article 234 was negotiated between Canada, the USA and the SSSR. That, as argued by Canadian negotiators, was key confirmation of the legitimacy of Canadian actions when Canada unilaterally enacted AWPPA.⁸⁶

A key point is the fact that even if the NWP is eventually proclaimed an *international strait*, the provisions of the Article 234 (and therefore the AWPPA) would still apply.⁸⁷ The reason for that is that because of the harsh ice conditions, the NWP would be excluded from the *international strait* regime.⁸⁸ That is very important, because it suggests that Canada should focus on developing the environmental jurisdiction over the NWP rather than focusing on asserting direct sovereignty.⁸⁹ Regardless of the outcome of the legal dispute over the status of the NWP, Canada will still maintain wide-ranging rights to protect the Arctic environment embedded in the AWPPA and in the Article 234. That will allow Canada to maintain *de facto* sovereignty of the NWP to protect the Arctic environment.

But in order for that to work, Canada has to have the physical infrastructure to make the claim credible. Canada has to develop a full range of sea and land based services to ensure that its control is factual and effective. Canada has to provide following services in the NWP: Marine navigational aids, icebreaking and escorting, marine search and rescue, marine emergencies and pollution control, ports, harbours and terminals etc.⁹⁰

⁸⁴ UNCLOS, pt. XII, § 6.

⁸⁵ Clark, “Canada’s Oversight,” 89.

⁸⁶ *Ibid.*, 89.

⁸⁷ Lalonde, “Increased Traffic,” 95.

⁸⁸ Buyers, Lalonde, “Who Controls,” 1204.

⁸⁹ Clark, “Canada’s Oversight,” 93.

⁹⁰ Lalonde, “Increased Traffic,” 91.

In 1985, U.S. ship *Polar Sea* navigated the NWP without seeking Canadian permission. Canada claimed that the *Polar Sea* complied with the AWPPA standards. But even if it did not, Canada lacked any physical means to stop the *Polar Sea* from conducting the voyage.⁹¹ That resulted in another Arctic sovereignty crisis for the Canadians. But this time Canada responded by a full blown declaration of sovereignty by enclosing the Canadian Archipelago by a baseline. By doing so, Canada effectively claimed the NWP as *internal waters*. Also, Canada withdrew its reservation to being taken to the ICJ over its actions. This is a proof of how important is the environmental regulation over the NWP to Canadian claim of sovereignty over the NWP: The *functional claim* and *de facto* sovereignty over the NWP exhibited through the AWPPA (followed by international recognition through UNCLOS) gave Canada enough confidence and legal position support to claim the Arctic waters by a sweeping declaration of sovereignty.

Also, for the first time, investment in Arctic infrastructure had been announced, including a promise of a new heavy-duty icebreaker (a promise that has yet to materialize).

3. Is Canadian Arctic Policy Really “Green”?

3.1. Harper’s Arctic Discourse Shift

Throughout the 90’s Canada continued to actively address protection of the Arctic environment through international cooperation. It was Canadian Prime Minister Brian Mulroney who proposed “a council of Arctic countries eventually coming into existence to coordinate and promote cooperation” in 1989.⁹² Canada was at the forefront of creation of the Arctic Environment Strategy Programme (AEPS). It was Canada who convinced Russia to endorse the AEPS and it was Canada who secured the endorsement of the Inuit Circumpolar Council and of the Nordic states. AEPS transformed into the Arctic Council by Ottawa Declaration in 1996. Thus, it was Canada who laid foundations of high-profile international cooperation on protection of the Arctic

⁹¹ Ibid., 66.

