

# **CANADA'S EVOLVING INTERESTS AND POLICIES IN THE CANADIAN ARCTIC**

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**DECLARATION**

I declare that the thesis entitled “Canada’s Evolving Interests and Policies in the Canadian Arctic” submitted by me for the award of the degree of **Doctor of Philosophy** of Jawaharlal Nehru University is my own work. The thesis has not been submitted for any other degree of this University or any other university

**Suprita Suman**

**CERTIFICATE**

We recommend that this thesis be placed before the examiners for evaluation.

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Supervisor

*Dedicated to My Sweet Daughter  
Navyashrikirty*

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## Abbreviations

A5 - Arctic 5  
AAC - Arctic Athabaskan Council  
AANDC - Aboriginal Affairs and Northern Development Canada  
AC - Arctic Council  
ACAP - Arctic Contaminants Action Program  
ACIA - Arctic Climate Impact Assessment  
AEPS - Arctic Environmental Protection Strategy  
AHDR - Arctic Human Development Report  
AMAP - Arctic Monitoring and Assessment Program  
AMSA - Arctic Marine Shipping Assessment  
AWPPA - Arctic Waters Pollution Prevention Act  
BEAC - Barents Euro Arctic Council  
BEAR - Barents Euro Arctic Region  
CAFF - Conservation of Arctic Fauna and Flora  
CLCS - Commission on the Limits of the Continental Shelf  
DND - Department of National Defence (Canada)  
EEZ - Exclusive Economic Zone  
EPPR - Emergency Prevention, Preparedness and Response  
HDI - Human Development Index  
IASC - International Arctic Science Commission  
ICC - Inuit Circumpolar Council  
IGO - Intergovernmental Organisation  
ILO - International Labour Organisation  
IMO - International Maritime Organisation  
ISA - International Seabed Authority  
NASA - National Aeronautics and Space Administration  
NATO - North Atlantic Treaty Organisation  
NEP - Northeast Passage  
NORAD - North American Air Defence Command  
NORDREG - Northern Canada Vessel Traffic Services  
NSIDC - National Snow and Ice Data Center  
NSPD - National Security Presidential Directive

NSR - Northern Sea Route  
NWP - Northwest Passage  
NWT - Northwest Territories  
PAME - Protection of the Arctic Marine Environment  
POPs - Persistent Organic Pollutants  
RAIPON - Russian Association of Indigenous Peoples of the North  
RCMP - Royal Canadian Mounted Police  
SAO - Senior Arctic Official  
SAR - Search and Rescue  
SDWG - Sustainable Development Working Group (Arctic Council)  
TSR - Transpolar Sea Route  
UK - United Kingdom  
UNCLOS - United Nations Convention on the Law of the Sea  
UNDRIP - United Nations Declaration on the Rights of Indigenous Peoples  
USGS - United States Geological Survey  
USSR - Union of Soviet Socialist Republic  
WMD - Weapons of Mass Destruction

## Preface

The present doctoral thesis in its six chapters discusses Canada's interests and challenges in the Arctic territory and accordingly formulated policies towards the Arctic. Canada's interests and policies towards its Arctic have two aspects—first is the Arctic territory of which is the part of Canada and second the Arctic region as whole. As an Arctic nation Canada has interest and policies are directed towards both.

The recent changes in the Arctic climate have made it accessible for commercial activities like shipping, mine drilling and explorations. The USGS prediction that Arctic sea bed is rich in mineral resources and especially rich in the hydrocarbon has attracted the European and Asian countries. These countries are the energy importers actually looking for affordable and guaranteed hydrocarbon sources. These interests are further augmented with the possibility of opening up of new shipping routes. These changes are likely to make the Arctic Ocean busy like any other oceans; and this would have a serious implication for its fragile environment and the political stability of the Arctic region. This will affect all the littoral Arctic nations including Canada. But Canada's position is more sensitive due to its complex geography. The Canadian Arctic's northern division is an archipelago which is fragmented and consists of nearly 36,000 small and big islands. The Archipelago presents tough challenge, to build infrastructure and to defend it. The Canadian Arctic territory became subject of the international interest because of opening of the Northwest Passage which runs through these islands; and which qualifies it on geographical criterion of being a high sea. For other countries it serves the commercial interests where as the Canada apprehends the opening of these shipping route as encroachment of its sovereignty.

To defend its sovereignty interest Canada simply has claimed that these waters are internal and historical on the basis of the Inuit occupancy and argues that claims are consistent with the recognizable international law. Yet its closet neighbour and security partner viz the US refutes the Canadian claim by saying that the Canadian claims are not consistent with the international law. This has created a permanent source of discord in Canada and the US relations.

Meanwhile, involving in the debate with the US, Canada realizes that its Arctic territory is going to face even more critical challenge if Arctic becomes busy with the human activities. Pollution is a trans-boundary challenge which will hamper the Canadian Arctic flora and fauna. Therefore Canada took initiatives to negotiate and establish Arctic Council with the other Arctic littoral countries.

Of the six Chapters, the first Chapter introduces the changes in the Arctic and the second Chapter explains the issues, actors and stakeholders that have emerged in light of the climate change in the Arctic region.

The third Chapter traces the genesis of the Canada's sovereignty claim over its Arctic territory which includes both island and waters through the various law and policy measures.

These acts and policy measures have created friction in bilateral relationship of Canada and the United States. The fourth Chapter explains all three aspects of the Canada- US relationship- cooperation, divergence, and reconciliation over the Arctic as well as how the presence of Russian interest adds a new dimension in the Canada US relationship in the Arctic.

The fifth Chapter explains the Canadian multilateral initiative to make whole Arctic region a rule based region which could protect and promote Canada's Arctic interests and ambition in a long term.

The thesis basically focuses how Canada designs and formulates and articulates its Arctic policy in its capacity of middle power liberal internationalist.

# **CHAPTER I**

## **INTRODUCTION**

The Arctic is the North Pole of the Earth; “limited by the Arctic Circle located at 66° 33' North Latitude” (AMSA 2009), the region includes the edges of Eurasia and the North American continent. This region includes eight nations and the Arctic Ocean. This includes islands, archipelago and the bordering parts of the Atlantic and the Pacific Ocean, its huge landmass covers six per cent surface of the Earth and spreads over 21 million square kilometres. Due to thick ice and inhospitable climate, this region has very low population density. The Arctic Ocean is ringed by five sovereign nations called the Arctic Five (A5) are Russia, Canada, the US, Norway and Denmark (due to Greenland). These countries have continental shelves in its basin. This makes it relatively isolated from rest of the oceans of the world. The Fram Straits which runs between Greenland and Norway connects it with the other oceans of the world. The three other countries in this region are Sweden, Finland and Iceland; all are together these are called Arctic Eight (A-8). The Arctic covers land area – approximately 14 million square kilometres which includes the northern Part of three Canadian territories, Northern part of Russia, Alaska province of the US, Norway and Greenland (a territory of Denmark), Sweden, Iceland and Finland.

The A8 have jurisdiction over the total landmass in the Arctic region except for few very small portions which are disputed, and these are one or two small islands. The current issues and problems which this thesis discusses have emerged around the Arctic Ocean. Thus the Arctic Ocean has emerged as core of geopolitics. This introductory Chapter of the thesis is divided into five sections. (i) Delineates the Arctic Ocean’s geographical features, its governing mechanism and the current changes with a reference to Canada.(ii) The second section deals with the emerging issues and question in the Arctic territory which Canada claims as its own. (iii) Literature Review, consistent with the chapters of the thesis. (iv) Definition, Rationale and Scope of the thesis, research questions, and the hypothesis built up around these and the research methodology., the theoretical framework which has been adopted to complete the research and testify the hypothesis. (v) The last section introduces briefly the chapters of the thesis.

## **The Arctic Ocean: Issues and Challenges**

The Arctic Ocean including its seas is the smallest and shallowest among all the ocean on earth forms the major part of the Arctic region. The Arctic geography defines this region as “the Greenland Sea, the Barents Sea, the Kara Sea, the Laptev Sea, the East Siberian Sea, the Chukchi Sea, the Beaufort Sea as well as Baffin Bay, the Foxe Basin, numerous straits and bays of the Canadian Arctic Archipelago, the northern parts of the Pacific and Atlantic oceans; the Canadian Arctic Archipelago, Greenland, Spitsbergen, Franz Josef Land, Novaya Zemlya, Severnaya Zemlya, Novosibirsk Islands and Wrangle Island, as well as the northern coasts of the continents of Eurasia and North America” ( AMSA 2009 16-18). It is surrounded by the three continents Asia, Europe and, and the North American Continent twenty-four time zones in the northernmost part of the world<sup>1</sup>.” Its population of approximately four million includes dozens of indigenous peoples living in isolation from mainstream of the world. Map 1 depicts the Arctic region and shows that the major part of the Arctic region is oceanic. The thick ice pack over the Arctic Ocean was not suitable for commercial activities and navigation and thus remained in isolation from the global politics and commerce.

**Authority of the Arctic Ocean:** There is no multilateral treaty to regulate the Arctic region as Antarctica Treaty. Moreover, while Antarctica is a landmass, the Arctic is perceived mostly as frozen sea. In the absence of any specific multilateral treaty, it is suggested that the Arctic is governed by UNCLOS, which was ratified in 1982 to govern the oceans of the world. At the time when UNCLOS III<sup>2</sup> treaty was signed, for governing the world’s oceanic region with an uniform law, the Arctic ocean’s surface was covered with thick ice pack. Thus negotiators and drafters couldn’t see the Arctic routes as feasible for navigation (Fleming 2009). The global community didn’t pay much attention on this issues. The commercial activities were also not started therefore, it was difficult to assess the applicability of the UNCLOIII in the Arctic Ocean. The four out of A5 except the US have accepted the UNCLOS III and ratified it. The UNCLOS III governs every aspect of the issues pertaining to the

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<sup>1</sup> <https://arctic.ru/geographics/>

<sup>2</sup> The Law of the Sea Treaty, known as “the Third United Nations Convention on the Law of the Sea, or UNCLOS III, was adopted in 1982” is a comprehensive set of rules to govern the oceans and to replace previous UN Conventions on the Law of the Sea, one in 1958 (UNCLOS I) and another in 1960 (UNCLOS II).

oceans like territorial rights of the states, Exclusive Economic Zone, high Seas, common heritage of the mankind, Extended continental shelf, navigational right, resources in the water and beneath the sea, disputes settlement

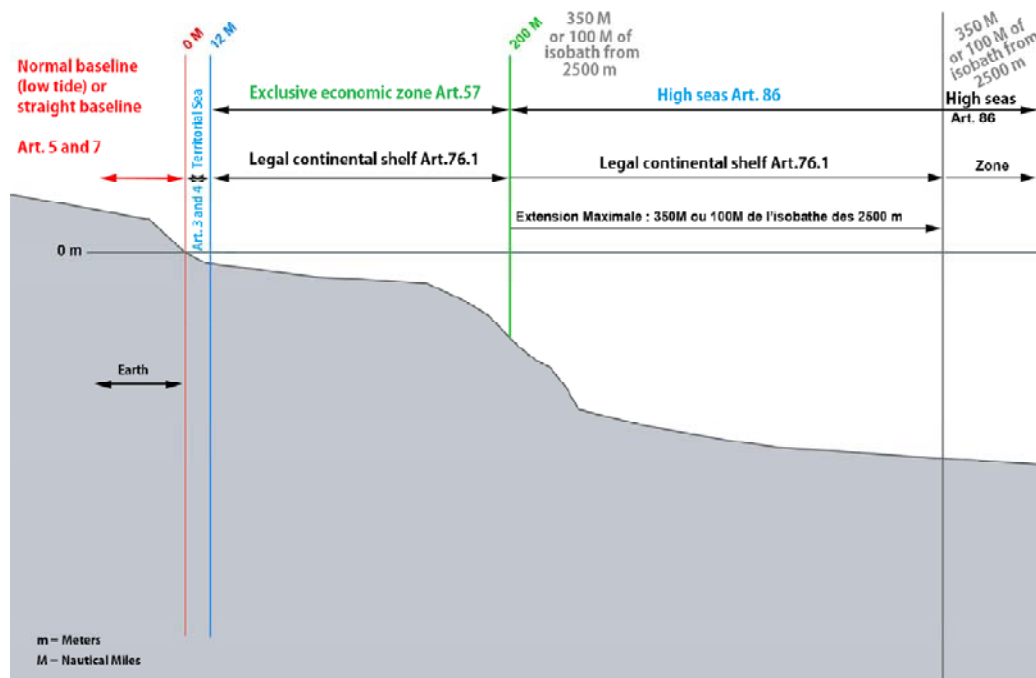
**Map 1: Physical Features of the Arctic Region**





Territorial Claims: The Article 3 of the UNCLOS III “Every state has right to establish the breadth of its territorial sea<sup>3</sup> up to a limit not exceeding 12 nautical miles, measured from the baseline determined in accordance with this convention.” Article 55 establishes the right of “Exclusive Economic Zone (EEZ) an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention.” According to the Article 57 of the UNCLOS III “the limitation of the EEZ is 200 nautical miles”; yet, in the Article 76 of the UNCLOS III has made provision that a coastal country can extend its claim for an extra 150 nautical miles or even more if proved that its continental shelf is extended beyond a 200 nautical miles EEZ – for the exploitation of the resources under seabed, but this claim is limited to the sea bed, not on the water and resources in the water like fishing.

Figure 1 gives an explanation of the different slice of the oceans under UNCLOSIII



**Figure 1: The different slices of the oceans and the specific laws applicable over them.**

<sup>3</sup> Territorial waters according to UNCLOS III international, “is that area of the sea immediately adjacent to the shores of a state and subject to the territorial jurisdiction of that state. Territorial waters are thus to be distinguished on the one hand from the high seas, which are common to all countries, and on the other from internal or inland waters, such as lakes wholly surrounded by the national territory or certain bays or estuaries”.

But in this zone, the coastal country claiming the seabed and subsoil would not have authority on the waters in case of the extended continental shelves, which would be considered as high sea. The division of seas has been shown in Figure 1. Now Arctic countries have submitted their claims for extending their continental shelves except the US (as it has not ratified the UNCLOS yet). The Article 76 states that any signatory country prior to claiming extension in the continental shelves beyond its EEZs:

- must ratify the convention,
- has drawn territorial sea baselines (as Canada has done).

Again the claim must be supported by the scientific evidence prepared after examine morphology, sediments and bathymetry of the shelf. For this signatory state, has been given limited period of ten years from the date of ratification of the UNCLOS III to formulate the valid claim. Further this claim is essentially submitted to the experts of “Commission on Limits of the Continental Shelf (CLCS).” Then the claims are reviewed by CLCS make recommendations concerning to the respective claims. The Commission is empowered to make available scientific and technical opinion to states that apply for it (Fleming 2009).

Navigational Rights in the Arctic Ocean: In subsection A of the section 3 of the UNCLOS III innocent passage, Article 17 of the UNCLOS III accepted the “established customary international law” regarding the right of innocent passage. This simply states, “Subject to this Convention, ships of all states, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea.” According to the Article 18 such passage to be “continuous and expeditious.” The means of access must not be “prejudicial to the peace, good order or security of the coastal state” here prejudices means “any act of wilful and serious pollution.” The Article 21 suggests methods to defend the interest of the coastal states of right of innocent passage is being misused, “the coastal state may adopt Laws and regulations, in conformity with the provisions of this Convention and other rules of the international law relating to innocent passage through the territorial sea in respect of any of these --- for the safety of navigation, for the regulation of marine traffic, the protection of navigational aids and facilities, for protection of cable and pipelines, for preservation of marine environment and resources, for protection of the scientific survey and research the preservation of the environment of the coastal State and the

prevention, reduction and control of pollution.” Article 234, authorises the coastal state to regulate shipping till 200 nautical miles to shield the aquatic environment of the frozen over coastal waters.

The right of innocent passage exists if the waters in question are:

“Part of territorial sea (TSCZC Article 5(2) and UNCLOSIII Article 8(2).”

Landward of straight baseline, drawn pursuant to the 1958 Territorial Sea and Contiguous Zone Convention 1958 and the waters that were previously considered as being internal waters (TSCZC 1958 Art. 5(2) and UNCLOS Art. 17).

A strait used for international navigation formed by an island and mainland of the same state; a route of similar convenience exists seaward to island (UNCLOS 45(1) a, 38(1)).”

No navigational right exists if the waters in question are:

“Historical waters”

“Landward of the low waterline (TSCZC Article 1. 5(1), UNCLOS III Article 5.8(1)).”

**The Current Developments in the Arctic Region and Canada:** The reason for the political changes in the Arctic region is the receding of ice caps in the Arctic Ocean with an increase in temperature. The National Aeronautics and Space Administration (NASA) reported, “the temperature of the Arctic is increasing at a fast rate due to global warming, even more than anywhere else in the world. Five of the first six months of 2016 also set records for the smallest respective monthly Arctic sea ice extent since consistent satellite records began in 1979, according to analyses developed by scientists at NASA’s Goddard Space Flight Centre, in Greenbelt, Maryland. The one exception, March, recorded the second smallest extent for that month” (NASA 2016). As these two key climate indicators have broken records in 2016, NASA scientists said, “the Arctic sea ice is continuing its decades-long trends of change. Both trends are ultimately driven by rising concentrations of heat-trapping carbon dioxide and other greenhouse gases in the atmosphere. The extent of the Arctic sea ice at the peak of the summer melt season now typically covers 40 per cent less area than it did in the late 1970s and early 1980s. The Arctic sea ice extent in September, the seasonal low point in the annual cycle, has been declining at a rate of 13.4 per cent per decade.”

There is a ‘scramble’ for the Arctic; a ‘new Cold War’ between US and Russia who are neighbours at only 92 kilometres here; a new military build-up with US maintaining its missile launch sites and strong military presence in the far north and Russia, especially since 2012, focussing a great deal on its military refurbishment in the region including forward airbases. The former US President Barrack Obama described the Arctic as the ‘last great frontier’, while, it is said, Russia is drawing a ‘New Ice Curtain’. It is also said that Russia intends to build a new ‘Suez Canal’ in its Arctic waters, as retreating ice makes shipping possible for part of the year during summers. China wants to be a ‘polar expedition power’ as it is eyeing shorter routes to European and North American markets, while countries like South Korea are anticipating opportunities for their shipbuilding industries.

In short, new environmental, economic and geographical realities are unleashing new geopolitical pursuits in the Arctic region. It is believed that some 13 per cent of the undiscovered oil and around 30 per cent of natural gas is located in the Arctic region. Unmindful of environmental aspects, Shell is set to explore oil off the coast of Alaska closer to the Arctic Circle. Russia is claiming several hundred thousand kilometres of seabed on the grounds of it being part of the Russian continental shelf – a claim which overlaps with the claims for an extended continental shelf by both Canada and Denmark. The US refuses to recognise any territorial claims over parts of the Arctic arguing that these waters are international sea open for navigation; on its part, Russia had in 2007 planted a titanium Russian flag at fourteen thousand feet depth to claim an extended continental shelf. In January 2015, the American president Barack Obama set up an executive steering committee to plan and steer a US naval maritime project for the Arctic.

What kind of frontier the Arctic would be – an ecological preserve or an economic engine? Would it eventually elicit an international cooperation or lead to political and military confrontation? These are core issues at the heart of the unfolding geopolitics in the Arctic region. Be that as it may, the 8-member Arctic Council, a multilateral mechanism working on principles of sustainable development in the Arctic, especially by involving indigenous communities of the member countries, is proving ineffectual in the face of the rising geopolitical competition in the region.

More notable and complex than other aspects, the political geography of the Arctic is unique and complicated: four out of five Arctic (A-5) nations except Russia are the

members of the US-led North Atlantic Treaty Organization (NATO). The two opposite superpowers of the Cold War era viz. the US and Russia (former Soviet Union) are close neighbours here. The US continues to maintain various defence facilities including missile launch sites under the North American Aerospace Defence Command (NORAD) agreement with Canada in this region.

The end of the Cold War has added new geostrategic dimensions to the Arctic region. For one, there is a raised concern that due to global warming the Arctic ice cap is melting which leads to shrinkage of the frozen area. The USGS<sup>4</sup> had predicted in July 2007 that the Arctic Seabed has huge resource potential. Besides, due to thinning of ice, a new and shorter sea route, called the “Northern Sea Route” (NSR) has become navigable serving as shortest route from the Atlantic to the Pacific Oceans. The reduced transportation cost will have different impacts on export competitiveness of countries; for instance, it would potentially reduce transportation cost by 30 per cent for the Chinese goods destined for the North American market.

Climate, resources and commerce – all have made the Arctic a subject of global interest and a number of countries are beginning to claim one or the other kind of stake in the region. For instance, it seems that ice melting has some bearing on the monsoonal pattern for India. A country like China might have political and strategic interests in finding a toehold in the region so as to participate in the exploitation of Arctic resources. Such claims admittedly have implications for the security and environment, and raise complex issues in governing the Arctic.

There are several more issues bearing geopolitical significance in the region. Now, Arctic countries have submitted their claims to extend their continental shelves except the US. Further, these claims are overlapping in nature and creating conflicts which would be discussed in the coming chapter.

### **Canadian Arctic**

After Russia, Canada is second largest country having forty per cent of its landmass and the largest coastline in the Arctic Ocean. Throughout the Cold War, Canada had

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<sup>4</sup> The United States Geological Survey, an organization was established by an act of Congress on March 3, 1879, to provide a permanent Federal agency to conduct the systematic and scientific "classification of the public lands, and examination of the geological structure, mineral resources, and products of the national domain." Its mission includes publishing and disseminating the earth-science,

always apprehended that in case of any military conflict, the Canadian Arctic would become a theatre of missile warfare between the two superpowers. The vast mineral and marine sources and geographical remoteness has made Arctic economically and strategically important for Canada.

The northern part of the Canadian Arctic is part of the Arctic Archipelago (CAA); it consists of nearly 18,000 islands surrounded by the waters of the Arctic Ocean. The CAA the Parry Channel as in map 2: subdivides the CAA in north and south. The Queen Elisabeth islands, are located in the Northern part whereas in the southern part consists those islands situated between the northern boundary of the Canadian mainland and south of the Parry Channel .

Because of the melting of ice, a shipping route a channel Northwest passage has become navigable running through CAA (map 2) which is between the Atlantic and Pacific Oceans. The Northwest Passage (NWP) is not single passage it consists of five routes:

Route I- Through the Prince of Wales Strait which lays across the five bodies of waters: Lancaster Sound, Borrow Strait, Viscount Melville Sound, Prince of Wales Strait and Amundsen Gulf.

Routes II- Through M'Clure Strait a narrow route.

Route III -Through Pell Sound and Victoria Strai which crosses eleven water bodies including Lancaster Sound, Barrow Starit, Peel Sound, Franlyn Strait, Larsen Sound, Victoria Starit, Queen Maud Gulf, Dease Starit, Coronation Gulf, Dolphin and Union Strait and Amundsen Gulf.

Route III A – Through Peel Sound and Jmaes Ross Strait. This route is a variation of the route III in which it passes on the east side of king William Island instead of the west side.

Route IV- Through Prince Regent Inlets.

Route V - Through Fury and Hecla Strait.

RouteVA- Through Fury and Hecla Stait and Regent Inlet.

These Sea Routes have been shown in the map 3

Map 2 Part A shows the Western Part of the Northwest Passage . Route II. Route III, Rout IIIA and Route IV has been shown in the Map. Source Description of Northwest Passage by Donat Pharand in Canada’s Arctic Water in International Law.



Map 2 B the Eastern part of the Northwest Passage. Route I, Route IV, Route V and VA has been shown in this part B. Edited by author. Map 2 A&B Canadian Arctic Archipelago and NWP





According to the mariners because this runs through the archipelagic region with narrow straits, at many places often stuck fast with impassable multi-year sea ice roving in from the mid Arctic Ocean difficult for a smooth sailing of the ships. One of the strait is M'Clure Strait which is located between Melville and Banks Island is one that remains clogged-up with multi-year ice roving in from the mid Arctic Ocean. The shallow waters and narrow straits create choke points and together make difficult in sooth navigation. The AMSA study concludes that "even during the most recent periods of reduced ice, the location of the ice, its thickness from year to year and the variability of ice-free areas makes it nearly impossible to schedule transits with any degree of certainty of reaching the desired port on schedule. The obstructions stemming from seabed pingoes<sup>5</sup> are also notable" (AMSA 2009). The NWP is not single navigation route but of seven different routes of which six run through the southern part of the archipelago makes the NWP. Despite the difficulties in navigating through the NWP its location is very important. Many countries like United States, China Japan and the European Union have their commercial interest in it. The NWP is shorter, economical for commercial shipping and is thus energy-saving. Much to the apprehensions of Canada, the US and the European Union are claiming this as high sea, open to unrestricted navigation. Canada counters such a claim by claiming sovereignty over it. This precisely is at the heart of an intense on-going debate about the Canadian Arctic.

The aspects and dimensions of the Canadian claim are worth noting. Canada's claim is that the waters in the NWP are internal and historical, based on the transfer of title over the Arctic Archipelago by Britain in 1880. Under the international law, claim for historical waters requires three criteria: exercising of authority by the concerned country; the continuity of the exercising authority and acquiescence of the foreign nations. Canada claims all three. The US and European countries counter this on the basis of the third condition and further, that Canada had not claimed sovereignty before the Manhattan voyage – an American oil tanker that passed through the NWP in 1969 without seeking any Canadian permission.

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<sup>5</sup> Seabed pingoes are, "old ice shaped like a cone extending like a knife from seabed upward towards the surface of the Ocean. This is assumed that the pingoes which are often covered and strengthen with frozen clay and mud as the relics from the time when seabed was above sea level". These are actually dangerous to the ships with deep draft. If ship collides with pingo the hull may be ripped open and result would be catastrophic.

Canada has dealt with this American and European position on the basis of the International Court of Justice (ICJ) ruling in the “*Anglo-Norwegian Fishery Case* of 1951 – a dispute between the United Kingdom (UK) and Norway.” The case was brought by the United Kingdom against the Norway which aroused due to the decree of the Norwegian government of July 12th. 1935. “According to this decree it had drawn a straight baseline in the fishing zone situated of its northern coast and reserved fisheries for its own fishermen. The reason was this northern bank was shallow sea and known for the good quality of fishes and fishing was the main occupation in this region, The British trawlers used to do fishing which was giving a set back to the local fisherman. By drawing this line the Norwegian made the fishing by the foreign trawlers illegal. The two questions emerged that whether this decree, which laid down a method for drawing the baselines is in accordance of the international law? And whether the width of the Norwegian territorial waters had to be calculated, was valid international law?” This question was rendered particularly delicate by the intricacies of the Norwegian coastal zone, with its many fjords, bays, islands, islets and reefs. The United Kingdom gave the argument, that some of the baselines fixed by the ruling did not follow the general direction of the coast and also were not drawn in a lawful manner. In its decision of 18 December 1951,” the Court bring into being that, contrary to the submissions of the United Kingdom, neither the method nor the actual baselines stipulated by the 1935 Decree were contrary to international law( ICJ 1951).” The ICJ had accepted that if these enclosed waters have been used by any community and it is long established, it must be maintained in the international law. Further, in such a situation, there also would be no limit on the straight baseline. Canada claims that the Inuit are using this water for their livelihood since times immemorial, and possibly, Canada has a right to fix an unlimited straight baseline if the geographical feature is complex.

The US claim that waters in the NWP are ‘International’ is based on the reading of Article 37 of the UNCLOS III and the ICJ judgement in the “*Corfu Channel Case 1946, between United Kingdom Verses Albania.*” To be brief, Albania damaged the warships of UK sailing through Corfu Channel and the UK claimed compensation. Albania appealed that the Corfu Channel is its internal waters and therefore, its action was defensive. The ICJ rejected Albania’s argument and declared that a waterway which connects two oceans and is being used for navigation since long is an

international strait. The NWP qualifies the first condition; but it has not been a busy strait for navigation like the Corfu Channel. Thus there remains a degree of ambiguity, whether these waters are internal to Canada or international waterways. Throughout the Cold War, Canada perceived the threat of Soviet attack and a lack of military and investment capacity made it dependent on the US. The NWP was often used by the US and other NATO allies for deploying nuclear submarines against the former Soviet Union. At that time too, Canada apprehended NATO activities as a threat/challenge to its sovereignty claim over the NWP. To wriggle out of the bind, it tried to separate its claim of sovereignty over the NWP from its security concerns and defence commitments under NATO. It made attempts to assert sovereignty over its parts of the Arctic including the NWP. In 1970, the Parliament of Canada enacted a legislation known as the “Arctic Water Pollution Prevention Act” (AWPPA) and authorised itself to control navigation in the Arctic Sea till 100 miles from its baseline to protect marine environment. The law was passed after the transit of the *Manhattan*. Knowing Canada’s intention to claim sovereignty over the region, the US responded by simply reducing imports from Canada (Cohen 1971 73).

In 1985, the *Polar Sea*, another American ship, traversed through NWP – again without Canadian permission. Next year in 1986, Canada drew the straight baseline so as to avoid any confrontation with the US. The Canadian approach was cautious and conciliatory. Canadian Prime Minister Brian Mulroney negotiated the Canada-United States Arctic Cooperation Agreement in 1988, so as to secure American consent for the more important bilateral Canada-United States Free Trade Agreement (CUSFTA), which went into effect in 1989. This Act authorised the US to transit through the NWP after taking prior permission from Canada.

Besides the NWP, Canada and the US also disagree on the division of the boundaries of Beaufort Sea. Canada has been involved in another dispute with Denmark; some other nations are also likely to have irritation and misgivings with Canadian claims for an extended continental shelf.

An archtypical middle power, Canada is unable to bring a major change on the basis of its power capability. But its standing in the comity of sovereign states and its diplomatic skills might influence international negotiations in its favour. It is said that Canada is developing its Arctic policy in its capacity as a middle power. Canada’s

Arctic policy is facing three challenges: first, to make the US agree on the Canadian sovereignty over the NWP without disturbing vital bilateral economic and defence ties; second, attain cooperation from its Arctic neighbours and resolve the boundary dispute; and thirdly, to take global acquiescence towards its Arctic policies which could defend its sovereignty and security interests in its own Arctic region.

Canada's diplomatic efforts regarding the Arctic region are the extension of its domestic policies. Through negotiation of Article 234 of the UNCLOS Canada got global consent on AWPPA including the US on the basis of environmental protection. Then it negotiated for the extension of territorial sea from 3 to 12 nautical miles under the Article 3 of UNCLOS III which made the major part of waters of the NWP as 'territorial'. But both the Articles could not sustain the Canadian sovereignty over the Arctic. Article 234 is functional until the Arctic Ocean is ice-covered; it is not going to serve the Canadian purpose if ice melts. The provision of 'innocent passage' that "allows for a vessel to pass through the territorial waters of another state subject to certain restrictions" under Article 8[2] of UNCLOS gave a setback to Canada's effort to check navigation through NWP by extension of the territorial sea. Therefore, Canada needed another measure within the normative framework to check shipping through its Arctic waters. It was then that it announced the drawing of a straight baseline to define its coastline of its archipelago and claimed that the archipelagic waters are historical, and sustained it with the occupancy of the Inuit living in this region and using the waters since times immemorial. Canada realises that changing realities of the Arctic are complex challenges for Canadian sovereignty position; therefore; it is also seeking to create multilateral institutions to secure its sovereignty and security both.

Embedding sovereignty claim in domestic socio-political sources is an interesting dimension of its evolving Arctic perception and policy. The foundation stone was laid by Canada through the creation of Nunavut, a new Canadian territory, in 1999, in the Canadian Arctic archipelago and having a majority population of the Inuit and granted title over the land and disputed waters – claimed as high sea by the international community. It was the time when the United Nations recognised the right of "Fourth Nations" (Indigenous Peoples) on the land and resources used by them and made provision to stop their displacement. Canada used this 'ethnic card' as the protective shield for Arctic sovereignty through the Arctic Council is the highest multilateral

forum in the Arctic region consisting of all the A-8 countries, which works on the concept of sustainable development. Canada represented itself by the Inuit Organization of Nunavut and consequently all the A-8 are being represented through their indigenous organisations.

The thesis examines the evolving Canadian perception and policy towards the Canadian Arctic; it would identify actors involved and the strategies used for the purpose. Significant foreign policy aspects of bilateral relations with the US, commitment to NATO as a ‘frontline’ state, and cooperation with and among the A-8 has also been examined. Geopolitical frameworks would be used in the thesis and to analyse the subject.

### **Literature Review**

The following literature review is presented thematically, which is consistent with the proposed chapter scheme of the research work.

#### **Evolving Geopolitical Scenario in the Arctic: Issues, Actors and Challenges**

The melting of ice makes the Arctic accessible for resource extraction and as a new and shorter shipping route. The Northern Sea Route has become navigable. Josef S. Raucek argues that the Arctic is a central connecting area between the North America and Europe and Asia continents as it offers the shortest air routes for connecting almost all the important cities and the trade centres of the northern hemisphere and its fuels are a potential substitute for the North American dependence on Arabian Gulf oil (1983).

For these reasons, a variety of global economic, political and strategic interests are converging on the Arctic and an ever-larger number of countries are evincing interest and stakes in the Arctic region (Ebinger and Zambetakisin 2009; Sharpp 2011). While as an Arctic country, the US has its own economic and strategic interests, others are not far behind. One view is that China is not going to benefit from the new shipping route of the NWP because it is uneconomical; yet, China’s interest is increasing in the Arctic for political and strategic reasons (Lasserre and Alexeeva 2015). South Korea has commercial interests as it would benefit from the shorter shipping route. Moreover, South Korea with its well-developed shipping and marine

infrastructure development industry would get more business opportunities (Bennett 2014).

Borgerson considers the absence of international legal agreements for governing the Arctic region as the foremost cause for perceived armed conflict among the countries because the states will attempt to control the largest possible area of the Arctic. Powerful states, importantly the US and Russia, might most probably act unilaterally in the absence of governing norms. Such a situation can result in claims and counterclaims on the territorial rights (2008). Three types of disputes emerge due to claims and counterclaims among the Arctic and the Non-Arctic actors: (i) One set of disputes are related to the boundary. There are as many as five disputes related to the division of boundary: between US and Russia in the Bering Sea; between Canada and US in the Beaufort Sea; between Canada and Denmark/Greenland in the Davis Strait; between Norway and Russia in the Barents Sea; and, finally the boundary dispute between Norway and Russia and others on the question of the status of Svalbard. (ii) Conflicting positions have been adopted by countries on the status of straits in the Arctic region: Canada vs. US and other countries differ on the status of straits; the NEP (North East Passage) involves differences between Russia and other countries. Several countries claim rights to passage through NEP as being high seas and that the NEP should be opened for navigation whereas Russia refuses all such claims under the provision of Article 234 of the UNCLOS. Canada argues that the waters in the NWP are internal on historical grounds, Inuit occupancy grounds as well as under the Article 234 of UNCLOS. (iii) The third type of conflict, likely to emerge, is due to the submission of the extended claim on the continental shelves by the four Arctic countries (Kříž & Chrástanský 2012). These claims overlap.

Of the diverse actors involved, the one of considerable significance and stake in all the Arctic countries are the indigenous communities. The indigenous populations living in the Arctic since the beginning have emerged as major players in this region who have depended upon the frozen Arctic ice for their dietary needs and livelihood. The rapid commercialisation and militarisation, causing pollution of the Arctic region, directly threaten the conventional practices of living of and occupation of the indigenous communities. During the 1970s and 1980s, the indigenous peoples made gains in terms of political and economic rights over the issues of governance and use of resources in the Arctic region. Their rising demands now pose complex questions

before all Arctic countries and the international community as a whole (Georgesu 2009; Loukacheva 2008; Loukacheva 2009).

### **The Arctic and Canada's Geopolitical Interests**

The Arctic represents the 'tremendous resource potential' for Canada and is 'critical' for Canada's security (Statement on Canada's Arctic Foreign Policy 2008). Canada has defined its Arctic as "land, ice, and water of Canada's Arctic Archipelago." Canada's first priority is to assert sovereignty over it (McRae 2009). The "Statement on Canada's Arctic Foreign Policy" has identified three priorities for Canada: "(i) the first priority for Canada is to exercise sovereignty over its Arctic as it is the foundation for realising the full potential of Canada's North, including its human dimension. For this Canada aims to resolve boundary disputes and secure international recognition for the full extent of its extended continental shelf. (ii) The second priority for Canada is the creation of appropriate conditions for sustainable development; to seek trade and investment opportunities; to encourage the human dimensions of the Arctic; and to improve the life of Northerners so as to realise the full potential of the Arctic region. (iii) Protecting the Arctic environment through the collective and collaborative efforts of the Arctic neighbours and to promote research on the Arctic and to improve the Arctic governance through the participation of indigenous peoples in the Arctic Council is the third priority for Canada (2008)".

Rob Huebert clubs various challenges under three categories: international disputes; environmental security; and the traditional security threats such as aggression in the Arctic region. The territorial disputes in the Arctic region are due to the conflicting geopolitical interests of Arctic nations (2003). Byer and Baker point out that increasing human activities like mining and shipping are posing serious non-traditional threats and besides, so are dangers posed by non-states actors like smugglers and alcoholism among the indigenous communities as well as environmental terrorism of which Canada has been a victim several times. Rush for resources and conflicting boundary claims and continental shelves might lead to military build-ups and armed acts by sovereign states of the region (2013).

Elizabeth Meisel has argued that after receiving its Arctic from Great Britain in 1880 Canada made considerable delay in claiming sovereignty over it only in 1973. Claims that NWP is Canada's historic internal waters were not formalised until 1986. This

long delay has somewhat weakened the Canadian sovereignty claims over the NWP. At present, three factors hinder Canadian presence in the Arctic: “failure in defining sovereignty, especially distinguishing between sovereignty over the land and sovereignty over the water; allocating limited manpower and financial resources to back up sovereignty claims with concrete programmes, projects, equipment and personnel; and, finally, living next door to the US, the mightiest of economic and military power ever, which is eager and determined to operate in the North. Arguably, the first issue has been resolved, but the other two continue to plague Canada. As a result, Canadian claims to sovereignty over NWP are not backed by an ability to defend, exploit, escort ships or patrol the Passage year round “(1999).

Discussing the American dominance in governing the Arctic, Borgerson says that the AC does exist to speak to environmental issues, but is ineffectual because it does not deal with the most pressing challenge of the region because the US forcefully emasculated its birth in 1996 by prohibiting it from addressing the military and security concern. Thus, being a NATO member Canada is not independent in making decisions in the security matters in the Arctic (2008). Rob Huebert argues that during the Cold War Canada left the security of its north completely in American hands and it became reluctant about the security of its own Arctic; all this makes the current Canadian position weak and vulnerable. The Canadian Coast Guard (CCG) were silently watching the submarine activities of NATO in the Arctic waters and ignored them; often, the Canadian navy was a partner in these military manoeuvres by NATO (2003).

### **Evolution of Canada’s Territorial and Sovereignty Claims**

Asserting sovereignty within the Canadian Arctic is the core interest of the Canadian policies regarding the Arctic. Oran R. Young argues that “the voyage of the *Manhattan* through the NWP in 1969 provoked the Liberal government of Pierre Trudeau to promulgate the Canadian Arctic Waters Pollution Prevention Act of 1970 (AWPPA) and, then, to push hard for the inclusion of Article 234 in the new Law of the Sea Convention as measures to enhance Canada's control over its Arctic waters (1987)”. America voyages by refusing to seek Canadian permission aroused the Canadian Arctic sovereignty concerns in 1969 and again in 1985 (Byer 2009). The AWPPA defined the Arctic Water under the Canadian law:



“Arctic waters “mean the internal waters of Canada and the waters of the territorial sea of Canada and the exclusive economic zone of Canada, within the area enclosed by the 60<sup>th</sup> parallel of north latitude, the 141<sup>st</sup> meridian of west longitude and the outer limit of the exclusive economic zone. However, where the international boundary between Canada and Greenland is less than 200 nautical miles from the baselines of the territorial sea of Canada, the international boundary shall be substituted for that outer limit.”

Through this definition, the Canadian government claimed its sovereignty over the disputed area of the Beaufort Sea. This act also provided the right to regulate shipping in this zone for protecting the marine environment in its 100 nautical miles and enforce law over 100 nautical miles in its Arctic region (1970).

In a critique of the Canadian foreign policy, Kirton and Munton argue that Canada worked unilaterally to assert sovereignty by extending its jurisdiction, and thus avoided the American alternative plans for a multilevel conference on the Arctic environment. With a nationalist, yet a short-sighted approach, “the Canadian government broke decisively with the Liberal Internationalist traditions that have dominated the Canadian foreign policy since World War II (1987).”

The Progressive Conservative government of Brian Mulroney (1984-93) proclaimed the Arctic as the new focus of Canadian foreign and security policies. This was mainly in response to the public clamour and outrage at the passage of the US Coast Guard icebreaker *Polar Sea* through the NWP in August 1985 (Purver 1990). External Affairs Minister Joe Clark addressing the House of Commons emphasised attaining full sovereignty in and on the Canadian Archipelago for Canada’s security and national identity. He also extended the word sovereignty to mean sovereignty in the airspace over the CAA (House of Commons 1985 6463); Clark announced the adoption of a straight baseline in the region of the Canadian Arctic Archipelago effectual from January 1, 1986 and the construction of Polar Class 8 icebreakers.

Terry Fenge and Merritt argue that granting title to indigenous peoples over land and water and recognising their right to governance can serve Canada’s sovereignty issues in the Arctic region. They substantiate their argument with the implementation of the “Inuit Land Use and Occupancy Project which demonstrates Inuit use and occupancy of Lancaster Sound and Barrow Strait – the eastern end of the NWP which is the very area characterised by the US and some European countries as an international strait. Canadian action intended to safeguard Canada’s sovereignty interests”(1999, 2007).

The Nunavut Land Claim Settlement Act (NLCA), transferring title to the Inuit over land and water in the Canadian Arctic is the most ambitious initiative of the Canadian government in this direction. Article 3 of this Act details the geographic components of the Nunavut Settlement Area, while Article 15 recognises and reflects on the historical claims of the Inuit over the marine waters and resources. Article 15 states the subsequent principles:

“Inuit are traditional and current users of certain marine areas, especially the land-fast ice zones; the legal rights of Inuit in marine areas flowing from the Agreement are based on traditional and current use; Canada's sovereignty over the waters of the Arctic archipelago is supported by Inuit use and occupancy; Inuit harvest wildlife that might migrate beyond the marine areas; an Inuit economy based in part on marine resources is both viable and desirable. The geographical extent of Inuit land and resource use in the Arctic has been well known for many years” (Nunavut Land Claim Act 1993).

Marecie and Mifflin argue that the condition of aboriginals remains unchanged, and Canada has done little to strengthen the identity and autonomy of Nunavut and its inhabitants (1999, 2008).

The Mulroney government sought to enhance military capability through the improvement of the Canadian Coast Guard and Air Force and modernisation of the NORAD. The Defence White Paper of 1987 talked of building infrastructure in the Arctic region. As noted earlier, Canada agreed to dilute its sovereignty claim over the Arctic in return for the US removing some punishing constraints under the CUSFTA. It was a repeat of the Americans restricting Canadian imports when the latter had legislated the AWPPA in 1970 (Howson 1987). Using environment as a plea, Canada had wanted that the US ships take prior permission before sailing through the NWP. This was the first Canadian initiative to deal with its sovereignty and security claim with the US (1988) but which bore an economic price tag.

The Conservative Prime Minister Stephen Harper (2006-2013) made Canadian Arctic sovereignty and security one of his core campaign issues in 2005. After becoming the Prime Minister in January 2006, he took steps to deliver on his electoral promises. According to the ‘Finance Canada 2008’ report, the Harper government allocated the largest budget for the development, research and defence of the Arctic. Canada’s First Defence Strategy envisaged expanding naval capacity for patrolling and surveillance in the Canadian Arctic; acquisition of offensive capability by acquiring warships and

deployment of icebreakers so as to strengthen Canadian presence in the Arctic region (2008). Elizabeth Dixon notes the increase in the defence budget, purchase of new patrolling ships, deployment of forces and increase in its naval power in the NWP (2012). Joel Plouffe takes a lighter view and believes that under Harper, security measures in the Arctic remain inadequate and essentially rhetorical. More than anything, Harper has pursued the goal of building closer defence ties with the US since 2006 (2014).

### **Canada and United States Relations in the Arctic Region**

Though Canada is the closest neighbour of the US and both maintain close relations on economic and security issues, Canada's sovereignty claim over the NWP is an important source of friction in relations with the US. Canada seems determined to maintain its sovereignty claim; such a response appears more as a reaction to US activities in the NWP and its assertion that these are international waters free for navigation (Proells & Miller 2008; Byers & Lalonde 2009).

In particular, Prime Minister Harper came to accord high priority to sovereignty over the Arctic waters including the land and the extended continental shelves. This was amply stated in the Statement on Canada's Arctic Foreign Policy (2008). In response, the then US President George Bush issued a Directive on Arctic Policy 2009. The section on 'National Security and Homeland Interest in Arctic' clearly says:

"Freedom of the seas is the top national priority. The Northwest Passage is a strait for international navigation and Northern Sea Route includes strait used for international navigation, the regime of transit passage applies to passage through those straits. Preserving the rights and duties relating to navigation and over flight in the Arctic region supports our ability to exercise those rights throughout the world including through strategic straits" (NSPD 2009).

There is a consistency in the US stance. It had opposed the AWPPA too when it regarded Canada's attempt to regulate shipping in the NWP, in the name of protecting the Arctic waters and marine life adjacent to Canada's mainland, as unilateral. The US has its own interests in keeping the NWP free for international shipping (Bilder: 1971). How asymmetrical are the relations with the US is evident when the US President Richard Nixon reacted to the enactment of AWPPA by simply cutting fuel imports by 20 per cent and ordered the building of the largest ever icebreaker (Stromberg 2006). Rob Huebert finds the US practising double standards: opposing

Canadian effort to comply with the stricter environmental standards for the operation in its Arctic while enforcing similar strict laws in American waters for all ships (2006).

Canadian scholars have also taken diametrically opposite views on the issue of NWP. Don McRae, Donat Pharand and Rob Huebert regard the NWP as internal waters where Canada has full sovereignty. Don McRae says that Canada has complete sovereignty over waters of the NWP until it is covered with ice; yet, Canada cannot rely on that for a long time because the ice in the Arctic Ocean is receding and that Article 234 of UNCLOS authorises a coastal state to control shipping in the icy-waters in only in its EEZ (1983; 1987). Donat Pharand has examined the Canadian position over the NWP in the light of the decisions made by the ICJ in the case of *Norwegian Fisheries* of 1951 and the provision of UNCLOS and the customary laws of seas and then argues that though Canada cannot discharge enough evidence to prove that the waters in the NWP are “historical” yet its the waters are internal through drawing the “baseline” is under the provision of the UNCLOS III. Therefore these are Canada’s internal waters. He counters that the NWP is the international strait just because it connects the two high seas based on the “*Corfu Channel Case*” on functional grounds: the NWP has never been a busy sea route like the Corfu Channel which was a busy sea route since long and being used by seven countries (1988; 2007). Rob Huebert’s claim that the Canadian archipelagic waters are internal is based on the claims made by Don McRae and Pharand but his opinion is that though the Canadian archipelagic waters are internal, yet Canada’s dependence on the US for its maritime security has given a setback to its sovereignty over the waters of the NWP. His argument is that Canada has itself made its position vulnerable in the Arctic region (2003; 2009). Huebert also says that the present clamour for sovereignty over the waters of the NWP is not related to climate change; Canada made too much delay in claiming which has weakened its sovereignty claim (2011). Rothwell looks at the geography of the NWP and finds that the NWP is not a single strait like any other international strait. Rather, it is series of five waterways surrounded by the territorial waters. It is not high sea but patches of the high sea surrounded by the territorial waters of the Arctic and a special provision is required for it under UNCLOS in this regard (1993). The present provisions of UNCLOS are not therefore appropriate for the NWP.