⁹² Cited in Hough, “International Politics,” 100.

environment.⁹³ In 2000, Canadian Liberal government released the first Canadian official strategy for the Arctic- *The Northern Dimensions of Canadian Foreign Policy*. The emphasis of the strategy was that environmental and social concerns should take priority over military concerns.⁹⁴

The election of the leader of the Conservative Party Stephen Harper as Canadian Prime minister in 2006 presented a shift in Canadian approach to the Arctic. Harper made the assertion of Canadian Arctic sovereignty his key election topic with promise of three heavy duty icebreakers.⁹⁵ Harper's understanding of the Arctic discourse is best summed up in his famous speech from 2007: "Canada has a choice when it comes to defending our sovereignty over the Arctic. We either use it lose it. (...) (the Arctic) represents the tremendous potential of our future. That is why I am so pleased to be here today. To announce our first moves forward to defend and strengthen Canada's Arctic sovereignty."⁹⁶ The "use it or lose it" is a reference to the principle of *functional claim* discussed in previous chapters. But in Harper's understanding an icebreaker's primary function would not be to protect the Arctic environment from pollution. Its primary function would be to assert Canadian sovereignty in the Arctic, by military measures if need be. To support his policy Harper announced plans for investment in Canadian Arctic infrastructure: To build a deep water port, to revive the military base in Resolute Bay, to purchase new Arctic patrol ships with icebreaking capability and increases in military exercises in the Canadian Arctic.⁹⁷ The military exercise in 2011 –the operation Nuuk- was the largest military exercise in recent Canadian history. Peter MacKay, Canadian Defence Minister commented on the exercise: "(Prime Minister Harper) has often hinted at potential military encroachment by Russia and stressed the need for beefed-up military hardware to defend the Canadian Arctic."⁹⁸ In other words, Harper's focus is to present Canada as a sovereign "Arctic power" rather than a world trustee for protection of the Arctic environment.

But that does not mean that Harper Government abandoned protection of the Arctic environment entirely. On the contrary, in the context of Canadian sovereignty over the NWP, environmental concerns have been employed at least in two cases:

⁹³ Hough, "International Politics," 100 -101.

⁹⁴ Grant, "Polar Imperative," 432.

⁹⁵ Byers, Lalonde, "Who Controls," 1192.

⁹⁶ Cited in Zellen, "Arctic Doom," 94.

⁹⁷ Zellen, "Arctic Doom," 94- 95.

⁹⁸ Cited in Du, "Santa Claus is Canadian," 884.

Firstly, when making it compulsory for ships navigating the NWP to register with the Canadian Coast Guard monitoring program NORDREG. Secondly, when arguing for creation of Canadian national park in Lancaster Sound at the entrance of the NWP.

The difference compared to Trudeau era is, that the employment of environmental concerns under Harper Government is arguably primarily to assert Canadian sovereignty, because Harper Government's concern for the Arctic environment as the primary concern is in doubt. Especially in the context of Harper Government's poor approach to environmental concerns in general. Firstly, Canada has withdrawn from the Kyoto Protocol in 2011. By doing so Canada effectively refused to participate in the fight against the climate change.⁹⁹ The climate change is the most important driving force affecting Arctic environment.¹⁰⁰ Secondly, in 2012 Harper Government diminished or even cancelled a list of Canadian environmental programs such as Environmental Assessment Act, Species at Risk Act or the National Roundtable on Environment and Economy.¹⁰¹ The reason for this controversial approach to environmental protection is the intention to exploit Canada's mineral resources extraction industry.¹⁰² Therefore, it is difficult to argue that Harper's concerns for the Arctic environment are sincere when in other parts of Canada (and on the world stage) they are clearly not. That supports the argument that in the Arctic environmental concerns are just a tool to assert Canadian sovereignty.

The strategic document *Canada's Northern Strategy: Our North, Our Heritage, Our Future* from 2009 prominent objective was described as "to vigorously demonstrate (Canada's) Arctic sovereignty as international interest in the region increases."¹⁰³ Only the third place is given to environmental protection "to respond to challenges of climate change in the North and make sure that its countless ecological wonders are protected for future generations."¹⁰⁴ This rhetoric admittedly does express intention to protect the Arctic environment, but it does not consider the environmental concerns a priority.

⁹⁹ Byers, "Intent for a Nation," 145.

¹⁰⁰ Emerson, „Future History," 145-147.