Franklyn Griffith argues that the NWP must be opened for shipping and it is not going to threaten the Canadian sovereignty. Canada is raising this issue when the Cold War ended because the economics of the geopolitical relation between the US and Canada has since changed. US cannot be expected to remain economically as large-hearted as it was before during the heyday of the Cold War. He strongly condemns the Canadian appeal for waters in the NWP being 'historical' or 'internal' on the basis of Inuit occupancy. In reality, Canada is not giving the Inuit any importance in political decisions and implementation. Canada's claim is double-faced.

Discussing the challenges Griffith argues that no third party can pose a frontal challenge to Canadian Arctic sovereignty without the backing of the US. Any international confrontation over the NWP would be an outcome of the Canada-US relationship (2003). Douglas raises other issues: transit through the NWP is not a matter of Canadian sovereignty. Transit through NWP would depend upon several factors, like cost and benefits, market price of energy, environmental threats (2002). Quite similarly, Franklyn Griffith argues that NWP would be ice-free only for 56 days in a year. It would remain so until about 2030. Now, shipping for only seven weeks in a year is neither economically viable nor countries would want to invest heavily for building infrastructure in the Arctic region for the same. He concludes that this is not the right time for Canada to raise this issue (2011).

Though Kraska never denies the arguments given by Paharand and Don McRae, he says that the melting of ice would increase the shipping in future and Canada's rigidity can risk the security issues in the Arctic region. His argument is that despite laws, the melting of ice would increase shipping. The US fears incidents like 9/11 and Canada's weak maritime security is the reason for deploying forces by the US (2009). Howson underlines that the US interest in the NWP is basically for two reasons: it is the shortest and cost effective route for shipment of energy and other resources from Alaska to European and Asian markets; and secondly, the US has strategic interests in military deployment so as to keep a watch on Russian activities (1987).

### **Canada and the Arctic Council**

Roth's and Gruintskiy emphasise that UNCLOS is highly relevant in resolving the disputes emerging among the Arctic nations; they also call for the role of multilateral

organisations in which the Arctic nations can participate and work on emerging issues and challenges in the region.

Canada has been actively involved in promoting a multilateral approach to handle the issues in the Arctic. Rob Huebert mentions Mulroney's visit to the former Soviet Union in 1989 with the proposal to set up the Arctic Council. It was the time when the relations among the Arctic nations were frozen and there was no scope for any multilateral cooperation as the Arctic Nations (A-8) were also divided on the basis of their membership in NATO and Warsaw Pact (2008).

Gibson argues that Canada lacks proper infrastructures to manage security in the Arctic region and its sovereignty claims over the NWP are not on sound grounds; therefore, a well-defined Arctic policy in a multilateral framework is the only option for Canada. In a multilateral forum, Canada might successfully secure international consent on the AWPPA and thus indirectly it can regulate shipping activities in the NWP. It needs to be recalled that even the US, which is opposed to AWPPA, supported Canadian sponsorship in negotiating the Article 234 of the UNCLOS (Miesel 2008). Though Article 234 does not deal with sovereignty, it authorises the littoral countries of the Arctic region to regulate shipping to protect the fragile environment.

Canada as a founding member of the "Arctic Council" has taken initiatives to secure international cooperation on several Arctic issues (Greaves 1999). Bloom states that in 1996, the A8 together created the Arctic Council as an inter-governmental forum for discussing issues other than military security. The mandate is fairly comprehensive and constructive: "Promoting cooperation, coordination and interaction among the Arctic states, with the involvement of the Arctic indigenous peoples and other Arctic States inhabitants on common Arctic issues in particular issues of sustainable development and environmental protection in the Arctic."

The non Arctic nations and non-governmental organization can join the Arctic Council as observers. It does not grant the Council authority to make binding decisions or to develop policies regarding current Arctic issues (1999). Criticising this, Fenge and Funston in their report "The Practices and Promise of the Arctic Council" have argued that lack of a legal forum; decision made at it not being mandatory; and that states are at liberty to pull out of agreements at any time are the

shortcomings of the Arctic Council. Another two major shortcomings are: the Council has yet to agree on the definition of ‘sustainable development’ in the specific context of the Arctic; and secondly, the Council lacks adequately funded permanent partners.

Rob Huebert states that the Canadian circumpolar security of Canada depends on the Canadian capacity to keep the US and Russia engaged in cooperative behaviour in the Arctic; it is a fairly challenging task for the Canadian foreign policy establishment. He highlights the American dominance in making the Arctic Council a strong organisation by excluding the security issues from its mandate. It is because the US wants no organisation such as NATO to deal with Arctic security. Canada accepted this because it needs to have American membership in the Arctic Council (1999). The *Declaration on the Establishment of The Arctic Council, Ottawa* explicitly stated that the “Arctic Council should not deal with matter related to the military security.” Helga Halfterndon argues that Canada does not want a role for NATO in the Arctic region and wants no collaboration with the Arctic Council. It has also refused any NATO activity in the Northern region and waters by saying that Canada has sovereignty over Northern provinces. The reason behind this is Canada’s fear that the US can exercise dominance through NATO to settle the disputes on the Beaufort Sea and the question of NWP as well. Canada’s Arctic policy provides no role for NATO, though the country remains a supporter of NATO expansion in Europe and Asia. Huebert’s argument presents another reason for Canada’s unwillingness to extend the involvement of NATO in the Arctic affairs. He argues that the relationship between NATO and Russia after NATO’s intervention in Georgia could upset the relationship among the Arctic nations. This would be against the principles of the Arctic Council. The NATO Secretary General during the 2008 meeting of its allies in Iceland refused publically from any military tension in the region. The announcement was intended to comfort Russia that NATO’s transformed interest in the Arctic region was not directed against it. However, following the NATO meeting, the Russian media was especially critical of the alliance. Therefore, Canada has also tried to convince Russia by making it clear that its invitation to the US and Denmark to participate in the northern military exercises is strictly bilateral (2012). Whereas, Luke Coffey argues that “Canadians have made it clear that they do not want NATO involved in the Arctic. Generally speaking, there is a concern inside Canada that non-Arctic NATO countries favour an alliance role in the Arctic because

it would afford them influence in an area where they otherwise would have none (2012).”

Torbjorn Pedersen, while giving reasons for including Finland, Iceland and Sweden in the Arctic Council, which do not have a coastline, argues that Canada wanted to make the presence of indigenous people strong. According to him, “The Canadian view was that if the other three Arctic Council members had an interest it was better to invite them. Keeping the group to the five littoral states also risks appearing to exclude the indigenous permanent participants of Arctic Council.”

The afore-mentioned literature review highlights in main the following aspects: (i) focus is on describing and analysing the geopolitical aspects of the Arctic and geopolitical interests of different countries who want access to the resources and territory in the Arctic region. (ii) The literature review especially focuses on the Canadian Arctic and Canada’s perceived geopolitical interests therein. In particular, Canada has security and sovereignty concerns related to the NWP. (iii) Through the establishment of the Arctic Council, Canada appears to be performing the role of a steward in the context of multilateralism. A quintessentially multilateral power, a detailed account of Canada’s role and overtures in the Arctic Council has been presented. How this stewardship is going to protect, defend and strengthen its geopolitical ambition through the Arctic Council? Why Canada has included all Arctic eight (A-8)? Why Canada has advocated the representation of the Arctic countries through the indigenous organisations? What is the geopolitics behind giving the observer status to non-Arctic Nations and NGOs? These and related questions bear academic significance. (iv) Canada’s Arctic perception and policy would not be complete without taking into account the American perception and approach to the Arctic including, importantly, to the area called the Canadian Arctic. Canada’s relations with the US are multilevel and comprehensive spanning trade, security, environment, technology, migration and indigenous communities’ rights etc. The Arctic has added one more dimension. Both sides are using varieties of leverages to gain and advance their respective position in the Canadian Arctic. The literature review has briefly highlighted some of the aspects and nuances of this bilateral dynamics; the thesis proposes to examine the bilateral aspects in greater details.



## **Definition, Rationale and Scope of the Study**

In the light of the preceding discussion under Literature Review, this thesis attempts to study and analyse the fairly complex subject of identifying salient issues, principal interests, key perceptions and major policy initiatives of Canada in the Canadian Arctic in particular, and the entire Arctic in general.

This thesis adopts a geopolitical prism to raise and answer questions related to the Canadian sovereignty and security claims and concerns in the Canadian Arctic. To the extent required, the study would incorporate the literature related to the concept and theories of geopolitics.

The thesis explores the making and conduct of the Canadian foreign policy and study as to what extent the Canadian government policies are responsible for the weak security and sovereignty in the Arctic region.

Aspects of multilateralism bear significance in Canadian foreign policy. What kind of arrangement is the Arctic Council? Is it a multilateral or a plurilateral arrangement? Why Canada is not keen on extending NATO to the Arctic region? Canada seems to be working to promote cooperation between the US and Russia in the Arctic Council; perhaps it is a new role as a 'go-between'!

The Arctic has added yet another and a very complex dimension to Canada's relations with the US. One needs to know how respective positions on the Arctic and in particular on the NWP have evolved and are being leveraged by the two sides. There are asymmetries and interdependencies in the bilateral ties; neither country can do without the other, more so Canada. Canada is a part of NATO, NORAD and a variety of other security arrangements; trade and economic integration under NAFTA besides other economic and commercial arrangements; hosts of environmental and water-related agreements; immigration and border trade and exchanges etc. Canada has a rich experience in leveraging its bilateral ties, often from a position of strength. Canada's policy to assert sovereignty over the Arctic is aggressively opposed by the US. How Canada's foreign policy handles contradictory and paradoxical aspects of bilateral ties in promoting its interests in the Arctic require more in-depth analysis.

Canada has embedded in its Arctic policy domestic sources, particularly by putting forth the historical and social claims of its indigenous people over the surrounding

waters and resources in the Canadian Arctic. It was also instrumental in incorporating indigenous communities as active participants in the Arctic Council. How effective is the 'ethnic card' in promoting perceived geopolitical interests in the region? For this Canada also created a new territory called Nunavut and signed the Nunavut Land Claim Act and provided a title over land and water claimed as high sea by the international community to the Nunavut authorities. Canada is playing the indigenous ethnic card internationally when in the Arctic Council Canada represented itself through the Inuit organisation of Nunavut. Other Arctic countries are also represented through their indigenous organisations.

### **Research Questions**

Some of the salient questions this thesis intends to raise and answer are as follows:

1. Why has the Arctic become a centre of geopolitical interests and potential conflicts? How have the geographical factors created difficulties for international norms and laws to maintain peace and preserve the environment in the Arctic region?
2. What are the geopolitical interests of Canada in the Arctic region, in particular in the region called the Canadian Arctic? How are the transforming geopolitical realities impinging on Canadian interests?
3. Why the sovereignty over the NWP is critical for Canada? What is the legal position of Canada's claim on the question of NWP and why and how Canada has belatedly framed the claim of sovereignty over the waters of the NWP?
4. How would the creation of a new territory Nunavut protect Canada's sovereignty issue in the Arctic region? How effective could be the indigenous 'ethnicity card' in the foreign policy and external relations of Canada?
5. What is Canada's own national Arctic policy? How far would Canada go in accommodating or in acquiescing to US position and overtures?
6. Why did Canada insist on excluding the defence and security issues from the mandate of the Arctic Council and eliminate any role for NATO in the Arctic Council? How Canada is trying to fulfil its national interest in the Arctic region through multilateralism?

## **Hypotheses**

- 1 Limited resources and capacity and delay in claiming sovereignty over the Arctic waters make Canada's sovereignty claim over the Arctic waters weak and fragile internationally.
- 2 Canada's middle powermanship has helped it in securing its Arctic ambition effectively.

## **Theoretical Framework**

The thesis is focussed about the Canada's perception and articulation of its policies in Arctic Region as a middle power. Middle powers according to Eduard Jordaan, "are those that are neither great nor small in terms of international power, capacity and influence, and demonstrate a propensity to promote cohesion and stability in the word system". The publication of David Mitrany's work on world government in the early 1930s in which he argued that, "the international community was comprised of only two tiers of state powers: great and small. He noted, however, that some of the small states were becoming stronger, and proposed that their strength be recognized through a "scheme of gradation" has popularised the significance of the concept middle powers in the international relations,.

Dialogue for the creating of the UNO provided Canada with an opportunity to shape its middle power status. Andrew Gelber has explained: "Canada wanted to ensure that the middle powers had some special rights to the permanent seats on the Security Council" (Gelber 1945). According to Gelber "great powers as those states which held exceptional powers at the Security Council (UNSC). The US, former USSR, China, France and Britain qualified as great because of their veto power. Small powers were those with no special rights (or every other state in the international community). Middle powers would have to have lesser, but still distinct, powers at the UNSC. They would have to receive preferential treatment in the selection of non-permanent members". Adam Chapnik has traditionally assumed three distinct middle power models—

(i) Functional viewpoint recognises the middle powermanship on the basis of country's capabilities to influence in certain areas and functions in international

affairs, For example, in 1942, Canadian diplomat Hume Wrong emphasized that “international society should respect Canada’s role as a middle power in three functional criteria: extent of involvement, interest, and ability”.

(iii) The behavioural point of view holds the view that a country can be categorise as middle power if it plays certain roles in the international politics. Cooper and his colleagues proposed that pursuing that these roles are: multilateral solutions to international problems, preferring finding the middle ground positions in international disputes and embracing philosophy of good international citizenship constitute the typical behaviour of a middle power.

The hierarchical approach categorises the middlepower by applying standards relating to their capabilities. These are their economic capacity, ranking in Human Development Index. Countries with medium-range capabilities are grouped as middle powers, and great powers and weak powers can be categorized in the same manner. Kim noted that the hierarchical perspective tends to use statistical indices for categorizing countries such as size of territory, GDP, the volume of trade and foreign currency reserves, population, and number of soldiers.

Chapnik says that states classified as middle powers in one model can be small powers in another model.

The most widely used definition of a “middle power” which is given by Andrew F. Cooper applies four approaches. The first approach is “positional”, in which a middle power is located at the middle point of measurable capabilities like size of population, economic development, or military capacity and strength. The second approach is “geographic”, according to which a middle power is located physically or ideologically between the system’s great powers. The third approach is “normative”, which views middle powers as benign, reliable and accountable actors with value orientations that favour diplomatic means rather than force to contribute constructively in making and maintaining of a stable and peaceful global order. The fourth approach focuses on a particular pattern of “behaviour” of middle powers known as “middlepowermanship”. Middlepowermanship is the “tendency to pursue multilateral solutions to international problems, the tendency to embrace compromise positions in international disputes, and the tendency to embrace notions of “good international citizenship”.

According to Cooper, Higgott and Nossal, “middle powers are recognizable by their foreign policy behaviour. Characteristically, a relatively large proportion of middle-power foreign policy has a scope that extends beyond the immediacy of geography and direct self-interest. This seeming absence of self-interested foreign policy behaviour in which the gains are immediate and clear has led to an image of middle powers as good international citizens; the middle powers are not capable of bringing change in their own capacity. A middle power works as stabilizer and legitimizes in the world order, whether in times of hegemony or not. The middle powers are stabilisers because of their limited ability to bring about a major global change that leaves them vulnerable in times of great global instability. They are legitimizes, because given their privileged position in the global political economy and regional economies, they benefit relatively from the institutionalisation of the current liberal hegemony” (Jordaan 2003).

On the basis of population and economy, Canada is a middle power which is economically sufficient, but its military power is insufficient to meet its own security challenges. Canada’s weak defence capacity in the Arctic region is against its own security demands and many of its defence projects have been cancelled in the absence of a proper budgetary capacity. Canada is not a poor economy and has a good place in the Human Development Index (HDI), but is incapable of investing in militarization. If we look at the third condition, Canada has a benign image in the international community. All these have placed Canada in the pool of middle powers in the Arctic context.

Foreign policy behaviour of the middle powers: Despite having an influential negotiation capabilities, in the international arena, the middle powers are aware that they are not capable to change or the shape global decisions, therefore, the middle powers have a tendency to devote fairly a great deal in international cooperative activities in order to press forward their interests and project their values. The middle powers pursue international cooperative activities at various levels and in diverse fields as a major thrust of their foreign policies. However, such involvement has been somewhat selective and intermittent except few (Wood 1987).

The functional approach looks the qualitative aspect of the foreign policy which argues that the middle powers are liberal internationalist. The functionalism as an

approach befits Canada to enhance its status in the international system where as instrumentally it offered the building up a constructive role in a fashion distinguish from the great powers (Cooper 1997). As “functionalist” middle power Canada has distinguish itself by championing the principles of liberal internationalism during the Cold War. The liberal internationalism in the Canada’s foreign policy is expressed in supporting the multilateralism in the matters of diplomacy as well as trade; international peace keeping; promoting international dialogue( Nafey 2007).

### **Multilateralism and Canada’s Foreign Policy**

According to John Gerard Ruggie “multilateralism refers to coordinating relations among three or more states in accordance with certain principles.” The multilateralism is an institutional form which coordinates relations among three or more states on the basis of "generalized" principles of conduct-that is, principles which specify appropriate conduct for a class of actions, without regard to the particularistic interests of the parties or the strategic exigencies that may exist in any specific occurrence (Ruggie 1992). According to Robert O. Keohane “multilateral institutions, are multilateral arrangements with persistent sets of rules; they can be distinguished from other forms of multilateralism, such as ad hoc meetings and short- term arrangements to solve particular problems. These institutions may take the form of international regimes - institutions with explicit rules, agreed upon by governments, that pertain to particular sets of issues in international relations - or bureaucratic organizations, which assign specific professional roles to their employees. In fact, however, regimes are usually accompanied by organizations: an international organization is established to monitor and manage a set of rules governing state behaviour in a particular issues” (Keohane 1990). Keohane classified the multilateral institution in to three types on the basis of membership. He held that these multilateral institutions worked for their interests irrespective of the type they belong to. Such multilateral institutions are doubtlessly constructed to help powerful states achieve their own objectives.

Restricted institutions: - These multilateral organizations are initially founded by a limited number of the countries which has some common interest to pursue and promote through them. OPEC is one such example. Member states constituting OPEC use this forum to secure higher prices of their oil and petroleum products.

Founded by a deliberately limited membership that have some set of interests in common or that have specified domestic political arrangement.

The members of such organizations either seek to achieve gains vis-a-vis outsiders (a function for which there must be outsiders to exploit) or to build strong bonds of community. They arise for the former reason when states perceive unexploited opportunities in their relationships with potential adversaries, whether strategic or economic

Conditionally open institutions – International Monetary Fund are open in principle to states that are willing to accept a set of prescribed commitments, which not all states may be able (much less willing) to do. Conditionally open institutions adopt measures to exclude non-providers from benefits secured by co-operation.

Open institutions: In some of the multilateral institutions the membership is open such as the UN system where the membership is open all sovereign states (Keohane 1990).

The Arctic region has offered an opportunity for Canada to exhibit its multilateral liberalinternationalists. Supporting the Canada's middle powermanship Gail Oshernko and Oran R Young state,"Any arrangement designed to cope with the international or transnational issues in the Arctic region must, therefore, take the form of negotiated regime." They further argue that

Both the US and Russia together could exert the effective pressure to establish Arctic regimes. But the two countries are not in habit in tandem for such purposes: they are much more likely to compete for military advantages in the Arctic as newly emerging strategic arena than to collaborate in the developnet of international regimes for arms control or emerging Arctic issue. This leaves the lesser Arctic states as the most probable locus of leadership for efforts to devise international regimes for these staes. Canad in particular may find such a role in the Arctic attctive (1989).

In this thesis attempt has been made to find out how Canada play its role as middlepower liberal internationalist in the Arctic region, where there are multiple actors with their multiple interests and most importantly their interests are conflicting in nature. It lso studies how Canada has carved out its role in its middle powerman

capacity and in championing the cause of multilateralism, in finding the issues around which the multilateral institution has been framed and negotiated to involve the different actors and accommodate their conflicting interests on common issue where hegemony of the two great powers posing challenges for its objectives.

### **Research Methodology**

The thesis describes and analyses issues, interests, and actors in the Arctic region, in particular the Canadian Arctic from a geopolitical perspective. To the extent possible, it would describe various theoretical concepts and tools used in the writings on geopolitics.

Primary source material available on the Canada government websites and those on the websites of other Arctic countries are utilised to describe and analyse the various geopolitical, economic, environmental and indigenous ethnic issues promoting cooperation and conflict among the A-8. The study has informed by the relevant international legal aspects including provisions of the UNCLOS.

For analysing the legal claims of Canada the decisions of the international Court of Justice in the different cases having similarity of issues with Canada has been analysed.

For analysing the policies and approaches of Canada in different periods of time, secondary source material have been consulted and used so as to benefit from the analyses of leading scholars and commentators on the subject.

The key experts from institutions of the academia and the state including diplomats, legal experts of international maritime law, scientists, and media persons has been consulted and interviewed to develop understanding on issues related to the Arctic from diverse points of view.

On the whole, the approach is analytical and comparative using the latest available data.

### **Chapters**

The present research work has been completed under six chapters including the introduction and conclusion.



## **Chapter II: Geopolitical Scenario in the Arctic: Issues, Actors and Challenges**

The thawing Arctic offers various economic and political opportunities because of its bountiful resources like hydrocarbons, precious minerals and fishes and other marine resources which became a key driver in developing the interests of countries all over the world. Varieties of countries and actors are evincing active interest in the Arctic region which has resulted in security threats from both the state and non-state actors, militarisation and environmental pollution including radioactive contamination. The militarisation is threat for the political stability of the Arctic as well as its fragile environment including the marine ecosystem and food chain. The most problematic issue is that no international institution is working or can be expected to succeed in checking militarisation in this region because of the strategic interests of the two military superpower blocs – the US-led NATO and Russia, the largest Arctic country. Canada, a middle power nation, is unprepared to meet these emerging challenges in the new emerging Arctic region. This chapter delineates the geopolitical interests of Canada; its perception of the emerging challenges and threats in the region. Canada has several challenges in the Arctic like territorial disputes with neighbouring nations and some other challenges which is common to the other Arctic nations. All these have been discussed in this section.

## **Chapter III: Sovereignty and Governance in Canadian Arctic**

The third Chapter examines in detail the Canadian approach to embed its Arctic policy in domestic sources, more so in the form of historical and social claims of the Inuit over Canadian waters and resources. The Canadian Arctic has a unique physiographic and political geography and most interestingly, a typical kind of history too. From the receiving the title from the United Kingdom to the current position, the Canadian Arctic has a matchless history. After attaining the title over the Arctic territories Canada did not clearly defined its sovereignty over it, especially over its archipelagic waters. Though several debates took place in Canada's House of Commons, there were no single piece of legislation that was presented in written form. The story of Canadian sovereignty claim over its Arctic waters began with the *Manhattan* voyage and Canada enclosed its archipelagic waters by drawing a straight baseline around this and claimed these waters as historical. Again it provided title of these waters to its Inuit living in the Canadian Arctic and fulfilled their demand for a

separate territory by creating a new territory “Nunavut” in 1993. But all the Canadian policies are facing a stiff challenge in the international community due to own flaws and weak defence capacity. Canada is unable to defend its Arctic owing to its limited economic and military strength. This made Canada depend on the United States for its Arctic defence which undermines the Canadian sovereignty claim. The most important reason for the fragile policy is the presence of the United States.

#### **Chapter IV: Canada’s Relationship with the United States and Russia**

This Chapter discusses the complexities of the Canada-US relations and their impact on the Arctic. Both are important for the security of Arctic as since World War I, Canada collaborated with the US for the defence of its northern boundary, whereas the US needed the Canadian Arctic for its strategic purposes. The Ogdensburg Agreement of 1940 brought these two nations closer by creating a Permanent Joint Board on Defence (PJBD). Both countries established the bi-national military organisation North American Air Defence Command or NORAD to deal with the Soviet threat. Both countries are cooperating on the environmental issues of the Arctic and are members of the multilateral treaties on the Arctic issues. Despite such closeness, Canada and the US have been at legal loggerheads for years over the status of the NWP. The US, counters the Canada’s argument that the NWP runs mostly through Canadian “internal waters”.

This examines the legal constraints in Canada’s claim of sovereignty over the NWP and the American position. The security of the Arctic is a threat which binds together these two nations despite severe disagreements and therefore, both the countries have tried to improve their bilateral relations by negotiation and to a major extent this relation is also shaped by the presence of Russia which has occasionally shown its solidarity with the Canadian sovereignty claim due to shared interests. Russia and Canada have their shared interests in the Arctic on the issue of sovereignty over the shipping routes. Canada has taken interest in improving its relation with Russia.. how Canada and Russia are trying to promote their common interests by forgetting their ideological difference and what efforts they are taking has been discussed in this Chapter.

#### **Chapter V: Canada’s Multilateralism in the Arctic**

This Chapter discusses Canada's participation and promotion of the Arctic Council as a multilateral body to ensure the sustainable development in the Arctic region. The Arctic region due to its strategic importance remained a battleground till the end of the Cold War. This made it impossible to materialise any international treaty to govern the Arctic except a few that were very limited in scope and objectives. The end of the Cold War gave an impetus to formulate an institution on the Arctic issue. Canada took this opportunity to stabilise the Arctic for its own national interest. Canada which is a middle power is unable to bring about any major change in the current scenario of the Arctic on the basis of its capacity whether military or economic; but, it has a voice and benevolent attitude as a stabiliser in the international community. Canada has used its middle powermanship for creating a multilateral forum, the Arctic Council. The Arctic Council is the highest level political organisation working on the common issues of the arctic like environmental pollution. Protection of marine life is there but sensitive issues like security have been excluded from its mandate in order to maintain harmony among the Arctic nations who are divided in two camps. The indigenous organisations have been given the status of permanent participants.

## **Chapter VI: Conclusion**

The final Chapter presents a summary of the findings of the previous chapters. Based on these findings, the Chapter would then present the generalisations by way of a conclusion.

## CHAPTER II

### GEO-STRATEGIC SCENARIO IN THE ARCTIC AND CANADA'S CONCERNS

Global warming has severely impacted the temperature of the Arctic region. The ice packs over the Arctic Oceans are melting; now it is being predicted by the experts that it would be ice-free in the coming few years. Due to an increase in temperature the multiyear sea ice<sup>6</sup> has declined. NASA researchers have found, “the thicker multi-year ice which survived several summer melt seasons, is being rapidly replaced by thinner, more ephemeral one-year ice formed over a single winter (the young-age ice is soft and melts faster compared to the multiyear ice). Increasing ice melting means that it is exposed for absorbing sunlight, raising temperature of the water, making the floating ice to melt. The heat of sunlight is more readily absorbed when falling on water than on ice (ice has a higher ‘albedo’<sup>7</sup> than water), causing further warming and further melting of ice in turn.” The surface of ice is thinning and now there is shrinkage in the ice pack areas due to melting of ice (Quillérou et al 2017, 2). Thus the perennially ice-covered Arctic Ocean has now started being to a seasonally ice-free sea (Berkman and Young: 2009). The US National Snow and Ice Data Centre in Boulder Colorado, 03 March 2015 reported, “the Arctic sea ice is now shrinking and thinning because of rising concentrations of anthropogenic greenhouse gases in the atmosphere, leaving longer sea ice-free seasons.” These changes in the Arctic environment open up the Arctic ocean-floor for resource exploration and extraction, waters for navigation and fisheries. These new opportunities for economic development in the region which could impact global trade patterns and trends (Quillérou et al 2017) has drawn global interests in Arctic energy, fishing, shipping, and tourism because the ice-free Arctic would be viable for navigation, mining and other economic activities like drilling, mining, fishing, etc.

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<sup>6</sup> Multiyear ice are old ice which has been surviving after facing at least one melt season; it is typically 2 to 4 m (6.6 to 13.1 feet) thick and becomes thicker as more ice grows on its underside. Such ice has distinct properties that distinguish it from first-year ice or new ice, based on the processes that occur during the summer melt. Multiyear sea ice contains much less brine and more air pockets than first-year ice. The Arctic, in contrast, is relatively land-locked, allowing extensive multiyear ice to form.

<sup>7</sup> Albedo is “the fraction of solar energy (shortwave radiation) reflected from the earth back into space. It is a measure of the reflectivity of the earth’s surface. Ice, especially with snow on top of it, has a high albedo: most sunlight hitting the surface bounces back towards space”.

These changes have unleashed economic opportunities but at the cost of endangering the traditional and non-traditional security aspects of this region. If left open and uncoordinated, such economic development has the potential to lead to a ‘scramble’ driven by selfish interests rather than a concerted effort to make the most of these new opportunities for society as a whole and create shared wealth and well-being (Quillérou et al 2017).

The littoral states were relying on the belief that their sovereignty over their Arctic territories is stable because of thick ice and harsh climatic conditions that prevent the sailing of ships through the Arctic Ocean; now because of the ongoing changes, they have become more concerned about the defence of the Arctic. The thawing Arctic Ocean has unleashed new political realities and complex challenges for international law as well. The changing Arctic climate has intensified two persisting debates: first is the conflict over the territorial control in the Arctic Ocean and second is the sovereignty over the Northern Sea Route (NSR) and these have created challenges before the international law and multilateral organisations to manage the political affairs of this region.

The current Chapter delineates the issues that have emerged after the melting of polar icecaps and its political and economic opportunities, and how the Arctic region has become globally important – what are the different actors, legal and political and other issues that are emerging in the Arctic region and how the Canadian perception towards the Arctic region has evolved and been reshaped.

The present Chapter have five sections which discuss (i) geopolitical and economic issues and which have attracted new actors in this region. (ii) The state and non-state actors, their factual and legal claims, and the policies formulated thereafter. (iii) The challenges occurring as result of increasing political and commercial activities of the new actors in the Arctic region.(iv) Canada’s perception towards these changes and implication of such changes on the Canadian Arctic and challenges for Canada in the changing Arctic and (v) Summarises of the issues discussed in the previous sections and conclusion derived from the discussion.

The current chapter would find out the answers for two research questions: Why the Arctic has become a centre of geopolitical interests and potential conflicts and how the geographical factors have created difficulties for international norms and laws to

maintain peace and preserve the environment in the Arctic region. Another words what are the geopolitical interests of Canada in the Arctic region, in particular in the region called the Canadian Arctic and how the transforming geopolitical realities are impinging on Canadian interests as its sovereignty claim.

### **Geo-political and Geo-Economic Issues**

The Arctic Ocean is strategically important as a central connecting area between the North American and Eurasian continents as it offers the shortest air routes for connecting almost all the important cities and the trade centres of the northern hemisphere (Raucek 1983; Watson 2008). When the Arctic was not feasible for the commercial activities, it served an important factor in World War II. It acquired a new strategic importance during World War II and the Cold War. Throughout the twentieth century the Arctic had a history of militarisation that started with World War II. during the time of the Battle of Atlantic<sup>8</sup> the Arctic constituted as Allied supply route. The former USSR received many resources and convoys from the “Lend Lease” programme. The Arctic was the shortest route and the former USSR had its military settlement in its Arctic region especially in the Barents Sea and Kara Sea. Therefore, the Nazis were always targeting this region (Herring 1973). The Battle of Atlantic brought the Arctic into World War II. During the Battle of Atlantic Britain used the Arctic lanes to support the former USSR (Russia) and block Hitler’s Nazi forces to access the North Atlantic (Depledge 2017).The Nazis blocked the maritime routes including the Arctic to impede the imports of the United Kingdom. The objective of this blockade was to weaken the United Kingdom and to reduce American intervention in the European war scenario. During the World War the Arctic nations were invaded by the Nazi forces, like Norway and Denmark (White 2008). The former USSR invaded countries like Finland. This battle of Atlantic added an episode of militarization in the Arctic region and underlined its strategic importance of the Arctic Ocean, the Arctic became important militarily (Sale and Potapov 2009). This was further intensified by the Cold War because geography made both the superpowers the US and the USSR close neighbours in the Arctic region and the Arctic Ocean shortest distance between them (Spohr at all). The Denmark Strait

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<sup>8</sup> Some 4,600 Canadians soldiers died in the Battle of Atlantic during the period of Second World War from 1939 to 1945. Canada played a key role in the Allied struggle for control of the North Atlantic sea lanes from the German submarines.

and the Norwegian Sea, outlets for open ocean vessels of the Soviet Northern Fleet, were both NATO frontlines (Bloomfield 1981). Even today, the Arctic icy waters are best suitable for submarine deployment – ice reduces the effectiveness of acoustic listening devices like sonar, while the ice shelf prevents visual and thermal monitoring. According to Willy Ostrong, “the interplay between the three factors contributed to post war mitigation of the Arctic, First the east west conflicts, which created the political framework for superpower tension and bloc generation, Second development in the military technology, which produced the atom bomb and other nuclear weapons as well as long range means of delivery. And the geostrategic conditions, which indicated that the Arctic was a suitable deployment area for strategic high- technology weapon system (Ostreng 1992),

After the end of the Cold War Arctic geography has made it core of the global politics, as Borgerson states, “The Arctic's unique geography is an asset unto itself. viewed from the top of the globe, the region sits at the crossroads of the world's most productive economies.” now the global community is expecting that an ice-free Arctic would serve as an economic corridor by providing resources and shipping channels. These have renewed the political and economic interests of the Arctic nations towards the Arctic and somehow reshaped the political and economic relations among the Arctic bordering nations as earlier the Arctic was meant for the traversing of nuclear submarines during the Cold War (King 2007) and a safe heaven for nuclear submarines.

#### **Natural Resources in the Arctic Region:**

The Arctic Ocean’s continental shelf are possibly content geographically largest unexplored prospective area for petroleum remaining on Earth (USGS 2008) about 22% of petroleum and 15 % of total global oil resources (Lindholt and Glomsrød 2011). Apart from this the Arctic region is rich in diamond, gold, zinc, nickel and tungsten These minerals are growing in importance as many of these are used in electronics and “green technology” (Virtanen 2013).

*(i)Fishing:* Arctic is rich in marine resources. The melting of polar ice caps has made fisheries commercially viable in the Arctic Ocean. The Arctic Ocean is connected to several significant breeding areas of fish stocks, which are expected to move north with the rising Arctic water temperatures. In fact, this change has been underway for

the last 40 years. The Alaskan coast and Canada have vast stocks of valuable species of fish known as Pacific salmon demanded in the North America and Russia. The Atlantic cod, a popular variety of fish is found in the Barents Sea. The Barents's Sea has world's largest cod stocks because the ecosystem of the Barents Sea is good for the cods where they are completely dependent on the availability of capelin and herring for their food. Another species is Pollock, a white fish belonging to the largest fish stocks in the Bering Sea between Alaska and Russia. Due to availability of oxygen the Arctic is good for breeding of high quality of the fishes (Larsen 1990). The Arctic water also contains halibut, redfish, haddock, king crab, snow crab and Pacific cod. Biological resources are similarly bountiful in the Far North – the king crab, snow crab and Pacific cod. Fishing in the Arctic region constitutes 10 per cent of the world fishing (Borgerson 2013). The salmon and trout farming in the Arctic Ocean account for approx 7.7 per cent of the world production (Czarny 2011). Both fishing and oil exploration and mining have added a new dimension to the Arctic region. Now the Arctic nations are putting every effort to grab maximum territories in the Arctic region. In the name of mining politics is going on for increasing the continental shelf. On the other hand, these countries are making efforts to interdict the entry of other nations protection of the Arctic fishes and other living marine resources, something like this was revealed in the International Agreement on the Arctic fishery in which all the A5 and other five major fishing nations China, Japan, Korea, Iceland, EU with organisations of indigenous peoples from Canada, Russia signed an agreement to prohibit commercial fishing in the high seas of the Arctic Ocean. This is an extraordinary accord. On 16 July 2015, in Oslo, the coastal states of the Arctic Ocean signed the international regulation known as "Declaration Concerning the Prevention of Unregulated High Seas Fishing in the Central Arctic Ocean which is also known as Oslo Declaration" also called the "Oslo Declaration 2015". The declaration contains a variety of political commitments, to a certain rather than international obligations; it targeted to solely fishing in that slice of the central Arctic Ocean which is actually high sea or common heritage of the mankind; it is different than a 'moratorium', 'ban' or 'freeze of fishing effort'; and it applies only to the A5. By early 2010, the A5 agreed that if a new international instrument on Arctic Ocean fisheries (Molenaar 2015). After seven years and several meetings from A5 China, the European Union, Iceland, Japan, Korea, the Russian Federation and the US met in Washington, D.C., from 28-30 November 2017 to finalize draft of the



“Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean” with an objective to prevent unregulated commercial fishing in the high seas portion of the central Arctic Ocean. Though Commercial fishing has never occurred in this region and; is argued to be preventive as the things changing in the Arctic Oceans “Agreement will establish and operate a Joint Program of Scientific Research and Monitoring with the aim of improving the understanding of the ecosystem(s) of this area and, in particular, of determining whether fish stocks might exist in this area that could be harvested on a sustainable basis” (Washington: 2017). This declaration probably means to restrict the entry of the other nations in that area of the Arctic region which is supposed to be the common heritage of humankind, i.e., this the only way to enter the non-Arctic nations into the Arctic Ocean.

*(ii) Freshwater and Forests:* An estimated one-fifth of freshwater and several of the world’s largest rivers are found there. Arctic glaciers, floating icebergs, ice sheets, ice caps are rich sources of freshwater on earth. The CAA covering 1.4 million square kilometres contained one of the largest freshwater glacier ranges on earth. It is estimated that it is almost equal to 3½ times the volume of the combined Great Lakes. The Arctic region's Boreal forests of spruces, pines, and firs account for eight percent of the earth's total wood reserves, and its waters already produce ten percent of the world's total fishing catch. Converted tankers may someday ship clean water from Alaskan glaciers to southern Asia and Africa (Borgerson 2013). The huge ice sheet covering Greenland contains the freshwater of the sources. But this natural resource is disappearing rapidly as the ice is receding. Thus, the Arctic region glaciers and icebergs are melting and becoming a part of sea water.

### **Navigable Shipping Lanes and Sovereign Territorial Claims:**

The ice melting in the Arctic Ocean made the strategic shipping lanes navigable, have the potential to transform global shipping patterns. The Northeast Passage (NEP) and the Northwest Passage (NWP) together encircle the earth and can be seen in Map 2. The Northeast Passage (NEP) is a sea route which connects the Atlantic and the Pacific Oceans traversing the Arctic following Russia’s and Norway’s coasts. The Northwest Passage (NWP) is not a single marine route but combination of six to seven routes connecting the Davis Strait and the Baffin Bay in the east and the Beaufort Sea in the west. It is a transportation corridor channelled through islands

occupying broad expanses of water and land in the north-south direction. The third is the Transpolar Passage (TPP) or Transpolar Sea Route (TSR) that is a future naval Arctic route that runs from the Pacific Ocean to the Atlantic Ocean through the Arctic Ocean. This runs through the high sea portion of the Arctic Ocean cover all waters that are solely international waters, no state has jurisdiction over it and therefore can be a politically viable transport venue. The map of the Anticipated Arctic Transit Routes is shown in Map 3.

**Map 3 The Arctic Shipping Lanes**

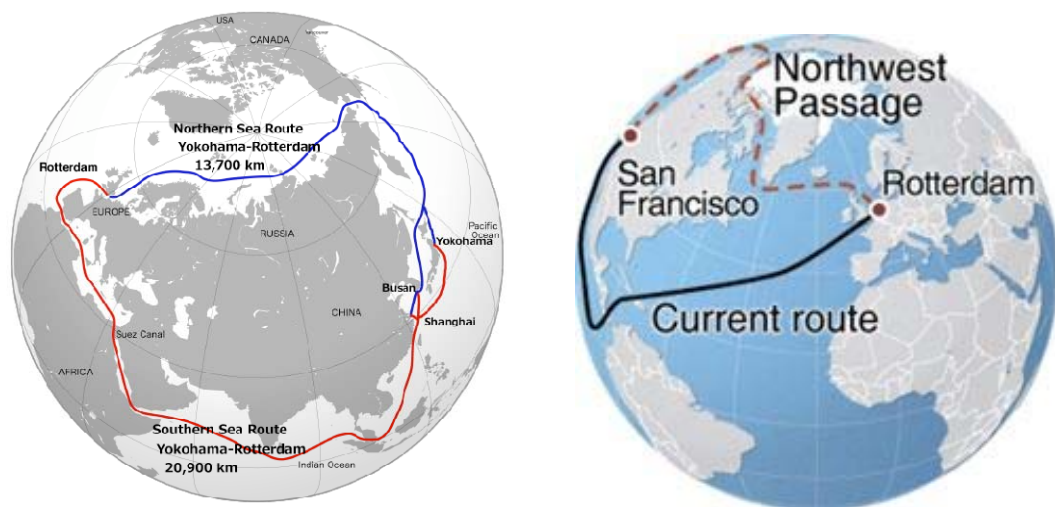


The European Community and the North Asian countries would be benefited if the Arctic routes become navigable.

(i)The Arctic routes are shorter than the existing routes which would save time and fuel. For example it would boost trade between north-west Europe and countries such as China, Japan and South Korea by making the voyage far shorter and thus coast effective. The NSR reduces shipping distances and time between North western

Europe and Northeast Asia by about one third and average transport cost reductions of between 20% and 30% between both regions using intensively the NSR (Bekkers at al 2015. 4). The trade from these routes may have serious implications over the country like Egypt in term of revenue earned by Suez Canal. The Map shows the comparative advantage of the NSR over the existing shipping southern shipping route. The red line represents the Southern Shipping Route through Suez Canal and the blue line represents the Northern Sea Route which is comparatively shorter.

#### Map 4 Shipping Shortcuts through NSR and NWP



Northwest Passage (NWP) is not single straight rather a combination of oceanic channels, gulfs and sounds considered as maritime highway that forms an Arctic route connecting the Atlantic and Pacific Oceans through the Arctic Archipelago (Map 4). The navigation through the Northwest Passage has economic advantage as shown in the map the traditional route is shown in blue the route through NWP is shown in red line. By avoiding traditional routes through Panama Cape Horn, a ship can eliminate reduce a distance between 4000 and 8000 nautical miles. But the experts like Franklyn Griffith argue that sailing through the NWP is dangerous and risky task even in the moderate ice condition (Griffith 2003). The use of the Northwest Passage as a shipping route has attracted the attention not only of environmental activists but also Canadian sovereignty advocates and proponents of the freedom of the seas (Krafft 2009).

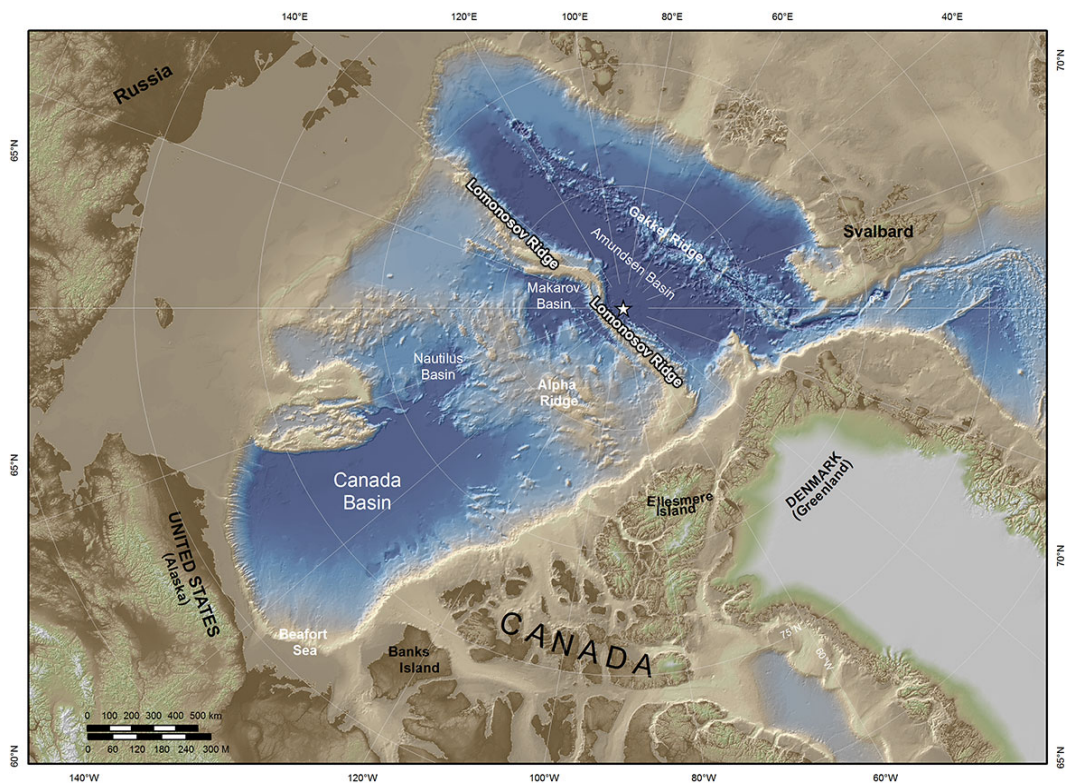
(ii)The another advantage is the Arctic shipping lanes running in politically stable and peaceful region which is capable in managing the sea routes and ensured safe navigation (Willett 2012).

(iii)The Arctic shipping routes run through resources rich location which has benefit for the shipping by reducing the threats like piracies which are common in the sea routes from the Indian Ocean (Willett 2012).

### Arctic Seabed and its Contentious Submarine Features:

Oceanography has revealed the submarine features of the Arctic and the most important are the ridges in the seabed of the Arctic: there are three ridges – Lomonosov Ridge, Gakkel Ridge and Alfa-Mendelev Ridge (Map 4). These ridges contain the deposits of hydrocarbon resources. According to the reports of the United States Geological Survey 2007, the Lomonosov ridge may contain up to 10 billion barrels of oil. Right now, neither any country has absolute jurisdiction nor have these ridges been divided. Yet this is also not clear that these ridges are ridges are global commons. The geographical locations of these ridges are vague and the disputes are likely to emerge among Denmark, Russia and Canada to own these ridges.

**Map 5: Ridges in the Arctic Seabed Source:** <http://news.gc.ca/web/article-en.do?nid=1102489>



## **Actors and Stakeholders**

The physical geography, geology, oceanography and political geography – each one has brought controversy for the Arctic region when it has become accessible. In the present era when the Arctic is melting, the features of the Arctic have generated controversy and conflicts internationally because new actors have become more and more involved in the Arctic resources and shipping routes. The melting and easily accessible resource-rich Arctic has attracted countries all over the world. New economic prospects in energy, mineral and maritime transport sectors offer significant opportunities for the Arctic States. The climate change, proceeding at a much higher rate in the Arctic than in the rest of the world, and the retreating ice cap, are giving it a new strategic importance (Blunden 2009). Commercial interests like shipping through the shortest routes, extracting hydrocarbon resources and research and strategic interests of the non-Arctic nations have also intensified with the Arctic thawing. . All these factors have reshaped the geopolitical and geostrategic dynamics of the Arctic. These actors can be broadly classified under three groups: the Arctic actors, sub-Arctic actors and non-Arctic actors.

### **Arctic Actors:**

The Arctic actors are the Arctic littoral states which are surrounding the Arctic Oceans, called as the Arctic Five (A5) another three Arctic actors are Sweden, Finland and Iceland which are not very powerful in the Arctic region as these countries do not have their continental shelf in the Arctic Ocean.

*(i)Russia:* Among the Arctic Five Russia has the largest territory – 1,75,000 kilometres long – and the largest Arctic population (Blunden 2009). Russia is the largest and powerful player in the Arctic. Russian Arctic is the richest in hydrocarbon resources and mineral deposits which holds maximum percentage of the undiscovered hydrocarbon reserves located in the Arctic region. The Russian Arctic accounts for roughly 20-25% of Russian GDP. Russia is increasing its focus in northern region in because it requires the alternative resource of its hydrocarbon sources located in Western Siberia have been exploited and production has been decreased. The hydrocarbons provide important force for Russian foreign influence especially in Europe, which is the major consumer of the Russian oil. The one-third of the natural

gas is imported from Russia (Käpylä and Mikkola 2013,2-3). Russian economy gained due to high oil and gas prices in the international market. The country began to modernise its decaying nuclear arsenal, including the part of it located in the country's north-western corner (Atland 2011).

Russia was the first to stake its claim in this Arctic gold rush in 2001. Moscow submitted a claim to the United Nations for 4,60,000 square miles of resource-rich Arctic water; the United Nations rejected this ambitious plan of annexation by Russia. In August 2007, Russia planted its flag on the North Pole sea floor. Days later, Russia ordered strategic bomber flights over the Arctic Ocean for the first time since the Cold War (Borgerson2008). It is apparent from the Russian strategy documents that the Russian policy makers are keenly aware of the importance of the Arctic resources and see them as the key element for Russian economy. According to Kristian Atland, "Whereas Russia's Arctic policy interests in the past were governed by national security interests, they are now being increasingly governed by national economic interests and the interests closely associated with the Russian state" (Atland 2011).

There is cooperation and conflict among the Arctic powers. Marlene Laruelle comments on Russia's Arctic policy that the 'Arctic policy is plural'. There are not single, but several policies that have both contradictory and congruent elements. On the one hand, Russia may take part in international military exercises together with Norwegian forces, but it can also pronounce bellicose statements aimed at Canada's assertiveness in the Arctic. Also, it makes sense to talk about not one, but several Russian Arctic regions because Russia's Arctic is not a uniform territorial entity (Marlene Laruelle 2013).

Although the role of military power in the Arctic has been redefined and toned down after the end of the Cold War, yet Arctic is still associated with the Russia's ambition to re-assert the great power status (Blunden 2009). The Russian Security Strategy 2020 identifies rivalry for the control of energy resources in the Barents Sea and other parts of the Arctic as a potential source of conflict (Zysk 2009). The paper supported the creating military build up in the Arctic and making the Arctic Russia's leading strategic base by 2016 (Golotyuk 2008).

(ii) *The United States:* The US interest in the Arctic region is evident from the official reports and the strategies relating to the Arctic reveals its economic interests in the Arctic resources though the United States has ranked the sovereignty and security of this region as its top priority (Solli et al 2013). The Arctic remained strategically important for the United States during World War II and the Cold War. United States is in a special position in the matter of the Arctic Ocean as it has not signed the UNCLOSIII, that permits signatories to register claims in disputes over the division of the shelf in special position. A directive on the United States Arctic policy adopted on January 12, 2009 (not long before George W. Bush left office) emphasises: “The United States has broad and fundamental national security interests in the Arctic region and is prepared to operate either independently or in conjunction with other states to safeguard these interests.” As the Presidential Directive mentioned,

Human activity in the Arctic region is increasing and is projected to increase further in coming years. This requires the United States to assert a more active and influential national presence to protect its Arctic interests and to project sea power throughout the region. . . . The United States seeks to ensure that energy development throughout the Arctic occurs in an environmentally sound manner, taking into account the interests of indigenous and local communities, as well as open and transparent market principles (Bush 2009).

As the leader of NATO and the member of the bilateral organisation the North American Aerospace Defence Command (NORAD), the United States has crucial strategic interest in the Arctic region and the United States has increased its military presence there. Thus the economic and military interests are closely interwoven in the Arctic (Konyshev and Sergunin 2012).The US policies is being discussed in the Chapter IV of this thesis.

(iii) *Canada:* Canada ranked second after Russia regarding its territorial expansion in the Arctic region and having a coastline along the Arctic Ocean also. The Canadian Arctic Archipelago is the world’s largest high Arctic land area. The Canadian Arctic islands form the largest island group in the world. As discussed in previous section melting of the Arctic ice has made the NWP navigable which runs through the Canadian Archipelago (Lalonde 2004). Canada has economic and security interest in the Arctic region and Canada is the first Arctic country to raise its voice internationally to protect the Arctic environment and to fortify its sovereignty claim over the NWP. Canada’s view is obvious and focused directly towards attaining

sovereignty which means sovereign rights and control in the Arctic through which as an Arctic power it can exercise leadership in the managing this region. Canada's geopolitical interests in the Arctic have many buttresses, i.e. its long coastline, its physiographic features and ethnicity. Canada has underscored its geopolitical interests in the Arctic in its policy document "Canada's Northern Strategy: Our North, Our Heritage, Our Future 2009" with the following priority areas, "first, exercising our Arctic sovereignty; second, promoting social and economic development; third, protecting the North's environmental heritage; and fourth, improving and devolving northern governance" (Government of Canada 2009). In 2010 the government of Canada published the "Statement on Canada's Arctic Foreign Policy" in which it asserted sovereignty over its Arctic describing the focus on the following areas: "engaging with neighbours to seek to resolve boundary issues; securing international recognition for the full extent of our extended continental shelf; addressing Arctic governance and related emerging issues, such as public safety; creating the appropriate international conditions for sustainable development; seeking trade and investment opportunities that benefit Northerners and all Canadians; encouraging a greater understanding of the human dimension of the Arctic; promoting an ecosystem-based management approach with Arctic neighbours and others; contributing to and supporting international efforts to address climate change in the Arctic; enhancing our efforts on other pressing environmental issues; strengthening Arctic science and the legacy of the International Polar Year; engaging Northerners on Canada's Arctic foreign policy; supporting Indigenous Permanent Participant organisations; and providing Canadian youth with opportunities to participate in the circumpolar dialogue". Exercising sovereignty is the main focus of Canada's Arctic Policy. This statement stated, "Canada has a rich history in the North, and Canada's sovereignty is the foundation for realizing the full potential of Canada's North, including its human dimension. This foundation is solid: Canada's Arctic sovereignty is long-standing, well established and based on historic title, founded in part on the presence of Inuit and other indigenous peoples since time immemorial."

Canada has also economic interest in the Arctic region which holds abundant oil and gas development opportunities. According to Indian and Northern Affairs Ministry Canada, "1.7 billion barrels of oil and 880 billion cubic m of what natural gas have been discovered in the Canadian North. The potential resources (both discovered and



undiscovered) are some 8.4 billion barrels of oil and 4.3 trillion cubic m of natural gas. These potential resources represent about 25 per cent and 33 per cent respectively of Canada's remaining resources of conventional crude oil and natural gas"(Government of Canada 2009)The two Canadian Arctic territories Nunavut and Northwest Territories are diamond producers (Glomsrød et al 2015). According to the data given by USGS, Canada was the third-ranked producer of rough diamond (Wacaster 2014). In 2015 Canada was the fourth largest diamond producer in the world and most of the diamonds are being produced in the Northwest Territories. All three Canada's northern territories are gold producers in which Nunavut is the largest gold producer (Glomsrød et al 2015).

*(iv) Norway:* As an Arctic littoral country Norway's interests and incentives for Arctic involvement are many, like commercial, environmental and strategic. The economy of Norway is dependent on the petroleum sector. For Norway, the Arctic region is a source of generating income through various methods such as fishing, bio energy, mineral extraction and tourism (Norwegian Ministry of Foreign Affairs 2006). The 2006 strategy states that, "Norway intends to play a leading role in monitoring climate change, environmentally hazardous substances and the marine environment in the region" (Norwegian Ministry of Foreign Affairs 2006). Despite its membership of NATO, Norway government is paying special attention to improve its relationship with Russia for its interests in petroleum exploration and fishing in the Barents Sea. The Norwegian government announced to focus on the cooperation in the Arctic region over the Cold War adversaries.

Our vision is that the Barents Sea should become a "sea of cooperation". Even during the tension of the Cold War, relations between the countries of the north were orderly and correct(Govt of Norway 2006).

The Norway government proposed for developing a cooperative mechanism to check illegal and unregulated and unregistered fisheries (IUU), in the Barents Sea with Russia. Military presence in northern Norway is also stressed in the 2009 strategy (Norwegian Ministry of Foreign Affairs 2009). These two countries have tied up for cooperating in fields like search and rescue, environment and even joint military exercises (Pettersen 2013). In 2010, the two sides signed a treaty resolving an outstanding border dispute and introducing measures to deal with potential conflicts

over the resources in the Barents region . Quoting Bailes and Heininen, Anders B. Bak describes it as a remarkable success story in international politics (Bak 2014). The latest Arctic Strategy of 2017 of the Norwegian government is focused on the cooperation and sustainable development in the Arctic:

Foreign policy and domestic policy converge in the Arctic. Our efforts to promote an innovative and sustainable North Norway are dependent on peace, stability and well-functioning cooperation with our Arctic neighbours. Close international cooperation has played a significant part in safeguarding Norwegian interests relating to safety, environmental protection and resources in the Arctic. Foreign policy is key in the Arctic, and we will build on our existing policy and the effective international cooperation mechanisms, such as the Arctic Council and the Barents Euro-Arctic Council (Government of Norway 2017).

(v) *Denmark*: The Kingdom of Denmark is an Arctic nation by virtue of Greenland. Its Arctic Strategy 2011-2020 gives emphasis to strengthen its presence strongly in the Arctic region. This strategy clarifies that apart from the environment and resources, Denmark is supporting militarisation in the Arctic region for its sovereignty (Arctic Strategy 2010-2020, 20), though it has indicated to resolve the territorial disputes in the Arctic region according to the provisions of the UNCLOS. It is the only one among the A5 which is supporting the NATO's function in the Arctic.

(vi) *The Indigenous Communities and their Rights*: The Arctic region is the homeland of a four million indigenous peoples (AHDR 2004) who have inhabited the Arctic region since times immemorial and have now emerged as a major stakeholder in the Arctic geopolitics like. The main groups of indigenous peoples are Norwegian and Finis Saami, Russian Sami, Swedish Sami, and Inuit (Iñupiat) of Alaska, Inuit (Inuvialuit) in Canada and Inuit (Kalaallit) in Greenland.

Almost every group of indigenous people has a similar problem like attempted assimilation from the national governments and the deprivation of their land and resources and cultural rights. They are now facing severe threats to their life in the wake of warming climate and melting of ice caps in the Arctic which has negative impact on their health and habitat. The Arctic Human Development Report 2004 says "Facing an unprecedented combination of rapid and stressful changes involving both environmental forces like climate change and socioeconomic pressures associated with globalization" (Arctic Human Development Report 2004). These peoples have united for safeguarding their cultural practices and working towards autonomy. Their

primary objectives are to preserve their cultural and resource rights. The livelihood and diet of these community is depended upon the frozen water of the Arctic. Therefore their livelihood and deity demand both is tied p with the Arctic land, water and ice. Strong ties to the land are repeatedly invoked as a key element of the Arctic indigenous cultural identity (AHDR 2004; ASI 2010). The melting of ice has facilitated commercial activities. Such activities have threatened the long-established land use, encroaching on the territories used for hunting, reindeer herding and fishing etc. (Fondahl et al: 2015).

The Arctic indigenous peoples put firm effort in establishing two international documents dealing with the indigenous people's right to self-sufficiency. First the ILO Convention No 169 of 1989, has been ratified only by two Arctic States Norway and Denmark, which have entrusted to implement measures recognising the indigenous people's right to ownership and possession over the lands they traditionally occupy, and second is the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) of 2007. This strongly affirms, "the indigenous peoples' right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use." The UNDRIP adopted by the UN General Assembly in 2007 lays out the rights of the indigenous peoples to culture, language, identity, health, education, employment and other critical issues. The Article 27 and 28 of the UNDRIP says:

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent(UNDRIP 2007) .

The indigenous peoples of the Greenland have increased autonomy from Denmark, after achieving 'Home Rule' in 1979, and 'Self-Rule' in 2008. Canadian Inuit became successful in creating Nunavut a separated from the Northwest Territories governed by indigenous peoples. In April 2009, the Inuit Circumpolar Council (ICC) adopted a document "A Circumpolar Inuit Declaration on Sovereignty in the Arctic", which states, among other things, that "the rights, roles and responsibilities of Inuit must be fully recognized and accommodated" in discussions on matters linked to Arctic sovereignty, including climate change and resource development (ICC: 2009).

The Arctic Council the high-level intergovernmental organisation in the Arctic the indigenous peoples groups are provided the position of permanent Participants. (Fondahl et al 2014).

The non-Arctic nations having no jurisdiction in the Arctic continental shelf whose interests in the Arctic have been driven by the resources and the navigational routes and for that part of the Arctic Ocean which would be a common heritage of mankind. Apart from these non Arctic nations enjoy the freedom or rights of scientific research, navigation, overflight, fishing, laying of submarine cables and pipelines, and resource exploration and exploitation in the high seas, the Area and other relevant sea areas, and certain special areas in the Arctic Ocean, as stipulated in treaties such as the UNCLOS and the Spitsbergen Treaty, and general international law.

*(VII) The European and Asian Actors:* The sub-Arctic actors are mostly the member nations of the European Union and most of them are NATO members too; its three members are the permanent members of the Arctic Council (Denmark, Iceland, and Sweden). The European Union has no jurisdiction in the Arctic region because the member nations have no coastline in the Arctic Ocean. The EU has significant resource interests in the marine areas of the Arctic waters. Due to this reason the EU maintains close ties with the Arctic states, particularly with its neighbours in the European High North. Arctic countries Russia and Norway are the main supplier of energy for the EU which strengthens the EU's drive for Arctic connection. The EU wants to secure a steady supply of energy that is not threatened by the risk of conflict, as experienced in case of Middle East therefore keen to participate in the Arctic governance (Bak 2014).

Shipping and transportation, as well as the supply of living and non-living resources, such as fisheries and oil and gas have played an important role in the EU's trade

relations with the Arctic nations. Even though it has been observed that the development of new Arctic shipping routes will probably be slow, yet the import of oil and gas from Arctic Russia and Norway has appreciably increased in recent years. The change in the maritime transport offers economic and political opportunities for the Arctic. According to Sander and other scholars some of the main benefits which the EU sees in the Arctic shipping are: access to trade routes; energy and other mineral resources in a nearby region free of political conflict; and shorter shipping route making it economical for European countries (Sander et al. 2015).

Europe is the third largest fish producer in the world yet exploitation of the fishing zones had led to depletion of stocks therefore Europe is looking for the new fish stocks. The Arctic fishes are best option for Europe due to quality, availability and geographical proximity (Boshakarev 2013).

Combating Climate Change In its Arctic Policy the EU has also tinted its role as a global leader in resolving the challenges emerging due to climate change, which is affecting the Arctic drastically. The EU has a pungent association with Canada because of two reasons first the EU, along with the US and other countries, refused to accept Canada's claim of the passage as internal waters and secondly Canada is unhappy on the EU regulation banning trade in seal products.<sup>9</sup> This has brought uneasiness in the EU Canada relations. Canada's perception is that ban on seal products was decision taken with the political interests and has no basis in fact or in science. The Canadian stand contradicts the European Union's; this became a major reason that the European Union application for permanent observer has not been accepted in 2009 and 2011. Canada was backed by Russia which was due to the diplomatic battle within the European nations (Hossian 2015). In 2009 the European Commission issued a Communication on the European Union urging " Member States and Community to defend the principles of freedom of navigation and the right of innocent passage in newly opened routes and areas," (European commission 2008)

(a)*The United Kingdom:* The United Kingdom played a major role in exploring the Arctic; it used the Arctic sea routes during World War II. Since the end of the Cold

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<sup>9</sup> In 2009, the European Parliament and the Council adopted a Regulation (EC) No 1007/2009 banning the trade in seal products in the European Union. The implementing regulation (EU) No 737/2010 came in force in 2010.

War, the UK has maintained its presence in two ways: through scientific research and military training. Since 1991, the UK has operated a scientific research station on Svalbard funded by the Natural Environment Research Council. The British physical military presence in the Arctic entails close cooperation with Norway and Canada (both fellow NATO members and Arctic states). The UK continuously kept sending the Royal Marine Commandos and other units to train for cold weather operations in Canada and northern Norway, and frequently participating in joint military exercises in Arctic waters (Depledge: 2013). The UK is a long-standing observer to the Arctic Council (established in 1996), supporting the engagement of British scientists in a number of large-scale Arctic science research programmes run by the Arctic Council working groups. In 2018, the House of Lords Select Committee on the Arctic (hereafter Arctic Committee) called on the British Government to appoint an Ambassador to Arctic Council (Arctic Committee) who could represent a wide range of British interests to such programmes, institutions and ventures and thus spoke directly to this changed reality proposing an exceptional type of diplomatic intervention to serve as a bridge between Britain and the Arctic which was needed to bolster Britain's influence in the Arctic region (Depledge 2017).

Germany, France and Switzerland and many other European nations are in the process of developing their Arctic policies. These nations are observers in the Arctic Council. Germany supports the international development of the Arctic region and is against the national approaches to neighbouring countries including Russia. It also supports providing more rights to the observers of the Arctic Council to improve their contribution in resolving certain problems (Belov: 2016). France has appointed its polar ambassador (Arctic Year Book: 2012). After becoming the permanent observer, Switzerland has initiated an Arctic Policy which has not come about as yet.

(b)*Asian Actors* Resource and shipping lane issues sparked the interests of the Asian actors like China, Japan, Korea and Singapore in the Arctic region. These Asian countries have their commercial interests in the Arctic but they cannot claim the Arctic resources as the Arctic nations have jurisdiction over the resources.

*China:* Among the non-Arctic Asian states, China occupies a prominent position due to its growing influence in world politics and expanding military capabilities. There are multiple motivations that drive China's interests in the Arctic region. China is

emerging as a superpower and is increasing its naval presence as oceans are the core of geopolitics. China has deep political interests in this region due to navigational routes and resources; overall, the strategic location of the Arctic sea is surrounded by the world's most powerful nations. The presence in the Arctic Ocean would strengthen the Chinese position. The Chinese policymakers remain focussed on research on the climatic and environmental consequences of the ice melting in the Arctic (Jackobson 2010) and have justified it on the grounds that the melting ice sheets in the Arctic region are having a severe impact on the climate of China.

As an export-based economy China requires natural resources and market. The new reserves of energy and other natural resources in the Arctic are being eyed by China (Jackobson 2010). The opening of shipping through the Northern Sea Route has substantial implications on the Chinese trade and commerce. Shipping and fish catching industries are expected to be benefited if Arctic becomes accessible. The Arctic Council's Arctic Marine Shipping Assessment (AMSA) 2009 report predicted that Arctic routes would be fully navigable (four months) in 2040. Referring to the statement of Gao Ho, Jackobson and Penge have argued that if the situation continues, "the transiting the Northern Sea Route from Shanghai to Rotterdam would shorten the trip by 6100 nautical miles (11,300 kilometres) compared to the route via the Strait of Malacca and the Suez Canal. This would trim off about a week's sailing time. Financial savings associated with using this shorter route are estimated at about \$600,000 per vessel per trip (Jackobson and Penge 2012)". Chinese vessels have additional benefits as this route would shorten the distance to the market for the manufactures; another benefit is of the shorter route for the resource imports. The distance from Shanghai to Hamburg along the Northern Sea Route over Russia is approximately 30 per cent shorter than the comparable route through the Suez Canal (Kuersten 2013).

The economic opportunities for China have substantiated its political interest in the Arctic region. Now China wishes to influence discussions and decisions related to the governance of the Arctic. China already has a stake in the general framework of Arctic governance: it is represented in many international organisations and is party to several international agreements that concerning directly or obliquely to Arctic region. China has major say in the UNCLOS because it is a veto-wielding member of the United Nations Security Council. The UNO is the ultimate authority of the 1982

UN Convention on the Law of the Sea. It is also a member in the International Maritime Organization (IMO), a United Nations agency accountable for suggesting the measures to safe and sound intercontinental shipping and to check marine pollution from ships. China is a signatory of the 1920 Svalbard Treaty, which grants all members equivalent right to use Svalbard while recognising Norway's absolute sovereignty.<sup>10</sup> Currently, China has attained the seat of permanent observer in the Arctic Council. China has keen interest in influencing the Arctic governance and the politics of the Arctic littoral states for its own interest. Many scholars have argued that political and strategic interests are at the core of the Chinese interest. China wants to make its presence felt in the Arctic region due to its strategic location, because a toehold in the Arctic region can be the stepping stone in developing a military base in this region from where it can eye both the former superpower Russia and the United States from the High North. Linyan Huang, Frédéric Lasserre and Olga Alexeeva have also supported this and presented quite a different argument after interviewing the shipping firms of China. These firms say that the shipping through the Arctic lanes is not feasible under the current ice conditions and the drilling of resources in the deep seabed is also not very profitable for China (Huang et al. 2014). But the Chinese engagements in the Arctic are growing due to some other factors, one is about the Russian sanction to the Western firms that has given them the opportunities to invest in offshore oil drilling in the Russian Arctic. According to Michael Byers the Chinese investment capacity and lack of infrastructure facilities in the Arctic are two major factors making China the key player in the Arctic region, though it has no jurisdiction over the Arctic resources.

The permanent observer status confers only limited rights to China in the AC, and that it will have no voting rights. However, China has taken this opportunity to check the monopoly of the Arctic nations. It advocated that the observer status not only made it a rightful Arctic player but also that permanent observers themselves may well gain more influence in the Arctic Council in the long run, thus enhancing Chinese Arctic influence over time (Käpylä and Mikkola 2013). On January 26, China issued a white paper on its Arctic Policy, vowing to participate in Arctic affairs as a “near-Arctic State” and a major stakeholder in the Arctic (GaO 2018). In this

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<sup>10</sup> Treaty relating to Spitsbergen (Svalbard Treaty), signed 9 Feb. 1920, entered into force 14 Aug. 1925, League of Nations Treaty Series, vol. 2 (1920).



White Paper China has called itself "Near-Arctic State". The white paper of China described its keen interests in the Arctic region and substantiated those interests are lawful under the existing treaties of UNCLOS and Spitsbergen Treaty.

While repeatedly emphasizing that it will follow international law and participate in the Arctic affairs "in a lawful and rational manner," China made it clear in the white paper that it will seek to use Arctic resources to "pursue its own interests" (Gao 2018) According to section IV of the White Paper China has emphasised on four areas:

First, China intends to build a "Polar Silk Road" by developing the Arctic shipping routes with the help of its enterprises.

Second, China aims to utilize the arctic resources like hydrocarbon and mines for its commercial purposes. The paper states that Arctic region is sources of abundance of geothermal, wind, and other clean energy resources to harness these resources. China will work with the Arctic States to strengthen clean energy cooperation.

Third, China emphasises in exploiting and conserving the Arctic fisheries and other living resources.

Fourth, China is interested in developing tourism industries in the Arctic, which the paper describes as "an emerging industry" (China's Arctic Policy 2018).

*Japan:* Japan is an export-based manufacturing economy which requires resource security as well as markets. The Japanese government has already taken an initiative to develop diplomatic relations in the field of resource exploitation. Japan is highly motivated to engage in Arctic affairs after the great earthquake and nuclear disaster in Japan in 2011 and the oil price volatility and supply issues from the Arab Spring in the Middle East and North Africa. This has led to extensive investigations of alternative energy sources, supply routes and security. These processes have reminded Japan and other East Asian governments about the value of safe and secure shipping routes, access to natural resources, and environmental and scientific knowledge to inform decision-making (Hara and Koats 2013). Aki Tonami and Stewart Watters have classified the Japanese Arctic interests in few broad categories: environment, economic security and governance.

The Japanese government's view is that change in Arctic environment and climate has global impact therefore the it is the accountability of the global community to

contributing for the protecting of the Arctic's fragile environment (Horinouchi, 2010). Japan justifies that conserving the environment of this area is its responsibility, as a part of the global commune (Toami and Watters 2012).

Japan is one of the largest energy importers because it lacks sufficient hydrocarbon resources from the domestic sources. The nuclear energy was the prominent energy source which was fulfilling one-third of the energy demand of Japan. Once a great nuclear energy producer, Japan faced an energy shortage after the Fukushima crisis in March 2011 when a nuclear plant meltdown led to the shutting down of Japan's forty-eight nuclear reactors. This made Japan dependent on the import of Liquid Natural Gas (LNG). Japan diversified its energy mix, importing crude oil from Iran. This entails political risk with the United States sanctions ever looming on the horizon over companies conducting business with Iran. In May 2013, crude imports from Iran more than doubled compared to 2012. The United States extended Japan's exemption for another six months. Japan is ambitious regarding the political affairs of the Arctic. Its Arctic ambitions are reinforced by government policies. For this it has entered into partnership with the Arctic countries in the field of science and security and is now trying to influence the Arctic politics also. Japan's Ministry of Foreign Affairs favours a new international structure in the Arctic, based on the presence of economic interests in the region (Zhurave: 2016).

*India, Singapore and Korea:* These three Asian countries were granted the status of permanent observers of the Arctic Council in the Kiruna Ministerial Meeting 2013.

India's engagement in the Arctic dates back to nearly nine decades: it signed on 9 February 1920 in Paris the Treaty concerning the Archipelago of Spitsbergen (the Svalbard Treaty), which entered into force on 14 August 1925. At that time, India was part of the British overseas dominions and the King of Britain and the Earl of Derby signed the treaty. India has shown very insignificant involvement in this region except little climatic research. India launched its first scientific expedition to the Arctic Ocean in 2007 and opened a research base named "Himadri" at the International Arctic Research Base at Ny-Alesund, Svalbard, Norway in July 2008 for carrying out studies in disciplines like Glaciology, Atmospheric Sciences & Biological Sciences (Sakhuja 2012). India has also entered into an MOU with the Norwegian Polar Research Institute of Norway, for cooperation in science, as also with Kings Bay (A

Norwegian Government-owned company) at Ny-Alesund for logistic and infrastructure facilities for undertaking Arctic research and maintaining the ‘Himadri’ at the Arctic region (Ministry of External Affairs India 2013). India has undertaken several scientific expeditions and is now planning to acquire an ice-class vessel to support its polar research and studies programme. There are fourteen national research institutions that support India’s polar programme, which is coordinated by the National Centre for Antarctic and Ocean Research (NCAOR) in Goa, under the Ministry of Earth Sciences (MoES), Government of India. India also advocates and would like to play a vital role in making the Arctic a region of peace and stability (Sakhuja et al. 2013).

*Singapore* The sophisticated shipping technology has enabled the small country Singapore to develop significant interests in global maritime issues. The development of the northern route will make it one of the busiest shipping lanes in the world, increasing the economic and political importance of the Arctic. This would give set back Singapore, as it relies heavily on shipping using the southern route and is a big shipping hub (Brown 2015). Its Arctic interest is also driven by shipping, like developing marine infrastructure constructing vessels (Tonami 2016); yet, its Arctic policy is in initial stages (Watters and Tonami 2012). It has also appointed a Polar Ambassador for the Arctic region (Depledge 2017).

*South Korea* has made significant strides in entering the Arctic Ocean. The Arctic can provide it with energy security. Despite many challenges, Korea is trying to get evolved in the Arctic politics (Park 2013). South Korea has built a research icebreaker that is currently operational in the Arctic in the and also building dozens of ice-strengthened cargo ships and tankers, many of them with dual-directional technology that enabled to sail in both normal and icy waters (Byers 2011). South Korean commercial interests would benefit from the shorter shipping route. Its well-developed shipping and marine infrastructure development industry would keep advantageous positions in the Arctic (Bennett 2014).

### **Challenges in the Arctic**

Scott Borgerson states, “Climate change may transform the Arctic Ocean into a third waterway for transcontinental traffic into North America. The result is that the northern tier will become open to the benefits and exposed to the potential costs of

worldwide commerce” (Borgerson 2008). The transforming Arctic has intensified the competing claims by Arctic states over territorial waters as well as outer continental shelf extensions. These challenges are of various types: disputes over the territories in which only the Arctic nations are involved, and the disputes in which the Arctic and non-Arctic nations are involved over various matters like fishing, oil drilling and shipping routes. The UNCLOS III which was ratified in 1982 settled a number of important issues related to ocean usage and state sovereignty, viz. navigation rights; limitation of territorial sea boundaries (twelve miles offshore); set exclusive economic zones (up to 200 miles offshore); set up rules for extending continental shelf rights (up to 350 miles offshore); created the International Seabed Authority; and created other conflict resolution mechanisms (i.e., the UN Continental Shelf Commission). Though it is a comprehensive document to govern the Ocean, some of the emerging situations in the Arctic Ocean inhibit its seamless applicability and some territorial disputes have emerged and are unresolved and some are likely to emerge (Proelss, & T Müller 2008).

### **Territorial Disputes and Overlapping Claims:**

The overlapping continental shelf claims in the Arctic are complex because of the configuration and geology of the sea floor and are further compounded by sovereignty claims, territorial claims and maritime passage (Kadir 2014). As the Arctic continental shelf has semi-enclosed shape encircled by littoral states, the extension of the continental shelves and delimitation of maritime boundaries would lead to invariably overlapping claims (Ebinger and Zambetakis 2009). Any sort of such claims are relevant to a range of maritime uses in the Arctic, including resource development, navigation and ocean management (Ilulissat Declaration 2009). In the Arctic region the A5 nations have overlapping claims including continental shelf (Golitsyn 2009). Disputed boundaries represent the major security challenge for the countries that border each other in the Arctic. These include not only border disputes but also the questions of passage rights, domestic and international waters, the length of the continental shelf and the boundaries of the Exclusive Economic Zones (EEZs). There are two main international laws that provide principles for the nations to settle their differences – the 1958 Continental Shelf Convention and the 1982 UNLOS III. The Convention of 1958 establishes that coastal states have sovereign rights over the natural resources within 200 nautical miles from their baselines. Beyond the EEZ lie

the high seas, where the rights of free shipping and flag rights apply. The most problematic question is where the continental shelf starts and where it ends.

Two questions, the first regarding the delimitation of national boundaries and second the respective EEZ, affect almost all Arctic countries and have created several boundary disputes among the Arctic littoral nations. These two questions have become highly controversial in case of existing treaties regarding boundary delimitation before the UNCLOS III. For example, disputes currently exist between Russia and the United States regarding the Bering Sea; the US and Canada over the Beaufort Sea; Canada and Denmark concerning the Davis Straits; Denmark and Iceland with respect to the Fram Strait.

In 1867 the United States purchased the territory of Alaska; the purchase agreement defined a marine boundary between Russia and the newly acquired US territory. The Convention of 1867 determined two geographical lines – one in the Bering Sea and the second one in the Arctic Ocean – to delimit American and Russian territories. “However, in case of the Bearing Sea the 1867 Agreement actually not only applied to maritime territories and was not intended for the delimitation of EEZ”, the concept didn’t exist at that time (Konyshv and Sergunin 2014). When the UNCLOS III was adopted, the 1867 Treaty line became the most contentious marine boundary in the world because of the indistinct language of the purchase agreement between Russia and the US. The treaty failed to define the type of line, map projection and horizontal datum used to illustrate this boundary. None of these two countries have original or other authenticated maps used during the negotiations to resolve the issue. When the United States and the former Soviet Union implemented a 200 nautical mile Exclusive Economic Zone (EEZ) in 1977, they exchanged diplomatic notes indicating their intent “to respect the line set forth in the 1867 Convention” as the limit to each countries’ fisheries jurisdiction where the two hundred nautical mile boundaries overlapped. This boundary was resolved in a 1990 treaty, commonly known as the “Baker-Shevardnadze Agreement, between the United States and the former USSR”. Though both the countries made compromise the US still controlled a far greater amount of area in the Bering Sea than what the new agreement proposed, based on the equidistant line principle normally used in international boundary disputes. The US quickly ratified the 1990 Agreement but the USSR didn’t ratified (Kaczynski 2007).

The United States and Russia have implemented their maritime boundary agreement provisionally while awaiting ratification by the Russian government (Antrim 2017).

The EEZ boundary in the Arctic is yet to be resolved either formally or provisionally in the US-Canada boundary in the Beaufort Sea; the language of the 1825 treaty between Russia and the United Kingdom failed to define the maritime boundary north of the Arctic coastline (Antrim: 2017) which would be discussed in Chapter IV.

The Arctic states have reached agreement on most of the maritime boundaries of their seas and sea beds. Russia has negotiated boundary treaties with Norway (Russia-Norway 2010).<sup>11</sup> In April 2010 Norwegian Prime Minister Jens Stoltenberg and Russian President Dmitry Medvedev publicly announced that negotiations had been completed, with the exception of some technicalities. The final agreement was signed in Murmansk, Russia, on September 15, 2010, and has been subsequently approved by the two countries' national parliaments. The document came into force in July 2011 (Konyshev and Sergunin 2014).

There is another dispute regarding the Spitsbergen Archipelago. Norway obtained sovereignty over the Spitsbergen Archipelago – Svalbard – in the Treaty of Paris of 1920. All the other signatories, i.e., some forty countries, got equal rights to fisheries, commercial enterprise, and the exploitation of resources on the land at Svalbard and within 12 nautical miles from shore. With the establishment of 200 nautical miles EEZ, Norway also argues for establishment of EEZ around Svalbard. The other signatories are claiming that the non-discriminatory principle of the Svalbard Treaty must be applicable also to the 200 nautical mile zone, whereas Norway adheres to the literal interpretation of the treaty text. The other signatories' argument is that the wider ocean areas would have been included in the 1920 treaty of commercial activity outside the territorial water which had been an option at the time. To avoid the conflict Norway did not establish an EEZ around Svalbard rather, a so-called fishery protection zone (Ostrued and Honneland 2014).

Norway has resolved disputes with Iceland and Denmark. Denmark and Canada have reached an agreement on their maritime boundary between Greenland and Canada

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<sup>11</sup> The dispute between Norway and Russia over maritime boundaries in the Barents Sea was settled by an agreement in September 2010. An area of more than 1,75,000 square kilometres was equally divided between the two countries.

from Baffin Bay through Nares Strait and the Lincoln Sea, though this agreement has not yet been finalised as a treaty.

Like many legal texts that are written by large committees, Article 76 appears clear on its face but, upon closer examination, bears little relationship to the real world: its terminology is ambiguous and overly simple. Plus the process that is followed inside the Commission has, up to now, not been transparent as it appears in the writing. The provision made under Article 76 of the UNCLOS III seems to be generating some major disputes in the Arctic region. According to this the coastal State is authorised to exploit the resources beyond the 200 nm of its EEZ according to UNCLOS 76(1) for establishing the outer limits of such a continental shelf, a state has to approach the Commission on the Limits of the Continental Shelf (CLCS) with supporting scientific and technical evidences as soon as possible, within ten years after ratifying the UNCLOS III. Article 76(5) UNCLOS provides that, “the outer edge of this continental shelf shall not exceed 350 nm from the baseline or 100 nm from the 2,500 m isobaths, whichever is more favourable to the Applicant State. The latter criterion is particularly significant in light of the overall flat nature of the Arctic Ocean (most parts are no deeper than 2,500 m).” However, there is one exception to this rule with respect to “submarine ridges”: if the continental shelf covers parts of such a ridge,” it cannot be extended to more than 350 nm from the coast no matter where the 2,500 meter isobaths falls.” This issue lies at the heart of the dispute over the remaining Arctic territory where in particular the definition of the Lomonosov and Alpha-Mendeleev ridges as “submarine ridges” (or instead as “submarine elevations” which are natural components of the continental shelf and do not fall under the limit of 350 nm) is disputed. Though the Article 76 requires scientific evidence of a natural prolongation to be submitted to the UN commission on the limits of the continental shelf for review, “the commission will not issue recommendations with respect to overlapping claims. It is up to the countries involved to negotiate a solution, refer the matter to an international court or tribunal, or simply agree to disagree and not issue exploration licenses for the contested area”, therefor the states have to resolve the dispute in their own (Byers 2009; Dorman 2009). In case of the extended continental shelf the coastal countries’ right is on the sea bed only; the waters and the ice in this zone would be part of high sea (Byers 2009), where the right of unrestricted passage exists.

Canada, the Kingdom of Denmark and the Russian Federation each assert that the Lomonsov Ridge is an extension of their own continental shelf. Proof of its continuation would give the State access to the seabed and natural resources beyond the current 200 nautical mile (nm) limit. The United States claims it to be an oceanic ridge and thus not an extension of any State’s continental shelf, and therefore refutes any claim to its ownership. The Arctic countries have submitted their claims for their extended continental shelf beyond 200 nautical miles. Their claims have been shown in the table below.<sup>12</sup>

Table 1 Claims Submitted to the CLCS by the Arctic Countries

Year	Country	Area	Decision
2001	Russia	Beyond 200 M Arctic	Rejected
2009	Norway	Barents Sea	Rejected
2009	Denmark	Faroe Islands	Granted
2009	Norway	Bouvetøya and Dronning Maud Land	Pending
2010	Denmark	Faroe Rockfall Plateau Region	Pending
2012	Denmark	Southern Continental Shelf of Greenland	Pending
2013	Russia	Okhotsk Sea	Granted
2013	Denmark	North-Eastern Continental Shelf of Greenland	Pending
2014	Denmark	Northern Continental Shelf of Greenland	Pending
2015	Russia	Arctic Ocean	Pending

Pursuant to article 76, paragraph 8 Russia submitted an application to extend its continental shelf in 2001 in which it claimed a huge portion of the Arctic. This was rejected in 2002. Then Russia submitted another claim in the Sea of Okhotsk in 2013 and CLCS decision was in Russia’s favor. Again in August 2015 Russia submitted another revised claim on the border in the Arctic Ocean and the decision over this submission is still pending. Denmark submitted five claims; the first in 2009 related to claims on the Faroe Islands has been accepted by CLCS. Decisions on four applications, (i) Faroe Rockfall Plateau Region of 2010, (ii) Southern Continental Shelf of Greenland of 2012, (iii) North-Eastern Continental Shelf of Greenland of 2013 and Northern Continental Shelf of Greenland of 2014 are still pending. Norway’s first submission regarding the limits of the Barents Sea (2009) was

<sup>15</sup> Submissions, through the Secretary-General of the United Nations, to the Commission on the Limits of the Continental Shelf, pursuant to article 76, paragraph 8, of the United Nations Convention on the Law of the Sea of 10 December 1982



rejected by the CLCS and it advised to directly negotiate with Russia, which it subsequently did. This negotiation paved the way for historical 2010 agreement dividing Barents Sea in half between the two Arctic states and ending 40 years of disputes between the two countries. At the heart of that four decades-long dispute were the sea's "offshore oil and gas reserves. Again Norway has submitted a second application in 2009 related to Bouvetøya and Dronning Maud Land, which is still pending. This seems that no country is satisfied even after the acceptance of their claims and therefore further submissions are being made (Brutschin and Schubert 2016).

### Prospects of Militarisation

As discussed in previous section that both the superpowers are close neighbours in the Arctic region. The US territory Alaska is much closer to the Russia than the US mainland. The geography played a vital role in making the Arctic region strategically important. In this context Greenland, Iceland and United Kingdom GIUK gap, which is a natural chokepoint which consists of Denmark Strait, and the Norwegian Sea and constitutes the principal outlet to the North Atlantic for the vessels of the Russian Northern Fleet (Oshernko and Young 1989) as shown in the map.

**Map 6 The GIUK gap**



Because they lay athwart the passage these Russian vessels must take route to the open sea. Thus the Norwegian Coast and Svalbard Archipelago can be target by Russia in case of war against Europe. Both Russia and NATO country Norway share

common border in this location and therefore important for NATO and Russia both (Oshernko and Young 1989). The current scenario indicates probability for increasing militarisation and more actors would be involved. As Lincoln Edson Flake states, “As climate change opens up a more accessible theatre of operations in the Arctic for the world’s navies, littoral states are increasing the tempo of military manoeuvres’ in the region (Flake 2014).

A5 are increasing their investment in building new equipments and deploying troops closer or even north of the Arctic Circle. Norway shifted its base northward, from Jåttå (south of the Arctic Circle) to Bodø (north of the Arctic Circle) in 2009 and Canada created four new reserve Arctic units, in north of 60°. Throughout 2013–2015 Russia created a new Arctic command spread around the Arctic Circle, with forces installations positioned on Wrangel Island and Cape Schmidt in the Chukchi Sea near Bearing Sea patrolling the Eastern borders of Russia, as well as on Alexandra Land Island (Barents Sea) patrolling the Western borders of Russia. Denmark revived its Arctic command in 2012 with headquarters in Nuuk, Greenland, which operates Station Nord, “the northernmost base in the world” located at 81°3N, 16°40 W (Brutschin and Schubert 2016).

Many of the military activities in 2014 were concentrated on the investments in new military equipments. After the disintegration of Russia there had been a sign of reduction in Russian presence in the Arctic (Czarny 2015) but Russia has shown retreating from this position and has deployed new radar systems on Wrangel Island and Cape Schmidt (Eastern part of Russia), but it also stationed new combat aircraft on Novaya Zemlya—an archipelago situated between Barents and Kara Seas (Northwestern Russia). Moreover, the Russian military announced plans to increase the number of troops stationed on Novaya Zemlya by 2020. Russia also reported a successful 2500 km flight over the Arctic without a landing by its SU-34 fighter bombers; aircrafts that are “intended for high-precision strikes, including strikes with nuclear weapons, on land and sea targets at any time of day”. Canada acquired a new maritime surveillance satellite, “RADARSAT Constellation”, which “will provide on average daily coverage of Canada’s maritime approaches and frequent coverage of Canada’s land”. Probably this satellite should be fully operational by 2018 and would facilitate the surveillance capacity of Canada. Canada has planned to acquire six ice-capable ships for Arctic offshore patrol by 2018. The US, Norway and

Denmark each has repeatedly declared the intention to increase their respective Arctic capabilities pointing to new investments either in place or in the pipeline ( Brutschin and Schubert 2016).

Beyond the littoral countries a number of non littoral states are also making efforts to seeking military access in the Arctic. The EU has growing its interest in the Arctic and established a cooperative naval presence to build security in the North Atlantic region, just as it has done in the Horn of Africa. Such presence would also complement growing EU discussions about the need to develop a comprehensive maritime strategy to support member interests. As members of NATO and EU nations are continuing to find opportunities to practise high- intensity operations in winter weather. In 2012 the UK assisted joined US and Dutch forces for Norwegian –led Operations ‘Cold Response’ (Willett 2012).

The growing commercial and strategic importance of the Arctic and its SLOCs and maritime chokepoints has become centre of military deployment for both defensive and offensive purposes. This confers on the GULF gap and the Bearing Strait, offensive and defensive submarine capabilities and operations have the potential to alter significantly the region’s strategic balance. Russia is investing on Arctic submarine capacity with SSNs and SSBNs. Despite significantly reducing their SSNs flotillas in the post –Cold War period both the US and Russian Navy routinely send SSNs for under ice training. The five major actors- China, France, Russia, the UK and the US are not only the nuclear powers but also possess the SSBNs capability. The sustained presence of the SSBNs is symbolic of militarization in the Arctic ( Willett 2012). The figure given in the next page shows the military activities of the Arctic nations in the arctic region.

### **Environmental & Governance-related Challenges:**

The melting of ice and increasing human activities are a severe threat to the Arctic environment. The global warming and melting of the ice has a devastating impact on the biodiversity of the Arctic. Many animals like polar bears, ice-dependent seals, walrus and ice-dependent sea birds would face the threat of extinction, as the animals rely on the ice for essential habitat, foraging and reproductive activities (Isted 2009) and for born or newborn lives.

(a)Pollution: The pollutants are the most dangerous threat for the Arctic environment. There is a risk to Arctic ecosystems from oil spills which may be caused by several reasons like exploratory drilling, production, pipelines, terminals and shipping, militarisation and other human activities

(b)Oil Spill: In the icy waters of the Arctic the oil spill takes significantly long time even decades. Lack of sunlight and freezing temperature inhibits the breakdown of oil. The flowing oil is locked up or sandwiched under the various levels of ice and then released when the ice melts. The Arctic ecosystem has not got rid of the devastating impacts of the Exxon Valdez oil spill<sup>13</sup> that occurred 29 years ago. According to BBC News, “around 250,000 seabirds, nearly 3000 sea otters, 300 harbour seals, 250 bald eagles and up to 22 killer whales died as a result of this spill.” (BBC, 24 March 1989). Similarly an event of oil spill took place in the Russian Arctic. An oil spill which occurred in the Russian Arctic in late April 2012 took nearly 36 hours to get the leakage under control. It has been estimated that 2,200 tons of oil were spilled out over at least 1,5 square kilometres of tundra, including reindeer grazing grounds (Stange 2012).

Shallow waters are the more prone to pollution, and these areas are important to organisms of all levels of the Arctic food chain. The oil spills in such areas cause “extensive acute mortality in plankton, fish, birds, and marine mammals ... [and] there would also be significant ... physiological damage, altered feeding behaviour and reproduction, and genetic injury that would reduce the overall viability of populations”. Because Arctic animals tend to be concentrated around open areas of water within the ice, a nearby spill could have a “devastating population level effect” (House of Commons UK 2012).

(c) Dumping of Nuclear Wastes: During the Cold War the developed nations usually dumped the nuclear wastes in the oceans which became a major concern and the Arctic Ocean was also not an exception. The first incidence of such kind of nuclear wastage dumping in the Arctic was reported in 1991 by the former Soviet Union into the Arctic Ocean in the Barents and Kara Seas (Rothwell 1995), but Russia denied it

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<sup>13</sup> In March 1989, the Exxon Valdez's ran aground near the Prince William Sound in the Gulf of Alaska. Some 2,000 km of stretch was affected by the oil spill over and years later, some areas were still found contaminated with the oil residues, because of the low temperature of Alaska. It was the largest marine spill in the vicinity of the Arctic and led to the death of birds and animals and local flora and fauna.

whenever it has been questioned. In the Fifteenth Consultative Meeting of the London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter in 1993, the Russian government was asked to provide report on its radioactive waste disposal practices. In response, the Russian government commissioned a report, and the final text, authored by Russian experts, was submitted in April 1993. The report known as the Yablokov Report, “revealed that the former Soviet Union had dumped six nuclear reactors containing fuel, a nuclear icebreaker shielding assembly containing fuel, and 10 nuclear reactors without fuel into the fjords of Novaya Zemlya and the Kara Sea. It also revealed that from 1959 to 1992, the former Soviet Union and later Russia disposed of over 17,000 containers of liquid and solid radioactive waste into the Barents and Kara Seas of the Arctic Ocean” (Nyman 2002). The total radioactivity of the waste estimated to be  $8.5 \times 10^{16}$  TBq,<sup>14</sup> which was ten times greater than the amount the Chernobyl<sup>15</sup> accident and Russian nuclear testing together deposited in the Arctic.