¹⁰¹ Robert MacNeil, "Canadian environmental policy under Conservative majority rule," *Environmental Politics* 23, no.1 (2014): 176

¹⁰² Mac Neil, "Canadian Environmental Policy," 176.

¹⁰³ Petra Dolata, "How 'Green' is Canada's Arctic Policy? The Role of the Environment and environmental Security in the Arctic," *Zeitschrift für Kanada-Studien* 32, no.2 (2012): 71.

¹⁰⁴ Government of Canada, *Canada's Northern Strategy. Our North, Our Heritage, Our Future* (Ottawa: Government of Canada, 2009) available at <http://www.northernstrategy.gc.ca/cns/cns.pdf> (accessed 5.5.2015).

The strategic document *Statement on Canada's Arctic Policy* from 2010 reasserted Canada as an "Arctic Power" and reiterated Canada's "robust leadership role in shaping the stewardship, sustainable development and environmental protection of this strategic Arctic region, and engaging with others to *advance our interests* (emphasis added)."¹⁰⁵ This quotation illustrates how environmental protection is used as an argument to assert Canadian sovereignty over the Arctic.¹⁰⁶ The *Statement* further reads: "exercising sovereignty over Canada's north, as over the rest of Canada, is our number one Arctic foreign policy priority."¹⁰⁷ Concerns for the environment are left with the second place at the best.

Northern Canada Vessel Traffic Services (NORDREG) is a reporting system for ships navigating the NWP. It was set up in 1977 as a voluntary system. It was made mandatory in 2010. The purpose of NORDREG is to keep track of ships intending to navigate the NWP and ensure that the ships comply with AWPPA regulations. Also, the NORDREG provides communication and navigation assistance and provides information on ice conditions. NORDREG is an important part of Canada's *functional claim* of sovereignty over the NWP. Canada claims that 98% of ships register with the NORDREG¹⁰⁸ and by doing so acknowledging Canadian *de facto* sovereignty over the NWP. Primary objective of the NORDREG is safety and protection of the environment. However, the report of Canadian Senate committee that recommended NORDREG to be compulsory was mainly stressing out the need to reinforce Canadian Arctic sovereignty. The concerns for the environment were secondary.¹⁰⁹

In 2010, Harper Government announced plans to create a marine conservation area in the Lancaster Sound at the entrance of the NWP. Also, Canada has been trying to get UNESCO recognition for the area as a World Heritage Site. That would of course give Canada more rights to regulate international shipping in the area. Also, because the area is the east entrance to the NWP, it would bolster Canadian claim over the NWP. Again, this is the very same principle as with the AWPPA: Creating the marine

¹⁰⁵ Government of Canada, *Statement on Canada's Arctic Foreign Policy: Exercising : Sovereignty and Promoting Canada's Northern Strategy Abroad* (Ottawa: Government of Canada, 2010) available at http://www.international.gc.ca/arctic-arctique/assets/pdfs/canada_arctic_foreign_policy-eng.pdf (accessed 5.5.2015).

¹⁰⁶ Dolata, "How Green," 72.

¹⁰⁷ Government of Canada, "Statement on Canada's Arctic Foreign Policy 2010"

¹⁰⁸ Canada, Senate, 2008, "The Coast Guard in Canada's Arctic: Interim Report," Standing Senate Committee on Fisheries and Oceans 4th Report, June 2008, available at <http://www.parl.gc.ca/Content/SEN/Committee/392/fish/rep/rep04jun08-e.pdf> (accessed 5.5.2015): 32.

¹⁰⁹ Dolata, "How Green," 76.

conservation area would represent Canadian *functional claim* over the area and consequently bolster Canadian assertion of sovereignty over the area. Seeking UNESCO recognition would give it international recognition, the same way UNCLOS gave international recognition to AWPPA. What makes Canadian environmental concerns in the Lancaster Sound controversial is the fact that just next to the proposed delimitation of the conservation area there is Shell's lease for oil and gas exploration (issued by Canada). An oil spill from Shell's operation would reach the proposed maritime reservation without respecting the boundaries.¹¹⁰

3.2. Canadian Arctic Infrastructure

It is widely considered that Canada lacks the necessary infrastructure to provide the services stemming from its commitment of protecting the Arctic waters and Arctic environment in general.¹¹¹ In Canadian Arctic, the requirements on infrastructure to protect the environment merge with the required infrastructure to provide search and rescue, navigation assistance and ice-breaking for commercial vessels.¹¹²

The nearest Naval base is at Halifax, Nova Scotia. A small coast guard base is at Nanisivik on Baffin Island. There is no port or repair station along the Northwest Passage. It is believed that Canada hasn't got neither the means nor manpower to deal with any major oil spill in the Arctic. The USA claims that Canadian preparedness is decades behind.¹¹³ Canada's own Transport Canada calls for more measures to be taken to deal with an oil spill, including a proposal to incorporate indigenous communities along the NWP into the oil spill response system.¹¹⁴ Canada's search and rescue

¹¹⁰ Mia Bennett, "Bounding Nature: Conservation & Sovereignty in the Canadian and Russian Arctic," in Heininen, Lassi ed., *Arctic Yearbook 2013* (Iceland: Northern Research Forum, 2013): 93.

¹¹¹ Grant, "Arctic Imperative," 467 or Byers, Lalonde, "Who Controls," 1191.

¹¹² Byers, Lalonde, "Who Controls," 1191.

¹¹³ „ U.S. worried about Canada's ability to respond to oil spills, records reveal," <http://www.theglobeandmail.com/news/british-columbia/us-worried-about-canadas-ability-to-respond-to-oil-spills-records-reveal/article24148025/> (accessed 5.5.2015).

¹¹⁴ CANADA, Ministry of Transport, Transport Canada, „Areview of Canada's Ship-source Spill Preparedness and Response: Setting the Course for the Future, Phase II, Requirements for the Arctic and for Hazardous and Noxious Substances Nationally," (Ottawa, Transport Canada: 2014), available at <https://www.tc.gc.ca/media/documents/mosprr/TC-Tanker-E-P2.PDF> (accessed 5.5.2015).

capabilities are considered weak.¹¹⁵ It would take at least a day for a long range helicopter to reach the NWP. In case of a large accident in the NWP Canada would have to rely on international support, namely from the USA.¹¹⁶ That would result in loss of *de facto* over Canadian Arctic the same way as during the Second World War.

None of the Canadian Navy ships is ice-strengthened so the Navy cannot effectively navigate the Arctic waters. The Navy has got four conventional submarines. Recently they have been experiencing some serious technical problems. But “the problem with submarines as enforcers of sovereignty was that it was like being diplomatically represented by an invisible man.”¹¹⁷ Today, it is considered that there are underwater sonars at crucial points of the Arctic. The importance of the sonars isn’t just in detecting trespassing submarines- they represent an emergency measure in the event of a submarine accident. Thus, the ability to detect submarines represents a crucial part of the pollution prevention and response concept. Information regarding sonars isn’t officially disclosed.

The air reconnaissance done by CP-140 *Aurora* long range surveillance aircraft is crucial for patrolling the Arctic. But the problem with aircraft’s ability to enforce environmental regulations is the same as submarine’s- its options are limited to communication with a vessel in violation of the regulations or an attack. Therefore, the enforcement of regulations lies on the Canadian Coast Guard. The Coast Guard has got at its disposal five medium to large and six small unarmed icebreakers. Most of these can operate the Arctic only in the summer. In 2013, the decision has been made to build five class 5 icebreakers (Arctic Offshore Patrol Ships) instead of one heavy duty icebreaker. The classes refer to the ability to navigate ice-covered waters on scale on one to ten; class ten being the strongest with the ability to navigate whole of Arctic all year round. This decision has been under criticism because the class 5 icebreakers will still not be able to navigate the Arctic in every part of the year. Because of that they had been referred to by the media as the “slush breakers.”¹¹⁸ The argument in support of them is that it is very unlikely that any potential enemy, much less a commercial ship,

¹¹⁵ “Canada’s Arctic nightmare just came true: The Northwest Passage is commercial,” <http://byers.typepad.com/arctic/2013/09/canadas-arctic-nightmare-just-came-true-the-northwest-passage-is-commercial.html> (accessed 5.5.2015).