Research conducted in the Arctic region reveals dangerously high concentration levels of caesium and strontium in the aboriginal population and in local food and reindeer. Seals have also been found to be dying of cancer linked to radioactive contamination near the Novaya Zemlya nuclear testing site. The level of radionuclide in the blood of inhabitants of northern Russia is 100 times higher than that found in Moscow residents. In two other incidences Russia was responsible for adding nuclear wastes: one was the sinking of submarine Komsomolets in 1989 with two nuclear warheads in the Barents Sea Continental slope to the south-west of the Bear Island. The corrosion of the cooling system released Co and Ni. The amount of radioactivity was small and therefore a limited impact has been expected (Thiel 2014). The other was a small amount of radioactive water leaked out of the Kola nuclear power plant near the Finnish border in September 1992 (Maloney-Dunn 1993).

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<sup>14</sup>Terabecquerel (TBq) is a radioactivity measurement unit.

<sup>15</sup> World’s worst nuclear power plant accident occurred at the Chernobyl nuclear power station in the former Soviet Union in 1986. Only after Swedish authorities reported the fallout did Soviet authorities reluctantly admit that an accident had occurred.

The topographical and oceanographic features of the Arctic Ocean made it susceptible to radioactive accumulation which is a matter of grave concern. These features are: first; the Arctic is almost enclosed by landmasses. It is essentially an estuary of the Atlantic with limited circulation with it and the Atlantic and the Pacific Oceans. The limited circulation between the Arctic and the Atlantic Ocean and the Barents Sea tends to concentrate and confine such pollution. Second, the majority of the dumping of nuclear wastes and pollution has been occurring in the Eurasian side which consists of shallow waters lying on the continental shelf. Furthermore the Arctic does not contain deep basins; rather, it contains a higher ratio of freely connected shallow seas. The shallow waters allow the pollution to remain concentrated, making it difficult for the pollutants to be diluted.

(d) Governance: The continued strategic importance of the Arctic and absence of treaty to govern the security and other critical issues like nuclear pollution have posed the challenges to govern the Arctic region. Being affected by incidences like the Exxon Valdez, take unilateral instance, which impinge with either international law or with other countries. After the disaster the United States adopted legislation or the Oil Pollution Act (OPA) in 1990<sup>16</sup> to protect its territorial waters. Under this legislation, “ships entering in the American waters are regularly inspected, primarily to ensure that they comply with safety standards and regulations pertaining to the adequacy of qualification and training of the crew members. The OPA also established a double hull requirement for the tanker vessels operating in the American waters. Much of the OPA content has been incorporated into International Regulations as well, including provision of reliable radio technology for on-board communication and vessel identification system to enable shipping activities to check the ships’ course and position at the time.” The United States which exhibits so much deep concern about the Exxon Valdez accident and was keen to introduce new legislation was against the Canadian step to check pollution in the Canadian Arctic and a serious and unresolved dispute is going on. Sometimes the problems remain unresolved due to a rigid attitude of the countries. One important example is the Russian deposition of the nuclear waste in the Arctic Ocean. In the international community Russia shows its inability to clear the nuclear wastes in the Arctic Ocean due to its economic problem but at the

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<sup>16</sup> Oil Pollution Act of 1990: The Oil Pollution Act of 1990 (OPA) (101 H.R.1465, P.L. 101-380) was passed by the 101st United States Congress and signed by President George H. W. Bush.

same time it refuses the assistance of the other neighbouring countries. The countries like Norway with an individual interest in environmental protection or security offered funds and technical expertise to assist Russia in nuclear waste disposal has been often refused by Russia. Russia is not in favour to allow the inspection trips needed for other countries to authorise aid and it has refused to allow technical experts from Western countries to enter its military bases. The refusal might have intended to prevent other countries from observing Russia's current nuclear submarine technology. Norway offered a sum of \$2 million to clean nuclear contamination but Russia rejected the Norwegian proposal to examine the area and even denied to give any information about the fund given to Russia for cleaning the nuclear waste. In another act of defiance, Russia continued to build and operate nuclear-powered submarines. Russian President Vladimir Putin is supports the constructing the nuclear-powered submarines, as a way of reclaiming the superpower status for Russia. Annually 5,000 tonnes of solid radioactive waste is dumped by Russia in the Arctic. Russia's unwillingness to check the dumping nuclear wastes is severe threat for the Arctic region (Nyman 2002). In this background the international laws become helpless.

There is the absence of any treaty to check military confrontation in this region. One major challenge is the exploitation of the seabed beyond the 200 nm EEZ, is controversial because this area is commonly referred to as the High Sea, no State has the right to autonomously exploit natural resources but has to apply to and cooperate with the International Seabed Authority which acts on behalf of mankind as a whole (Articles 137, 153, 157 UNCLOS III), unless it is proven that the coastal state has rights over the respective resources that lie within its continental shelf (UNCLOS III).<sup>17</sup>

### **Canadian Concerns and Threats**

The disputes emerging among the Arctic nations and their stubborn attitude have created several problems for Canada and it is facing policy and budgetary challenges to resolve these. Currently, Canada is involved in the following disputes in the Arctic region, as given below.

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<sup>17</sup> According to UNCLOS, "the continental shelf is a maritime area consisting of the seabed and its subsoil attributable to an individual coastal State as a natural prolongation of its land territory".

(i) The first dispute is related to Canada's sovereignty over the archipelagic waters in the Canadian Arctic. The waters around the island of the CAA are internal waters and not subject to the right of innocent passage claimed by Canada which has made the United States and the EU to protest the Canadian position. This assertion has been demonstrated effectively by enclosing these waters by drawing the straight baseline around its Arctic Archipelago (Howson 1988; Rothwell 1993; Meisel 1999). This would be discussed in the coming chapter.

(ii) Canada is facing disagreement of its neighbour, the US, in the matter of splitting up of the Beaufort Sea. Canada asserts that the maritime border between the Yukon and Alaska. This issue would be discussed in detail in Chapter Four.

(iii) Canada's neighbour Denmark has challenged the Canadian sovereignty of an inhabited Hans Island, a 1.3 kilometre "rock", since the 1970s which is positioned between the coasts of Canada and the north of Greenland (Isted 2008). Canada perceives that losing it will be set a dangerous precedent (Huebert 2009).

(iv) This dispute that is likely to emerge or that Canada could face in the Arctic concerns is about the delimitation of the northern continental shelf. In the high Arctic the northern continental shelf joins three countries together Canada, Russia and the US. Thus there will be a need to delineate each state's claim. The UNCLOS III provides "a coastal state is entitled to claim the extension of continental shelf where it can claim rights over the seabed and subsoil." This gives such a state the right to exploit the resources found on the seabed and subsoil. But for this the state must determine the limits of its continental shelf within 10 years of ratification. The United States has not ratified the Convention and therefore, didn't submit the claim though Russia has submitted this claim, Thus the Canadian position is unclear in this regard. This problem was never looked from a political perspective when the Arctic was frozen. However, the Russian action has put pressure on Canada to act (Huebert 2009).

The other major challenge for Canada in the Arctic waters concerns the activities of nuclear submarines in the Arctic waters. During the Cold War the Canadian Arctic Water was used for the submarine activities by both America and other NATO nations as well as the Soviet Union and Canada doesn't possess capacity to detect and deter them (Huebert 2009),



Rob Huebert says that, Canada is also facing the challenges of illegal from the foreign fishers in the waters between Greenland and Baffin Island and also Canada is incapable in detecting these fishermen. The NORDREG<sup>18</sup> which is the regulatory body supporting the Arctic Waters Pollution Prevention Act does not require foreign (or Canadian vessels) to report their presence in or near Canadian northern waters. Such vessels are only requested to report their entry.<sup>19</sup> The current concern is that fishers who may be in international waters between Greenland and Canada cross over into Canadian waters without taking reporting their position (Huebert 2009).

Canada fears increasing human activities in its Arctic especially in the NWP that is prone to oil spills; there is complete absence of technology to rescue these spills. The increasing human activities and militarisation is major source of contaminating the Arctic waters which disturbs the Arctic species and humans too by entering in the food chain.

Canada in its limited capacity and geographical complexities can face several challenges in the Arctic region in checking the pollution. Canadian Arctic waters are running through the various narrow and frozen channels which can transport to the oil spill and other nuclear hazards in the interior locations of the CAA where the indigenous population live and hunt. Such pollution can cause harmful impact on their health and habitat.

### **Summary and Conclusion**

When the Arctic Ocean was frozen it was only useful for its strategic location and used for deploying nuclear submarines but global warming unleashed new opportunities in this region like fishing, shipping routes, etc. The reports of the United States Geological Survey 2007 revealed that the Arctic is the home of hydrocarbon resources, natural liquid gas and other valuable mines like manganese, nickel,

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<sup>18</sup> Northern Canada Vessel Traffic Services Zone—also referred to as NORDREG—is administered by the Canadian Coast Guard’s Marine Communications and Traffic Services (MCTS) Centre. It is located at Iqaluit. The zone includes the shipping safety control zones prescribed by the Shipping Safety Control Zones Order.

<sup>19</sup> Arctic Waters Pollution Prevention Act (R.S.C., 1985), c. A-12

diamonds and silver, that added a geo-economic dimension to this region. The Arctic resources have attracted the industrial economies looking for alternative hydrocarbon resources due to the troubled Middle East region. This attraction is further intensified because the shorter Northern Sea Route has become navigable which has facilitated the resource extraction and its transportation to the destination. The Northern Sea Route is shorter, thus fuel-saving and time-saving, and the most important part is that it is in the peace zone. The trading nations and companies are facing trouble because of notorious elements like pirates on the South China routes and political turbulence in the Middle East; the new routes have advantage over the old ones like the Panama-Suez-Canada routes which are unable to accommodate megaships (Borgerson 2008). All these have made the Arctic region a centre for geopolitics. The Arctic littoral states which have jurisdictional rights in the Arctic Ocean are rushing to carve more territories in the Arctic; the indigenous peoples are claiming the waters, land and resources of the Arctic region where they have been residing since times immemorial. The commercial and political interests of the sub-Arctic countries like the members of the EU and Asia and more countries are likely to add to this category; they are trying to influence the governance and polity of the Arctic littoral countries through investment in the economic ventures and justify their activities on the grounds of scientific research. The lust for territories has created several boundary disputes among the Arctic nations. The non-Arctic nation China is eyeing the space which would be called a “global common” and also raising concerns over the provisions of the UNCLOS under Article 76 which allows the extension of the continental shelves.

There is possibility of militarisation in the Arctic due to conflicting of interests of the different actors. Almost all the Arctic nations are escalating their armed forces in the Arctic. The military activities and other human activities like mining and oil spill, tourism, etc. are major threats for the Arctic environment. There are several reasons which have made the Arctic Ocean vulnerable to pollution. The most important threat is the oil spill which may be caused due to running ships or oil drilling. Due to a low temperature of the Arctic waters and the long cold frozen season, it takes decades to dissipate the oil.

Thus the competing interests of different actors have created prospects of militarisation in the Arctic. Young and Berkman comment on the changing Arctic scenario:

There are ‘potential conflicts between indigenous and commercial uses of Arctic waterways’ as well as unsettling consequences for the Arctic nations with the emergence of China, Japan and Korea as maritime nations. There are also potential disagreements between the Arctic coastal state and remaining members of the Arctic Council (Iceland, Sweden and Finland) and perhaps more problematically between the Arctic and non-Arctic states with the effect that the Arctic Ocean is becoming like any other ocean with an increase of activities that may involve both cooperation and conflict (Young and Berkman: 2012).

In this situation, Canada has very sensitive position and a limited capacity cannot make immune its Arctic from the impact of the thawing of the Arctic. Apart from these Canada has been involved or likely to be involved in the territorial dispute with each of its Arctic neighbours.

Chapter III would discuss how Canada perceives these challenges and the Canadian approach to develop its domestic policies towards the Arctic.

## CHAPTER III

### SOVERIEGNTY AND GOVERNANCE IN THE CANADIAN ARCTIC

The previous Chapter discussed the ongoing changes in the Arctic region in the light of its accessibility, which made it a centre of geopolitics. Now more attention is needed to maintaining peace and conserving the environment in the Arctic region. Scott Borgerson warns in his work that “Arctic meltdown” is responsible for generating conflicts and militarisation in this region leading to environmental disaster. Kraska comments, “Climate change may transform the Arctic Ocean into a third waterway for transcontinental traffic into North America. The result is that the northern tier will become open to the benefits and exposed to the potential costs of worldwide commerce. The greatest impact to date of the prospect of increased shipping in the North American Arctic has been the disruption of Canada’s sense of security” (Kraska 2009). These changes have threatened the sovereignty and security of the Canadian Arctic territory. The present Chapter focuses the Canadian measures to protect sovereignty and security of its Arctic territory through its domestic policies.

The indented coastline, location of the and complex geography of the Canadian Arctic are major challenge for Canadian government in creating infrastructure for development and defence of this region.

The Canadian Arctic has a unique history from British possession to being part of Canadian territories. The Canadian government has focussed its policy to attain sovereignty over the islands and waters in the CAA. Canada received its Arctic territories from the United Kingdom. It was an unmanned region and was prone to annexation because there was no international law enacted for claimants to define and protect territorial sovereignty over such unmanned land. Canada realised that asserting sovereignty over its Arctic territory is critical for Canada. This has led Canada to legislate to protect its Arctic. Therefore it enacted policy to consolidate its sovereignty claim internationally.

This Chapter attempts to answer the research questions related to the territorial sovereignty of the Canadian Arctic region: How the transforming geopolitical realities are impinging on Canada’s Arctic policy? Why the sovereignty over the NWP is critical for Canada? And how Canada has belatedly responded to its sovereignty

claims in the region? How the creation of the new territory of Nunavut would protect Canada's sovereignty issue in the Arctic region?

Apart from answering these questions, this chapter would test the first hypothesis of thesis; delayed sovereignty claim has been responsible for weakening Canada's sovereignty over the waters of the Northwest Passage. This chapter is divided into four sections explains the different aspects of Canada's Arctic policy; section (i) overviews the evolution of Canada's Arctic territorial and sovereignty claims; (ii) delineates the policies and legislative measures adopted by Canada, (iii) gives an overview of Canada's defence build-up capabilities in the Arctic region to enforce the sovereignty claim and challenges in defending the Arctic (iv) the last section would discuss the summary and conclusion of the previous four sections.

### **Evolution of Sovereignty and Territorial Claims in the Canadian Arctic**

Canada received its Arctic territory from the United Kingdom in 1870-1880 and most of these islands were explored by the British explorers and thus became part of the British Empire and later transferred to Canada (Head: 1963). This was an unmanned uninhabited territory and the process to occupy the Arctic territorial claim is not as plain as the Southern provinces of Canada. Most importantly it was uncharted and fragmented land mass separated by the sea waters and jointed by thick sea ice pack. Canada's claim to sovereignty over the islands of the CAA is based on conventional legal grounds which includes- a series of territorial claims and legislative acts enacted by the Canadian government over a period of time. If combined together serve as the strong evidence in favour of Canada against any challenges to sovereignty (Rothwell 1996).

### **Sovereignty over the Arctic Islands**

During this period there was no laws regarding unclaimed land and whenever the territories were discovered, they were possessed by the explorers or the countries to which the explorers belonged. But the scope of discovery to form the basis of claim was eliminated in a legal document after the Berlin Conference on Africa<sup>20</sup> (15 Nov. 1884-26 Feb. 1885). This declared that a discovery claim to land or that continent

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<sup>20</sup> The purpose of the Conference was to 'manage' the ongoing process of colonisation in Africa to avoid the outbreak of armed conflict between rival colonial powers. Its outcome was the conclusion of a General Act ratified by all major colonial powers including the US. Among other things, the General Act set out the conditions under which territory might be acquired on the coast of Africa.

would be valid only if it is followed in reasonable time by “effective occupation otherwise such claims would be inchoate or temporary and liable to challenge by the other countries.” This was supported by the eminent experts of the international law William Edward Hall (1835-1894) and Lass Francis Oppenheim. They suggested two ways to convert the inchoate title to permanent; “ (i) it must be either converted as human or military settlement within a reasonable time; and (ii) by demonstrating the intention of continual claim by repeated local acts. Oppenheim added that the effective occupation must substantiate the discovery claims with administrative action otherwise this would be “fictitious occupation only, unless there is left on the territory a settlement which is able keep up authority of flag” (Grant 2010 18 19).

As mentioned Canada’s sovereignty claim over the islands of the CAA is based on the customary lawful grounds; a sequence of protective claims and parliamentary acts enacted over a period of time. This began with the purchasing of Rupert Island from Hudson Bay Company in 1869(ibid 12)has been regarded as the first step to claim sovereignty over the CAA under the Section 146 of the British North America Act 1867 (BNA Act 1867 ( Head 1963 210 212).

The islands of the CAA were explored by the British and French explorers. Various treaties ceded these islands first to the United Kingdom and then to Canada. In 1763 the Treaty of Paris ceded to United Kingdom all land under French possessions in British North America with the exception to Pierre and Miquelon.<sup>21</sup> The 1825 Boundary between Russia and the United Kingdom<sup>22</sup> established Canada and the United States boundary between Yukon and Alaska along 141°West (Rothwell 1996 164).

After this transfer the northern boundary remained undeclared; however, even Canada was facing uncertainty in defining its Arctic territory and feared the challenges of the foreign countries and especially from the United States which did not recognise the Canadian sovereignty throughout the 19<sup>th</sup> century (ibid 165). Therefore, the

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<sup>21</sup> The Definitive Treaty of Peace between France, Great Britain and Spain 42 Con TS.27

<sup>22</sup> The Treaty of Saint Petersburg of 1825 or the Anglo-Russian Convention of 1825, officially the Convention Concerning the Limits of Their Respective Possessions on the Northwest Coast of America and the Navigation of the Pacific Ocean. It defined the boundaries between Russian America and British claims and possessions in the Pacific Northwest of North America at parallel 54°40’ north which had the year before been established as the limit of overlapping American claims in the parallel Russo-American Treaty of 1824. The Russian sphere in the region was later sold to the United States, becoming Alaska, while to the south of the division point was the British claim, the remnant of which today is the coast of the Canadian province of British Columbia.

Dominion Government of Canada passed an Order-in-Council dated 30 April 1875 and made request to transfer of all the lands to the north of the Dominion from the United Kingdom. This was followed by a joint address to Her Majesty the Queen from the Senate and House of Commons of Canada on 3 May 1878 (Head1963) requesting to affirm the status of the Canadian Arctic territory.

That, to avoid all doubt in the matter, it is desirable that an Act of the Parliament of the United Kingdom of Great Britain and Ireland should be passed defining the North-Easterly, Northerly, and North-Westerly Boundaries of Canada, as follows, that is to say: On the East by the Atlantic Ocean, which boundary shall extend towards the North by Davis Straits, Baffin's Bay, Smith's Straits and Kennedy Channel, including all the islands in and adjacent thereto, which belong to Great Britain by right of discovery or otherwise; on the North the Boundary shall be so extended as to include the entire continent to the Arctic Ocean, and all the islands in the same westward to the one hundred and forty-first meridian west of Greenwich; and on the North West by the United States Territory of Alaska (Senate Canada 1878in Ivan Head 1963).

But the reply of the Imperial government could not remove the ambiguity of Canadian position regarding the Arctic territory. Then the Canadian government defined its Arctic territory. The available records reveal that the Canadian Order in Council which was passed on October 2, 1895 was the first step taken by Canada to specify receipt of the transfer of claims of 1880. But due to major flaw it was replaced by the Order-in-Council passed on December 18, 1897 “which placed in Franklin District all the islands more than 20 miles from the coast in the area bounded by 141° West and the channel west of Greenland, and on the north by the parallel of 83 1/4°. This order constituted Canada’s notification to other countries that it claimed all the Arctic Islands north to 83 1/4° (northern tip of Ellesmere). Canadian sovereignty in the Arctic has not been successfully challenged by any other state; yet, no foreign state officially and expressly recognised the Canadian claim” (Kikkett and Lackenbaur 2014).

According to the international law there are many methods to claim the land but in the case of unclaimed lands, it may be acquired by complying with the threefold rule: making discovery, enforcing occupation, and notifying to other states of intention to absorb those lands in the national domain. The Arctic archipelago lying north of North America was, until during the nineteenth century, practically an unclaimed land, although explorers, chiefly British and of the United States, had, at various points and times, declared the islands subject to the jurisdiction of their respective

governments (Johnston 1933). The transfer to Canada of Britain's claims to the Arctic Archipelago during the late 19<sup>th</sup> century is the basis on which Canada has assumed sovereignty over that region (Head 1963).

The Canadian sovereignty over the Arctic islands has been further substantiated by the verdict of the "Permanent Court of the International Justice (PCIJ) resulting in the Eastern Greenland Case in 1933". In this dispute both Norway and Denmark were claiming the sovereignty over Eastern Greenland. Denmark had colonies in other parts of Greenland and had granted concessions in the uninhabited Eastern sector. It had proclaimed that all treaties and legislation regarding Greenland covered the territory as a whole, as establishment of the width of the territorial sea, and it sought to have its title to all of the territory recognised by other states. The Court felt that these acts were sufficient in providing evidence for founding a good title and against Norwegian actions which was limited to the wintering of expeditions and the erection of a wireless station in Eastern Greenland, against which Denmark had protested. Norway actually claimed the territory after Denmark (Shaw 2003). The Court declared that, "local administration is not necessarily required for the exercise of sovereignty over uninhabited territory" (PCIJ 1933).<sup>23</sup>

Effective occupation: The term effective occupation has been interpreted by Professor Dickenson in the "Clipperton Island Award of 1932 - as applying to all uninhabited and uninhabitable regions, and as meaning that occupation which is required of such regions, is only such occupations is appropriate and possible under circumstance" (Head 1963). "Effective occupation" of these territories quite naturally seeming to be impossible, no steps was taken by the Canadian Government with this in view, until 1919. Since then, however, the Canadian Government has sent patrol, established a few posts, and provided several landing places for airships; all of these lying to the south of approximately 82 degree north latitude (Lakhtine 1930). Despite the geographical obstacles Canada maintained effective occupation over its Arctic territory by spending money over the indigenous population living in the places which are claimed as the Canadian Arctic, and both the Arctic territories Yukon and Northwest Territory elected a representative for the House of Commons. Apart from this in 1925 the US announced the MacMillan Expedition (organised by the National

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<sup>23</sup> PCIJ (ser A /B) No 53 at 22"



Geographic Society but actively supported by the US navy) which was planning to fly over some of the Canadian Arctic Islands without notifying Canada. The Canadian parliament came up with an amendment known as “Northwest Territories Act requiring licences of Arctic scientists and explorers” (Head 1963) to oppose the US action.. The 1940 during signing of the “Ogdensburg Agreement established the Permanent Joint Board on Defence (PJBD), creating for the first time a combined American-Canadian body responsible for continental security”<sup>24</sup> America recognised the Canadian Arctic territories and the American challenges over the Canadian Arctic Islands came to an end.

But any of the aforementioned incidences did not elucidate the grade(whether internal or international) of the waters in the CAA and Canada did not make any official statement over these waters. However, the Canadian authority over the islands has been accepted internationally except over the Hans Island.

### **Sovereignty over the Waters in the Canadian Arctic Archipelago**

The debate exists over the archipelagic water which serves as shipping routes between the Atlantic and the Pacific Ocean claimed international strait by many countries and internal and historical by Canada. The international community is claiming that these waters as international strait or high sea where the right to unrestricted navigation exists but Canada refuses by saying that these are Canada’s historical waters and Canada has full sovereignty over these waters. This is the most serious issue in the whole Arctic region and the heart of the Arctic challenges. A very simple question can be raised: Why has this issue emerged?

The history of Canada’s claim over the NWP has been weighed down with perplexity and indecisiveness. Initially, it didn’t focussed on the waters because of the impassable ice. Still, a claim to the waters was at least hidden in an assertion, first made in the late 19th century, that Canada owned everything between the 60° and 141° West meridians of longitude all the way to the North Pole(ibid).

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<sup>24</sup> Department of National Defence, “Backgrounder: The Permanent Joint Board on Defence”, [http://www.dnd.ca/site/Newsroom/view\\_news\\_e.asp?id=298](http://www.dnd.ca/site/Newsroom/view_news_e.asp?id=298); accessed in June 2016.

## **Sector Theory**

The “sector theory” was made by Senator Pascal Poirier in 1907. The sector theory is descriptively simple and composed of only two ingredients: “a baseline along the Arctic Circle through a territory unquestionably within the jurisdiction of a temperate zone state, and sides defined by the meridians of longitude extending from the North Pole south to the most easterly and westerly points on the Arctic Circle pierced by the state. Under the theory, nations possessing territory extending into the Arctic regions have rightful claim to all territory – be it land, water or ice – lying to their north. This claim springs from the geographical relationship of the claimant state to the claimed territory; the two areas must be contiguous along the Arctic Circle.” But this theory remained a one-man theory and not seconded, and was not even put to vote. This was not accepted and also never documented worldwide, and it was rejected by the Canadian government itself (ibid 206, 207).

But this claim was not accepted by other countries except Russia which was itself doing this (Byers: 2006). Canada became the only nation to make such claim. Though Canada has rejected the sector theory yet in 1938, Canada was clearly endorsing the sector theory as revealed from the statement made by the state Minister of Mines and Resources of the Liberal Government in the House of Commons that, “no foreign challenge to Canada’s sovereignty in the Arctic could be successful. He referred to his understanding that international usage had established clearly certain principles upon which the sovereignty could be claimed in remote areas of the Arctic which have never been visited by man, and that these principles were favourable to Canada” (Debates in House of Commons 1938). But there was absolute nonappearance of the term of sovereignty over the waters running through the CAA, but as Head argues, “this may be inferred in as much that no land exists within 450 miles of the pole” (Head 1963).

## **Evolution of Canada’s Claim over the Archipelagic Waters**

In 1957, Prime Minister St. Laurent reported to the House of Commons that “the United States Vessels servicing DEW<sup>25</sup> line stations are required to apply to Canada

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<sup>25</sup> During the Cold War, North America relied on radar networks to provide an early warning of airborne attacks inbound over the North Pole. From the early 1950s, a series of isolated radar stations were constructed in Alaska, Canada, and Greenland to identify unfriendly aircraft and direct fighter planes to intercept them. The most northerly of the networks, the Distant Early Warning (DEW) Line of radar sites, was established in the late 1950s and extended along the Arctic coastline (roughly along

for waivers of the provisions of the Canada Shipping Act before proceeding” (Head 1963).

Though Canada has consistently claimed the Arctic since beginning, but nothing came out as a piece of legislation. Article 38 of the Statute of the International Court of Justice (ICJ) recognises three primary sources of international law to make the sovereignty claim:

First is the convention, which are the sources of formulating the treaties and could include conventions, protocols, and declarations. Second, international customs those have been established as a tradition requisite by law. Third, the wide-ranging doctrine of law accepted by civilised nations.

In addition, Article 38 also identifies as a “subsidiary means for the determination of rules of law” preceding legal decisions and the experience of the publicists.<sup>26</sup> But the NWP is an oceanic body would seem to fall within the purview of the UNCLOS.

Canada after receiving its Arctic north from Great Britain in 1880, claimed sovereignty over the Northwest Passage as being Canada’s historic internal waters in 1973 and without any legislation. In 1986 with the execution of straight baselines served as a policy to assert sovereignty (Miesel 1999). In 1973, Canada just made a hint that Canada views the waters in the Arctic Archipelago as its “internal waters.” In a letter, the Legal Bureau wrote “It has been the Canadian position that the waters of the Arctic Archipelago are part of the internal waters” (Killas 1987,100), but no exact legal argument was clarified to carry on this claim. Similarly, a statement was made by Canada’s Secretary of the State for External Affairs in 1975, but without any supporting legislation (Meisel 2009).

Elizabeth Meisel’s argues that the delay in claiming sovereignty became a cause for weakening the Canadian position internationally. Meisel explains reasons for this delay: because prior to 1969 no challenge has emerged thus it was not required nor any such condition had emerged. But at present, three factors hinder Canadian presence in the Arctic: failure in defining sovereignty, especially distinguishing between sovereignty over the land and sovereignty over the water; (ii) allocating

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the 69th parallel) from north-western Alaska to Iceland. The DEW Line was planned, built and largely funded by the United States according to an international agreement. Out of the 63 sites that comprised the DEW Line, 42 were located within Canadian territory.”

<sup>26</sup> Statute of the International Court of Justice, art. 38(1), 26 June 1945, 59 Stat. 1055.

limited manpower and financial resources to back up sovereignty claims with proper defence capabilities and (iii) finally, living next door to the United States, the mightiest economic and military power ever, which is eager and determined to operate in the North. Arguably, the first issue has been resolved, but the other two continue to plague Canada. As a result, Canadian claims to sovereignty over NWP are not backed by an ability to defend, exploit, escort ships or patrol the Passage year round (Meisel 1999,410). Even in the House of Commons, concern was raised that the being deficient in a precise claim to sovereignty would give setback to Canadian archipelagic claim by making it weak and Canada can be force to abandoned it (Kilas 1987.97).

Though Canada neither overtly stated nor notified the Canadian claim over the archipelagic waters, some statements made by the Canadian officials have claimed sovereignty over these waters. Ivan Head to supports the Canadian position on the basis of correspondence made by Lester B. Pearson while serving as the Canadian Ambassador to the United States 1946, in which he has mentioned, “A large part of the world’s Arctic area is Canadian. One should know exactly what this part comprises. It includes not only Canada’s northern mainland, but the islands and the frozen sea north of the mainland between the meridians of its east and west boundaries, extended to the North Pole” (Head 1963). But the Minister of the Northern Affairs and National Resources in the St. Laurent government articulated paradoxical views in the House of the Commons:

We have never subscribed to the sector theory in the application of ice. We are content that our sovereignty exists over all the Arctic Islands. There is no doubt about it and there are no difficulties concerning it...we have never upheld a general sector theory. To our mind the sea, be it frozen or in its natural liquid state, is the sea; and our sovereignty exists over the lands and over territorial water (Laurent 1956 in Ivan Head 1963).

He further told the House of Commons in 1956 that, “the Fisheries case has set a principle which we think should be applicable to our own shores. We think the conditions are such that the decision that was there rendered would apply to many parts of the Canadian shores” (Head 1963).

The Arctic Water Pollution Prevention Act 1970 was enacted after the *Manhattan Voyage*. In 1969, after American oil companies had found huge oil deposits in

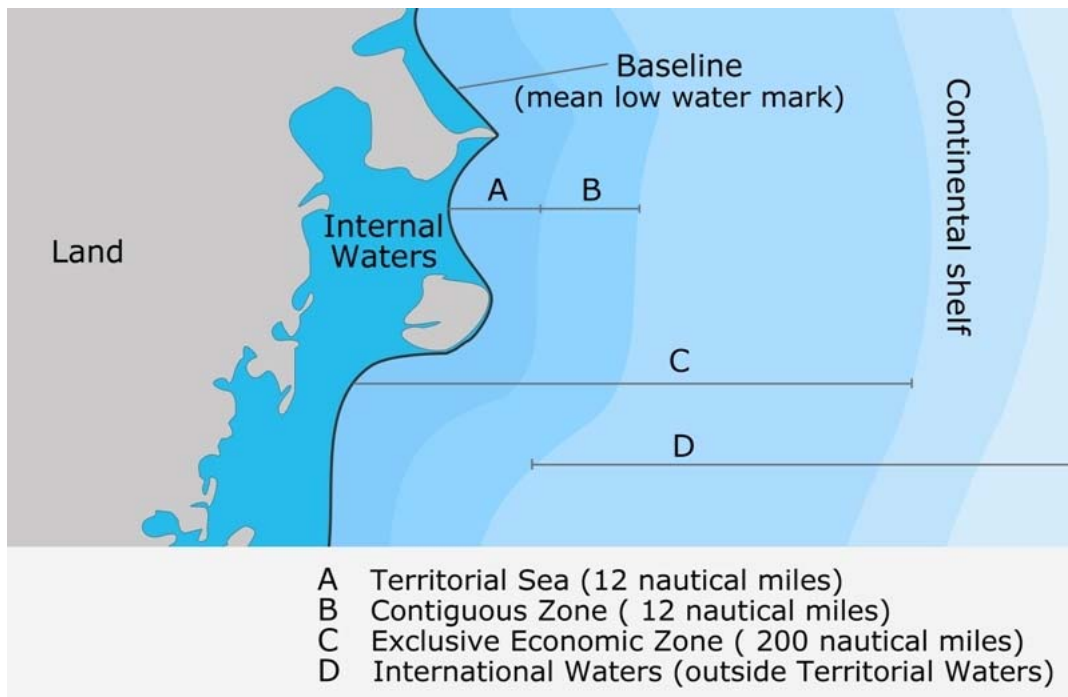
Alaska's Prudhoe Bay, they decided to reinforce a super tanker, the SS *Manhattan*, for a trial transit through the Passage (Bloomfield 1981). In August-September 1969, the Voyage of SS *Manhattan* through the Northwest Passage brought the issue of sovereignty claim over the waters in CAA on the forefront (Meisel 1999). *Manhattan* Voyage was being assisted by the Canadian government and a Canadian icebreaker was also sent to provide support to it yet Canadians didn't favour this and raised their concern over the voyage (Howson 1987).

The Voyage of the *Manhattan* led Canada to claim sovereignty over these waters and legislate to assert its sovereignty over them. It raised several questions: why Canada has claimed sovereignty over the waters after a long delay? Why not has Canada made any effort claim sovereignty? These questions made the Canadian government fortify its claims and to defend them in the international community by clarifying the reasons and factors for such a delay or to prove that they had already been made. Therefore, the government of Canada directed its efforts to sustain the Canadian sovereignty claim over these waters. Delay in claiming and defending its Arctic Canada has however made Canada face several challenges.

### **Domestic Laws and Policies of the Canadian Arctic**

Attaining sovereignty over the waters in the Arctic has remained the core objective of the Canadian Arctic policies because Canada has always perceived that these waters are prone to several military and criminal activities. Though Canadian policymakers have claimed sovereignty over the waters of the NWP during debates in the Parliament and tried to get international recognition by calling them historical waters or internal waters, yet actual legislation was introduced in 1986. The internal waters are being decided on the coastline's features. According to the UNCLOS, "a nation's internal waters includes waters on the landward side of the baseline of a nation's territorial waters, except in archipelagic states". It includes waterways such as rivers and canals, and sometimes the water within small bays". The picture below explains the internal waters.

**Figure- 2 Status of Oceanic Waters**



But the claim the historical waters is decided by the ICJ based on ethnicity of the region. It is not decided by the geographical features, rather on reports made by anthropologists and historians. Before enclosing the archipelagic waters, most important legislation passed by Canada was the Arctic Water Pollution Prevention Act 1970 in response to the *Manhattan* Voyage in 1969.

### **Arctic Water Pollution Prevention Act (1970)**

Though the scholars like Howson called it experimental and Donald Rothwell argued that the reason of the voyage was innocent, the implications were grave for both the Canadian and the US sides. It now appeared that ice-breaking super tankers might have a feasible 'route from the oil fields of Alaska's North Slope to the Eastern Seaboard of the United States'. The Canadians apprehended that such voyage could be disastrous and caused oil spill damages like; *Torrey Canyon* wreck in 1967<sup>27</sup> and

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34 *TORREY CANYON* ran aground on Pollard Rock on the Seven Stones Reef, near Lands End, Cornwall on 18<sup>th</sup> March 1967. Thousands of tonnes of oil spilled from the stricken vessel's ruptured tanks and during the next 12 days the entire cargo of approximately 1,19,000 tonnes of Kuwait crude oil was lost. A wide variety of methods to mitigate the spill were tried. Burning the slick proved unsuccessful.

the 1968 Santa Barbara oil spill<sup>28</sup>. This threat was underscored in February 1970, when the *Arrow a* Liberian Tanker, that ran aground in Chadabucto Bay off Nova Scotia, resulted in polluting the waters and the coast<sup>29</sup> (Brien and Chapelli 1973). This voyage also created a considerable public controversy in Canada as the Canadian media created a perception among the public that the US has violated the Canadian sovereignty by refusing to consult before the voyage (Rothwell 1993). The concerns were expressed over three issues: first, the potential maritime and environmental disasters due to massive oil spills and the Canadian inability to take preventive and protective measures for damage control; second was about Canada's status and capacity to exercise authority over the waters of the Arctic, and third the probability that the NWP become commercially navigable route. This shed worries among the Canadian public both on Canada's authority over the waters and on its ability to implement those claims lawfully (Howson 1987).

According to Rothwell, there was anxiety that Canada's situation regarding the NWP and waters of the Canadian Arctic had not been visibly established, and so this was a direct risk to the Canadian sovereignty (Rothwell 1993). Responding to the public resentment over the *Manhattan* voyage, Prime Minister Pierre Elliot Trudeau assured the House of Commons that, "Canada's claim to sovereignty over the northern lands was unquestionable and void of competing claims. He stated with respect to the waters between the islands of the Canadian Arctic Archipelago that "The area to the north of Canada, including the islands and the waters between the islands and areas beyond, are looked upon as our own, and there is no doubt in the minds of this government, nor do I think was there in minds of former governments of Canada, that this is national terrain." He further added,

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<sup>28</sup> The 1969 Santa Barbara oil spill ranks as the third worst U.S. spill. On January 28th, 1969, an oil well blow-out at Union Oil's offshore platform in the Santa Barbara Channel six miles off the California coast continued for 11 days, with lesser leaks continuing for months thereafter. Sea birds, seals, dolphins, kelp beds, and miles of beaches were coated with black crude. In the end, an estimated 80,000 to 100,000 barrels of oil were spilled and some 30-to-35 miles of California coastline tarred.

<sup>29</sup> *ARROW* was an enlarged version of the standard American wartime tanker design. She was one of the oldest tankers in the fleet of Aristotle Onassis, owned by the holding company Sunstone Marine Panama. On February 4, 1970 is was approaching Port Hawkesbury, the ship finally split in two, with the stern sinking in deeper water. Attempts to take off the cargo were not successful nor were the attempts to recover her stern. In all, about 10,330 tonnes of fuel were spilled coating 75 miles of the shoreline with thick black sludge threatening wildlife and the fishery.

It is also known that not all countries would accept the view that the waters between the islands of the archipelago are internal waters over which Canada has full sovereignty. The contrary view is that Canada's sovereignty extends only to the territorial sea around each island. The law of the sea is a complex subject which, as can be understood, may give rise to differences of opinion. Such differences, of course, would have to be settled not on an arbitrary basis but with due regard for established principles of international law (House of Commons 1969).

Following the voyages of the SS *Manhattan* through the NWP, the Canadian made three policy initiatives:

The first was the enacting the Arctic Waters Pollution Prevention Act (AWPPA) in the House of Commons. The bill proposed to create a 100-nautical-mile contamination deterrence zone in the Arctic waters within which Canada would regulate navigation by prescribed standards of vessel construction, if necessary, to ban the passage (Bilder1970) of the navigation. The Arctic Waters Pollution Prevention Act (AWPPA) has been enacted with an objective of preventing polluting activities in the Canadian Arctic waters. The AWPPA is 'zero discharge' act --- posing restriction over the pollution activities either by man or ship in the Arctic water. This act describes offences and penalties for such activities; and describes the authority that is given to Pollution Prevention Officers for the enforcement of this Act. The AWPPA contains two types of laws --- namely; the Arctic Shipping Pollution Prevention Regulations (ASPPR) and the Arctic Waters Pollution Prevention Regulations (AWPPA 1970).

Arctic Shipping Pollution Prevention Regulations (ASPPR) was enacted to govern navigation in coastal water within Canadian jurisdiction north of 60° N .The ASPPR deals with “the building of ships with certain specialities for different navigation zones; bunkering stations; issuing of Arctic Pollution Prevention Certificates for any vessel planning to use the Arctic Ice Regime Shipping System and every tanker must have a qualified Ice Navigator on board; fuel and water concerns (enough of both on board before entering a zone); sewage dump and oil deposit mishaps (unavoidable deposit only, that is, to save a life; or from damage to a ship from stranding, collision, or foundering if all reasonable precautions were taken).” All vessels above 100 tonnes that navigate the Canadian Arctic waters must comply with these regulations, including reporting requirements. Ship owners may request an Arctic Pollution



Prevention Certificate for vessels that carry more than 453m<sup>3</sup> of pollutants (including all oil, fuel, and lubricants)” (Government of Canada 1970) .

**Arctic Waters Pollution Prevention Regulations 1970** The AWPPR applicable in case of the deposit of waste in Arctic waters or in any location whether on the mainland or islands of the Canadian Arctic and the liability for such deposits. This Act also describes the limits of liability. “The *Marine Liability Act* (MLA) extends north of 60°N. In the event of an inconsistency between the provisions of the AWPPA (or any regulation made pursuant to it) and the MLA, the MLA prevails to the extent of the inconsistency.’

Under the Arctic Water Pollution Prevention Act, Canada claims the right, inter alia, to:

Prohibit and punish the actions of depositing waste in Arctic waters or on the islands or mainland so as to enter Arctic Waters, Destroy or remove ships which are source of threats of waste deposits (Brein and Chapelli 1973); prescribed as a “shipping safety control zone” is any of the Arctic waters; within such zones regulate navigation and prohibit access entirely at certain times of year. The ships owned by the foreign sovereigns would be exempted if in compliance with the shipping safety zones regulation (AWPPA 1970); to implement anti-pollution regime officials were given duties with sufficient authority to inspect the ships entering in the shipping safety zones. To impose penalty on the ships and cargo creating pollution in the shipping safety zones, provisions were made to get compensation against the damaged caused by such navigations” (AWPPA 1970).

The AWPPA legislation did not make and didn't require assertion of sovereignty, no more than it constitutes a denial of sovereignty or was inconsistent with any basis for sovereignty. Canada enacted this Act due to its dissatisfaction with the multilateral conference process and from a new determination to assert national interests in addition to the traditional Canadian internationalist approach. Canadian proposals for a regime of unlimited and absolute liability for pollution damage on the high as well as territorial seas were rejected at the 1969 IMCO Conference which drafted the Convention on Civil Liability for Oil Pollution Damage. The agreed strict liability provisions for territorial seas damage only were found unacceptable by Canada which was the only state at the Conference to vote against the final Convention. The

*Manhattan Voyage* just brought this matter to the forefront (M’Gonigle 1976). The most important thing of the AWPPA established the geographical definition and extent of the Canadian Arctic Waters.

Arctic waters’ mean the internal waters of Canada and the waters of the territorial sea of Canada and the exclusive economic zone of Canada, within the area enclosed by<sup>30</sup> the 60<sup>th</sup> parallel of north latitude, the 141<sup>st</sup> meridian of west longitude and the outer limit of the exclusive economic zone. However, where the international boundary between Canada and Greenland is less than 200 nautical miles from the baselines of the territorial sea of Canada, the international boundary shall be substituted for that outer limit” (AWPPA 1970).

According to this definition, the Canadian government has claimed its sovereignty over waters in disputed area of the Beaufort Sea also. In 2009 Bill C-3 was introduced to amend the AWPPA. Canada expanded the geographical scope of the AWPPA from 100 up to 200 nautical miles offshore encompassing not only Canadian waters and adjacent territorial waters but also the entire EEZ, In 1978 Canada promulgated the Shipping Safety Control Zones Order establishing the limits of 16 Shipping Safety Control Zones in the Arctic and implementing specific regulatory measures in such zones (Schonfeldt 2017). The AWPPA replaced the definition of the “Arctic Waters” with the following:

Arctic Waters” means the internal water of Canada and the waters of the territorial sea of Canada and the exclusive economic zone of Canada, with in the area enclosed the 60<sup>th</sup> parallel of north latitude, 141<sup>st</sup> meridian of west longitude and the outer limit of exclusive economic zone; however where the international boundary between Canada and Greenland is less than 200 nautical miles from the baselines of the territorial sea of Canada, the international boundary shall be substituted for that outer limit.”<sup>31</sup>

In 2009, not only was the AWPPA was extended but also the limits of Shipping Safety Control Zone were extended from “100 to 200 nautical miles”. Pursuant to the Shipping Act of 2001,<sup>32</sup> Canada passed the Northern Canada Vessel Services

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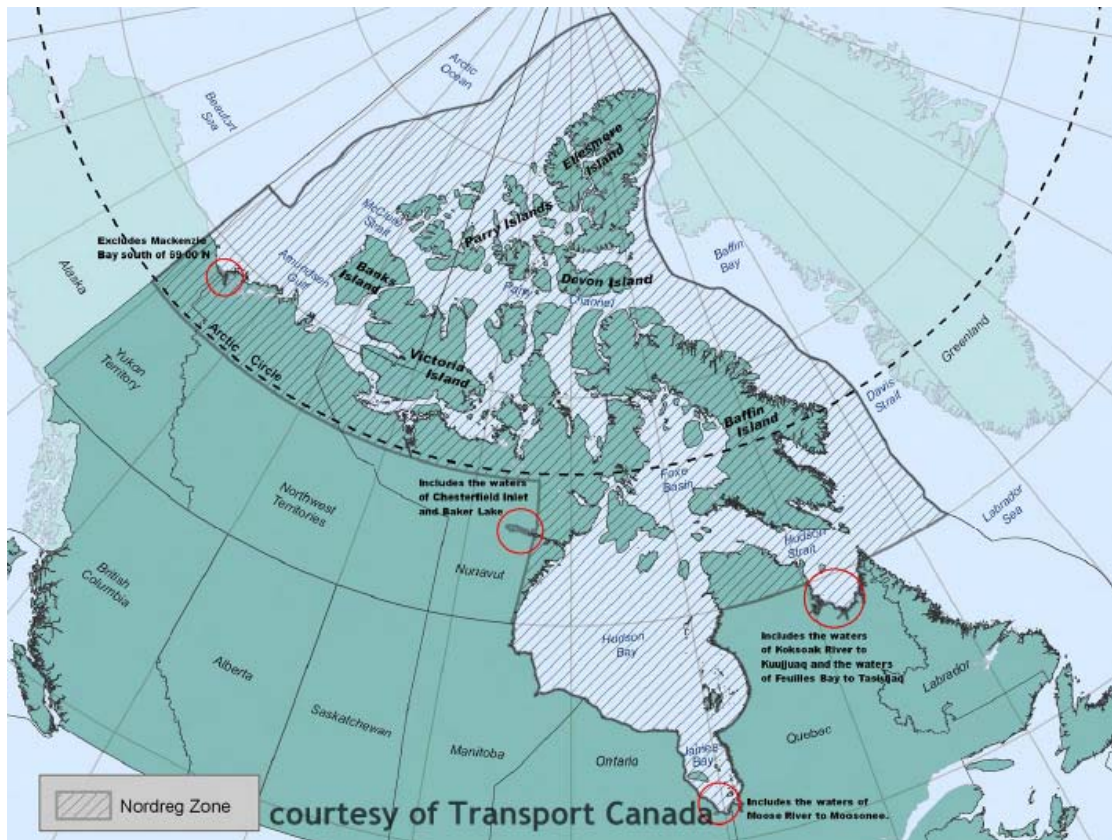
<sup>30</sup> “Bill C-3, An Act to amend the Arctic Waters Pollution Prevention Act, was introduced in the House of Commons by the Minister of Transport, Infrastructure and Communities and received first reading on 3 December 2008. It consists of an amendment to the definition of “arctic waters” in the *Arctic Waters Pollution Prevention Act* (1) to extend the geographic application of the Act from 100 to 200 nautical miles offshore Canadian land north of the 60th parallel of north latitude.”

<sup>31</sup> Bill C-3[ Act to amend Arctic Waters Pollution Prevention Act], 40<sup>th</sup> Parl.2009

<sup>32</sup> The *Canada Shipping Act* (CSA) 2001 is the ‘principal legislation governing safety of marine transportation and recreational boating, as well as protection of the marine environment. The CSA was recently modernized and reintroduced as the *Canada Shipping Act (CSA) 2001*. The CSA 2001 came into force in July 2007, and has been reorganized, updated, and streamlined making it clearer and easier to understand.”

Regulation (NORDREG). NORDREG imposes mandatory reporting requirements for the certain classes of vessels entering in the Shipping Safety Control Zones and other northern waters such as Hudson Bay and James Bay ( areas covered under the Nordereg are shown in the map7) .

**Map 7 Areas Covered Under NORDREG**



Despite the UNCLOS that has empowered the coastal states to regulate pollution in the EEZ under Article 234 (would be discussed in detail in Chapter IV), Canada prefers the AWPPA over the UNCLOS III because it ensures that the marine polluters are prosecuted under Canadian law (Gordy 2017). The AWPPA represents the ‘functional’ response, it means that “Canada’s objective was to build up its claim through a series of statements and administrative acts while stopping short of legislation which would specifically declare these waters as internal by drawing baselines around them. In this way Canada therefore gained a degree of control without provoking sustained international challenge. To support this approach a

number of Canadian acts could be amended, to make clear they apply in the absence of baselines”(Mamorandum to Cabinet 1982). The reason behind opting the functional approach was the American challenge which

Canadian government wished to avoid confrontation with the US (MacDorman1986) Mesiel mentions that PM Trudeau clarified that Canada’s legislated not to assert sovereignty, he explained to the Americans that the AWPPA was also meant “to withstand the immense Canadian Public pressure for an assertion of sovereignty” (Larsen: 1990). But, according to the Americans, this act was one attempt further to continue the Canadian tradition of asserting its position in the Arctic waters (Meisel 1987). The Liberal government of Pierre Trudeau put this question before Cabinet to know the opinion about declaring sovereignty and, though that extensive memorandum, recommended an explicit declaration of sovereignty (Memorandum of Cabinet: 1982). But the Canadian Ambassador to the UNCLOS John Alan Beesley and the country’s ambassador to the United States, Allan Gotleib who were legal experts and also representing decades of tradition surrounding the External Affairs Arctic policy suggested the Canadian government to maintain the existing position only. Their suggestion was concerns about American rejection and therefore, recommended continued caution and patience (Lajeneuness and Huebert 2017).

The second was extending the territorial sea from three to twelve nautical miles, in both the cases in the Canadian mainland and also in the island. Rothwell argues, “this extension of the territorial sea resulted in a great deal of the NWP becoming enclosed within Canadian territorial waters so that the any transit of the Passage would now see vessels coming up more frequently under the Canadian position”(Rothwell 1996). This action made the two key “gateway” areas of the NWP, i.e., the Barrow Strait and the Prince of Wales Strait unquestionably under Canadian sovereignty by making them territorial according to existing international law, regardless of differences of views as to Canada’s claim to sovereignty over the whole of the NWP (Beesley 1971; Rothwell 1993).The twelve nautical mile territorial sea, made it mandatory to seek Canadian permission to navigate through the NWP. This created an interesting position because during the passage the ships have to transit through the Canadian territorial waters at the choke points where the width of the sea was less than 24 nautical miles. With the three nautical mile limit, a vessel could have traversed the NWP, provided it used the difficult M’Clure Strait instead of

the Prince of Wales Strait, without entering Canada's territorial waters. No delineation of the outer limit of the territorial sea was ever done in the Arctic so the accurate position of Canada's Northern territorial waters was tentative (McDorman 1986). Though the extension of territorial sea from three to twelve nautical miles by Canada was also faced rejection by the US government yet this step of Canada didn't faced severe diplomatic protest because than the AWPPA because nearly sixty countries including a number of Latin American countries had already taken similar steps (Byers and Lalonde 2009).

An initiative was the Territorial Sea and Fishing Zone Act; another significant Canadian move was to enclose the waters in NWP that was under process. Though it was not formulated as reaction to the *Manhattan Voyage*, yet it became important in successfully closing the entrance of the NWP. A bill to amend the Territorial Sea and Fishing Zone Act was under consideration in the Parliament of Canada. It aimed to authorise the Canadian government for the establishment of a new fishing zone in the area adjacent to the coast of Canada (MacDorman 2009). The Canadian government empowered itself, "to establish the control zone behind fisheries, closing lines across the entrances to bodies of waters requiring fisheries conservation to which Canada has geographic, economic and historical claim. In this bill, the government also replaced its existing three nautical miles territorial sea and nine nautical miles exclusive fishing zone with a twelve territorial sea" (Kirton and Muntton 1986).

In 1964, Canada enacted a legislation establishing a three nautical mile territorial sea and beyond this, a nine nautical mile exclusive fishing zone. This legislation allowed for the establishment of a straight baseline along the Canadian coast. This aimed to serve two purposes: first to delineate the outer limit of three to twelve nautical miles and bring within the regime of internal waters those waters landward of the straight baseline (Territorial Sea and Fishing Zone Act 1965-1966).

The United States that was protesting the Canadian action also created an extended nine nautical mile fishing zone through passing the act "Establishing a Fisheries Zone Contiguous to Territorial Sea" (MacDorman 2009). In 1967 and 1969 Canada announced a straight baseline<sup>33</sup> along the coast of Labrador, Newfoundland and Nova

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<sup>33</sup> In the coastal areas where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured."

Scotia, Vancouver Island and Queen Charlotte Island but did not announce a straight baseline to enclose as internal waters any of the ocean areas.<sup>34</sup> In December 1970 Canada extended its territorial sea from three to twelve nautical miles and this legislation empowered the Canadian government for creating a fishing zone adjacent to Canada by using the ‘fisheries closing lines’.<sup>35</sup>

The extension of the territorial sea was tied both to Canada’s interest in fishing and capturing the key waters in NWP (Kirton and Munton 1986). The fishing zone was established in 1971 by the fisheries’ closing lines which were the Gulf of Lawrence, Bay of Fundy and the waters of the Dixon entrance (MacDorman 2009). The character of the fishing zone changed as a consequence of the amendments proposed to the Canadian Shipping Act in 1970 and passed in 1971, which applied vessel source pollution laws and regulation to foreign vessels within the newly created fishing zone (Canada Shipping Act 1970-71-72).

As the third response the Canadian Cabinet decided that the newly enacted AWPPA not be challenges in the ICJ (Huebert 1995). Therefore Canada abrogate its corollary to the approval of the necessary jurisdictions of the ICJ that aimed to prevent any future legal action over the matter (Byers and Lalonde 2009) and “disputes arising out of or concerning jurisdiction or rights claimed or exercised by Canada in respect of the conservation, management or exploitation of the living resources of the sea, or in respect of the prevention or control of pollution or contamination of the marine environment in marine areas adjacent to the coast of Canada” (McDorman1986; Rothwell 1996). In this way actually Canada protected the AWPPA from being challenged by any country. Because Canada was feared that the United States might unilaterally refer the dispute to that court (Bankes1987) and AWPPA would be unable to survive against challenge in ICJ (Huebert 1995).Collectively, these three processes have represented a cautiously constructed, three-tiered approach to shielding marine environment and exercising jurisdiction in the Arctic Ocean. At the outer 100 nautical miles perimeter the government-asserted jurisdiction for the specific purpose of pollution control, within the archipelago formed by the Arctic islands, it strengthens its ability to serve jurisdiction for further purposes in the future. And in the vital core of the NWP, it has enlarged Canadian

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<sup>34</sup> Amendment of the Territorial Sea and Fishing Zone Act 1970.

<sup>35</sup> Canada United States Statement of the Establishment of Canada’s fishing Zone 1971.

control over the critical eastern western gateways at the Barrow and Prince of Wales Straits where the channel is less than 24 miles wide; with these moves the Canadian government has effectively protected its fragile Arctic environment. This act also constituted one of the largest geographical extensions of the Canadian state's jurisdiction in the country's history (Kirton and Muntton 1986). While making moves, Canada was well aware that Canada can face challenges in the international community especially its relations with the United States would be worsen and it became so. On April 9, just the next day after the legislation, a State Department spokesman opposed the Canadian insistence on unilateralism and a disagreement with the existing international law and proposed for bilateral and multilateral talks to resolve this issue (Bilder 1970). Moreover, by acting unilaterally by exempting its pollution and fisheries measures from the compulsory jurisdiction of the ICJ and avoiding an American alternative plan for multilateral conference on the Arctic environment, the Canadian government broke decisively with "the liberal internationalist tradition" which was the prominent feature of the Canadian foreign policy since World War II. Finally, by basing the Canadian claim to custodianship, Canada was taking initiatives on behalf of the lagging international law that was normally the function of the superpowers (Kirton and Muntton 1986).

The AWPPA 1970 was unique as a customary law<sup>36</sup> "that challenged the international law because the existing Law of Sea convention of 1958 did not provision such power to any coastal country. It opened a new round in the historic and multifaceted struggle over the freedom of the seas" (Bilder 1970). Some important and complex questions emerged before the international law and policy regarding the legal regime of the Arctic waters, the concept of contiguous zones, the status of waters within archipelagos, and the doctrines of innocent passage and international straits. The question emerged about the adequacy of the existing international law in protecting legitimate interests of the coastal states and the coastal country can enact such legislation to protect its own interests (ibid). The AWPPA set an example that Canada could act with its fewer physical resources and act unilaterally in ways that potentially challenges important security interests of the

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<sup>36</sup> Customary Laws are unofficial laws. In short, they are the long established control (standard of community) of a particular or a local general law as regards legal practice. For example, the so-called "law of nation" is a customary law.

United States. Domestically, they displayed the government's ability to resist the sustained pressure of an assertive Canadian public demanding considerably more ambitious actions. And above all, they revealed the capacity of the government of Canada to act with creativity and confidence in advance of what national capabilities and international realities could allow.

### **The Polar Sea Voyage of 1985 and Straight Baseline Claim**

After 1970, Canada began asserting that waters in the straits and channels between the islands are 'internal' as well as being historic waters. Such claim was already made by Canada in case of Hudson Bay in 1906. Though in the beginning the United States filed a protest, yet for more than hundred years past, no country has overtly opposed the Canadian claim. Even the US found that this protest was useless for shipping through Hudson Bay. This can facilitate the shipping to the port of Churchill, Manitoba. Moreover, James Bay – at the southern end of Hudson Bay – extending within 1000 miles of Chicago, Detroit, and New York City which is not strategically useful. Opening this route would be putting those cities within easy reach of ship-launched cruise missiles. However, because of Hudson Bay's status as historic internal waters, Canada, in concert with the North Atlantic Treaty Organization (NATO) and the North American Aerospace Defence Command (NORAD), can legitimately deny access to warships of non-allies (Byers and Lolande 2009). Apart from the Hudson Bay, Canada has claimed straight baselines for closing the portions of Labrador and Newfoundland in 1967, Nova Scotia in 1969, Vancouver and Queen Charlotte islands, and in 1985 for the Arctic islands.<sup>37</sup>

Claiming that the waters in the Canadian Arctic 'internal' was the most definitive measure which Canada adopted to secure sovereignty. But steps couldn't established the Canadian authority of the waters of the NWP and many of the same issues emerged during the "Polar Sea Voyage, the United States Coast Guard" (USCG) icebreaker through the NWP (Huebert 1995).

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<sup>37</sup> Office of the Ocean Affairs Limits in the Seas. No. 112: United States Response to Excessive National Maritime Claims 10(1992)' available at <http://www.state.gov/documents/organization/58381.pdf>."

119. "An Act to Amend the Fisheries Act, 1906"



The most recent (yet thirty-two-year-old) sovereignty violation dispute occurred when the American icebreaker *Polar Sea* began a crossing of the NWP, unauthorised by Canadian officials (Rothwell 1993). Despite Canada's vehement requests, the United States refused to seek permission to use the Passage. The voyage was completed ultimately without the permission of Canada (Perry 1997). The United States Interagency Arctic Policy group which consisted the officials from the States Department, the USGC and the Defense Department, met to consider the possible reaction of the Canadian government to the proposed voyage. The planned *Polar Sea* voyage was approved by the State Department following these discussions, and on May 21, 1985, the Canadian desk of the States Department sent a cable to the US Embassy in Ottawa requesting it to notify the Canadian government about the voyage (Huebert 1995). In the demarche, the US government emphasised the practical nature of voyage and its operational rationale and invited the Canadian participation. However, the demarche denied to accept Canadian sovereignty over these waters (Huebert 2009). The voyage of the *Polar Sea* aroused nationalistic sentiments in Canada. The concerns were raised on the fragility of Canada's dominion over the Arctic boundary and waters. This time Canada announced a straightforward autonomy over the waters in the NWP. The government responded with the most definitive claim of sovereignty to date. The Minister of External Affairs stated in the House of Commons: "Canada's sovereignty in the North is indivisible. It embraces land, sea and ice. It extends without interruption to the seaward-facing coasts of the Arctic islands. These islands are joined and not divided by the waters between them. The policy of this government is to maintain the natural unity of the Canadian Arctic archipelago, and to preserve Canada's sovereignty over the land, sea and ice undiminished and undivided . This full sovereignty is vital to Canada's security. And is vital even to Canada's nationhood" (Clark 1985 House of Common).

Prompted by the voyage of the *Polar Sea*, on September 10, 1985, Joe Clark, Canada's Minister of External Affairs announced in the House of Commons several measures to reinforce Canada's sovereignty over the waters in the Canadian Arctic Archipelago. He proposed six measures:

Establishing a straight baseline around the Arctic Archipelago to define the outer limit of Canada's historical internal waters from January 1<sup>st</sup> 1986,;

The adoption of Canadian Laws Offshore Application Act, designed to extend the application of Canadian civil and criminal law to offshore areas in the Arctic elsewhere.

Talk to the US, “on the basis of full respect for Canadian sovereignty”.

An increase in surveillance of flights over the Arctic waters and immediate planning for Canadian naval activity in the Eastern Arctic in 1986.

The immediate withdrawal of the reservation to Canada’s 1929 acceptance of the compulsory jurisdiction of the ICJ (which barred the court from hearing the disputes that might arise concerning the jurisdiction exercised by Canada for the prevention of pollution in the Arctic waters) and

The construction of a Polar Class 8 icebreaker (Howson 1987) for protecting the Arctic water..

In the conclusion of the speech Clark expressed to meet any challenge regarding this in the ICJ:

We challenge no established rights, for none have been established except by Canada. We set no precedent for other areas compared with the Canadian Arctic archipelago. We are confident in our position. We believe in the rule of law in international relations. We shall act in accordance with our confidence and belief...We are prepared to uphold our position in [the World Court] if necessary and to have it freely and fully judged there (Clark 1985. House of Commons).

The Canadian government enclosed the waters by drawing baseline around the CAA, which came to in effect from January 1, 1986. The system contains both straight baselines (joining designated base points on the mainland) and segments of the normal baseline<sup>38</sup> for measuring the breadth of the territorial sea from the low-water line along the coast. The baselines, drawn around the outer perimeter of the Canadian Arctic archipelago, enclose the archipelagic waters as internal and delimit the breadth of the territorial sea and other maritime zones (Killas 1987). Ottawa justified its step on the basis of the judgement given by the ICJ in the United Kingdom v. Norway. In the *Anglo-Norwegian Fisheries*, the ICJ noted that the “delimitation of sea areas cannot be dependent merely upon the will of the coastal state as expressed in its municipal law” (Johnson 1952). The Fisheries Case was brought before the Court by the United Kingdom of Great Britain and Northern Ireland against Norway. “By a

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<sup>38</sup> Normally, a sea baseline follows the low-water line of a coastal state. When the coast is deeply indented, has fringing islands or is highly unstable, straight baselines may be used.

Decree of July 12, 1935, the Norwegian government had, in the northern part of the country (north of the Arctic Circle) delimited the way in which the fisheries were reserved for its own nationals. The United Kingdom asked the Court to state whether this delimitation was not contrary to international law. In its judgement the Court found that neither the method employed for the delimitation by the Decree, nor the lines themselves fixed by the said Decree, are contrary to international law” (ICJ 1951).

In this decision the ICJ considered “that the geographical features of the Norwegian coastline which has distinctive configuration. Its length as the crowflies exceeds 1500 kilometres. Mountainous along its whole length, very broken by fjords and bays, dotted with countless islands, islets and reefs (certain of which form a continuous archipelago known as the *skjaergaard*, “rock rampart”), the coast does not constitute, as it does in practically all other countries in the world, a clear dividing line between land and sea. The land configuration stretches out into the sea and what really constitutes the Norwegian coastline is the outer line of the land formations viewed as a whole. Along the coastal zone are situated shallow banks which are very rich in fish. These have been exploited from time immemorial by the inhabitants of the mainland and of the islands: they derive their livelihood essentially from such fishing.” In earlier period the British fishermen had made incursions into the waters near the Norwegian coast which has hampered the economic interests of the local fishermen. The King of Norway took action against them. This prohibition remained effective for three centuries yet in 1906, British vessels appeared again. These were trawlers equipped with improved and powerful gear. The local fishermen became troubled, and the government of Norway took measures with a view to specifying the limits within which fishing was prohibited to foreigners. On July 12, 1935 the Norwegian Government delimited the Norwegian fisheries zone by Decree. Negotiations had been entered into by the two Governments; they were pursued after the Decree was enacted, but without success. A considerable number of British trawlers were arrested and condemned in 1948 and 1949. It was then that the United Kingdom Government instituted proceedings before the Court (Evensen 1952).

Following the *Anglo-Norwegian Fisheries* decision, the requirements for straight baselines were incorporated into the 1958 Geneva and 1982 Montego Bay Conventions on the law of the sea. The baseline around the archipelago was enforced from January 1, 1986 after publication in the Canada Gazette had two related results.

First was that Canada's twelve nautical miles territorial sea would be measured completely outside the archipelago, using the straight baseline at starting point. Second was that all the enclosed waters would become internal in nature but in absence of any prior historic title to those waters, the right of innocent passage exists according to Article 8(2) of UNCLOS III.<sup>39</sup>

### **Creation of Nunavut and its Arctic Dimension**

The government Canada put forward the occupancy of the Inuit over the waters of the NWP to make them historical. Pharand refers to Milton Freeman's argument that "the Inuit have hunted and trapped over a vast majority of the NWP, including the western entrances of Amundsen Gulf and Prince of Wales Strait and the eastern gateways of Barrow Strait and Lancaster Sound for their livelihood." The official records of the Northwest Territories government revealed that ice use is vital to Inuit lifestyles in many ways. The Inuit relied on marine-related harvests for their income, either in cash or as a non-monetary equivalent and diet (Zawaag and Pharand 1983). The Canadian claim that Arctic waters are historical can be sustained only after the cession of the title by the Inuit to the Government of Canada. Pharand defines cession thus:

Cession, the doctrine whereby a state would claim sovereignty over territory as a result of a title transfer from a previous sovereign", might arguably be applicable to Arctic ice-covered areas through the following reasoning. Inuit have exercised dominion and control over Arctic ice for thousands of years. Since ice to the Inuit has been like land to Europeans, Inuit may pass a sovereign international title to ice-covered waters to a national government

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<sup>39</sup> Under Article 19 of the UNCLOS III it is defined "Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State". Such passage shall take place in conformity with this Convention and with other rules of international law. "Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities: (a) any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations; (b) any exercise or practice with weapons of any kind; (c) any act aimed at collecting information to the prejudice of the defence or security of the coastal State; (d) any act of propaganda aimed at affecting the defence or security of the coastal State; (e) the launching, landing or taking on board of any aircraft; (f) the launching, landing or taking on board of any military device (g) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State; (h) any act of wilful and serious pollution contrary to this Convention; (i) any fishing activities; (j) the carrying out of research or survey activities; (k) any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State; (l) any other activity not having a direct bearing on passage" (UNCLOS III 1982).

through a maritime claims settlement agreement (Zawaag and Pharand 1983). The Arctic remained the settlement of the Inuit and they were using the land and resources in this region since times immemorial. In 1973 the Canadian Government decided for the recommencement of modern treaty negotiations with indigenous peoples whose right to land had not been extinguished by former treaties or superseded by law. The Inuit of the Northwest Territories were among those. But before the commencing negotiations, the government of Canada asked for the data confirming whether the land and resources were used by the Inuit? If yes till what was extent, intensity and frequency of land and resource were used in order to define the area subject to negotiation. The Inuit Land Use and Occupancy Project<sup>40</sup> in its three volumes report published in 1976 by the Minister of Supply and Services, Canada provided this properly. This study was completed by conducting the interviews of more than 80 per cent of Inuit hunters definitively illustrated the use and occupancy by Inuit in the Northwest Territories and a small portion of northern Yukon of 3.8 million square kilometres of land and ocean, used interchangeably. For the Inuit, sea ice served as a platform which they used to travel between communities and has favoured hunting sites, often at the floe edge.” The 1976 Inuit Land Use and Occupancy Project demonstrated Inuit use and occupancy of Lancaster Sound and Barrow Strait or the eastern end of the Northwest Passage – “the very area characterised by the United States and some European countries as an international strait (Map 4). In response to the *Polar Sea* voyage, Canada drew straight baselines from the outer edge of the coast and fringing islands enclosing the Arctic Archipelago and declared the waters internal.” The findings of the ILUOP had made ground to support for this legal move by providing base Canada to claim the historic title over these icy waters.

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<sup>40</sup> The Inuit Land Use and Occupancy Project (ILUOP) presented a detailed and comprehensive and variable basis for the claim that the Inuit used and occupied an area excess of 2.8 million square kilometres at the time of the ILUOP in the Northwest Territories and northeast Yukon. The report was commissioned by the national Inuit Organization, Inuit Taperisat of Canada, in 1973 pursuant to securing a land claim agreement in respect to hunting, trapping, and fishing territories used and occupied by the Inuit in and offshore the then-Northwest Territories (NWT) and the northeast Yukon. The ILUOP report was used during negotiations leading to the Inuvialuit Final Agreement in 1984 (Canada 1984) and the Nunavut Land Claim Agreement (NCLA) in 1993 (Canada 1993) and provided support for Canada’s assertion of sovereignty over all navigable waterways within the Canadian Arctic Archipelago.

After more than 20 years of negotiation, the Inuit of Nunavut and the government of Canada ratified in 1993 the NCLA – a modern treaty within the meaning of Section 35 of the Constitution Act, 1982. Promises made in this agreement are assured in Canada’s constitution and enforceable in the courts. Through the agreement the “Inuit ceded, released and surrendered to the Crown their Aboriginal title, rights, claims and interests to lands and waters within Canada and received in return a wide range of rights applicable throughout the Nunavut Settlement Area, including wildlife harvesting and representation in institutions of public government to manage and regulate the use of land, water, oceans, wildlife and natural resources”. The map reveals that to sail through the NWP it is compulsory to cross Nunavut which has been created as a territory with aboriginal identity and its major parts consist of historical waters.

The Government of Nunavut was established in 1999 as a result of a promise in the NCLA. The parties agreed to exchange Aboriginal title for defined rights and benefits “in recognition of the contributions of Inuit to Canada’s history, identity and sovereignty in the Arctic”. Article 15 dealing with marine areas adds: “Canada’s sovereignty over the waters of the Arctic Archipelago is supported by Inuit use and occupancy”. Out of our comprehensive land claim agreements were negotiated between Inuit and the Canadian Government covering northern Quebec (1975), the Beaufort Sea region (1984), Nunavut (1993) and northern Labrador (2004). All of them support Canada’s Arctic sovereignty in general, but only the NCLA explicitly addresses Arctic sovereignty. The functioning of this agreement is an ongoing expression of a negotiated partnership between the government of Canada and the Inuit of Nunavut and could be an significant factor of a tactic to assert, establish and articulate Canada’s Arctic sovereignty (Fenge 2008). Map of Nunavut has been shown in Chapter I Map 2 on page no 10-11.

The economic and jurisdictional developments resulting from the establishment of *Nunavut* enhances Canada’s claim to the Arctic water internationally. Sovereignty is held important if it is sought to ensure the welfare of people who inhabit a region. The international community has placed an optimistic responsibility on Canada to protect the economic base of the Inuit population. Inuit hunting is recognised as a necessary concomitant requiring jurisdictional power over international shipping in the Arctic. Canadian sovereignty may be regarded as a prerequisite for the maintenance of the

Inuit economy. The application of Canadian law through an Inuit government to an icy and water region that its people use would be a valid ground to form the claim of occupation. Sovereignty would be enhanced in this manner if the federal government were to transfer some jurisdiction over offshore matters to the region of Nunavut. Nunavut is not an independent territory. The Inuit of Canada are largely dependent upon the Arctic ice for their food and livelihood. The regions where the sea ice was used by Inuit has been shown in the Map 6. The areas where the Inuit were using the Arctic are shown in the Map attached. The indisputable affiliation of Nunavut with Canada will not only provide the autonomy required for socio-cultural renewal in the north and credibility for a sovereignty claim within the international community but also its economic protection and jurisdictional arrangements will further Canada's claim at law (Perry 1996).

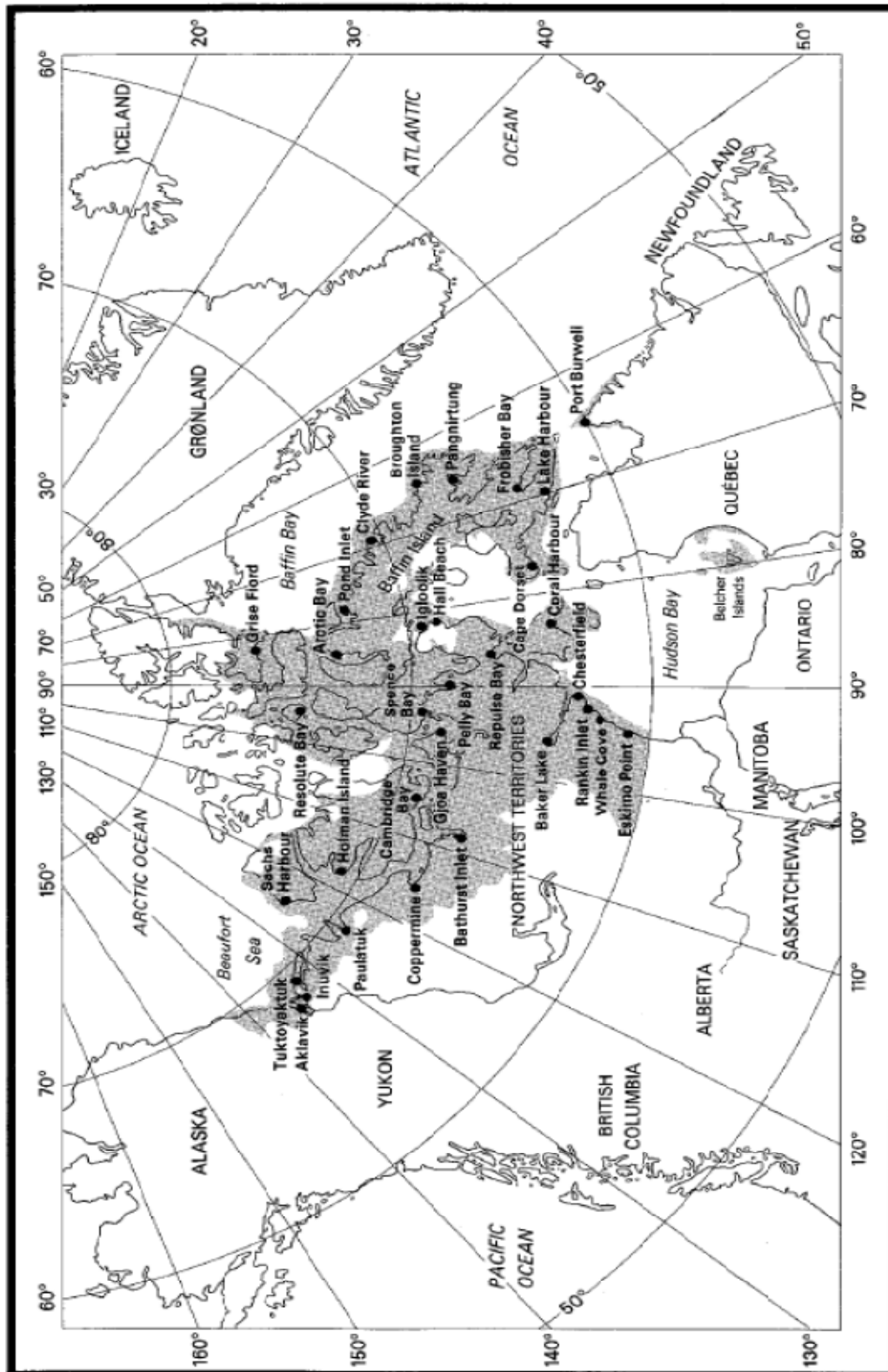
To obtain historic title over the archipelagic waters, Canada required to prove that the Inuit hold the historic title over the Arctic waters before the advent of the Europeans, which they transferred to Canada. To succeed with this argument, Canada would have to persuade other countries – or a court or a tribunal – that-

(1) Sea ice had served as base for the earning and producing food like land for the Inuit; (2) Under the provisions of international law, indigenous people are eligible for both acquiring and reassigning sovereign rights over the land and the waters; and (3) The indigenous rights holders ceded their existing rights, to Canadian government.

The first and third points have been proved in a petition which the Inuit from Canada and Alaska filed with the Inter-American Commission on Human Rights for the protection of their shelters, environment and livelihood including the cultural rights (Cloutier 2005). This petition fulfilled the first condition. The United Nations Declaration Rights for Indigenous Peoples proved the second condition.

The third condition fulfilled by the NLCA affirms the intent of the Inuit to transfer to Canada any rights they might have had over the sea-ice under international law (Byers and Bakers 2009). The Map 8 shows the those areas where Inuit were doing hunting. This clearly shows that the archipelagic waters were subject of occupancy.

Map 8 Inuit Settlement and Ice Occupancy in the Canadian Arctic



Map 2 Extent of the Sea Ice Use by the Inuit

Prepared for the author by the Canadian Hydrographic Service, Dept. of Fisheries and Oceans, Ottawa.  
 Source: Report on Inuit Land Use and Occupancy Project, Vol. 3, at p. 153 (1976).



## Building Defence Capabilities

Canada has never been a military superpower. In the beginning, Canada was only patrolling the Arctic territories to administer the Arctic. It was World War II when Canada apprehended aggression from the northern frontier and to protect its northern region, Canada collaborated with the US, whereas the US needed the Canadian Arctic for deploying its defence infrastructure its strategic purposes (Bloomfield 1971). Canada always perceived the military deployment in the Canadian North as a means of asserting sovereignty. The defence build up in the Canadian Arctic took place in three phases; the first was during World War II; the second was the period was between the *Manhattan* voyage to the *Polar Sea* Voyage and the third after 1987.

Prior to World War II, the RCMP was only source of Canadian presence in the northern waters. Throughout the World War II period Canada collaborated with the United States for continental security, involving Arctic projects such as the Northwest Staging Route, Crimson Route and Alaskan-Canadian (ALCAN) Highway (Teepel 2010). In the post-war period the defence was focussed on continental security, mainly air defence, for the previously ignored Arctic and Arctic Ocean (Meisel 1999). During World War II, the RCN developed antisubmarine warfare (ASW) and convoy escort expertise, roles that the Canadians required to continue and develop in the post-war era. But the need to supply and resupply the JAWS<sup>41</sup> and DEW<sup>42</sup> Line, and the interest of the United States Navy (USN) in Arctic transits and research, made mandatory for Canada to send its navy into the Arctic waters in the late 1940s (Meisel 2009). The Canadian Arctic waters have been crucial for the United States to deter the Soviet attack due to its strategic location This situation provided two alternatives two alternatives to Canada; first; allow the US forces into Canadian waters and accept the inevitable repercussion for Canadian sovereignty and secondly, to undertake the defence itself and bear most or all the cost occurred in defending its territory. The Canadian government opted for a midway. Since 1943 the government

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<sup>41</sup> An agreement between Canada and the USA was reached in February 1947 to establish five Arctic Weather Stations staffed by Canadian and American personnel. The representative institutions were the Meteorological Service of Canada and the United States Weather Bureau.”

<sup>42</sup> In December 1954, construction began for the Distant Early Warning (DEW) Line, an integrated chain of 63 radar and communication centres stretching 3000 miles from Western Alaska across the Canadian Arctic to Greenland constructed in 1954. This predominantly-American defence project, designed to detect Russian bomber incursions into North American airspace, was the largest technological undertaking the Canadian Arctic.

of Canada had made it a point to pay and operate in as much as possible for building the defence infrastructure in Canadian territory. Canada shared the construction cost of the Radar lines and insisted on the participation of Canadian personnel in most operations in Canada and deployed an interceptor (Rossignol 1988). In 1947, Canada and the United States established an elaborate system for continental defence, which involved the installation of a variety of radar, weather, and other defence related stations in unoccupied Canadian territory north of 60 degrees latitude against the Soviet threat. Since the major spending was done by the US it was understood that the United States would exercise its dominance over the Arctic issues (Lennox 2012). In 1948 the Canadian Cabinet set in motion the first post-war naval building programme and proposed to construct an icebreaker to the Royal Canadian Navy (RCN) (Hennessy 1996). The first Canadian icebreaker capable of working in the Arctic was the HMCS *Labrador* which performed wide-ranging surveys and other research work in the mid 1950s; it became the first icebreaker to navigate the Northwest Passage (Department of Indian and Northern Affairs Canada, 1989). Canadian officials became concerned with maintaining Canada's sovereign control over the region. These concerns were finally brought to the cabinet table on 21 January 1953, by the Secretary of State for External Affairs, Lester B. Pearson (Lennox 2012). In a memo addressed for the Cabinet on that day, Pearson wrote:

In the circumstances, it seems desirable to examine the extent of Canadian and US activity in the Arctic, with particular relationship to the maintenance of Canadian sovereignty, and to consider whether, and in what fields, further Canadian activity is justified to serve Canadian interests of a political, administrative, scientific or military nature (Document on External Relation 1953).

Though the Canadians were appeared to be concerned about their sovereignty, minimum effort was reflected in the Canadian defence to protect its sovereignty yet the Defence White Paper of 1964 remained silent in adding more efforts in increasing the defence capabilities in the Arctic. The Defence White paper of 1964 was the first Defence White Paper of the Government of Canada after World War II which indicated several changes in Canada's forces like increasing the defence budget, enhancing the role of the Canadian air force and the Canadian navy and raised concerns about the increasing threat in the northern frontier from the former Soviet Union related to security and concentrated on continental air defence (Defence White Paper Canada 1964).

## **Building Defence Capacity after the *Manhattan* and *Polar Sea* Voyages**

The requirement for an independent defence policy free from the foreign policy of Canada was expressed in the White Paper 1971 issued in the Pierre Elliot Trudeau period after making the AWPPA in 1970; no significant step was taken except the establishment of the Northern Canada Vessel Traffic Services Zone Regulations (NORDREG) – an Arctic marine traffic system to safeguard the Arctic marine environment (Raspotnik 2011).

The sovereignty over the Arctic became a major concern in the 1980s due to two reasons; first the refusal of the United States to acknowledge the sovereignty over the Waters in the NWP and the second was the deployment of nuclear submarines in the water of CAA by both the United States and Russia. Keeping these in mind Brian Mulroney on 5 June 1987 unveiled the Defence White Paper of Canada “Challenges and Commitment” focused to rejuvenate its military capacity in the Arctic region as stated by Clark (Lajeunesse 2008) and acknowledged that Canadian forces were being neglected and unfunded and were left with obsolete equipment and fleets (Defence White Paper 1987). This was an effort or the first step to nationalise the Canadian defence capacity and promised to bridge the gap between defence commitment and defence capacity; it advocated a considerable increase in defence spending (Wu and Fetterly 1990; Michaud 2007). Canada used to spend only 2 per cent of the Gross National Product (GNP) on defence which was insufficient. This Defence White Paper target to spend the 450 million for constructing of a icebreaker (Defence Ministry White Paper 1987). It established an administrative region for the Canadian Coast Guard in the Arctic region; determined to maintain the nation’s first quasi permanent ice research station, directed underwater submarines and increased the number of “show flag” from 16 to 20 per year. In June 1987, it was decided that it w \$10 billion over twenty years would be spend to buy a nuclear-powered submarine to enforce its claim to the passage (Howson 1987).

But the announcement of the federal budget in April 1989 revoked the defence plans stated in the white paper and it gave major setback to the Arctic defence (Wu Fetterly 1990).The government announced its intentions to save nearly \$3 billion between 1989 and 1994 through cuts on planned spending; this again gave a major setback to the Arctic defence programme. The proposal to purchase the nuclear-powered submarine and new long range Aurora aircraft came to an end due to government

budget cuts in 1990. After this, the Sea King replacement was cancelled in 1993 and in 1996 the proposed fixed underwater surveillance system was cancelled, which would have placed acoustic sensors at three choke points of the NWP. The Oberon submarine fleet retired in 2000, leaving Canada's submarine fleet very tenuous (Meisel 1999; Tasseron 2003).

The Canadian Government White Paper on Defence 1194 gave a major setback to the Department of National Defence. The pressure of the government to bring the deficit under control led reductions in the appointment of defence personnel, purchase of equipments and in building the infrastructure (Defence White Paper 1994).

In the 2005 elections, the Arctic sovereignty was an election agenda of the conservative leader Stephen Harper. His promise included to add three heavy icebreakers, construct a deep water port on Baffin Island, deploy underwater sensors and trained paramilitary troops for patrolling the Arctic region. After becoming the Prime Minister he extended the function of the bilateral United States and Canada North American Aerospace Defense Command (NORAD) for the surveillance over maritime domain. Harper announced for constructing eight military vessels purposely designed operate in the Arctic waters called as the "Arctic Offshore Patrol Ships (AOPS)" – a purchase the Conservatives called the "the most effective way to assert Canada's authority, independence and sovereignty" in the northern waters (Chase 2014).

In August 2007, Harper announced to improve existing capabilities in the Arctic region to strengthen the surveillance and defend the Arctic.

Some of the important promises were "(i) construction of six to eight ice capable and armed naval vessels known as Arctic Offshore Patrol Ships,(ii) construction of large and multipurpose icebreaker for Canadian Coastguard, (iii) improvement and expansion of the Canadian rangers, (iv) modernising the surveillance capacity in the Arctic, (v) increasing and expanding military exercise in the Arctic, (vi) improving the Capacity of the Canadian Air Force to operate in the Arctic region" (Huebert 2014).He also announced for constructing a deepwater dock at at Nanisivik, on northern Baffin Island, that would be refurbished to provide an enhanced refuelling facility for Canadian naval and Coast Guard vessels close to the Northwest Passage (Byers and Baker 2009) and would improve the infrastructure of the Arctic. The poor

infrastructure has resulted in high living costs in the Arctic region because it is only connected through airways (Chase 2014). But in face of the global economic crisis that began in 2008, the government has slowed the process of fulfilling most of its commitments (Huebert 2014).

The Harper government improved the number of rangers (Huebert 2014), equipped with snowmobiles rifles and though capable to fulfil essential search-and-rescue and surveillance function with the limited range yet not trained to forcefully board ocean-going vessels. The search and rescue operation capacity of Canada is inefficient against requirement of the Arctic region and to enforce sovereignty.

It has only four old, slow Twin Otter aircraft based in Yellowknife. The Hercules cargo planes based in Trenton, Ontario, used for most of the serious search-and-rescues, take six hours to reach the NWP and, once there, can only drop search-and-rescue technicians (SAR-techs), rather than hoist anyone on board. None of the Canadian Forces' Cormorant search-and-rescue helicopters are capable in performing search and rescue operation. With the increase in shipping there is chances of an increased number of accidents but due to isolated locations and harsh weather the SAR is a challenging task in the Canadian Arctic (Georebeur 2014). 'Search and rescue' is required in case of aeroplane accidents, some of which could require large-scale deployment for an example in 1991, a Canadian Forces Hercules crashed twelve miles from a Canadian Forces Station Alert on Ellesmere Island, killing five of the eighteen passengers and crew. The thirteen survivors waited two days for a search and rescue team from southern Canada could reach them (Byers and Baker 2009). The Defence White Paper 2008 of the Canadian Government showed an improved attitude towards Arctic security; yet, some factors led to the renaissance of Canadian Arctic security:

The attacks of September 11, 2001 alarmed Canadian government to think towards the security challenges emerging from terrorism in the Arctic region.

The impacts of climate change would increase the threats making it more accessible to foreigners. The international incidents regarding emerging security challenges

Both the Martin Liberal Government and the Harper Conservative Government showed enthusiasm in improving defence capacity for Canadian Arctic sovereignty and security. Martin's support was stated in the Canadian International Policy

Statement released in the spring of 2005; in which the government accepted that its flaw and negligence towards the Canadian Arctic security, and now needed to modify it in face of the emerging changes.

Though in the Defence White Paper of 2008, Prime Minister Harper announced to allocate the biggest budget ever for investment in the Arctic region, his announcement has been criticized to be mere rhetoric (Pulloufe 2014), because it failed to colour those rosy pictures created in the Defence White Paper 2008 and it did nothing but just develop closer ties with the United States. The construction of AOPS was delayed; the proposed refuelling site at Nanisivik has not been completed (Hueber 2014). Apart from the defence capacity, the poor infrastructure in the Canadian Arctic territory is also a major challenge in patrolling and surveillance.

The capacity of the RCN to conduct surveillance in ice-covered waters is not advanced enough difficult to detect underwater threats and to respond to these. Canada's Victoria-class submarines can conduct the surveillance of Arctic waters but only during the summer months and only up to the ice edge. The RCN is still waiting to launch Canada's Arctic Offshore Patrol Ships (AOPS) which will be able to conduct sustained operations throughout the Arctic during the navigable season. These ships are to provide situational awareness throughout Canada's Exclusive EEZ in the Arctic. But in winter's frozen season, these ships have to operate with the assistance of the Canadian Coast Guard ice breaker. The Canadian Coast Guard itself lacked fleets. Canada's planned Polar class icebreaker is long awaited and is far from being built (Sloan 2017).

The Canadian force possesses Aurora long-range patrol aircraft which were bought in the 1980s for ASW operations; they are being modernised and upgraded structurally to extend their life to about 2030, and technologically with advanced missions systems and sensors. As well, the modernised Halifax-class frigates have passive and active sonars<sup>43</sup> and will soon be equipped with the new Cyclone maritime helicopter, containing its own advanced sonar, and Canada's four diesel-electric submarines are

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<sup>43</sup> The sonar is sensing device used for locating underwater and submerged objects or to measure the distances underwater. These are of two kinds – one is passive sonar and the other is active sonar. The passive sonar just receives the sound waves and detects the location of objects by sound waves and vibrations. The active sonar apart from receiving it also transmits sound to water to detect the objects. Since the passive sonar does not transmits any wave in the water it has no harmful impact on the environment but the active sonar is harmful for many animals like whales.

being upgraded with “the most advanced sonar in the world.” But there are some existing and pending gaps. In addition to the assets mentioned above, destroyers are central to ASW and until the Canadian Surface Combatant arrives Canada will not have that capability. When conducting ASW operations, Canada is dependent on its allies for refuelling and supply until such time as the new Joint Support Ship arrives. A further upgrade to the Halifax class to include an advanced sonar suite, identified in the 2016 Defence Acquisition Guide, has not been funded. And, most critically, the current in-service submarine upgrade will only keep those boats operational to about 2027 (ibid 16-17).

The current defence capacity and equipment of Canada are quite insufficient to defend Canada’s longest coastline in the Arctic region and Canada needs the American support to defend its northern boundary which is a vulnerable target for invasion by national actors and the non-state actors. The sovereignty claim requires proper strength to defend. The Canadian defence is suffering from all kinds of shortages like infrastructure, manpower and equipment, which makes it dependent on the United States.

### **Summary and Conclusion**

Canada received its Arctic territory from the United Kingdom by transfer and took every possible necessary step to vindicate its sovereignty over the islands of the CAA before international law. The Canadian sovereignty over the islands is well established and unquestionable except the Hans Island; but, ambiguity remains over the status of the waters in the CAA. Canada did not make any claim over these. Despite several debates that were initiated in the Canadian Parliament to declare the status of the water around the islands of the CAA, nothing came out as legislation.

During World War II Canada perceived a threat from the German and Japanese forces during and collaborated with the United States in building defence infrastructures like the DEW line and JAWS on its Arctic territories. During the Cold War, Canada was also concerned about a missile attack in its northern frontier and the new threat was the former USSR which was a nuclear superpower. To deter any possible attack it built up close ties with the United States and at that time sovereignty was not an issue. With the passage of time Canada felt that America with its military capacity was hegemonising the Arctic defence and had started using the waters of the CAA for

deploying the nuclear submarines. Then it requested the American government to seek permission and said that these waters are Canadian internal waters.

In 1969 the American oil super tanker *Manhattan* sailed through the NWP and also the United States claimed that the waters in the CAA are international straits. The Canadian public raised concern for the status of the waters in the Canadian Arctic and the capacity to exercise sovereignty over the Arctic Waters was questioned in the media and the public. Though the Canadian Ice Breaker was also supporting this voyage yet a serious concern emerged about Canadian sovereignty. The Canadian Prime Minister PE Trudeau took three steps: (i) he enacted a new legislation AWPPA in 1970 which imposed certain regulations on foreign vessels entering its coastal area till 100 nautical miles in the Arctic. Canada faced the reactions of the United States and the diplomatic relations between the two countries worsened (ii) Canada extended its limit of territorial sea from three nautical miles to twelve nautical miles and; (iii) Canada refuse to accept the decisions of ICJ if dispute emerged on the matter of AWPPA (Byers and Lalonde 2009) and disputes arising out or concerning jurisdiction or rights claimed exercised by the Canada in respect of the conservation or exploitation of the living resources of the sea or in respect of the prevention or control of pollution or contamination of the marine environment in marine areas adjacent to the coast of Canada (Mac Dorman 1986; Rothwell 1996). The AWPPA 1970 was functional in nature and it did not declared sovereignty over the waters in the CAA. Canada's functional approach was well-crafted diplomacy which aimed to prevent direct legal confrontation with the United States and attained rights regarding controlling the passage through the Arctic waters.

In 1985, the sailing of the *Polar Sea* USCG made Canada declare its sovereignty over the Arctic waters by drawing a straight baseline and making it historical. To sustain its historical title over the Arctic waters, Canada also used the Inuit occupancy over these waters, who are living in the Canadian Arctic region and depend upon the frozen waters of the Arctic for their food and livelihood, which became instrumental in sustaining its historical claim over the Arctic. Canada created a new territory Nunavut in 1999 where the Inuit are in majority in the territorial government.