¹¹⁶ Elizabeth Elliot-Meisel. "Politics, Pride, and Precedent: The United States and Canada in the Northwest Passage," *Ocean Development and International Law* 40, no. 2 (2009): 204.

¹¹⁷ Lalonde state of ready 63.

¹¹⁸ “Why Canada’s search for an icebreaker is an Arctic embarrassment,” <http://www.theglobeandmail.com/news/national/the-north/why-canadas-search-for-an-icebreaker-is-an-arctic-embarrassment/article16425755/> (accessed 5.5.2015).

will be present in the Arctic in parts of the year when the class 5 icebreakers couldn't.¹¹⁹ To compare, the icebreaker promised (and never materialized) in 1986 was to be class 8; the current Canadian strongest icebreaker *Louis S. St. Laurent* is class 4.

The greatest contribution the Harper Government has made to Arctic sovereignty concerns is the implementation of the remote sensing satellite Radarsat-2.¹²⁰ It is a perfect tool for tracking ships and mapping sea ice. But, the satellite is useless at monitoring pollution.¹²¹

Conclusion

In this thesis I analysed the relationship between Canada's concerns for the Arctic environment and Canada's claim of sovereignty over the NWP. Even though today Canada claims the NWP as its *internal waters* on the basis of enclosing Canadian Arctic Archipelago by a straight baseline, the environmental concerns are still a crucial component of Canada's claim of sovereignty over the NWP. I present three arguments:

Firstly, as I showed on the account of events following the *SS Manhattan* voyage through the NWP in 1969, environmental regulations enacted as a response to the *SS Manhattan* voyage were the basis of Canada's very first official legislative claim of sovereignty over the NWP. The AWPPA was not a full blown declaration of sovereignty. But as explained through the employment of historical principles, by showing its administrative presence in the NWP, Canada was pursuing the principle of *functional claim* over the NWP. That asserted Canada's sovereignty only implicitly. But thanks to international recognition of the AWPPA via the UNCLOS treaty in 1982, Canada gained enough confidence and legal ground to claim the NWP by a full blown declaration of sovereignty in 1986.

Secondly, the predominant legal opinion is that the AWPPA would still apply even if the NWP is proclaimed an *international strait*. The Article 234 of UNCLOS excludes waters with harsh ice-conditions from the regime of *international straits*. Therefore, in the worst case scenario, if Canada loses the legal dispute and the NWP is

¹¹⁹ Lalonde, "Increased Traffic," 120.

¹²⁰ Byers, Lalonde, "Who Controls," 1195.

¹²¹ Grant, "Polar Imperative," 459.

proclaimed and *international strait*, Canada would still maintain the right to enforce the AWPPA and protect its Arctic environment.

Thirdly, effective enforcement of environmental regulations greatly bolsters Canada's claim of sovereignty over the NWP via the *functional claim* principle. Each ship complying to AWPPA's standards or each ship that registers with NORDREG is recognizing Canada's sovereignty over the NWP. But in order to turn the "paper sovereignty" into *de facto* sovereignty, Canada has to have the physical means to enforce the regulations as well as to provide other services stemming from the commitment of claiming sovereignty over the NWP such as being able to deal with an oil spill or provide search and rescue. If Canada's infrastructure proves unable to accommodate increase in commercial shipping through the NWP, Canada will lose *de facto* sovereignty over the NWP and consequently its ability to protect the Arctic environment. With this argument I am implicitly suggesting that the *de facto* control is more important than the *de jure* sovereignty. If Canada is not able to protect its Arctic environment in real terms, it does not matter what is written in international treaties.