Canada tried to build up its military capacity in the Canadian Arctic to protect its sovereignty. The threat over the Canadian sovereignty emerged during World War II



when it apprehended the threat of Japanese and German forces and developed ASW to protect its northern sovereignty with the assistance of the United States. Post-World War II the sovereignty threat was persisting because of the Cold War. Both the Cold War leaders the United States and Russia are geographically close neighbours. All other three Arctic nations including Canada are in the American camp. Being the American ally, Canada sees Russia as its Arctic adversary.

To deter the perceived Russian threat Canada collaborated with the United States but this collaboration made Canada compromise its sovereignty over the waters in the CAA. Keeping this in mind Canada tried to build up its defence capability to be self-dependent in defence of the Arctic. Canada's all four defence policies were in the post-World War period – 1964, 1987, 1994 and 2008. It has made promises to improve the Canadian Arctic defence. Despite all the efforts and promises the Canadian defence policy is insufficient and inefficient i.e. lack of fleets and equipments, aging equipments, outdated technology, poor SAR arrangement.

Canada is a weak military power and is geographically and politically positioned between two opposite superpowers; it has its own complex challenge to defend its security and sovereignty interests in the Arctic. Canada has been maintaining very delicate diplomatic relations with these two as the United States as its closest neighbour is not ready to acknowledge its sovereignty and Russia is on the opposite side pertaining to the military relationship and both are indulged in military activities in the Canadian Arctic. The coming chapter will discuss Canada's relations with these two superpower neighbours over the Arctic issue.

## CHAPTER: IV

### CANADA'S RELATIONS WITH THE UNITED STATES AND RUSSIA OVER THE ARCTIC

The previous Chapter discussed that Canada has two major challenges in its Arctic – one regarding sovereignty and the other regarding security. Most importantly, Canada perceived these two threats from not out of the Arctic region but from its own close and powerful neighbours. The US refused to recognise Canada's sovereignty over its Arctic territory but in 1940 when the United States signed the Ogdensburg Agreement which recognised the Canadian sovereignty over the land but it has never acknowledged Canada's sovereignty over the waters in the CAA. The two countries share the longest international border; most important trading partner and they work together militarily, both multilaterally through the North Atlantic Treaty Organization (NATO) and bilaterally through the North American Aerospace Defence Command (NORAD). Despite their interdependency in the Arctic the sovereignty claim of Canada has proven a major irritant in this bilateral relationship. This paradox has been quoted in the words of David Lenaric and Robert Reford, "what pulls Canadian and American together in the Arctic splits them apart as well."

David Lenaric and Robert Reford comment on the Canadian position of Canada in relation with the US, "situated as it is between two superpowers, the Arctic interests of Canada are necessarily different from those of its southern neighbour. Owing to the expanding strategic prominence of the region, the conundrum it faces involves how to fulfil its alliance obligations to the US while at the same time putting some space between itself and certain American Arctic military schemes, as well as instituting measures to buttress its effective occupancy in the Canadian Arctic territory" (1989: 165).

This chapter which has five sections discusses: (i) Canada-US relations over the Arctic and the episodes of cooperation and divergence in the Arctic region (ii) the legal status of the Canadian legislations and the American claims over the Arctic water, (iii) reconciliation in the Canada-US relationship in the Arctic, (iv) Russian reaction over Canada's sovereignty claim over the Arctic as both the countries have common interests in the Arctic region regarding their respective sovereignty claim and how their sovereignty claims shape the Canada-Russia relationship, (v) the summary of all the four sections and conclusion.

## Canada United States Co- operation in the Arctic

Canada and the US have collaborated in the Arctic for protecting themselves from northern attacks. They are also working together in science and technology, environmental protection and defence infrastructure-building in the Arctic region. The US needed the Canadian Arctic for deployment of defence infrastructure to deter any attack from the north which is beyond Canadian capacity. The United States which has never recognised the Canadian sovereignty over the Arctic Islands which Canada claimed as Canadian territory( Rothwell 1996), offered to establish a defence infrastructure on the Islands the Canadian Arctic during the World War II (Meisel 2009). The reason was that the “German forces were proving to be a threat to North American continent and that the United States could not defend itself effectively against a major attack based on Canadian soil. To the Canadians it was obvious that their meagre resources of population and military equipment were incapable of protecting the vast reaches of their national domain. The past experience<sup>44</sup> also made Canada to collaboration in defence was as inevitable as it was imperative” (Keenleyside 1960). The unique bilateral cooperation was initiated by the US President Roosevelt and the Canadian Prime Minister King Mackenzie when both leaders met on 17<sup>th</sup> August 1940 to decide the measures to protect the Western Hemisphere against the dangers threatening from the German forces. They met place of meeting was siding near the station of Ogdensburg, New York. Both the leaders agreed to sign a cooperative arrangement over the defence of the US and Canada. At the end of their meeting, on the 18th of August, 1940, the President and the Prime Minister issued to their peoples the following statement of policy:

The Prime Minister and the President have discussed the mutual problems of defence in relation to the safety of Canada and the United States. It has been agreed that a Permanent Joint Board on Defense shall be set up at once by the two countries. This Permanent Joint Board on Defense shall commence immediate studies relating to sea, land and air problems, including personnel and material. It will consider in the broad sense the defence of the north half of the Western Hemisphere. The Permanent Joint Board on Defense will consist of four or five members from each country, most of them from the services. It will meet shortly (Keenleyside 1960).

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<sup>44</sup> “Canada became a dominion of the British Empire in 1867 but London continued to have the final say on over most of Canada’s foreign and defence policy until the passage of the Westminster Act in 1931. This meant that the British government declared war on behalf of Canada in 1914 and the Empire’s war was Canada’s war. Canada sent 500,000 (6% of the population) troops to fight in the First World War and lost 60,000, an effort and a price out of proportion to its size.”

This led the establishment of a Permanent Joint Board of Defense (PJBD), the oldest bi-national defence forum, for discussing and making defence policy issues related to continental defence and security which is still active today as it was in 1940 (Dittman 1990; Stone and Solomon 2005). The Canada-US defence cooperation evolved in response was further strengthening to deter the new emerging security challenges. During the Cold War period both the countries collaborated to establish NORAD. After the terrorist attack of 11 September 2001 both the neighbouring nations commenced a series of new measures and to create new government organisations such as Public Safety Canada and the US Department of Homeland Security to protect North America from various asymmetric threats that could strike within their borders.

### **North American Aerospace Defense Command NORAD**

The Canada-US defence joint venture which born during World War II was strengthened in its consequences and especially once the former Soviet Union developed nuclear weapons and long range bombers in the late 1940s and early 1950s (Ritcher 2008). As a result, both the countries Canada and the United States established the North American Air Defence Command (NORAD), which is responsible for continental defence (Jockel 1987; Hollman 2000). The United States has in many respects supported Canada's defence as an invaluable ally in granting special allowances, tough efforts like bearing the burden of most of North American continental defence while still permitting Canada a voice in the process which has been underestimated (Burke 2018) while discussing the Canada-US relationship over the Arctic security. By providing for a joint approach, NORAD allowed Canada to maintain a measure of air sovereignty protection at a lower cost. Traditionally, Canada has paid roughly 10 per cent of NORAD's costs, reflecting the relative difference in population sizes and economies of the two countries. This was less than what would have been necessary for a purely national air defence system (Sokolsky 1986). Thus the United States as the wealthier partner provided the bulk of the NORAD's forces and financing, an arrangement that provided Canada with a measure of air sovereignty at a reduced financial cost (Burke 2018). NORAD's commander is directly and equally responsible to both the President of the United States and the Prime Minister of Canada. While it is no secret that Canada and the

United States enjoy a very close alliance, NORAD is truly unique in the world – no other two countries have an arrangement quite like it (Lavallee 2014). Its original purpose was primarily to detect and deter Soviet incursions into North American airspace with the goal of preventing a nuclear strike on the homeland which both Canada and the US perceived during the Cold War period (Rice 2017). NORAD has three missions for North America:

**Aerospace warning:** The aerospace warning mission target includes detecting threats in North American continent through the Air like missiles, air attacks. This is done with a global network of sensors. These include satellites and radars on the ground and in the air. Apart from this the NORAD also assists in detecting and monitoring the aircrafts suspected to be illegal and involved drug trafficking. It submitted this information with civilian law enforcement agencies which can check them.

**Aerospace control:** The control mission ensures the air sovereignty and air defence of the airspace of Canada and the United States. Fighter aircraft from the air forces of both countries are in position to act, if this became necessary.

**Maritime Warning:** The maritime warning mission was added to the NORAD Agreement in 2006 with an objective to provide the monitoring of Canadian and US waters. These include ocean, maritime areas and inland waterways. Like aerospace warning, it involves monitoring vessels transiting to the NORAD area of operations. This is done in conjunction with other agencies in both Canada and the US.

NORAD's main headquarters is located at Peterson Air Force Base, Colorado, and it has three regions:

- Continental US NORAD Region (CONR) headquartered is in Florida,
- Alaskan NORAD Region (ANR) headquartered at Elmendorf in Alaska,
- Canadian NORAD Region (CANR) headquartered in Winnipeg, Manitoba.

The defence of Canadian airspace, is the responsibility of CNR. Thus CNR mission covers a vast geographical area of responsibility that spreads between the Atlantic Ocean in the east to the Pacific Ocean in the west and Canada the US border in the south to the northernmost frontier of the Canadian Arctic Archipelagos in the north (Government of Canada 2018). NORAD remains the only example of a permanent bi-national command structure in a military organisation, with the Commander of NORAD reporting to two separate national chains of command: the Prime Minister of Canada and the President of the United States (Rice 2017).

In case of any possible challenge that emerges within the area of CANR, its mission would be supported by the CANR headquarters. This is co-located with 1 Canadian Air Division, can deploy CF-18 jet fighters from 3 Wing Bagotville, Quebec, and 4 Wing Cold Lake, Alberta, to counter the challenge.

The two air bases maintain CF-18s on alert for short-notice NORAD missions 24 hours a day, 365 days a year. Other Royal Canadian Air Force assets can also be deployed during the NORAD missions if it becomes necessary. For example, CC-150 Polaris air-to-air refuelling tanker aircraft stationed at 8 Wing in Trenton, Ontario, are often mobilised to refuel CF-18s engaged on long-range missions (Royal Canadian Air Force 2017). NORAD allows Canada and the US to “have the same tactics, techniques, and procedures,” to “train together,” to “fly the same way,” to “talk to each other on a daily basis,” and to “share information back and forth.” NORAD also allows Canada to share assets with the US to fill important capability gaps. For example, Canada does not own any Airborne Warning and Control System (AWACS) aircraft, but the US does. Under the NORAD arrangement, the US AWACS are used to extend the reach of land-based radar systems and the valuable information gathered by those aircraft is shared with Canada. Arrangements have also been made for US air refuelling aircraft to support Canadian CF-18 jet fighters when deployed on extended missions in the Arctic, thereby putting less pressure on the Royal Canadian Air Force’s (RCAF) small fleet of CC-150 Polaris air tankers (Parliament Canada 2015).

**Tri-Command** is a working agreement between the Canadian Joint Operations Command (CJOC), the United States Northern Command (USNORTHCOM), and NORAD for the defence of North American Continent. These three together have missions to balance each other, in the air and on the ground side by side to meeting their individual and common goals. They hold staff meetings and talks annually on operations, exercises and plans.

In late 2007, the Chief of the Defence Staff and his US counterpart, the Chairman of the Joint Chiefs of Staff, initiated investigating the future roles, missions and relationships for CJOC, NORAD and USNORTHCOM – collectively responsible for defending North America. This investigation resulted in the development of three keystone documents:

(i) The *Tri-Command Framework*, signed by the Commanders in September 2009, provides the direction including the mode of operating of all the three Commands,

their co-ordination and highlighted the essential relationships, and underscored command tasks concerning mutual support and teamwork. The Framework led to the recognition of sixteen specific action items, aimed at getting better cooperation, competence and interoperability among the three Commands. Most of the task has been completed.

(ii) The *Tri-Command Vision*, signed in March 2010 provided a strategic view on how the three Commands should cooperate and collaborate to achieve their missions and identified five strategic goals which are (i) strengthen the collective ability to detect, deter, defend against, and defeat threats to our nations;(ii) improve unity of effort and with respective mission partners;(iii) develop a culture of continuous collaboration and cooperation in planning, execution, training, information management, and innovation;(iv) enhance intelligence and information sharing and fusion to support mission accomplishment; and (v) to strengthen the collective ability to provide appropriate, timely and effective support to civil authorities, when requested (Government of Canada 2010).

(iii) *Tri-Command Strategy* was signed in December 2010 outlines a series of shared tasks intended to reinforce the working collaboration with defence and security partners, including such things as: “improving the ability to share classified information; completing the review of the Civil Assistance Plan; sharing best practices/lessons learned; and improving shared situational awareness in the five domains in which the military operates (land, sea, air, space, cyber” ( Government of Canada 2010). The Commander of CJOC, Lieutenant-General Stuart Beare, and the Commander of NORAD and USNORTHCOM, General Charles H. Jacoby, Jr. signed two documents regarding the Arctic defence during the 230th meeting of the Canada-U.S. PBBD in December 2012, Colorado Springs, Colorado.

(i)The *Tri Command Framework for Arctic Cooperation* acknowledges that defence issues do not drive Arctic affairs.

The Canadian and US militaries assist if other departments and agencies request to counter any challenge and threat occurs in the region. In that context, objective of the Framework is to promote enhanced military cooperation in the Arctic and identify specific areas of potential Tri-Command cooperation in the preparation for, and conduct of, safety, security and defence operations. It strengthens an already unique

and mature partnership with deep military bi-national coordination and cooperation ties. Areas of potential improved cooperation in the Arctic include planning, domain awareness, information-sharing, training and exercises, operations, capability development and science and technology.

Both the Commander of CJOC and the Commander of NORAD and USNORTHCOM have been assigned the areas of duty within the Arctic. The Commands have complementary missions and work closely together to meet individual and collective responsibilities including support of civilian authorities whenever needed.

(ii) *Tri-Command Training and Exercise Statement of Intent*, promotes the joint and combined readiness in support of security, safety, and defence missions through combined training and exercises and strengthening collaboration among the Commands.

Commodore Dan Mackeigan in a personal interview quoted that that US Canada NORAD is the unique example of military collaboration between US and Canada. Both countries have made compromise for this and this is a factor keeping them as invaluable ally in whatever may the rumour (27<sup>th</sup> March 2018).

**Environment:** Though Canada and the United States have their common interests in the Arctic environment, yet there has been no important bilateral agreement on the environmental issues like pollution control and protecting the Arctic flora and fauna, aBoth the countries were part of treaties like the 1911 treaty for protecting the fur seals in the Arctic, the 1973 treaty for conservation of the polar bears. Both the countries became the member of AEPS and Arctic Council and are together working on the environmental issues in the Arctic. One bilateral agreement in the Arctic relates to trans-boundary fishery management in the Gulf of Maine. Canada and the United States are working together on improving ocean management in the Gulf of Maine to prevent ecological damage, map the area and strengthen regional economies in both countries. These efforts are a key step towards enhancing scientific understanding and managing the area.

In the 1970s, Canada and the US extended their offshore jurisdictions to 200 nautical miles and the Gulf of Maine became the exclusive domain of the Canadian and US fisheries. The countries' jurisdictional claims overlapped in an approximately 30,000



km<sup>2</sup> area at the eastern end of Georges Bank and created disputes between these two neighbours. The disputed region was home to several commercial groundfish species, including cod, haddock and yellowtail flounder. Although the jurisdictional issue was resolved in October 1984, with the intervention of the ICJ by establishing the international boundary between the two countries in the Gulf of Maine yet the problem of managing Georges Bank's trans-boundary fisheries resources remained and cooperative management was virtually absent. Meanwhile, increased fishing efforts on both sides of the boundary throughout the 1980s led to the over-exploitation of the trans-boundary groundfish stocks. In response to this growing problem, Canada and the US developed a series of cooperative initiatives aimed at addressing trans-boundary fisheries issues (Pudden and Vanderzwaag 2007). The "Agreement between the Government of the United States and Canada on Fisheries Enforcement" was negotiated between the two countries in 1990, making it illegal for nationals of one nation to not respect the laws and regulations of the other nation if operating within the jurisdiction of that nation. The Agreement, which included consistency with the stricter Canadian penalties, was implemented through each country's national legislation, and included regular cooperation, sharing of monitoring, control, and surveillance information, and joint patrolling along the Hague Line (Fanning and Heimes 2010).<sup>45</sup> The outcome of the Agreement has been successful and the number of violations has decreased substantially since its introduction. Additionally, due to a shared commitment to rebuild the stocks in the Gulf of Maine, management efforts have facilitated a reduced number of vessels operating in areas close to the boundary line due to closures on the US side to scallop fishers. Even with a limited re-opening, there have been no reports of illegal fishing in the area (Puddin and Vaderwaag 2007).

### **Arctic and the Canada-US Divergence on the Law of Sea**

The United States rejected the UNCLOS and was not in agreement of the provisions mentioned in the UNCLOS III. Though the straight baseline to enclose the waters is p under the provision of UNCLOS but the Brian Mulroney faced serious criticism from

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<sup>5</sup> The ICJ settled the territorial dispute between the United States and Canada, awarding the United States about two-thirds of the Gulf of Maine and giving Canada the rest. With the establishment of the ICJ boundary, known as 'the Hague line' in 1984, the jurisdictional issue between the two countries was resolved, with Canada receiving approximately one-sixth of the total area of Georges Bank, including the rich scallop and fishing areas known as the Northeast Peak and the Northern edge.

the US. Rejecting this Canadian instance the US State department said “around islands extending hundreds of mile north of its mainland coast. Several of the individual lines stretching between islands are over 50 miles in length; one is over 99 miles, such greater than the distance between the US mainland and Grand Bahama Island in Bahama.”

### **Division of Beaufort Sea**

The Beaufort Sea is that shallow portion of the Arctic Ocean located between Alaska and Canada’s High Arctic islands, just to the north of the Mackenzie River delta. During 1970s seismic surveys and investigative opinions established that the seabed sediments there contain hydrocarbons. The Canada-US boundary dispute in the boundary dispute is another irritant in the bilateral relationship in the Arctic region. In the Beaufort Sea the EEZ of Canada and the US overlapped where the rich hydrocarbon resources are known to exist; until the two countries agree on a maritime boundary, the corporations have to operate under the Canadian laws or the US laws (Dixon 2008).

The two countries have disagreed on the location of the Beaufort Sea boundary since 1976. While issuing oil and gas concessions Canada was using the boundary line which was protested by the US. The dispute became apparent when both countries delineated exclusive fishing zones out to 200 nautical miles, and used different lines. Canada argued that its westernmost boundary is at 141°W longitude, established by the 1825 Boundary Treaty between Great Britain and Russia and reinforced by the 1867 Boundary Treaty between the United States and Russia, and projects northwards “as far as the frozen ocean” (Larson 1990). The wording of the 1825 Treaty between Russia and Britain (the United States took on Russia’s treaty rights when it purchased Alaska in 1867 has become the reason for this dispute; Canada acquired Britain’s rights in 1880)<sup>46</sup> as was discussed in Chapter II. The treaty sets the eastern border of Alaska at the “meridian line of the 141 degree west, in its prolongation as far as the frozen ocean”. Canada claims this treaty provision establishes both the land border and the maritime boundary, and that both must follow the 141°W meridian straight north contrary to the US argument is that the treaty’s delimitation applies to land only. Beyond this regular methods of maritime boundary delimitation apply.

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<sup>46</sup> Great Britain/Russia: Limits of their Respective Possessions on the North-West Coast of America and the Navigation of the Pacific Ocean, February 16, 1825, 75 Consolidated Treaty Series 95.

According to the US position in the case of the Beaufort Sea an equidistance line – where every point on the line is an equal distance from the nearest point on the coasts on either side – is the legally and geographically appropriate approach.

Legal expert Michael Byers states, “since the coast of Alaska, the Yukon, and the Northwest Territories slants from east to south-east from Point Barrow, Alaska, to the mouth of the Mackenzie River, such an equidistance line trends progressively further east of the Canadian-preferred line at the 141°W meridian, running in a roughly north to north-eastern direction from the terminus of the land border to the 200 nautical mile limit. As a result, within that distance from the shore, an approximately 6,250-square-nautical-mile pie-shaped disputed sector has been created” (Byers 2009). The interpretation and definition of the frozen ocean is creating ambiguity in examine the issue , but it certainly would not mean the extension of a meridian line all the way to the North Pole. During formulating the 12-nautical-mile territorial sea in 1970, the 100-nautical-mile pollution prevention zone in 1970, the 200-nautical-mile fishing zone in 1977 and the 200-nautical-mile economic zone in 1987, Canada maintained that boundary line in the eastern ocean was 60°W longitude and that the western zones was the 141°W longitude (Larson 1990).

But the US refusal to accept both AWPPA and amendments to the Territorial Sea and Fishing Zones Act further complicates this issue. The US refusal to accept the Canadian extension of the 141°W meridian and this has given rise to a substantial legal dispute. Canadians who have been relying a sector line to define their western offshore boundary with the US are refusing to apply this in the Beaufort Sea. In resolving the disputes with the US Canadians successfully asserted an equidistant offshore boundary line with the US in the Gulf of Maine dispute. The reason was very simple it was to their advantage, but refuses to do so in the Beaufort Sea when it is to their disadvantage (Larson 1990). The irony is that Canada asserts the median-line “equidistance” principle with Denmark in talks on the offshore boundaries off the coasts of Ellesmere Island and Greenland, while the United States is not following that method in its sharpening quarrel with Canada over the Gulf of Maine east coast boundary, involving explosive questions of fishing rights (Bloomfield 1981), in which they agreed to refer to a chamber of the International Court of Justice (ICJ).

In case if Article 76 of the UNCLOS III applied this position would create a twist to the Beaufort Sea boundary dispute, because the equidistance line preferred by the

United States extends beyond 200 nautical miles and soon changes direction and begins tracking toward the north-west (see Map IV.C) because of a change in direction of the Canadian coast on the eastern side of the Mackenzie River delta. The presence of Banks Island created a large feature on the eastern side of the Beaufort Sea. The effect of Banks Island makes the equidistance line to cross over the 141°W meridian and heads toward the maritime boundary between the United States and Russia. Here the US line appears to favour Canada beyond 200 nautical miles, and vice versa (Byers and Bakers 2009) as seen in the map 8. This situation provides a scope to resolve this dispute.

### Map 9 Disputed Areas in Beaufort Sea Region



### The Canadian and American Claims in the Beaufort Sea

So far, neither the US nor Canada has publicly expressed a position as to their rights beyond the limits of the EEZ. Therefore, it is difficult to assume that either or both countries consider their arguments within 200 nautical miles to be determinate of their positions beyond that zone, though Canada's meridian-based claim would seem to lack any logical mechanism for differentiating between the line within that limit and beyond it (Byers and Bakers 2009). Most importantly, the extension of the dispute beyond 200 nautical miles appears favourable for a negotiated solution. The introduction of extended continental shelves into the equation has only recently

created a new bargaining environment, with the traditional US legal position conceivably favouring Canada and the traditional Canadian legal position conceivably favouring the United States (Bakers 2009).

The map no 8 describes the position of both Canadian and the American claim and disputed zone and their respected claim in the Beaufort Sea. The Banks Island which a part of Canada its continental shelf is extended beyond 200 nautical miles for applying the Article 76 of the UNCLOSIII creates the another region which can compensate loss of the either of these two parties.

In other words, what appeared to be a zero-sum negotiating situation now offers opportunities for creative trade-offs but hydrocarbon resources have been a major reason for the rigidities of both parties keeping this matter unresolved (Bakers 2009).

Both the parties investigated the possibility of setting up a joint hydrocarbon development zone, but neither side was willing to compromise on its legal position for fear of prejudicing its approaches to other delimitations, and the two countries subsequently focused on the most pressing boundary dispute, in the Gulf of Maine, which they agreed to refer to a chamber of the ICJ. Nevertheless, the Beaufort Sea dispute has remained well managed, with both countries adhering to a de facto standstill on oil and gas exploration in the disputed area (Bakers 2009).

There are several reasons for the slow resolution of this dispute:

First, the dispute is not particularly controversial and is considered by diplomats in both states to be well managed. Second, neither country has shown any strong interest in a model that would require harmonisation of their legal and administrative regimes to jointly manage such common uses as hydrocarbon exploration. Third, both states have effectively agreed to a suspension on hydrocarbon investigation in the triangle, in spite of that each has included sites there in prior lease sales (Byers 2009)).

Canada does face an important domestic obstruction to varying its position on the location of the international boundary in the Beaufort Sea because of the Inuvialuit Final Agreement in 1984 – a constitutionally recognised land claims agreement. The Canadian government used the 141°W meridian to define the western edge of the Inuvialuit Settlement Region. In the Settlement Region and specifically in an area called the “Yukon North Slope” which includes the off-shore to the northeast of the terminus of the international land border, Canada recognized Inuvialuit harvesting rights over fish and game and promised to protect the area (Inuvialuit Final

Agreement: 2(2)). Under international law, Canada could enter into a maritime boundary treaty with the United States that would likely be valid and binding regardless of the domestic rights of the Inuvialuit. However, under Canadian law, the federal government can limit any infringement of aboriginal rights as much as possible, make any such limitation clear through an Act of Parliament, and provide compensation. For this reason, the Canadian government can yet make an argument that the Inuvialuit Final Agreement (Byers and Baker 2009).

Undoubtedly, the Inuvialuit have long hunted seals and beluga and bowhead whales in the Beaufort Sea and the ability of indigenous peoples to acquire and transfer sovereign rights was recognised by the International Court of Justice in the Western Sahara Case (Western Sahara, Advisory Opinion 1975). It would be appropriate, indeed legally required, for trans-boundary access rights to be negotiated after the drawing of the boundary, as part of the duty placed on states in UNCLOS to agree on measures to conserve and develop straddling fish stocks. For this reason, one possible outcome of negotiations over the Beaufort Sea boundary is the creation of new rights and obligations between the Canadian Inuvialuit and the US government with respect to any area falling between the 141°W meridian and an agreed international boundary to the east of that line. Such an agreement would free the Canadian government to make concessions within 200 nautical miles from shore, in return, presumably, for US concessions further out. But, again, to achieve this result, the Inuvialuit will need to be involved in the negotiations (Byers and Bakers 2009).

### **Legal Status of Canada's Legislations and the American claims**

The Canadian legislations to exercise any kind of authority or asserting sovereignty have negative implications on the bilateral relations of both the countries. In this section the legal status of the legislations enacted by Canada and the American claims against these legislations are being discussed.

**(i) Arctic Water Pollution Prevention Act 1970** When Canada enacted this act it was contrary to the international law of sea as discussed in the previous chapter. Till 1982 it remained contrary to the international law. In 1982 Canada became successful in negotiating the Article 234 which was actually an international version of the AWPPA 1970 (Mac Rae 1983). The Article 234 of the UNCLOS III provides:

Coastal States have the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance. Such laws and regulations shall have due regard to navigation and the protection and preservation of the marine environment based on the best available scientific evidence (Article 234 UNCLOS III 1982).

### **Extension of the Limit of Territorial Sea from Three to Twelve Nautical Miles**

The UNCLOS III has fixed the limitation of the territorial sea twelve nautical miles from three nautical miles under the Article 3. This made the Canadian legislation of extending the limit of its territorial sea from three to twelve nautical miles consistent with the provisions of the international law.

**Straight Baseline Claim of Canada** Canada adopted the baseline method to enclose the waters in the Arctic Archipelago after the *Polar Sea* voyage in 1985. Article 4 of the Territorial Sea Convention 1958 and Article 7 of the UNCLOS III made provision for the straight baseline in the following situation:

1. In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.
2. The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters.
3. Baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them.
4. Where the method of straight baselines is applicable under the provisions of paragraph 1, account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by a long usage.
5. The system of straight baselines may not be applied by a State in such a manner as to cut off from the high seas the territorial sea of another State.
6. The coastal state must clearly indicate straight baselines on charts, to which due publicity must be given (UNCLOS III Article 7)

The legal status of the Arctic waters according to academia and law can be determined by analysing two factors: the geographical features of the Arctic

Archipelago and the existing provisions of the Law of the Seas. These two factors have been considered and interpreted by different academicians and they have developed different arguments.

**Geographical Features:** For examining the status of the waters in the Canadian Archipelago, there are no clear-cut criteria. Therefore the existing examples which are the decisions of the ICJ in different cases on similar disputes and the UNCLOS form the bases to generate arguments on this issue. Under this section, the Canadian claim to sovereignty over the waters in the Canadian Arctic Archipelago by drawing a straight baseline making the landward side waters internal and claiming historical waters would be analysed on three bases: Canada's geographical features, the provisions made under international law and the views and arguments provided by the academicians. Article 38(1)(d) of the Statute of the ICJ states, "the academic writers may be consulted by the Court in order that the Court be able to determine the rules" of International Law (MacNeil 2006).

Article 8(2) of UNCLOS provides if the waters are made internal by drawing the baseline, in such internal waters, right of innocent passage exists. Otherwise, the Article 2 of UNCLOS III establishes sovereignty of the coastal state "internal waters are considered to be part of sovereign territory of a state, and are thus subject to the full range of jurisdictional powers which the state may exercise on its land and territory" (MacNeil 2006).

As Canada has aligned its baseline claim with the Norwegian Fisheries case, the academicians and legal experts have also examined the Canadian claim on the basis of the Norwegian Fisheries Case. In the light of the given geographic features and condition of the CAA, it appears that it is a huge web of small and big islands and cliff, broken by large indentations in the form of bays and gulfs traversed by numerous straits, sounds, inlets, the whole being fused together by perennial ice. CAA is not a simple fringe of islands, it constitutes a single unit bordering the northern coast. The physical characteristics of the CAA is complex and absolutely impossible to follow the exact directions of the coasts or of the islands while measuring the territorial sea, all these features rendering it completely essential to use baseline (Pharand 1989). This method was introduced in the international law as a result of the ICJ decision in the Anglo-Norwegian Fisheries Case in 1951 which has been



discussed below. Pharand claims that the actual establishment of the lines meet three criteria according to the law of sea.

First: the straight line follows a general direction of the outer line of the archipelago, which in effect constitutes the northern coast of Canada. But Kraftt has quite a different argument: the ICJ has noted that the Norwegian coastline did not clearly divide the sea and the land. The Norwegian coastline, presents an extension of the coastline but the CAA is not merely an extension of the Canadian mainland. The geographic features of the islands of the CAA are separate and distinct from the Canadian mainland. Banks and Victoria islands are separated from the Canadian mainland by nearly 250 miles of water, i.e., the Amundsen Gulf. This significant distances cause the straight baselines to depart from the general direction of the coast. Therefore, it is unlikely that the Arctic Archipelago waters fall within internal waters according to the first part of the three-pronged test (Kraftt 2009).

Second, the sea to land (island) ratio in the archipelago is 0.822: 1, and the presence of the quasi-permanent ice cover in the water enclosed areas further made these island more closer (Pharand 1989). Kraftt states it problematic because of the climatic effects on Arctic ice. The ice is melting rapidly and the ice factor would not help the Canadian position. Arctic has experienced less perennial ice making; therefore this is a tenuous argument (Kraftt 2009).

Figure 2 explains the geographical features of the Norwegian coastline with its intended and fringe of small islands but these are not distinctly separated from the mainland, whereas the Canadian case is different. The islands are fragmented and at some places the distance from the mainland is exceptional. This issue has been raised by legal experts who challenge the Canadian claim of straight baseline. This is a situation that patches of high seas are surrounded by territorial waters. At some places the free navigation principle can be applied and at some place the distance is less than 24 miles, thus the vessels enter into the Canada's territorial waters and are subjected to regulation.

Third, the validity of the straight baselines crossing the Amundsen Gulf and Lancaster Sound is reinforced by the economic interests of the Inuit population. This area remain close to their shelter and source of livelihood because they were depended exclusively on fishing, hunting and trapping in those waters since time immemorial.

Archaeologists and anthropologists believed that the Inuit arrived in Canada’s Arctic between 4,000 to 4,500 years ago. As far as the lengths of the individual straight baseline go, no objection can be taken, since they have been established pursuant to the applicable criteria. Along with an increase in surveillance and minimal Canadian naval presence in the Arctic waters, these measures to long way to protect Canada’s interests in the Arctic (Pharand 1989; Kraftt 2009).

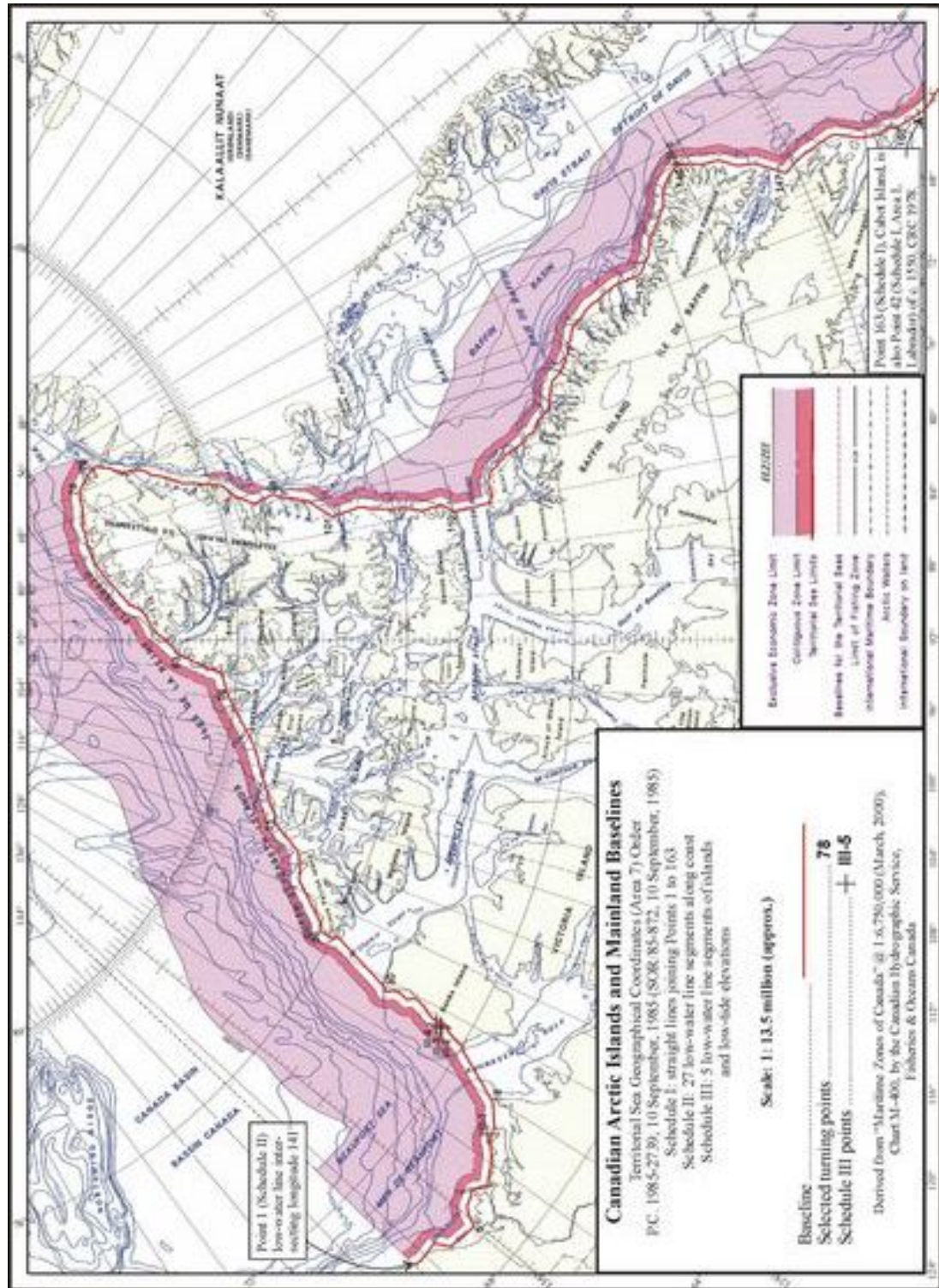
**Map 10 Features of the Norwegian Coastline**



The comparison of the two maps reveals that the Norwegian coastlines are fragmented but adjacent to the mainland. The Norwegian coastline has been drawn to enclose the

fragmented coastline whereas the straight baseline are drawn Canadian straight baseline are drawn around the islands which are though near to the mainland yet separated by running waters.

**Map 10 Features of Canadian Arctic Coastline**



Maps 10 and 11 are used for comparing the Canadian Arctic Archipelago with the Norwegian coastline. It is clear that the islands in the Norwegian case are near the mainland, whereas in the case of the Canadian Archipelago the presence of the island sometimes shows an appraisable distance from the mainland.

Thus the waters around these islands have remained territorial waters and if the breadth increases, they would fall under the categorisation of high sea. Thus drawing a baseline under the provisions of Article 7 becomes tough if followed strictly.

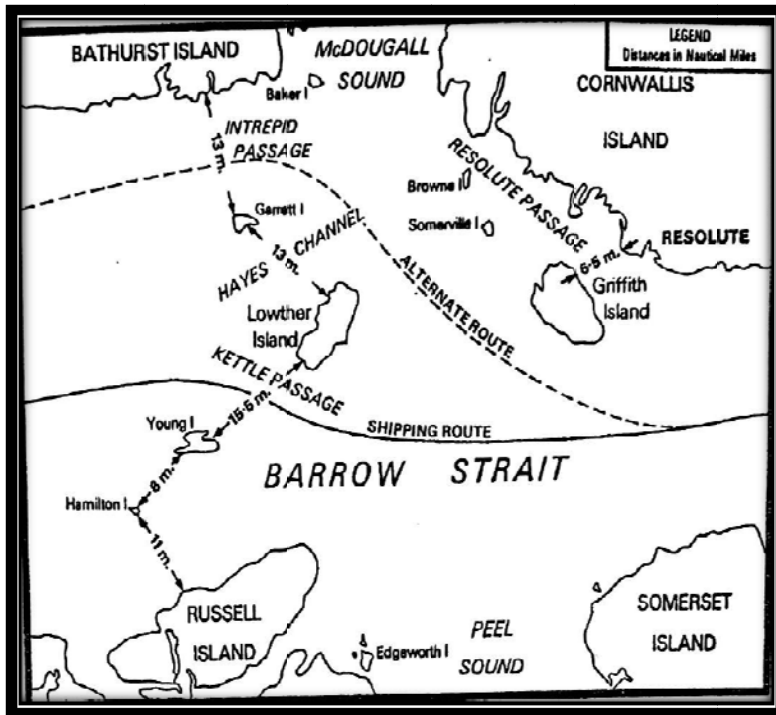
Article 47 of UNCLOS III also authorises the 'archipelagic state' to draw a straight baseline joining the outermost points, the outermost islands and the drying reefs of the archipelago. Though Canada does not fit within the meaning of the term archipelagic states as it is not a country constituted wholly or fully by one or more group of islands, yet it is not precluded that Canada can develop the argument that due to its huge size and complex geography it can claim a special status of a coastal archipelagic state and draw a straight baseline (Kilas 1987). Objective mathematical criteria as regards the ratio of waters to land and the maximum length of baseline are included which the Canadian Archipelago satisfies (Larson 1990; Poeless and Miller 2008).

Donald Rothwell has a completely different argument which is based on the geographical features of the NWP. According to Rothwell NWP is an international strait through which a right of navigation exists, the first issue that arises is whether it is possible to equate the Passage with a single strait? Because the geographical descriptions reflects that NWP is a series of connecting straits which when combined offers a variety of navigation routes through the Canadian Arctic Archipelago. "This is unlike the situations covered by both customary international law and the conventions, which provide only for a regime based on passage through an "international strait" and not a series of straits. There is no evidence that much consideration has even been given to this question in the past, though it should be noted that UNCLOS does provide for a navigational regime within the waters of an archipelagic state" (Rothwell 1993).

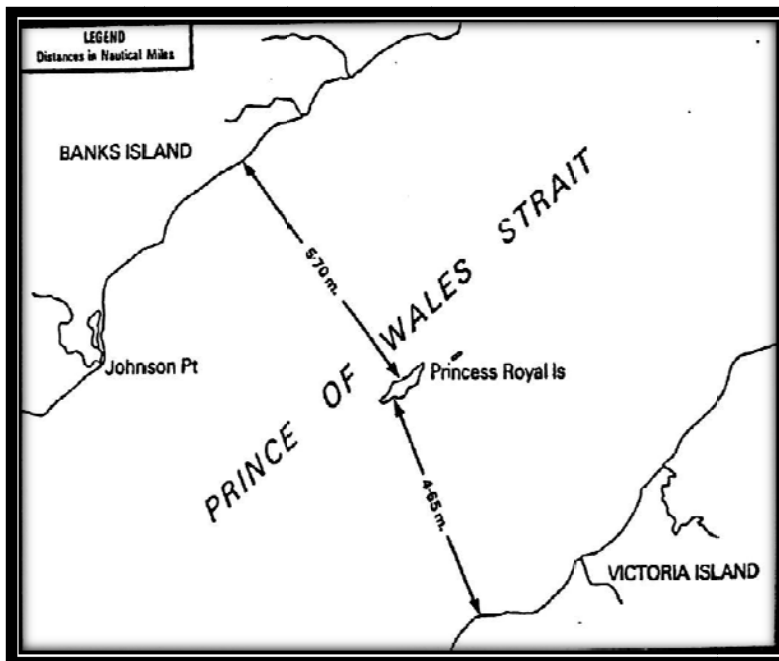
If Rothwell's argument is taken into consideration, it is clear that the NWP is not a high sea but patches of high sea surrounded by the territorial waters. It counters both the arguments that it is a high sea where unrestricted navigation exists but before

entering this, it has to enter through the territorial waters of Canada. Even if the right of innocent passage exists, the conditions of innocent passage are applicable. Donat Pharand’s geographical analysis also raised this issue in the same direction. As shown in map 12 and 13.

**Map 12 The Barrow Strait**



**Map 13 The Prince of Wales Strait**



Map 11 shows at the western end of the Barrow Strait where this offers a string of five islands lying across the straits in a zig zag style. Although the Barrow Strait is 70 miles wide at this point, the widest inter-island passage is 15.5 miles and the narrowest passage 8 miles wide (Pharand 1988). If the article 3 of UNCLOS is applied then it becomes difficult where the right of unrestricted navigation exists and where the passage are under the Canadian law because in case of innocent passage the coastal states are authorised to regulate them.

The another example is Prince of Wales shown in map 12 is only 10 miles wide and minimum width is less than 7 miles due to presence of Prince Royal Island about the halfway down the strait (Pharand 1988)

### **Historical Water Claim**

This claim requires a proper policy implementation of the claimant states. The Canadian historical water claim has the sole objective, “Under the 1958 and 1982 Conventions it has been described that newly enclosed waters are internal also, but subject to the right of innocent passage, if they had previously been considered as part of territorial sea or high sea”; if Canada succeeds in proving that the waters in the Canadian Arctic Archipelagos have been historical since the beginning, it would achieve what it wishes for.

The Canadian assertion of the historical rights presents an immediate problem in attempting to settle the status of the NWP under UNCLOS. Although UNCLOS refers to the historic rights, the treaty provides no definitions. In absence of any definition and provision under the international law how can it be decided whether the particular waters are historical or not? Interpretation depends upon the personal bias of the judges. According to UNCLOS, if Canada has a historical title to the NWP, its sovereignty over the waters is complete and unaffected by transit rights granted in Part III of UNCLOS. As the UNCLOS does not define historical waters, it is the customary law which provides an analytical framework to the Canadian claims to historic title (MacNiel 2006).

The historic waters claim is fairly established and considered the status of internal waters (Pharand 1971) and traditionally claimed in respect of certain bays and,

indeed, the concept of historic waters is but an enlargement of the doctrine of historic bays which developed much earlier (ICJ 1951).

Donat Pharand states that the doctrine of historic bays emerged in the nineteenth century as the freedom of the high seas principle actually served as a protective measure for certain states having large bays closely linked with the land and traditionally considered by those states as part of national territory; they were often expressed to be of vital importance from the economic and national security standpoints. Consequently, the waters of those bays were considered as internal or inland waters, and the territorial sea was measured from a line drawn across the mouth of such bays, in the same way as for smaller bays the entrance of which did not exceed twice the breadth of territorial waters. As the principles of law developed relating to the delimitation of maritime areas, the idea of claiming bays on the basis of an historic title was extended to other water areas adjacent to the coast. The concept of historic waters, therefore, is a regime of exception to the general rules of law relating to the de-limitation of the maritime domain of a state (Pharand 1971).

At the time of the Norwegian Fisheries Case, there was no definite rule of international customary law limiting the width of territorial bays to ten miles; the concept of historic bays could no longer be considered as an exception. This view was a defensible one concerning the nature of historic bays, as well as historic waters in general, before the 1958 Territorial Sea Convention, but Article 7 lays down provisions relating to the measurement of the closing line for bays – the maximum permissible length being twenty-four miles – and it specifies that those provisions “shall not apply to the so-called "historic" bays...”<sup>47</sup> In the same way, Article 12 formulates a rule for the delimitation of territorial waters between opposite or adjacent states but it provides that “the provisions of this paragraph shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision”.<sup>48</sup>

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<sup>47</sup> Article 7 of the Territorial Sea Convention 1958

<sup>48</sup> Article 12 of the Territorial Sea Convention 1958

The legal prerequisites for the establishment of the historic title to water have not been endorsed in either the 1958 Territorial Sea Convention or the UNCLOS III. In determining whether or not a title to “historic waters” exists, there are three factors which have to be taken into consideration, namely (i) Exclusive authority and control over the maritime area by the state claiming historical title (ii) The long usage or the passage of long period of time, the length of the period; (iii) Acquiescence by foreign states, particularly those clearly affected by the claim (Pharand 1971; Burke 2018).

First, effective exercise of sovereignty over the area by the claiming state is a necessary requirement for title to the area as “historic waters” of that State. The coastal state must be in a position to show that action was necessary to assert and maintain its authority the area in question (Pharand 1971). Quoting Bourquin’s view Paharnd argues that intent is expressed by deeds and not merely by proclamations. Laws and regulations of the coastal state are never challenged; action will be necessary on the part of the coastal state. If challenged, the coastal state will have to meet that challenge; action is necessary to maintain the effective control to a necessary claim of sovereignty (Pharand 1971). According to MacGibbon, “The passage of considerable period of time is an essential element in the growth of prescriptive and historic rights, the presumption of general or particular acceptance which may be raised by absence of protest being strengthened in proportion to the length of time silence persists.”

Although a formal notification on the part of the claimant state is not generally required, it certainly facilitates proof; this is particularly so if the maritime area being claimed as historic waters happens to be located in remote and somewhat inaccessible parts of the globe such as the Arctic regions. In any event, the exercise of sovereignty by the coastal state must be of such a notoriety that knowledge on the part of interested states may be imputed (Pharand 1971).

Acquiescence of foreign states to the activities of the claiming State in the area must have been such that it can be characterised as an attitude of general toleration. Particularly, it would seem reasonable, in the case of a state (or states) claiming historic title to waters bordered by two or more states, to accord special importance to the attitude of the other riparian state (or states) (International Law Commission 1962). However, there is some disagreement as to the form which the acquiescence



should take. The opinions seem to be divided into two groups, depending on the view which is taken on the nature of historic rights. Those who consider historic rights as an exception to the general rules relating to the acquisition of sovereignty take a stricter view of acquiescence. They seem to consider acquiescence as a form of consent or recognition of the sovereignty of the coastal state over certain maritime areas, and this recognition or consent must come from those states that are affected by the claim in question. The other group maintains that silence or the absence of protest on the part of the other states is sufficient for the exercise of sovereignty by the claimant coastal state to result in an historic title (ibid).