The question is how sincere are Canada's concerns for the environment. Or rather to what extent is Canada employing the environmental line of argumentation to bolster its sovereignty over the NWP. Trudeau admittedly enacted the AWPPA as a reaction to a perceived affront to Canada's Arctic sovereignty. But as I showed, Canada had been arguing for more stringent measures of pollution prevention in the Arctic even before the *SS Manhattan* voyage. Also, Trudeau's actions were informed by opinion of Canadian public which was highly sensitive to environmental concerns at the time. Therefore, it can't be argued that Trudeau's concerns for the Arctic environment had been insincere. Trudeau's actions served concerns for the environment and sovereignty both. It was *environmentalism of convenience* for Canada.

I was incorrect in my initial assumption that Harper's Government omits concerns for the environment in the Arctic. On the contrary, Canada's strategic documents highlight concerns for the environment. But in Harper's case it can be argued that the concerns for the environment are primarily employed to assert Canada's sovereignty in the Arctic. There are subtle arguments in support of this such as unconvincing rhetoric of the strategy documents or endeavour to create a maritime conservation area next to an oil drill site. But the convincing argument is Harper's abysmal record of environmentalism in general. Canada under Harper withdrew from the Kyoto Protocol. That demonstrates Canada's negative approach to fight against the

climate change, which is the most important driving force of environmental changes in the Arctic. Harper cancelled many of Canada's environmental programs and policies (presumably to support Canada's mineral extraction industry). Therefore, it can be argued that Harper's concerns for the environment are insincere, or at least secondary.

If examined through Oran Young's theory, Trudeau was arguably closer to the discourse of ecosystem-based management because of his effort to gain international support to protect the Arctic environment. The same can be argued for Canada in the 90's when Canada was one of the main proponents of creation of the Arctic Council. But Harper is arguably well within the geopolitical/political realism discourse with his approach to the Arctic. Today, Canada's concerns for the environment are primarily a tool to assert Canada's Arctic sovereignty.

Summary

Ice cover of the Arctic is melting due to climate change. With the ice gone, new opportunities for economic development appear. It is estimated that there are 13% of world's undiscovered reserves of oil (in addition to the already discovered ones). Therefore, as the drilling becomes more viable, Arctic is becoming a region of interest to various actors. Some predict that the Arctic will become a region where powerful state will again engage in a new "Great Game" over Arctic resources.

Another emerging possibility in the Arctic is the Northwest Passage. Shipping through the NWP would shorten the main maritime shipping routes. Therefore, it can be expected that shipping in the NWP will increase in near future. The NWP is the subject of legal dispute with Canada claiming the NWP as its *internal waters* and the USA and the EU maintain the NWP is an *international strait*. Historically, Canada has claimed the NWP on the basis of protecting the Arctic environment. Enacting environmental regulations in the Arctic in return bolstered Canadian sovereignty over the NWP. This thesis examines the relationship between the claim of sovereignty and concerns for the environment.

This relationship is examined on the account of voyage of American Tanker *SS Manhattan* through the NWP. The voyage gave Canada convenient justification to enact environmental regulation (AWPPA 1970) in the NWP while arguing that it is protecting

the Arctic environment on world's behalf. The AWPPA was later internationally recognized via the UNCLOS treaty in 1982. That gave Canada enough legal ground to eventually claim the NWP by a full blown declaration of sovereignty 1986. Therefore, the concerns for the environment are closely related to Canada's sovereignty in the Arctic.

Canada's discourse towards the Arctic under Harper is focused on direct assertion of Canada's Arctic sovereignty. Nevertheless, the implicit assertion of sovereignty through the enforcement of environmental regulation is still important today. If commercial shipping in the NWP increases as predicted, Canada will have to make sure that it is able to effectively enforce the environmental regulations in order to protect its Arctic environment from pollution. Meanwhile, environmental concerns are still being employed to assert Canada's sovereignty in the Arctic.

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