An effective protest on the part of foreign states might serve to rebut the presumption of acquiescence which would otherwise arise. The protest, however, must be a real one, and it must usually be followed by some more forceful steps by the protesting state in order to prevent the formation of an historic title. The protest must be a real one in the sense that the mere raising of an objection in an indirect way would not be sufficient (ibid).

In the case of Canada's Arctic, what measures were, and are being, undertaken? From 1906-1911, Canada applied whaling legislation to ships operating in at least part of the claimed area; in addition, in 1913, a Canadian expedition was sent to patrol the waters of the Arctic in order to explore and to enforce Canadian Customs and Fishing Regulations against American whalers. After World War I ended, an annual Arctic patrol was instituted in order to protect and affirm Canada's sovereignty. As part of this greater show of control, the RCMP was established as a permanent presence in important areas to consolidate title over the islands and supervise adjacent waters.

Canada also exercised control over various supply missions undertaken by American ships after the Second World War. Canada enacted the *Arctic Waters Pollution Protection Act* (AWPPA) in 1970 under NORDREG regulating the ships entering Canadian Arctic Waters. As late as 2003, the combination of Inuit rights, now vested in Canada, and the exercise of Canadian authority over the Arctic waters (which began even before the title and rights had been ceded) strengthened the claims of Canada. According to the terms of the 1984 *Inuvialuit Final Agreement*, "The Inuvialuit cede, release, surrender and convey all their aboriginal claims, rights, title and interests, whatever they may be, in and to the Northwest Territories and Yukon

Territory and adjacent offshore areas, not forming part of the Northwest Territories or Yukon Territory, within the sovereignty or jurisdiction of Canada”(1984).

Similarly, in the 1993 *Agreement Between the Inuit and Canada*, the Inuit support this element which has already been discussed in the previous chapter. As a result of these Agreements, provided the Inuit subject to these Agreements can establish an historic presence, Canada should now be able to assert title by cession (Neil: 2006).

The Northwest Territories, which include the Arctic islands, is an official political unit of the Canadian Federation recognised in the Canadian constitution. The Canadian federal government administers the Northwest Territories with more funding than it grants any other region of Canada. Residents of the Northwest Territories elect a representative to the Canadian Parliament from the Arctic islands (Western Arctic), and Canadian law applies throughout the North. Economically, the private sector, in cooperation with the Canadian federal government, has developed a modern infrastructure of buildings, roads, and air routes which supports the Arctic's forestry, mining, and oil industries. These efforts have led to a successful administration of the North that other nations regard as a model for Arctic development.

But two factors that hinder the Canadian position internally are the dominance of the American military and financial power in the defence of the Canadian Arctic and the Canadian government's attitude towards its indigenous people which remains suppressive. This might cause hurdles in claiming that the Inuit have exercised peaceful possession on the Arctic land and waters. The physiographic features of the Arctic makes this claim more sustainable. The physical survey conducted by the American Natural Geographic Society concluded that the Arctic islands are an archipelago of the Canadian continental shelf (Perry 1996).

Byers emphasised that the Nunavut Land Claim Agreement 1993, whereby the Canadian government and Inuit affirmed that “Canada's sovereignty over the waters of the archipelago is supported by Inuit use and occupancy” has reinforced the historical water claim of Canada. His argument is based on the decisions of the ICJ in the arbitration.

In 1975, in a dispute between Morocco and the Western Sahara, the ICJ held that the historic presence of the nomadic peoples can help to establish the historical water claim. The other is the decision of the Permanent Court of International Justice in 1933 in a dispute between Norway and Denmark where the Permanent Court of International Justice held that the degree of presence necessary to establish title over territory is lower in inhospitable regions than in more temperate claims. It is likely that Canada would attempt to justify the continuous exercise of control based on the presence of the Canadian Inuit, since “time immemorial”. However, Canada’s failure to integrate the Inuit nations into its political structure has resulted in a “politically marginalized” section.

### **The Corfu Channel Case 1949 and Legality of the US Claim**

This case was brought by the United Kingdom against Albania for the sinking of one of its naval vessels during mining operations in 1946. The ICJ, in one of its first cases, ruled that Albania was liable for these damages, as this was a customary waterway used as a shipping lane. In essence, there are two test criteria to determine an international strait – they are the geography associated with the waterway and its functionality.

The Albanian government had claimed that foreign warships and merchant vessels had no right to pass through Albanian territorial waters without the prior notification and consent of the Albanian government. The British government claimed that “innocent passage through straits was a right recognized by international law”. The ICJ found that it was “generally recognized and in accordance with international custom that States in time of peace have a right to send their warships through straits used for international navigation between two parts of the high seas without the previous authorization of a coastal state”(ICJ 1949).

The ICJ found the Albanian position wrong; determining that the North Corfu Channel had been a useful route for international traffic, the ICJ referred to records showing that almost three thousand ships of various nationalities passed through the North Corfu Channel over a 21-month period. “It also noted that the channel had been used regularly by the British for over eighty years and that other navies also used the Channel.” The court then concluded that the “North Corfu Channel should be

considered as belonging to the class of international highways through which passage cannot be prohibited by a coastal State in times of peace” (ICJ 1949).

From the US perspective, the Northwest Passage is an international strait as the geographical criteria set by the ICJ is met in case of the Northwest Passage, and is so defined by UNCLOS Article 37 which says, “This section applies to straits which are used for international navigation between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone. In essence, an international strait is a body of water that links two other major bodies of water, and that the bordering states have no rights of control to prevent the innocent passage of ships through this strait” (Kennair 2012).

The Corfu Channel case has limited applicability to the NWP. Both the geographic and functional elements cannot be straightforwardly applied to the NWP. Therefore, whether the Corfu Channel case could at all be used to determine the status of the NWP is questionable. The geographic element poses some limitation on the applicability of the Corfu Channel case to the NWP. Unlike the Corfu Channel case, the NWP is a combination of various waterways used as a single maritime highway. The waterways used are not fixed, but rather, change depending on the marine ice and sea conditions. Therefore, whether the NWP is considered as a single strait or whether each route used must qualify as a strait is unclear. As a singular international strait the NWP would connect two parts of the high seas or EEZs. Using this definition the right of transit passage would exist so long as the NWP meets the functional requirement (Kraftt 2009).

### **Canada-United States Reconciliation in the Arctic Region**

It was the first cooperation between Canada and the United States on the issue of the Northwest Passage which was signed before signing the Canada-United States Free Trade Agreement (CUSFTA) (Howson 1987). The 1988 Agreement on Arctic Cooperation signed on 11<sup>th</sup> January 1988, while binding both the United States and Canada contains very few applicable provisions, and those provisions are both specific and limited (Kim 2013).

In recognition of the close and friendly relations between their two countries, the uniqueness of ice-covered maritime areas, the opportunity to increase their knowledge of the marine environment of the Arctic through research

conducted during icebreaker voyages, and their shared interest in safe, effective icebreaker navigation off their Arctic coasts:

The Government of the United States and the Government of Canada undertake to facilitate navigation by their icebreakers in their respective Arctic waters and to develop cooperative procedures for this purpose; law, in order to advance their understanding of the marine environment of the area;

The Government of Canada and the Government of the United States agree to take advantage of their icebreaker navigation to develop and share research information, in accordance with generally accepted principles of international law, in order to advance their understanding of the marine environment of the area;

The Government of the United States pledges that all navigation by U.S. icebreakers within waters claimed by Canada to be internal will be undertaken with the consent of the Government of Canada” (Agreement on the Arctic Water 1988).

Neither the United States nor Canada conceded the validity of the other’s position regarding the status of the Northwest Passage; the Agreement did specify that the United States would only operate icebreakers within the Northwest Passage with Canadian consent. The Agreement on Arctic Cooperation did not apply to any ships besides icebreakers, and explicitly preserved each nation’s original position regarding the Northwest Passage (Kim 2013). This Agreement helped to bridge the gap that had emerged in the sovereignty question of the Northwest in three ways. First, Canada wanted an intergovernmental agreement that would unambiguously assert and reinforce the existing Canadian claims to sovereignty concerning the waters of the Arctic Archipelago – specifically the NWP – and defuse a politically volatile, nationally symbolic, domestic issue and be politically dependable before parliament and the Canadian public (Kirkey 1995). Second, the United States upon agreeing to a bilateral discussion with Canada sought to fulfil its own agenda of denying recognition of Canadian sovereignty over the NWP and to find a suitable arrangement without compromising first with the objectives that were fundamentally grounded in American foreign policy. Third, this served as a political formula to satisfy the Canadian needs while not detracting from the American legal and military interests.

The agreement is marked by the effects of symmetric interdependence between Canada and the United States for their national interests. If not, the following situations are likely to emerge:

First, the United States would have to accept Canada's sovereignty over the entire waters of the Canadian Arctic archipelago or oppose the Canadian position aggressively.

Second, Canada had two principal options it could exercise to secure its national goals. Canada could have first chosen to bolster its physical presence in the disputed waters, through a combination of procurement and increased use of existing long-range patrol aircraft, icebreakers, sonar acoustic equipment, and military personnel. Such a commitment, however, would involve burdensome costs and was believed to be of questionable utility in reinforcing Canada's northern maritime legal claim. Otherwise, putting the Canadian case before the International Court of Justice was also viewed with disfavour by Ottawa. Thus none of these options were in favour of Canada.

Canada's legal position regarding the archipelagic waters had not been accepted by the entire international political community, let alone the ICJ. Despite Clark's announcement on September 10, 1985 that Canada was withdrawing its April 1970 reservation to the ICJ compulsory jurisdiction, the Canadian negotiating team never announced its intention to take the issue before the court. In fact, Canadian representatives did not use this tactic in the course of negotiations with their American counterparts largely because of deep-seated concerns that if challenged by the United States to present their case before the ICJ, the court would reject the Canadian claim and uphold the American position (Kirky 1995). The 1988 Arctic Cooperation Agreement would have resolved the matter for all the practical purposes, but for the dramatic ice melt occurring. The melting of ice poses a fundamental challenge to 'agree to disagree' arrangement (Byers 2013).

The increased commercial traffic and Canada's attempt to regulate it makes it increasingly likely that the formal status of the Northwest Passage under international law will become an issue of concern for both the United States and Canada (Kim 2013; Byers 2013). The Agreement on Arctic Cooperation reveals that its scope encompasses only icebreakers of the United States and Canada. Commercial shipping, private craft, and non-icebreaker military vessels are excluded from the Agreement. Furthermore, both nations specifically reserved their original positions regarding waters in question and prevented the Agreement from affecting their respective

positions through Article 4. No other treaties relating to the Arctic waters or the Northwest Passage have been registered with the United Nations. Thus, it is clear that there is no treaty binding both the United States and Canada which can be used to determine international law applicable to the Northwest Passage dispute (Kim 2013).

But there are some contradictory arguments which are also worth noting. According to Nicholas Howson, the Agreement on Arctic Cooperation was concluded by these two countries to avoid the bitterness between these two nations that had become a hurdle in signing the CUSFTA/CUFTA which was signed after this agreement in 1989, whereas Phillip Brigs says that this agreement was a pause and not an end to the Canada-United states dispute as military, economic and environmental pressures increased in the entire region (Brigs 1990). Both the countries have shown full respect in this agreement. The experience over the years suggest that both Canada and the US have been trying to promote their interests without compromising the friendly relations between them which do have a conflict of interests inherent in the dynamics of the Arctic economic and politics.

Three further factors when combined have created an impetus for new Canada-United States negotiations:

**First:** The terrorist attack of 11 September 2001 shifted the focus of security concern in the United States from the state actors to the non-state actors. In 2005, Paul Celluci, the ambassador of the United States in Canada, revealed that he had asked the State Department to re-examine the US position on the Northwest Passage in the light of transit threat as terrorists might take the advantage of ice-free conditions to enter North America. He went so far as to suggest that Canada's legal position might now benefit the United States (Byers 2013).

**Second:** It was the Model Negotiation on the Northern Water wherein on February 18 and 19, 2008, two teams of non-governmental experts which included ex-defence officers and Paul Celluci and experts<sup>49</sup> in the Arctic and legal matters from both

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<sup>49</sup> U.S. team: Paul Cellucci, U.S. Ambassador to Canada, 2001-2005, Scott G. Borgerson, Council on Foreign Relations Professor Elizabeth Elliot-Meisel, Department of History, Creighton University, Professor Christopher Joyner, Department of Government, Georgetown University, Professor Eric Posner, University of Chicago School of Law Coalter Lathrop, J.D., President, Sovereign Geographic Inc.

countries, Canada and the United States, met to discuss issues, identify possible solutions, and make recommendations concerning navigation in the Northern waters to the governments of the United States and Canada. The teams agreed that the long history of US operation in the Arctic indicated the potential for a new bilateral agreement as the history of cooperation on shipping such as the St. Lawrence Sea Way. The Canadian team of experts presented strong arguments as to why the United States should recognise Canada's legal position that it controls the Northwest Passage. The changing Arctic environment raises new security concerns. In this context, the Canadian team argued that recognising Canadian control of the Northwest Passage could substantially enhance North American security, without compromising US interests elsewhere in the world. The US team also pointed out that the US position has strong arguments in its favour. The two teams together "respectfully request, without prejudice, that the United States and Canadian governments examine all of these arguments".<sup>50</sup>

This team made nine recommendations, including that the two countries collaborate

1. in the development of parallel rules and standards and cooperative enforcement mechanisms with respect to notification and interdiction zones in the northern waters of Alaska and Canada;
2. in implementation of the 2006 expansion of the NORAD agreement, which includes the sharing of all maritime surveillance in the area covered by that agreement, and that the two countries cooperate in the development of further surveillance capabilities;
3. in building from the Arctic Waters Pollution Prevention Act, that the two countries develop common navigation, safety and ship operation and construction standards;
4. in the establishment of shipping lanes, traffic management schemes and oil spill response in the northern waters of Alaska and Canada;
5. with respect to immigration and search and rescue concerns related to cruise ships;
6. accelerating the acquisition of new icebreakers.

The two countries should maximise burden sharing opportunities, following the models of the US-Canada icebreaker

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Canadian team: Professor Michael Byers, Department of Political Science, University of British Columbia, Colonel (retired) Pierre Leblanc, Former Commander, Canadian Forces Northern Area, Aaju Peter, Inuit law student, Iqaluit, Professor Rob Huebert, Department of Political Science and Centre for Military and Strategic Studies, University of Calgary, Professor Ted McDorman, Faculty of Law, University of Victoria, Professor Suzanne Lalonde, Faculty of Law, University of Montreal  
Professor Armand de Mestral, C.M., Faculty of Law, McGill University

<sup>50</sup> "<http://byers.typepad.com/arctic/model-negotiation-on-northern-waters.html>"



agreement on the Great Lakes and the agreement on the resupply of Thule Air Base; 7. to step up their efforts to develop safety infrastructure, including search and rescue, in support of increased shipping in the northern waters of Alaska and Canada; 8. That the two countries make maximum use of their existing port state and flag state authority to promote safe, secure and environmentally responsible shipping and to step up their efforts to develop safety infrastructure, including search and rescue, in support of increased shipping in the northern waters of Alaska and Canada; 8. That the two countries make maximum use of their existing port state and flag state authority to promote safe, secure and environmentally responsible shipping and 9. the two countries consider establishing a US-Canada Arctic Navigation Commission to address their common interests in navigation, environmental protection, security, safety, and sustainable economic development. This Commission should include representation from indigenous groups directly affected by navigation. This Commission would follow the model of the International Joint Commission by acting as a recommendatory body. This Commission should operate within the framework of the already legislated bi-national research body, the Arctic Institute of North America. The teams also recommended that the two countries make maximum use of the considerable legal powers they already possess over the vessels – those sailing to or from Canadian or American parts – or those registered in either country (Byers 2013).

**Third:** American President Barrack Obama tried to improve the relationship with the Arctic neighbours on the Arctic matters. He began to reset the relationship with Russia and with Canada it did the mapping of the continental shelf in the Beaufort Sea. The two countries are now in the early stage of negotiating a maritime boundary in the sea (Byers 2009).

Clause 3 of the 1988 Agreement on Arctic Cooperation between Canada and the United States says: “The Government of the United States pledges that all navigation by U.S. icebreakers within waters claimed by Canada to be internal will be undertaken with the consent of the Government of Canada” (Agreement on the Arctic Water: 1988). It somehow questions that has the United States retreated significantly from its stated position that the waters in the Canadian Arctic are international strait? Though the United States and the European Union have challenged the Canadian sovereignty claims since its first official announcement in 1973, most ships which

operate in the Arctic do so in compliance with Canadian law (Proelss and Miller 2008). Additionally, the United States has apparently accepted that Canadian laws apply to American commercial vessels. Even if the United States was correct and the NWP is a strait used for international navigation, it could, as non-parties to the treaty, at best claim innocent passage rights through the Passage. All these undermine the American position against Canada (Kim 2013).

But the passage of submarines through the NWP has raised the issue that Canada has acquiesced in the US position that the NWP is an international strait. Though the acquiescence of the other state is a factor for the historical title over the waters, the protest of the United States has remained a major obstacle for Canada; yet, it has never appeared as a strong legal challenge. The Americans not protesting with strong legislation to AWPPA 1970, Canada's drawing of baseline to enclose the Arctic waters to claim it as internal and providing titles to Inuit over these waters through NLCA 1993 can be inferred as support to the Canadian claim by the United States (Kim 2013).

Thus both Canada and the United States have failed to maintain their arguments with proper legislation and protests. Canada has taken too much time in formulating its sovereignty claim over the waters in the Arctic. When the Canadian government was aware of the Norwegian Fisheries Case then why not after did it legislate to make the Arctic waters internal? Another factor is the ice melting which can reduce the claim of the ice occupancy of the Inuit. At the same time, the United States has not made strong protests. The protest was about just sending a diplomatic note to Canada. These reveal that none of these two countries wished to take this matter to the ICJ because they feared to lose it and if any party would lose, the impact would be bitter on the bilateral relationship (MacNeil 2006).

Similarity in the Russian position over the Northeast Passage (NEP) provides some strength to Canada against the American challenge because it has to challenge the Russian position simultaneously which is going to be more tough. The United States also knows this fact that the other Arctic nations like Denmark and Norway have never stood with the United States when it made its protests against Canada. In 1970 when Canada enacted the Arctic Water Pollution Prevention Act the former USSR (the largest Arctic nation) also passed a similar protective legislation for the Northeast

Passage. Thus in the Arctic region also, the United States is the only country opposing Canada.

In August 1967 the United States Coast Guard icebreakers *Edisto* and *Eastwind* traversed the NEP via Vilkitsky Strait which is less than twenty-four nautical miles wide (Brigs 2009). On August 28, 1967, the Soviet Ministry of Foreign Affairs advised the American Embassy in Moscow that the passage of certain United States ships through the Vilkitsky Straits “would be a violation of Soviet frontiers” (Pharand 1968). Though at that time the territorial water limit was only three nautical miles but the former Soviet Union was not in agreement of this and had adhered to the twelve nautical mile territorial sea limitation. In the argument of innocent passage which was applicable in any condition for the ships in question, the former Soviet Union defended itself; “the coastal state may, however, "suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security"” (TSCZC 1958, Article 16, Para 3). The former Soviet Union applied its own limit and turned back the Coast Guard ships. Their mounted foredeck guns were taken as the proof by Soviet authority that the *Edisto* and *Eastwind* were military ships and thus subjected to the special restriction in the Soviet waters. Despite such hard action the American reaction against Russia was not that much strong as in the Canadian instance. In 1970 when Canada enacted the AWPPA the American President Nixon ordered to reduce petroleum imports from Canada by twenty per cent and ordered to construct the largest icebreaker (Stormbergh 2006).

### **Canada-Russia relationship over the Arctic Issue**

Russia is the largest country in the Arctic and no severe dispute has emerged between these two Arctic powers in the period of the Cold War even when they were in two hostile groups. One major factor which has strengthened the Canadian position in the Arctic is the closer ties between Canada and Russia (Edge and Vander Zwaag 2015) on the sovereignty issue. The largest countries on earth account for three-quarters of the Arctic Ocean’s coastline. Russia and Canada have never opposed each other’s claims, yet neither have they explicitly supported each other. Instead, they have always relied on thick, hard sea ice to keep foreign vessels away (Byers 2009). The reason for this is obvious as both were on different sides during the Cold War. With the end of the Cold War, the official discourse in Canada on Arctic affairs shifted

away from continental security and narrow sovereignty interests to emphasise circumpolar cooperation and broad definitions of security that prioritised human and environmental dimensions. Both the countries are meeting the similar challenges regarding sovereignty over the NWP and NEP (Brigs 1990).

On many occasions in Arctic politics the cooperation between these two has become apparent. First: Canadian Prime Minister Pierre Trudeau made an official visit to the former Soviet Union. After this Russian Premier Alexei Kosygin made an official visit to Canada. Following the talks between the Canadian-Soviet delegations, Trudeau and Kosygin signed a protocol on consultation between the two countries. The former Soviet Union agreed with Canada as to the special status of Arctic waters and the responsibilities and rights of Arctic coastal states which Canada stated to justify through the AWPPA 1970. Statements issued after the May 1971 visit of Prime Minister Trudeau to the former Soviet Union and after the October 1971 visit of Premier Kosygin to Canada confirmed Soviet-Canadian cooperation on principles governing Arctic navigation.

The two countries indicated an intention to regulate Arctic activity through national enforcement of environmental policies:

Noting that the severe climatic and unique ice and navigation conditions in the Arctic, as well as other special features, call for increased efforts in developing and using the northern territories of the USSR and Canada, the two sides consider it useful to expand bilateral cooperation on Arctic problems. The two sides agreed that this kind of cooperation could be aimed in particular at preventing pollution in Arctic waters and taking other measures for the preservation in these areas of the ecological balance which is of importance for the protection of the human environment (Canadian-Soviet Communique 1971 in Denher 1972).<sup>51</sup>

Second, in 1982, the Soviet and Canadian diplomats partnered in the negotiation of Article 234 of the UNCLOS III, which allows the coastal state to exercise heightened regulatory power over shipping in the ice-covered areas for the prevention, reduction and the control of marine pollution to 200 nautical miles from the shore. Article 234 actually has given international recognition to the Arctic Water Pollution Prevention Act 1970 enacted by Canada in the light of the *Manhattan* voyage which later provided a model for the former Soviet Union's 1990s regulation on the NEP (Byers 2013).

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<sup>51</sup> Canadian-Soviet Communique, Office of Prime Minister Press Release 11, Oct. 26, 1971.

Third, Canada and Russia were seen together on the matter of drawing straight base line along the Arctic coast in 1986. After the *Polar Sea* voyage Canadian action was supported by Russia. Russia stated that Soviet ships would probably not attempt the Northwest Passage “in foreseeable future because it is easier and cheaper for Soviet ships to use the Northeast Passage to go from west to east’ (Brigs 1990).

Fourth, as mentioned in Chapter II, Canada’s refusal to accept the application of the European Union for the status of permanent observer in the Arctic Council was fully backed by Russia. All these have consequences for NWP and NEP.

Taking an independent instance on the NWP issue is not an easy task for Canada because Canadian security is linked with the United States through NATO, NORAD, and the Five-Eyes<sup>52</sup> intelligence sharing network. This imperils the Canadian position to take help from Russia. As per Russia’s near-complete silence over the NWP, it is assumed that Russia decided not to disrupt the delicate balance that allows Canada and the United States to “agree to disagree” on the issue. Had Russia come out strongly in form of support to the Canadian position, the United States might have decided that Canada’s independent stance was no longer tolerable – and then applied the considerable pressure available to it as the dominant partner in a close but asymmetrical relationship. An alternative explanation is that Russia is not concerned that any country would directly challenge its claim by overtly sailing through the NSR (Byers and Bakers 2013).

The Canada-Russia relationship became focused in the 1990s and early 2000. Ottawa and Moscow appeared to work together on environmental and indigenous issues (Ceiullo 2008). Both countries have been collecting the scientific evidence necessary for extended claims. However, it is possible that their claims will overlap along the Lomonosov Ridge, an underwater mountain range that bisects the Arctic Ocean (Byers 2009).

The end of the Cold War and melting of the Arctic ice reshaped the Russian attitude towards the Arctic. The economic interests and environmental concerns have become more important than the military interests. These have made Russia to lower the military expenditure. Russia is a member of the G8, G20, WTO, Council of Europe,

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<sup>52</sup> The Five Eyes intelligence network between the USA, the UK, Canada, Australia and New Zealand is the world’s most enduring multilateral arrangement of its type.

Barents Euro, and the Arctic Council. Its largest trade partners are the European Union members. These changes facilitated these two countries' economic and diplomatic ties. In 1992 both Canadian and Russian governments signed an agreement to cooperate in the Arctic and north known as the "Agreement between the Government of Canada and the Government of the Russian Federation on Cooperation in the Arctic and the North" that was signed by the Canadian Prime Minister Brian Mulroney and the Russian President Boris Yeltsin (Lackenbuer 2010). The Parties identified as priority areas of cooperation: economic development, including small business; socio-economic and cultural problems; relations and contacts between aboriginal peoples; land use planning and management; construction in the Arctic and northern regions; geology in the Arctic and northern regions; effects and transport of contaminants; development of renewable and non-renewable resources; education and professional training; policy and legislation related to the administration of Arctic and north territories; hydro meteorological research and monitoring; fisheries science and technology; Arctic air, land, and marine technology; medical services and healthcare delivery; tourism; transportation; and such other areas as may be mutually agreed (Government of Canada and Russia 1992). After 1993, the Chretien Liberals continued to promote a message of diplomacy, governance, and long-term human capacity-building. In 2000, the "Northern dimension of Canada's foreign policy" set four objectives for circumpolar engagement. Traditional security threats were notably absent. One of the policy paper's key priorities was working with Russia to address northern challenges such as cleaning up Cold War environmental legacies and funding Russian indigenous peoples' participation in the Arctic Council (Lackenbauer 2010). "Perhaps more than any other country", the policy paper declared, "Canada is uniquely positioned to build a strategic partnership with Russia for development of the Arctic" (Government of Canada 2000).<sup>53</sup>

But some events actually shadowed the Canada-Russia relationship in the Arctic region. In 2007 the planting of the Russian flag in the Arctic sea bed was not welcomed by Canada (Laruelle 2015). Another incidence was the flight of two Russian military aircraft close to Canadian airspace on the eve of President Barak Obama's visit to Canada in February 2009 (Lackenbuer 2010); the Canadian media

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<sup>53</sup> The northern dimension of Canada's foreign policy," Department of Foreign Affairs and International Trade, 2"

exaggerated the reports of the flights of the Russian bomber above the Arctic regardless of the fact that these flights did not violate the Canadian airspace. The dispute over the Lomonsov and Alfamaendeleev ridges has created a confessional and conflictual position in this relationship (Laruelle 2015).

Despite such differences, both Canada and Russia have shared interests over the sovereignty over the NEP and NWP and challenges in the Arctic region which is a major factor for their strong bilateral relationship in the Arctic region (Brigs 2009).

Working with Russia to address its northern challenges was a key component of the Canadian government's Northern Dimension of Canada's Foreign Policy. In the Arctic Council Canada has also eliminated the role of the NATO to maintain a good relationship with Russia (Halfrdon 2013), because Russia faces a unique challenge in being the lone circumpolar country which is not a NATO member (Lakenbaur 2007). Even Russia has shown cooperation on the Arctic issue. In February 2009 Alan Kessal, the Legal Advisor to Canada's Minister of Foreign Affairs, met the Russian counterpart Roman Kolodin in Moscow.

Both sides also noted a high degree of similarity in their position on the issue of international shipping in the NWP (Canada) and Northern Sea Route (Russia)—the existing limitations that they are being applied to those areas are necessary to preserve the fragile maritime environment and are sync with the rights that UNCLOS concedes to the Canadian stake in the ice-covered areas. Both sides argued to have more detailed consultation on their topic, including the issue of rights to Historical Waters in the context of the existing disputes over the status with the United States (Byers and Bakers 2013).

Due to the high degree of similarity between the two situations, additional opposition to one claim only serves to weaken the other. Among other things, such issue-specific diplomatic cooperation would strengthen the leverage of both countries as they seek singly or jointly to negotiate some kind of long term compromise with Canada (Byers and Bakers 2013). This cooperation further strengthens Canada's baseline claim with historic title and due political geography of the circumpolar region. In this region if the United States protests strongly the Canadian sovereignty in the ICJ it has to oppose the Russian position also. That would complicate and challenge the Russian-American relations in the high north. Secondly, there are only five countries bordering the Arctic Sea. Three of them have claimed for a straight baseline case; Norway succeeded in 1951 and there is every possibility that these three can join hands on this

issue. As mentioned previously, Norway is also developing very close ties with Russia despite being a NATO nation. The United States can apply its dominance over Canada but challenging Russia is little bit tougher. The similarity in the geography of Russia, Canada and Norway and a similar claim of adopting straight baselines can bring the three circumpolar nations closer and challenge the American protest. Thus Russian support to Canada can support the Canada's claim.

Canada's assistance to the Russians aboriginal community has been welcomed by the Canadian Inuit groups who have been strong proponents of the Russian Association of Indigenous Peoples of the North. The Canadian assistance on environment development issues and support for indigenous representation in Russia played a vital role in bringing the indigenous communities of both the countries. Canada which is providing the modest technical assistance to local Aboriginal entrepreneurship, as well as improved regional governance systems has been regarded as constructive initiatives in Russia. These continued bilateral cooperation and goodwill, despite all the high-level political and media talk of conflict have maintained a good relationship between Russia and Canada (Lackenbauer 2010).

### **Summary and Conclusion**

Canadian efforts to attain sovereignty over the Arctic waters have implications on its relationship with the United States and Russia which are its powerful Arctic neighbours. Canada has shared interests with both neighbours in the Arctic region.

Canada and the United States are mutually benefited through the Canada-US defence ties through various organisations like the PJBD, NORAD and Tri-Command. The defence collaboration which was initiated during World War II to counter the Nazi forces became strengthened during the Cold War, because Canada being in the NATO camp apprehended the attacks in its northern frontier from the former Soviet Union. NORAD was established in 1958 to deter the nuclear and missile attacks from the former Soviet Union during the Cold War in the Canadian Arctic territory. Keeping the fear of attack of WMD in the wake of 9/11 the role of NORAD was extended to maritime security in the Arctic region. Canada shares only one-tenth of the total expenditure in NORAD but have always had a voice.

Despite such strong defence collaboration both the countries have severe disagreements over the status of the waters in the Northwest Passage. Two major



irritants in this relationship are (i) disagreement over the maritime boundary of the Beaufort Sea and Sovereignty over the NWP. Canada claims sovereignty over it by drawing a straight baseline to enclose it and by making it historical on basis of Inuit occupancy. The Canadian claim which is formed on the basis of the ICJ decision in the Norwegian Fisheries Case is facing several challenges in the academia and moreover, this claim faces difficulties in establishing the historical waters claim seamlessly.

The American claim cites the decision of the ICJ in the Corfu Channel case of 1949 that the NWP is an international strait and the geographical criterion of the NWP determines it being an international strait. The functional criteria remain unfulfilled. This condition makes the Canadian and US positions ambiguous. Therefore, none of the two countries brought this issue to the ICJ. Both Canada and the United States have shown respect for each other while opposing each other.

The similarity in Russian sovereignty claim has somehow strengthened the Canadian position against American opposition because if America confronts Canada it has to challenge the Russian position over the NEP as well which is going to be more tough. The shared interests of Canada and Russia over the NEP and NWP has worked to ease the relationship and bridging the gap of east and west relationship of the Cold War period. Russia has supported the Canadian instance to attain sovereignty over the NWP, negotiating the Article 234 which gives coastal states to legislate over the EEZ for environmental causes in the coastal areas covered with ice.

The accessibility of the Arctic has increased the number of stakeholders in the Arctic region; therefore, Canada needed a foreign policy to deal with the other Arctic neighbours, new emerging Arctic actors and stakeholders in a rule-based organisation. For this Canada had made efforts to establish a multilateral organisation in the Arctic region. The coming chapter discusses Canada's multilateralism in the Arctic per se.

## CHAPTER V

### CANADA'S MULTILATERALISM IN THE ARCTIC REGION

The previous Chapter analysed the aspects of Canada's relationship with its two Arctic neighbours, the United States of America and the former Soviet Union, in the light of the policies which Canada enacted to formulate its sovereignty claim over the waters in the NWP. This has been underlined in Chapters III and IV that Canada's policies intended to attain sovereignty over the Arctic waters faced severe American disagreement. As discussed in Chapter III, in early 1960, Canadian Prime Minister P. E. Trudeau introduced AWPPA it drew criticism. The US reaction against AWPPA was strong and it presented a detailed protest of the legislation (McConchie and Reid in Macdorman 1986). In this background Canada has proceeded in another way, declaring and exercising jurisdiction (MacDorman 1986) by legislating AWPPA and further negotiated with the UNCLOS to get accent in a multilateral forum over it. Canada was successful in negotiating the Article 234 and extending the limitation of territorial sea from 3 to 12 miles under Article 3 of the UNCLOS III. Canada experienced that multilateral diplomacy can help it against the American opposition. In bilateral negotiations with the US, Canada has difficulty dealing with the US and fears to be the loser and also, there, the US can exercise its dominance in another way but in a multilateral forum. In this situation middle powermanship could be effective in promoting Canada's national interests in the Arctic.

The present Chapter which is divided into four sections analyses Canada's multilateralism pertaining to the Arctic. It discusses (i) the multilateral treaties regarding the Arctic region and Canada's role in these multilateral treaties and their limitations in addressing the Arctic problems (ii) underscores the Canadian initiative to establish a multilevel organisation called the Arctic Council (iii) discusses the Arctic Council and analyses its contribution in Arctic politics, and (iv) summarises the issues in the all three sections.

This Chapter intends to answer how Canada's middlepowermanship worked in the formation of multilateral governance in the Arctic region to promote its national interests through multilateralism and how the geopolitics of ethnicity is becoing instrumental in strengthening the interests of the Arctic nations, especially Canada, in the global geopolitics of the Arctic region.

## **International Cooperation in the Arctic**

The international cooperation in the Arctic region was initiated in the beginning of the twentieth century. According to Young and Oshernekho, “Arctic issues gave rise to three efforts to devise governance systems that proved influential in global terms in addition to providing solutions to pressing regional problems” (Young and Osherenko 1993).

First was the Four Nations’ Treaty<sup>54</sup> which was signed in the year 1911 with an objective to prohibit pelagic sealing. It was regarded as the first step in the creation of international regimes in the Arctic region. The convention on the fur seal known as North Pacific Sealing Convention was signed in Washington by the UK (on behalf of Canada), Japan, Russia, and the US to establish a cooperative management regime designed to restore the health of stocks of northern fur seals breeding on several islands in the Bering Sea. It is also widely regarded as the first successful effort to construct an international mechanism of managing consumptive uses of migratory wildlife which are of interest to the nationals of a number of countries (Lyster 1985; Young 1997). But this treaty was not only for the Arctic region as it covered other regions also. Only the Bearing Sea area was covered under the treaty.

Second, after World War I, the Treaty of Spitsbergen was signed in 1920 for a peace settlement and created an international regime for the Svalbard Archipelago which still exists. This treaty prohibited installation of any type of military base of any country on the archipelago and furthermore served as the model for recent arrangements, including the regime for the Antarctica Treaty of 1959.

In the period of the Cold War, the Agreement on the Conservation of Polar Bears was signed by A5 nations in 1973. But these treaties did not aim to govern the Arctic region or address the Arctic issues. The Polar Bear Treaty of 1973 addressed an issue of the Arctic environment but had a limited scope. The Arctic cannot be governed like the Antarctic Treaty because the birth and the structure of the Arctic governance system are quite different from the Antarctic. There is no sovereign state in the

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<sup>54</sup> Each of the High Contracting Parties agreed that no person or vessel shall be permitted to use any of its ports or harbours or any part of its territory for any purposes whatsoever connected with the operations of pelagic sealing in the waters within the protected area mentioned in the waters of the North Pacific Ocean, north of the thirtieth parallel of north latitude and including the Seas of Bering, Kamchatka, Okhotsk and Japan.

Antarctic. Contrary to that, all the Arctic land, islands, and much of the waters are under the sovereignty and jurisdiction of the Arctic states and in compliance with international law. The policies of these sovereign nations have influence on structure of the Arctic governance system. Thus the sovereign nation-states ultimately determine how the region is governed, even if international law and cooperation play a role (Koivurova 2014).

During the Cold War the Arctic sovereign states were divided into two hostile groups of NATO and Russia and both groups were working unilaterally and reluctant about the other issues except defence. During the 1980s, the impediments in the international cooperation in the Arctic region started eroding and the environment for international cooperation became favourable. The basic factors behind this are described below.

The end of the Cold War which took place with the collapse of the former USSR changed the political scenario in the Arctic region dramatically as the strategic and military significance of the Arctic toned down. The disintegration of the Soviet Union somehow altered the attitude of the Arctic nations about the Arctic. The Arctic was being seen from a different perspective. The countries were less interested in defence installations in the Arctic. The economic interests dominated the strategic interests.

The United States forces abandoned the Keflavik base in 2006. Despite a few sources of tension during the Cold War period leaving unresolved problems, they were conceived as less acute in the post-Cold War period (Siemon 2012).

The global warming intensified the economic interests of the Arctic nations. They were attracted towards the exploitation of natural resources and oil exploration developing navigational facilities through the Arctic shipping lanes. The reduced tension after the Cold War reduced the possibilities of confrontation between the two superpowers, and the shrinking ice cap and technological improvements in resource extraction altogether added a geo-economic aspect in the Arctic region. The Arctic, therefore, has regained a prominent place on the political map under these different circumstances (Østerud and Hønneland 2004). Now non-Arctic nations, corporations were emerging as the Arctic actors.

The question of the rights of the indigenous peoples has become more important all over the world. The questions of the democratic rights and self-governance of these people were rising (Pekka 2009). The indigenous population of the Arctic nations were demanding participation in self-governance and resources in the Arctic region. In this process they came closer to each other because most Arctic indigenous peoples are minorities in their countries. Therefore they internationalised trade and cultural practices. This also helped them to strengthen their legal position as an indigenous people clearly and to assert their right to self-determination against unified states. For example, the Sáami homeland of the Saami people is divided by the national borders of four different unified states. In 1980-81, the Alta movement against the harnessing of the Alta River in northern Norway mobilised the Saami across the national borders to reassert their identity as an indigenous people and to strengthen their demands for self-determination in order to achieve the “collective right to decide their own future”. Although this radical transnational movement lost its fight over the dam, it spawned a national awakening, especially among young Saami and Saami artists. One visible result can be seen in the national symbols shared by all Saami, including the Saami flag (Heininen 2004).

At the end of the Cold War the indigenous peoples of the Arctic came closer through their social networks. The northern peoples shared some common issues and challenges in their respective sovereign states and they were raising their voice for self-determination. This brought about a pan-Arctic renaissance. The deep connections among the different indigenous peoples enabled them to understand the Arctic issues more effectively and this encouraged their initiative in founding international institutions like the Arctic Environmental Protection Strategy and Arctic Council.

### **Canadian Initiative and the Establishment of Multilateral Institutions in the Arctic region**

There are almost no treaties that were specific to the Arctic region till the end of World War II. The only exception is the 1973 Polar Bear Treaty known as the Agreement on the Conservation of Polar Bears dealing with the protection of the polar bear population in Canada, the United States, the former USSR, Norway and Denmark (A5 Nations), in Oslo. This agreement was negotiated due to raising

concerns which emerged in the period of 1950s to 1960s due to the decreasing population of the polar bears. It was believed that the increase in the price for polar bear fur and use of machines and aircraft and boats for hunting were the reason behind this (Striling 1994). After negotiations, the A5 nations with jurisdiction over the areas where the polar bears were distributed signed this international agreement. This agreement represented a significant political achievement because it was the first time that the A5 collaborated in an assigned commitment to solve a common regional problem (Prestrud and Stirling 1994). According to Rob Huebert, the real rationale of the treaty was to provide for a confidence measurement for the superpowers in a time when the NATO and the former USSR were attempting to improve relations through detente. Since that time there have been no other specific Arctic treaties. Instead, what has developed is a series of international agreements (soft international law), and several general international treaties or conventions that have an impact on the Arctic region but are not specific to the region (Huebert 2008).

The emerging geostregic prominace of the Arctic region during the end of the Cold War required a pan – Arctic regime by negotiation. Gail Osherenko and Yoran Young arguement is that the prevailing political scenarios wre appealing for role of less powerful Arctic States. They argue, “Canada in particular, may find this role in the Arctive attractive. Not only would this role fit nicely with the image that many Canadian hold regarding the palce of Canada in international society and that has energized Canadian efforts in the feilds of of Arms control and peace keeping, it would also assuge Canadian fears about being sandwiched between two great powers in the Far North and about succumbing to Maerican pressure regarding issues of sovereignty and security in the Arctic” (1989 242). In oher words Canada’s role as middle power liberal interanationalist in the Arctic region could benfit Canada in the two ways; in protectin its sovereignty and security interst in the Arctic region as well as enhacing its international image,

Canada took the initiative to bridge the gap through intervention. These two factors promoted the Canadian initiative:

## **I The Report of June 1986 of the Special Committee of the Senate and of the House of Commons on Canada’s International Relations**

The report titled *Independence and Internationalism* which was focused on the Canada's foreign policy like trade and development suggested policy measures about two specific areas; Canada's relations with the United States and the Arctic policy of Canada. The Chapter 10 of the report, "A Northern Dimension for Canadian Foreign Policy," recommended the Canadian Government to develop a coherent policy for the Arctic region. Canada's focus should be broadened in its perception about the Arctic region and Canada's Arctic policies should not be developed in isolation but must engage its other Arctic neighbours also. Such a policy would cater to Canada's interests in the Arctic (Dean et al. 2014). This report especially emphasised that Canada should improve its relations with the former Soviet Union. The report said,

"The Soviet Union occupies over 50 per cent of the land mass bordering on the Arctic Ocean and it regards that part of its territory as having a special strategic importance," it noted. "Despite the interests that should be shared by Canada and the USSR, which together occupy more than four-fifths of the Arctic land mass, it has taken a long time to work out mutually acceptable exchange arrangements."

This document also noticed that Canada's foreign policy would be directed to improve its relationship with Russia either bilaterally through promoting the pre-existing Arctic exchange programme or multilaterally by developing any multilateral arrangement in which all the Arctic countries should be engaged. It was noted "an Arctic exchange programme with the Soviet Union is an effective way to increase Canadian knowledge of the north as well as provide a basis for improving East-West relations".

The Canadian government's official response to *Independence and Internationalism* came in the same year titled as *Canada's International Relations*, and affirmed the government's commitment to a "adopt a coherent Arctic policy".

To improve Canada's relations with the former Soviet Union the government announced to increase the funds for the existing Arctic Exchange Programme which provided contacts between Russian and Canadian scientists, giving them opportunity to share their research experiences and knowledge. The Department of Indian and Northern Affairs announced the strengthening of the funding structure early next year to review past programmes and future cooperation in areas of economic development, environmental protection and exchanges among indigenous people involved in

traditional pursuits (Hanningun 1994). For making the initiative to develop cooperative arrangements with other Arctic countries Canadian Prime Minister Mulroney stated that:

Canada will explore ways of expanding our bilateral and multilateral relations with all northern states in areas of mutual interest, including trade, security, native people, environment, economic development, education, health, science and technology. This will be effected through visas, bilateral discussions and, where necessary, formal agreements. The government is considering possible options for expanding relations with Northern states, including a high-level delegation or symposium.”

The Defence White Paper 1987 titled, “Challenge and Commitment” also highlighted the importance of a rule-based Arctic region:

There is no external threat which unique to Canada. Canada alone cannot assure its own security. As the neighbours of two heavily armed superpowers and as a country that depends on international relationship for its well being and prosperity, if not for its survival, Canada’s security ultimately requires the maintenance of a peaceful international order. In an age when a breakdown of that order could result in a nuclear holocaust its importance is self evident (Defence White paper Canada1987).

When Canada was looking an opportunity to create cooperative framework in the Arctic region to make it a rule-based region, in this opportune time the Soviet President Mikahil Gorbachev’s Murmansk speech somehow supported the Canadian stance.

## **II Murmansk Speech of Mikhail Gorbachev**

Authors like Oran Young have regarded the Murmansk speech as the most remarkable event; this was the speech delivered by Mikhail Gorbachev in Murmansk in October 1987. This speech has been viewed as a symbolic turning point in the shift to a new pattern of international relations in the circumpolar North due to the weakening of the Soviet economy.

The Soviet Union attaches much importance to peaceful cooperation in developing the resources of the North, the Arctic. Here an exchange of experience and knowledge is extremely important. Through joint efforts it could be possible to work out an overall concept of rational development of northern areas. We propose, for instance, reaching agreement on drafting an integral energy programme for the north of Europe. According to existing data, the reserves there of such energy sources as oil and gas are truly boundless. But their extraction entails immense difficulties and the need to create unique technical installations capable of withstanding the Polar



elements. It would be more reasonable to pool efforts in this endeavour, which would cut both material and other outlays. We have an interest in inviting, for instance, Canada and Norway to form mixed firms and enterprises for developing oil and gas deposits of the shelf of our northern seas. We are prepared for relevant talks with other states as well (Gorbachev 1987).

In his speech, Gorbachev set forth a multidimensional programme of cooperation initiatives in the North including the creation of a nuclear-free zone, restriction on manual interventions causing damage to the Arctic environment in the North, peaceful cooperation in the development of the Arctic resources, the coordination of scientific research, cooperation in protecting the Arctic environment, the opening of the NSR and the recognition of the indigenous peoples. Gorbachev also called those interested in the region to join forces for forming in the Arctic “a genuine zone of peace and fruitful cooperation”.

The Russian proposal for increased cooperation in scientific research and resource extraction in the Far North was motivated by its resource interests in the Arctic for which Russia actually required Western technology and know-how to extract resources. The Soviets hoped to gain from Western expertise and experience in exploiting offshore oil and gas in a cost-effective manner (Purver 1988). On Gorbachev’s initiative for arms control, Purver quotes,

Arms control component of the Murmansk Initiative, as well as being part of the remarkably activist approach of the Gorbachev regime to arms control issues in general, can also be explained as a direct response to a number of specific threats and opportunities in the military/security field. First the enunciation of the US Navy’s Forward Maritime Strategy, the Soviets may have grown even more concerned than previously about American naval activity in Northern waters close off their shores. Certainly, the increased tempo of US submarine operations in the Arctic cannot have escaped their notice. A recent build up of NATO’s infrastructure on the Northern Flank - for example, the pre-stocking of allied heavy equipment in Norway - has also been viewed with some alarm by the Soviet Union, as have stepped up exercises by NATO surface vessels (including battleships) in the Norwegian and Baltic Seas. All of this has come in the context of the introduction into the US Navy for the first time of long-range, sea-launched cruise missiles (SLCMs), which the Soviet Union naturally considers to be a major threat to its own territory, particularly in the North (Purver 1988).

Gorbachev’s proposal to initiate bilateral or multilateral cooperation in the Arctic region was welcomed by the Arctic countries including Canada; yet, obviously, the previous hostility shrouded the warm response. Canada became involved in a big debate with Russia and the Canadian External Affairs Minister Joe Clark raised

questions: “However, listing three of the arms control elements of the Murmansk speech - the Nordic NWFZ, the limitation of military activity in the Baltic, North, Norwegian and Greenland Seas, and “the examination of a total ban on naval activity in mutually agreed zones”...we have serious reservations about these proposals” (Clark 1987). Clark described Canadian military installations in the North as “all defensive”, and declared that “proposals to demilitarize our North would imply that we abandon our defences”. “Similarly,” he went on, “proposals to declare the North a nuclear-weapon-free zone or to restrict naval movement in areas such as the Norwegian Sea overlook the fact that the nuclear-weapons threat is global, not regional...(d)eclearing the Arctic a nuclear weapon-free zone or restricting certain naval movements there would do nothing to reduce the threat from these weapons. It would be destabilizing for other regions” (Clark 1987). Mr Clark welcomed the Gorbachev proposal for promoting bilateral and multilateral cooperation in the Arctic in non-military areas like energy, science and the environment, and the former Soviet Union’s interest in the creation of an Arctic Sciences Council and developing cultural links among the indigenous peoples of the North. But a series of questions and counter-questions from the Canadian side emerged on this speech and several clarifications were given by the Soviet authorities. Thus the Murmansk speech ultimately paved the way for bilateral and multilateral negotiation cooperation in non-military fields in the Arctic (Purver 1988).

Besides these two events that brought political change, the environmental disasters also played a major role in bringing the A8 under one umbrella to think over the trans-boundary issues which were more severe and critical than the sovereignty issue. These were the Chernobyl incident of 1986 in the former Soviet Union which has been discussed in Chapter II (footnote) and which had a negative impact on the health of the Saami and the sulphur dioxide emission from the Pechengnikel and Saveronikel smelters and Monchegorsk on the Kola Peninsula which reached the Finnish coast causing disaster for the northern forests of Finland.

In March 1989 the Exxon Valdez event discussed in Chapter II and in April 1989 the sinking of a nuclear submarine Komsomolet in the Barents Sea as discussed in Chapter II caused a devastating impact on marine life in the Norwegian Coast (Yong 1998).

These incidents energised negotiations among the Arctic nations especially Norway and Finland, which had suffered from Russian incidents.

**Rovaniemi Declaration 1991: Arctic Environment Protection Strategy (AEPS) and Canada's Initiative** Mikhail Gorbachev's initiative could not mitigate the East-West gap completely, yet it represented the first step by an Arctic State towards cooperative arrangement in the Arctic. The Murmansk speech showed the melting Russian attitude towards Finland.

We welcome the initiative of Finland's President Mauno Koivisto on restricting naval activity in the seas washing the shores of Northern Europe. For its part, the Soviet Union proposes consultations between the Warsaw Treaty Organization and NATO on restricting military activity and scaling down naval and airforce activities in the Baltic, Northern, Norwegian and Greenland Seas, and on the extension of confidence-building measures to these areas (Gorbachev 1987).

Finland hoped that collaboration on environmental protection could ease Cold War tensions with the former Soviet Union. The other reason was the nuclear contamination in the Arctic Ocean which has been discussed in Chapter II. During the 1980s, Arctic states and indigenous groups became more concerned after knowing that the Russian activities created nuclear pollution in the environmentally sensitive Arctic Ocean. The former Soviet Union unsafely stored nuclear waste in the Kola Peninsula that borders Finland. The former Soviet Union did not have regulations to govern the storage of the cancer-causing industrial coolant polychlorinated biphenyl (PCB) safely. In bilateral meetings, the government of Finland had difficulty convincing the former Soviet Union to take action on this issue. On both issues, the states knew the problem existed, but did not understand the extent of the problem and failed to intervene due to the attitude of the two superpowers. Thus environmental issues served as the reason on which the Arctic states could collaborate to ease Cold War tensions and address the more serious borderless challenge (Chater 2015).

The scientific community took the first initiative of reintroducing the earlier plan for a circumpolar body to foster cooperation among the Arctic scientific institutions (Roots and Rogne 1987). The prime motivation was to obtain physical access in the entire circumpolar area. This effort resulted in the creation of the non-governmental International Arctic Science Community (IASC), an associate of the International Council of Scientific Unions. The members of IASC included the research

organisations from all A8 countries and ten other countries. This institution facilitated the development and funding of cooperative projects of circumpolar relevance (Honneland and Stoke 2007).

The Finnish government took this opportunity to create the Arctic Environment Protection Strategy. This initiative was led by Ambassador Esko Rajakoski at the end of the 1980s. He gave four main reasons in answering the question of why the Finnish government believed that the time had arrived for the conduct of international discussions regarding environmental problems in the Arctic. These are

the improved relations between the East and the West;

the lack of existing international legal instruments;

the need to improve scientific research in the Arctic; and,

most importantly, the awareness of the deterioration of the Arctic environment. Finland began negotiations with other Arctic countries in October 1988. The success in initial discussions prompted the delegates officially launching a proposal to create a multilateral body on January 12, 1989 (Vanderzwaag et al. 2002). Several more meetings were held till June 1991. At that time, the A8 – the United States, Russia, Canada, Finland, Sweden, Iceland, Norway and Denmark for Greenland – met at Rovaniemi, to sign the Declaration on the Protection of the Arctic Environment and the accompanying Strategy. The Strategy consisted of a set of objectives and principles; identification of six main types of pollutants. i.e., persistent organic contaminants, oil pollution, heavy metals, noise, radioactivity and acidification; identification of the existing mechanisms for the protection of the Arctic and a sections on the actions to be taken to counter the pollutants (Young 1998).

Canadian officials played a critical role in the successful creation and negotiation of this agreement. The AEPS was what Rob Huebert called as the internationalisation of the Canadian domestic policy – the Arctic Environment Strategy (AES) (Huebert 2014) which was launched in 1991. Actually Canada under extreme pressure of the superpowers was unable to what it has dreamt but it wanted to make a beginning at any condition, Rob Huebert States;

As the Cold War ended, both the Mulroney government and the Chrétien government saw an opportunity to improve circumpolar relations. In a 1989 speech in Leningrad, Mulroney suggested that the time had come to create a multilateral body that brought together the Arctic states to improve cooperation between former enemies. Neither the Americans nor the Soviets accepted the initial effort to create this council so it went nowhere. Instead, Canada joined forces with Finland to create the Arctic Environmental Protection Strategy (AEPS), which was an agreement to examine the emerging circumpolar environmental problems discovered by scientists. While less ambitious than the plans for the Council, Canadian officials viewed it as offering the best means of improving cooperation. However, Canada never lost sight of its goal of creating an Arctic Council and was eventually successful in transforming the AEPS into the Arctic Council in 1996(Huebert 2009).

It aimed to preserve and enhance the integrity, health, bio-diversity and productivity of the Arctic ecosystem for the benefit of present and future generations. Its focus was four major areas: contamination, waste, water and integration of environmental and economic planning (Guidotti and Gosselin 1999, Dowine and Fenge 2003).The most interesting innovation that was associated with the creation of the AEPS was the inclusion of three northern indigenous organisations, which was also a Canadian initiative (Huebert 2014). These included the Inuit Circumpolar Conference (ICC), the Saami Council and the Association of Indigenous Minorities of the North, Siberia and the Far East of the Russian Federation (now known as the Russian Association of Indigenous Peoples of the North). Although they were allowed to participate in almost all of the AEPS discussions and have subsequently been granted the status of Permanent Participants (Arctic Environmental Protection Strategy 1993), they were not accorded completely equal status to the state members.

The inclusion of the one AEPS programme, the Conservation of the Arctic Flora and Fauna (CAFF), became possible with Canadian involvement. Canada put forward this proposal in the preparatory meeting of the AEPS held in Yellowknife in Canada, following the suggestions of the Canadian Wildlife Services, and also provided a secretariat for the CAFF (Rob Huebert in Keskitalo 2004).

Underlining the role of Canada in the creation of the AEPS, Keskitalo quotes Rob Huebert, “A factor that is often overlooked is the key role that Canada played in the drafting of the Strategy [AEPS], Grath Bangey, an official from the Department of Indian and Northern Affairs was one of the main Canadian negotiators; while Rajakoski was initiator of the Strategy Bangey was the main drafter of the actual Strategy” (Huebert 1997 in Keskitalo 2004).

In the beginning Canada’s proposal was that the AEPS should centre on sustainable development and be called the “Arctic Sustainable Strategy” which has not been accepted. This Canada took up when establishing the Arctic Council (AC) which was signed by A8 and reflected the Canadian thinking (Keskitalo 2004).

“The AEPS was created pursuant to “soft international law”. Rather than commit to the establishment of an international treaty, the members of the AEPS would participate in the AEPS activities on a voluntary basis.” Vanderzwaag, Huebert and Ferrara (2002)’s argument is that “this was the result of the United States’ reluctance at the time to participate in any new multilateral organizations and to enter into any new international financial commitments. One of the most difficult challenges that the founders of the AEPS faced was the development of a structure and work plan for the Strategy”.

The AEPS included A8, three indigenous peoples’ organisations as observers and four working groups in four areas: Arctic Monitoring and Assessment Program (AMAP); Protection of the Arctic Marine Environment (PAME); Emergency Prevention, Preparedness and Response (EPPR); and Conservation of Arctic Flora and Fauna (CAFF). The functions and tasks of these working groups will be discussed in Section III of this Chapter on the Arctic Council because these groups functioned for a short period under the AEPS and came under the Arctic Council. The AEPS outlined the environmental challenges in the Arctic region and the existing legal regime to deal with those challenges, and proposed mechanisms to prevent them. For this the A8 confirmed their commitment to cooperate “to ensure the protection of the Arctic environment and its sustainable and equitable development, while protecting the cultures of indigenous peoples”. The five objectives of the AEPS were:

(1) “ protection of the Arctic ecosystem which the flora, fauna including indigenous population and other human being living there;

(2) protection and enhancement and restoration of quality of the Arctic environment using the natural resources in sustainable manner natural resource in order to preserve these for the local populations and indigenous peoples in the Arctic;

(3) to recognise and accommodate the traditional and cultural requirements, ethic, values and practices of the indigenous peoples as determined by themselves. And to extent possible accommodate them and utilise their knowledge and practices for the protection of the Arctic ecology,

(4) to review of the Arctic environment on a regular basis,

(5) identification of the pollutants of the Arctic environments and to check and eliminate the pollution” (Rothwell 1996).

**Other Sub-Regional Organisations emerging in the Arctic Region:** After the end of the Cold War two sub regional organizations were established in the Arctic Reion.

#### **The Council of Baltic Sea States (CBSS) and**

#### **The Barents Euro Arctic Region (BEAR)**

*The Council of Baltic Sea States (CBSS)* After the collapse of the Soviet Union when the Arctic States were making efforts for collaborating and cooperating on the circumpolar affairs, two sub-regional institutions emerged as salient vehicles for cooperation in the European Arctic (Honneland and Stoke 2007). This was the time when the European Union was being very active in the Arctic Affairs. Three out of the A8 are members of the European Union (Sweden, Denmark and Finland) and five are other European countries. Due to these the European countries were attempting to get more involved in the Arctic affairs through their participation in different organisations of the European Arctic nations.

The first was the *Council of the Baltic Sea States (CBSS)* which was established in 1992 and was the product of a Danish-German initiative and all the European Arctic nations which are Nordic nations (Denmark, Finland, Iceland, Norway, and Sweden) and Russia, which is the largest Arctic power, were the members of this institution. The other members were the three Baltic States of Estonia, Latvia, and Lithuania and Poland, Germany and the European Commission. The CBSS is one of several intergovernmental organisations working for cooperation, peace and democracy in

Europe as a whole or in its various regions. Sweden considers that the Council of the Baltic Sea States is playing an important role in overcoming old divisions in northern Europe and in preventing the emergence of new ones. The Council has consistently supported Poland's and the Baltic States' membership of the European Union and continued close cooperation between the EU and Russia. The Council is playing a significant role in implementing the EU's Northern Dimension, i.e., its policy for the Baltic Sea region. This came as a result after the former Soviet republics gained their independence; conditions were created for close cooperation between the governments of the Baltic Sea region (CBSS 2004).

The Council of the Baltic Sea States has the following objectives:

- “To work for greater unity between the member states and to reinstate the Baltic Sea area as a cohesive region,
- To contribute to the continued democratic development of the Baltic Sea region,
- To contribute to economic growth in the area,
- To help ensure that development is sustainable, i.e., that it does not harm the environment and other conditions for future development,
- To support regional Baltic cooperation in different spheres and at various levels” (CBSS 2004).

The CBSS has a permanent international secretariat in Stockholm. The members of CBSS are represented by their ministries of foreign affairs. The CBSS takes overall guidance from the Baltic Sea States Summits, which assembles the heads of the government of the member states and a member of the European Commission. A Committee of Senior Officials (CSO) serves as the body for intergovernmental cooperation among CBSS members. Decisions within the CBSS are taken by consensus (Honneland and Stokke 2007).

*Barents Euro Arctic region (BEAR)* was created by Norwegian initiatives with a unique two-tiered structure – the Barents Council that involved the representatives of Russia, Nordic nations and the European Union and the Regional Council that involved the counties of the indigenous peoples of the region. Initially it included only



three northernmost counties of Norway, Norrbotten in Sweden, Lapland in Finland, Murmansk and Arkhangelsk in Russia.

The Barents Euro-Arctic Council functions mainly through working groups and the Barents Regional Council has representatives from all twelve member counties, provinces and regions as well as the indigenous peoples. The Council works on economic cooperation, trade and investment, science and technology, tourism, the environment, infrastructure, educational and cultural exchange, energy and the improvement in the lives of the region's indigenous peoples (Pekka 2009).

The two sub-regional institutions left no room for Canada and the United States. This made Canada alarmed that the non-Arctic nations can use an engine-bogey system (those who are the members of any organisation where the Arctic members have a prominent position) to peep into the Arctic affairs and there is a possibility that the Arctic politics may come under the dominance of the non-Arctic nations. The initiatives to establish CBSS were Danish and the BEAR was Norwegian, but they largely ignored the Canadian and American presence despite their being NATO allies. This made Canada feel and even fear that every Arctic small power would create institutions with respective allies and involve them in the Arctic matter. Therefore, Canada became serious in creating a political institution working on the Arctic environment and compact enough as the membership would be limited to the circumpolar countries only. Another issue which Canada took up very skilfully was the utilisation of the support from the indigenous organisations that had emerged as an important stakeholder in the Arctic region as discussed in Chapters II and III. There was a very important fact behind this that the indigenous peoples had developed transnational contacts and they were raising voice for their territorial and resource rights and the international institutions like BEAR also recognised their importance, therefore ignoring them in any organisation focussed on the Arctic issue would jeopardise the image of a multilateral institution for the Arctic region. The whole Arctic region is inhabited by the indigenous peoples and after the ILO convention their rights are protected and defended by the international organisations like the UN. Ignoring them could provoke them to demand an independent territory free from the sovereign states, leading to the division of Canada. Thus Canada was bound to give this section an important place in its proposed institution which has been named as 'Arctic Council'. By 1995, Canada started attempting the transformation of the AEPS

into a new international organisation to address the broader issue of sustainable development and that would assume the existing AEPS. As an outgrowth of the Arctic Environmental Protection Strategy (AEPS), a new forum for the cooperation in Arctic the Arctic Council, was established by the eight states in Ottawa, Canada, on September 19, 1996 (Pekka 2001).

Canada aims to establish a high level multilateral governing body for the Arctic region and by the A8 and initially its mandate included the security issue also but the American refusal to sign it compelled Canada to exclude it from the mandate of the Arctic Council (AC). What Borgerson says is that the AC has been ineffectual before it was born as the security issue which is the grave issue in the Arctic has been excluded from the Arctic Council's mandate (a footnote in the Ottawa Declaration establishing the Arctic Council in 1996 states that the Council should not deal with matters related to military security).<sup>55</sup> Under American pressure Canada has no option to accept this because Canada was keen to include all the sovereign states in the Arctic Council and the refusal of the US, the most powerful country, may bear many negative consequences.

Quite contrary to this argument, Keil K. has given a positive view on this:

As geopolitical tensions grow in the rest of the world, the Arctic Council remains an effective forum for international cooperation between arctic states, including Russia and the US. This is largely due to the members' commitment to keep the forum depoliticized. Bringing military security issues into the Arctic Council could risk damaging the current cooperation and coordination between arctic states and indigenous communities on important issues such as climate change, environmental issues, health, and scientific research. When the Arctic Council was established as a high level forum in 1996, the main goal was to enhance cooperation on environmental protection and sustainable economic development in the region. The Arctic Council has proved to be a successful forum for interstate cooperation in the region (Keil:2016).

The geopolitical scenario at the time of the collapse of the Soviet Union in 1991 proved a catalyst to advancing the normalisation of relations with Russia and other Arctic nations. The changing Arctic ecology necessitated the scientific cooperation on environmental matters in the Arctic region. Undoubtedly, the Arctic Council appeared

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<sup>55</sup> Arctic Council (1996) Declaration on the Establishment of the Arctic Council (The Ottawa Declaration), 2, first footnote.

to be among the most promising means to bring them together for closer cooperation in the Arctic region. The Arctic region was remote, unfamiliar and on the periphery of national affairs in most of the Arctic states in those years and this provided ample room for diplomatic manoeuvring. Even as the AEPS was being negotiated, Canada promoted the concept of an Arctic Council in a speech by Prime Minister Mulroney during a visit to Leningrad in November 1989. The Canadian Initiative was intended to create a body with a broad mandate that took into account matters of sustainable development and the so-called “human dimensions” of the Arctic. The Canadian Initiative gained momentum when Canada appointed an Ambassador for Circumpolar and Aboriginal Affairs in October 1994 with a mandate to negotiate an Arctic Council. In 1995 the document *“Canada’s Proposal to Establish an Arctic Council of the Eight Nation, published by “* Department of Foreign Affairs *’Canada is of the strong view that a forum is needed to promote cooperation and concerted action and to bring political focus to addressing the urgent issues affecting the circumpolar North. These issues go beyond those related to the protection of the environment.”*

The Council took form from 1993 to 1996 through negotiations among the Arctic nations. The three indigenous peoples’ organisations which were AEPS Permanent Participants also attended these negotiations. An informal 1995 agreement between Canadian Prime Minister Chrétien and United States President Clinton to move this initiative forward was of first importance in this process (Fenge and Funston 2015). Canada incorporated all those elements envisioned in the speech of Gorbachev’s Murmansk speech for a multilateral institution in the Arctic.

### **Arctic Council**

According to Anrea Cahrron, “the Arctic Council is regarded as high-level, mainly intergovernmental forum for cooperation, coordination, and interaction among Arctic states, indigenous groups, and interested parties of two issue areas, sustainable development in the Arctic and the protection and study of the fragile Arctic ecosystem” (Charron 2012).

The Arctic Council was a Canadian initiative from beginning. During 1960 Canada urged for creating a multilateral Arctic organization but other Arctic states gave little consideration to the creation of such a body during the cold war. The Gorbachev’s Murmansk speech and his call for an Arctic 'zone of peace' paved way for the

negotiation of the Arctic Council ((Huebert 1999).Canada promoted Arctic collaboration actively by engaging in the process leading up to the founding of the arctic council. in 1996, and participating in he Council working group. For Canada this was serving a major diplomatic interst also. Actually Canada found this opportunity to develop good relations with Russai after the end of WW II and securing the sustainable development and environment friendly solutions for the arctic region (Offerdal 2014, 78).

The Arctic Council is the most important forum of cooperation in the Arctic (Hoel 2010) and an excellent example of regional cooperation. Currently, the Arctic Council is superior among all the international institutions in this region, in the sense that all of the Arctic Eight are its permanent members. According to the Ottawa Declaration 1996:

“The Arctic Council is established as a high level forum to:

- (a )provide a means for promoting cooperation, coordination and interaction among the Arctic States, with the involvement of the Arctic indigenous communities and other Arctic inhabitants on common Arctic issues, in particular issues of sustainable development and environmental protection in the Arctic.
- (b) oversee and coordinate the programs established under the AEPS on the Arctic Monitoring and Assessment Program (AMAP); Conservation of Arctic Flora and Fauna (CAFF); Protection of the Arctic Marine Environment (PAME); and Emergency Prevention, Preparedness and Response (EPPR).
- (c) adopt terms of reference for, and oversee and coordinate a sustainable development program.
- (d) disseminate information, encourage education and promote interest in Arctic related issues (Ottawa Declaration 1996).”

The Arctic Council is not a full-fledged international organisation as it is based on “soft” international law. According to the Ottawa Declaration the Arctic Council is established as a high level forum without legal personality. The status of the Arctic Council is of a forum, and not as an international organisation, and has an important impact on how it operates and how states interact within it. Because the Council acts solely through consensus, individual Arctic states can have confidence that the Council will not be used either to impose policies with which they disagree or to require participation (and thus payment) for programmes which are not matters of

priority for them. States are also assured that there is no limitation on their ability to act in their national interest, as there is no requirement that any particular issue or type of cooperation be handled through the Council (Bloom 1999). The choice of a non-legally binding instrument is a clear indication that the Council was not intended to be an international organization. Canada in particular advocated in the mid 1990s that the Council should be an international organization, but in the end could not convince the United States (Molenaar 2012). The UNCLOS III Part IX which deals separately with the enclosed and semi enclosed sea consists Article 122 and 123 which recommends the organizations like the Arctic Council. The Article 123 reads:

“States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavour, directly or through an appropriate regional organization: (a) to coordinate the management, conservation, exploration and exploitation of the living resources of the sea; (b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment; (c) to coordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area; (d) to invite, as appropriate, other interested States or international organizations to cooperate with them in furtherance of the provisions of this article” (Molenaar 2012). But there remains an ambiguity whether the Arctic Council is enclosed or semi enclosed sea.

### **Arctic Council Structure, Features and Functions and Development**

The formal structure of the Arctic Council is outlined in the Ottawa Declaration. There are three categories of the participants of the Arctic Council

I Sovereign States or the Core Actors: All eight Arctic rimming nations located in the north of the Arctic Circle (A8) have been given the membership in the Arctic Council as these are the core in the decision-making process.

II The Permanent Participants or the Indigenous Organisations: Permanent participation equally is open to other Arctic organisations of indigenous peoples with a majority Arctic indigenous constituency, representing: (a) a single indigenous people resident in more than one Arctic State; or (b) more than one Arctic indigenous

people resident in a single Arctic state. The determination that such an organisation has met this criterion is to be made by a decision of the Council. The number of Permanent Participants should at any time be less than the number of members. The category of Permanent Participation is created to provide for active participation and full consultation with the Arctic indigenous representatives within the Arctic Council. One of the main differences between AEPS and the Arctic Council was placing the organisations of the indigenous peoples in the structure of the latter (Koivurova 2009). In AEPS, indigenous organisations were given only observer status, equally with non-Arctic countries and other organisations, but the Ottawa Declaration assigned to the organisations of the indigenous peoples the status of Permanent Participants which obligates member countries to consult with them before making a decision on the consensus principle (Ottawa Declaration 1996) and have right to “active participation and full consultation”. They also have the right to present proposals for cooperative activities. This status is distinct from the “Observer” status, which the Arctic Council reserves to (some) non-Arctic states, intergovernmental and inter-parliamentary organisations and non-governmental organisations (Arctic Council 1996).

**Table 2 Permanent Memmbers, Permanent Pariticiapnts and Observers and Pending Applications for the Seat of Permanent Observers**

Participant	Country or Organization	Status	Year Joined
1	2	3	4
Canada	Country	Chair	1996
Denmark	Country	Member State	1996
Finland	Country	Member State	1996
Iceland	Country	Member State	1996
Norway	Country	Member State	1996
Russia	Country	Member State	1996
Sweden	Country	Member State	1996
United States	Country	Member State	1996
Arctic Athabaskan Council (AAC)	Organization	Permanent Participant of the Arctic Council	1996
Aleut International Association (AIA)	Organization	Permanent Participant of the Arctic Council	1996
Gwich'in Council International (GCI)	Organization	Permanent Participant of the Arctic Council	1996
Inuit Circumpolar Council (ICC)	Organization	Permanent Participant of the Arctic Council	1996
Russian Association of Indigenous Peoples of the North (RAIPON)	Organization	Permanent Participant of the Arctic Council	1996
Saami Council (SC)	Organization	Permanent Participant of the Arctic Council	1996
France	Country	Observer	1996
Germany	Country	Observer	1996

1	2	3	4
The Netherlands	Country	Observer	1996
Poland	Country	Observer	1996
Spain	Country	Observer	1996
United Kingdom	Country	Observer	1996
International Federation of Red Cross & Red Crescent Societies (IFRC)	Organization	Observer	1996
International Union for the Conservation of Nature (IUCN)	Organization	Observer	1996
Nordic Council of Ministers (NCM)	Organization	Observer	1996
Nordic Environment Finance Corporation (NEFCO)	Organization	Observer	1996
North Atlantic Marine Mammal Commission (NAMMCO)	Organization	Observer	1996
Standing Committee of the Parliamentarians of the Arctic Region (SCPAR)	Organization	Observer	1996
United Nations Economic Commission for Europe (UN-ECE)	Organization	Observer	1996
United Nations Development Program (UNDP)	Organization	Observer	1996
United Nations Environment Program (UNEP)	Organization	Observer	1996
China	Country	Observer	2013
Italy	Country	Observer	2013
Japan	Country	Observer	2013
South Korea	Country	Observer	2013
Singapore	Country	Observer	2013
India	Country	Observer	2013
European Union	Organization	Applying for observer status	NA
Oceania	Organization	Applying for observer status	NA
Association of Oil and Gas Producers (OGP)	Organization	Applying for observer status	NA
OSPAR Commission	Organization	Applying for observer status	NA
Greenpeace	Organization	Applying for observer status	NA
International Hydrographic Organisation (IHO)	Organization	Applying for observer status	NA
World Meteorological Organization (WMO)	Organization	Applying for observer status	NA
Association of Polar Early Career Scientists	Organization	Applying for observer status	NA

In 2017 in the 10<sup>th</sup> Ministerial Meeting of the Arctic Council in Fairbank Alaska Switzerland was granted the seat of permanent Observer.

III Observers: The observer status in the Arctic Council is open to:

(a) non-Arctic states;

(b) inter-governmental and inter-parliamentary organisations, global and regional; and

(c) non-governmental organisations that the Council determines can contribute to its work. The detail of these three categories is given in the table 2. The observers are invited to ministerial and other meetings of the Arctic Council. How long observer status is continued is not specifically stated; presumably, it continues so long as there is consensus among the eight Arctic states. Observers may make statements at the discretion of the chair and submit relevant documents to the meetings. Non-Arctic states and organizations not yet deemed observers are welcome to apply to the chair of the council in writing, outlining their potential contribution to the council. The applications are reviewed and a final decision is made by consensus among the Arctic states (Charron 2012). In Ministerial in Nuuk May 2011 the Arctic Council adopted some criteria for accepting new observers ( Arctic Year Book 2012 49). These are:

(i) Accept and support the objectives of the Arctic Council defined in the Ottawa declaration. (ii) Recognize Arctic States' sovereignty, sovereign rights and jurisdiction in the Arctic. (iii) Recognize that an extensive legal framework applies to the Arctic Ocean including, notably, the Law of the Sea, and that this framework provides a solid foundation for responsible management of this ocean. (iv) Respect the values, interests, culture and traditions of Arctic indigenous peoples and other Arctic inhabitants. (v) Have demonstrated a political willingness as well as financial ability to contribute to the work of the Permanent Participants and other Arctic indigenous peoples. (vi) Have demonstrated their Arctic interests and expertise relevant to the work of the Arctic Council. (vii) Have demonstrated a concrete interest and ability to support the work of the Arctic Council, including through partnerships with member states and Permanent Participants bringing Arctic concerns to global decision-making bodies Molenaar 2012).

*Chairmanship* Canada was the first to assume the chairmanship of the Arctic Council when it assumed the AC chairmanship in 2013; the cycle of rotating chairmanships among the eight Arctic states began anew. In the first cycle, states proposed themselves as the next country to hold the chair which consequently moved from Canada (1996-1998) to the United States (1998-2000), Finland (2000-2002), Iceland (2002-2004), Russia (2004-2006), Norway (2006-2009), Denmark (2009-2011) and finally to Sweden (2011-2013). In 2013-2015 Canada held the chair of the Arctic and was followed by the US in 2015-2017 and currently Finland has the chair that started



in 2017 and which will end in 2019. The state before holding the chair has to propose its objectives and priorities and actions to be made during its tenure. Arguably, the chairmanship is the ‘window of opportunity’ to shift the agenda of the AC closer to the national interest of the state in office, even if constrained by the consensual nature of the AC decision-making process.

The ministers of the eight states meet after every two years. Each state appoints a Senior Arctic Official (SAO). The SAOs meet every six months and direct the work of the Council on a day-to-day basis. The chair of the SAO belongs to the country currently chairing the Council (2014).

The Indigenous Peoples’ Secretariat established under AEPS is now existing in the Arctic Council. The major difference between AC and AEPS is that the indigenous organisations were provided only the observer status under AEPS but in Arctic Council they became the permanent members. The AC is responsible for reviewing the priorities and financing of its programmes and associated structures (Ottawa Declaration 1996).

Evolution and Role of the Arctic Council: The Nuuk Ministerial Meeting in 2011 marked the history of the Council also in two other respects. First, at that meeting foreign ministers of Arctic states took the decision to establish a permanent Arctic Council secretariat to be located in Tromsø, Norway and operational no later than at the beginning of 2013 (Arctic Council 2011). The decision to establish a standing secretariat was a major step in the Arctic Council’s effort to strengthen the capacity of the Council to respond to emerging challenges and opportunities and provide it with the institutional memory it had not had with a secretariat rotating every two years with the chairmanships. It also constituted a principal difference in the practice of the AEPS and the Council’s first fifteen years in operation (Śmieszek and Koivurova 2017). Second, at Nuuk the ministers signed the first legally-binding agreement negotiated under the auspices of the Arctic Council. It was the Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic (SAR Agreement) (Molenaar 2012), followed by the Agreement on Cooperation on Marine Oil Pollution, Preparedness and Response in the Arctic (Oil Spills Agreement) signed at the Ministerial meeting in Kiruna, Sweden in May 2013. Because the Arctic Council has no independent legal personality both agreements are between the eight

Arctic states – rather than being “Arctic Council agreements”. Nonetheless, even if the Council served primarily as the catalyst for their negotiations and signature, the agreements marked an evolution of the AC from a body “set up to discuss, inform and potentially shape decisions by national governments” (Fenge and Funston 2015) toward more of a decision-making one.

**Working Groups and Task Forces in the Arctic Council** The Arctic Council subsumed the AEPS and its four working groups in 1996 and two more working groups were added. The working groups are comprised of representatives at expert level from sectoral ministries, government agencies and researchers. Their function covers a variety of fields of subjects, like climate change, pollution control, preservation of environment and emergency response.

**(i) Arctic Contaminants Action Program (ACAP)** This working group functions for addressing the impact of climate change through various practical projects on short lived climate forcers, like black carbon, in the transport and diesel generators sectors, as well as renewable fuel alternatives. ACAP is working in direction to reduce releases of contaminants such as mercury, obsolete pesticides, dioxins and furans, PCBs and other hazardous waste in the Arctic environment is to prevent adverse effects of contaminants. Currently the Arctic environment is exposed to many kinds of pollution resulting from human activities, the working group has been entrusted with the task to identify them and suggest the steps to mitigate them (ACAP 2016).

**(ii) Arctic Monitoring and Assessment Programme (AMAP)** The main function of this Working Group is "providing reliable and sufficient information on the status of, and threats to, the Arctic environment, and providing scientific advice on actions to be taken in order to support Arctic governments in their efforts to take remedial and preventive actions relating to contaminants". Its main responsibility is measuring the levels, and examine the impact of anthropogenic pollutants in every compartment of the Arctic environment whether human being, animals and documenting trends of pollution; sources and nature and trend of pollutants; examining the impact of pollution on Arctic flora and fauna, especially those used by indigenous people; reporting on the conditions of the Arctic environment; and giving advice to the Ministers for required actions (AMAP 2018). AMAP's priorities include the following contaminant groups and issues:

- Persistent organic contaminants (POPs)
- Heavy metals (in particular mercury, cadmium, and lead)
- Radioactivity
- Acidification and Arctic haze (in a subregional context)
- Petroleum hydrocarbon pollution (in a subregional context)
- Climate change (environmental consequences and biological effects in the Arctic resulting from global climate change)
- Stratospheric ozone depletion (biological effects due to increased UV-B, etc)
- Effects of pollution on the health of humans living in the Arctic (including effects of increased UV radiation as a result of ozone depletion, and climate change)
- Combined effects of pollutants and other stressors on both ecosystems and humans (AMAP 2018)

AMAP has produced a series of high quality scientifically-based assessments of the pollution status of the Arctic.

**(iii)Conservation of Arctic Flora and Fauna (CAFF)** This is the working in the area of conserving biodiversity of the Arctic region with cooperation of members of A8, permanent participants and observers and their organizations. CAFF is governed by a Chair and Management Board and supported and coordinated by the International CAFF Secretariat. Its mandate is addressing the conservation of Arctic species and habitat management and utilization, to share information on management techniques and regulatory regimes, and facilitating for effective decision-making. It communicates its findings to the governments and residents of the Arctic, helping to promote practices which ensure the sustainability of the Arctic's living resources. The works are performed through various monitoring, assessment and expert group activities. The projects being carried out under CAFF provide data regarding the emerging challenges and guided by the CAFF Strategic Plan for the Conservation of Arctic Biological Diversity and biennial Work Plans (CAFF 2015)..

**(iv)Emergency Prevention, Preparedness and Response (EPPR)** The Arctic environment is fragile with an extremely low climate temperatures, long dark winters, snow, ice and permafrost. Harsh weather conditions and lack of

infrastructural facilities in the Arctic increase risks and hinder response activities. Its mandate is to contribute for prevention, preparedness and response to environmental and other emergencies as accidents, and Search and Rescue (SAR). EPPR conducts projects to address gaps, prepare strategies, share information, collect data, and collaborate with relevant partners on capabilities and research needs that exist in the Arctic. EPPR works with Arctic Council Working Groups and other organizations on projects and activities to:

(i) development of guidance and risk assessment methodologies,

(ii) coordination of response exercises and training,

(iii) exchange of information on best practices with regards to the prevention, preparedness and response to accidents and threats from unintentional releases of pollutants and radionuclides, and to consequences of natural disasters” (EPPR 2017).

**(v) Protection of the Arctic Marine Environment (PAME)** The function of this Working Group is dedicated to protecting the Arctic marine environment. With increased economic activity like shipping, fishing, oil spill are posing threats to the Arctic marine and coastal environments.

PAME's mandate is addressing the policy and non-emergency pollution prevention and control measures related to the protection of the Arctic marine environment from both land and sea-based activities (PAME 2015)

**(vi) Sustainable Development Working Group (SDWG)** The Arctic Council mandate (1996) stated that it would be working on the principles of sustainable development program and accordingly this Working Group was included in the Arctic Council. Terms of Reference were approved by the Arctic Council in September 1998 and the Sustainable Development Working Group (SDWG) was established:

- to propose and adopt steps to be taken by the Arctic States to advance sustainable development in the Arctic, including opportunities
- to protect and enhance the environment and the economies, culture and health of Indigenous Peoples and Arctic communities, as well as

- to improve the environmental, economic and social conditions of Arctic communities as a whole.

**Areas of Work under SDWG** Consistent with the mandate and priorities of the Arctic Council, the functions can be categorised into six broad thematic areas:

- Arctic Human Health issues and the well being of people living in the Arctic,
- Sustainable economic activities and increasing community prosperity,
- Education and cultural heritage, including Indigenous Languages.
- Management of natural, including living, resources.
- Adaptation to Climate Change;
- Infrastructure development (SDWG 2018).

In addition to the Working Groups there are also Task Forces to facilitate the Arctic Council. The ministerial meetings decide the specific issues and the targets to assign for these Task Forces. The difference between the Working Groups and the Task Forces is that the Working Groups are Permanent where as the Task Force for a limited amount of time and remain active until they have produced the desired results, at which point they become inactive. Experts from the Working Groups and representatives from the Arctic States take part in the Task Forces. There are currently two active Task Forces in the Arctic Council.

*Task Force on Arctic Marine Cooperation (TFAMC)* was established 9th Arctic Council Ministerial Meeting in Iqaluit, Canada, on April 24, 2015. The mandate was” to consider future needs for strengthened cooperation on Arctic marine areas, as well as mechanisms to meet these needs, and to make recommendations on the nature and scope of any such mechanisms.” Its task was extended for another two years during the 10th Ministerial Meeting in Fairbanks, Alaska on May 11, 2017.

*Task Force on Improved Connectivity in the Arctic (TFICA)* was at the Fairbanks Ministerial Meeting in 2017. With an objective of, “compare the needs of those who live, operate, and work in the Arctic with available infrastructure, and work with the telecommunications industry and the Arctic Economic Council to encourage the

creation of required infrastructure with an eye toward pan-Arctic solutions, and report to Ministers in 2019.”

The programmes of the Arctic Council are funded voluntarily by individual Arctic states. Under current practice, states identify working groups or projects they wish to support, for example, Norway pays for a secretariat for AMAP, Iceland for PAME, the US and Iceland for CAFF, and Denmark provides most of the funding for an Indigenous Peoples’ Secretariat located in Copenhagen (Bloom 1999).

### **Canada’s Role in the Arctic Council**

Canada was the first nation to the Arctic Council and during the first chairmanship the AC was only in infant stage but during the second chairmanship of Canada (2015-17), Canada, which was so keen to mitigate the Cold War bitterness could not escape the prevailing tension.

The reason for the tension between Canada and Russia was over the Russian involvement in Ukraine, militarising the Arctic. The former Canadian Prime Minister Stephen Harper had strong words with Putin. Such incidents reflect the lack of harmony among the Arctic countries within the AC and also Canada’s failure to maintain its own objectives to establish the AC.

If success is considered, Canada has successfully created the Arctic Economic Council, a separate body consisting of solely private partners. In March 2014, the Arctic Council’s Senior Arctic Officials approved the document “Facilitating the Creation of the Arctic Economic Council”, which describes the aims of the Arctic Economic Council as “to foster sustainable development, including economic growth, environmental protection and social development in the Arctic Region”. But Canadian chairmanship has been criticised for neglecting the environmental issue which is the core objective of the AC.

### **Success and Limitation of the Arctic Council**

Though the Arctic Council does not have the capacity to adopt any legally binding obligations to implement an integrated oceans management in the marine Arctic, ye it has made some important efforts and developments in respect to adopting an integrated oceans management. Its two working groups, Conservation of Arctic Flora

and Fauna (hereinafter CAFF) and Protection of the Arctic Marine Environment, established under Arctic Council, have provided the states with critical knowledge about the biological diversity in the Arctic and its current and future threats. The main tasks of these working groups are to collect data about the status of the environment, including its biological diversity, and to identify, monitor, and assess the risks of human activities, as means to provide advice to the Arctic states regarding their decision-making (Jakobsen 2013). The Arctic Council contributing in the combating challenges emerged due to the climate change but mostly by generating knowledge that may fuel the regulatory process in broader institutions (Stokke 2011).

The elimination of security issues from the mandate of the AC has obviously some important implication for capabilities of the AC, (the 1996 Ottawa Declaration) stating that it “should not deal with matters related to military security” has been assumed as a reason to weaken the Arctic Council but proved helpful in bridging the West and East relationship. The focus on practical, shared challenges was insured by another provision stating that the “decisions of the Arctic Council are to be by consensus of the members”. These two factors have worked successfully as a binding factor for the Arctic Council members. One of the successes of the AC was the 2004 Arctic Climate Impact Assessment which drew global awareness to the changing climate of the Arctic region and its impact on global climate. Then, in 2011, a task force established by the Arctic Council negotiated a treaty on search and rescue. In 2013, another task force negotiated a treaty on oil spill preparedness and response (Byers 2016).

Michel Byers has argued that “Arctic cooperation has survived significant disputes between Russia and other Arctic countries. The US-funded Arctic Climate Impact Assessment was adopted at the Arctic Council shortly after the 2003 US-led invasion of Iraq, which was strongly opposed by Russia. The Arctic Marine Shipping Assessment was adopted at the Arctic Council shortly after the 2008 Russian invasion of Georgia, which was strongly opposed by the United States and other Arctic countries. Arctic cooperation was challenged again when Russia annexed Crimea in March 2014. The annexation, and Russia’s support for rebels in the Ukrainian provinces of Donetsk and Luhansk, raised tensions between Russia and other Arctic states to their highest level since the Cold War” (Byers 2017).

Once it was being apprehended that the AC might be caught up in the crisis that followed Russia's annexation of Crimea in March 2014, a rift was created in the Canada-Russia relationship. Canada boycotted a meeting of a task force on black carbon in response to "Russia's illegal occupation". However, Canada stated that it will "continue to support the important work of the Arctic Council". But after this the subsequent meetings have been attended by all the eight member states, and cooperation on practical, shared challenges has continued. In April 2015, Russia's Minister of Natural Resources and Environment Sergei Donskoi joined in the Iqaluit Declaration<sup>56</sup> in Yukon, Canada, agreeing to the adoption of the US programme for its two-year chairmanship. Although Canada was against Russia's actions in Ukraine during the Iqaluit ministerial summit, the practical work of the AC continued notwithstanding that. Russia supported the creation of the task force.

In this meeting the members unanimously agreed to establish a task force named as the Task Force on Arctic Marine cooperation (TFAMC) with a mandate to prepare mechanism to foster cooperation in marine-related issues against the emerging future challenges.

Another limitation of the Arctic Council is that it has no mechanism to resolve the dispute within the Arctic region even. No country has initiated to resolve the Canada-Russia bitterness. But Micheal Byers finds that the Arctic Council is more effective in its present structure "Two further aspects of the Arctic Council's design have made it easier for the Arctic states to distance that institution from the Ukraine crisis and any changes in the general power relationships between Russia and Western states. First, there is the exclusion of matters of military security. Second, there is the requirement of consensus, which protects each Arctic Council state from having decisions imposed upon it by the others. The consensus requirement is effectively a veto, and serves the same function as the vetoes held by the permanent members of the UN Security Council: protecting both the state using the veto and the institution itself, by acting as a safety valve that suspends decision making in circumstances where the institution might otherwise implode from the pressure of irreconcilable interests (Byers 2017).

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<sup>56</sup> Iqaluit Declaration took place on 25 April 2015 in Nunavut, Canada, on the occasion of the Ninth Ministerial Meeting of the Arctic Council. This meeting took place to conclude the Canada's second chairmanship under the theme of Development for the People of the North.



The Ilulissat Declaration<sup>57</sup> issued in May 2008 became a major event of difference in the Arctic Council. In that Declaration, Canada, Denmark (Greenland), Norway, Russia, and the United States proclaimed that:

By virtue of their sovereignty, sovereign rights and jurisdiction in large areas of the Arctic Ocean the five coastal states are in a unique position to address these possibilities and challenges. In this regard, we recall that an extensive international legal framework applies to the Arctic Ocean as discussed between our representatives at the meeting in Oslo on 15 and 16 October 2007 at the level of senior officials. Notably, the law of the sea provides for important rights and obligations concerning the delineation of the outer limits of the continental shelf, the protection of the marine environment, including ice-covered areas, freedom of navigation, marine scientific research, and other uses of the sea. We remain committed to this legal framework and to the orderly settlement of any possible overlapping claims (Ilulissat Declaration 2008).

The A5 countries firmly affirmed that the UNCLOSIII is efficient in governing the maritime issues in the Arctic and therefore, no new treaty is required to govern the Arctic Ocean.

“This framework provides a solid foundation for responsible management by the five coastal States and other users of this Ocean through national implementation and application of relevant provisions. We therefore see no need to develop a new comprehensive international legal regime to govern the Arctic Ocean. We will keep abreast of the developments in the Arctic Ocean and continue to implement appropriate measures” (Ilulissat Declaration 2008).

Whereas some of the states present at the meeting justified the Arctic Five format as necessary at a time of heightened interest in the Arctic (Pedersen 2012), this became a major concern of differences among the participants of the Arctic Council because Iceland, Finland, Sweden and the Permanent Participants were to keep away from this new forum. All of them expressed their deep discontent with the new forum, claiming that it undermined the Arctic Council’s image as a Pan-Arctic institution and rules of collaboration in the circumpolar north. The exclusion of the permanent participants is

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<sup>57</sup> At the invitation of the Danish Minister for Foreign Affairs and the Premier of Greenland, representatives of the five coastal States bordering on the Arctic Ocean – Canada, Denmark, Norway, the Russian Federation and the United States of America – met at the political level on 28 May 2008 in Ilulissat, Greenland, to hold discussions. In this declaration the five Arctic rimming states declared their special status within the Arctic because only these five countries have their territories in the Arctic Ocean.

also not consistent with the Canadian historical waters claim over the NWP. The Ilulissat Declaration generated a remarkable level of criticism from the A3 (Sweden, Finland and Iceland). The A3 nations viewed it as an attempted encroachment on their interests in the Arctic Ocean – which were not well articulated and for the work of the Arctic Council. Three years later the A3 and others raised a similar objection when the A5 again met on their own in Chelsea, Quebec. The critics warned that the exclusion of the A3 and the Permanent Participant A5 was again creating a parallel system to the Arctic Council (Baker 2013). It also raised questions about the Arctic Council as the preeminent region-specific forum – a debate that somewhat came to a halt in 2010 when Secretary of State Hillary Clinton signalled a significant shift in US Arctic policy and practically dismissed the Arctic Five gathering, making the Arctic Council (for the time being) the only relevant forum for general discussions on Arctic matters (Pedersen 2012).

### **Role of Indigenous Peoples in the Arctic Council**

Though the Arctic Council has played a significant role in engaging the aboriginal population into decision-making processes in the Arctic, many of the indigenous organisations did not get this chance. The permanent participants are only six and obviously, as regards this issue, there are also critical voices. Many organisations of indigenous people do not have their representation in the Council.

The Ottawa Declaration stated that, “the number of permanent Participants should at any time be less than the number of member states which means that there is only one more place in the Council for a Permanent Participant” (Ottawa Declaration 1996). On major issue which has prevented their actual capacity to be utilised and explored in the AC is that the member states are the only decision makers. Moreover, their involvement has been kept limited in the work of ACIA where the autochthons’ knowledge and experience could be useful in resolving some of the environmental issues (Kankaanpaa 2012). The indigenous organisations are given importance because of their increasing influence in the international foray and overall, the ICC played an important role in formulating the policies and negotiation of the AC and thus their inclusion was essential for the establishment of the AC.

The ICC has been particularly influential over international environmental issues, providing an essential moral impetus during the negotiation of the 2001 Stockholm

convention on persistent organic pollutants and helping to bring the Arctic dimension of climate change into the global public consciousness. In 2009, the ICC issued “A circumpolar Inuit declaration on sovereignty in the Arctic”. The document does not claim Inuit sovereignty; rather, it asserts the right to be involved in any interstate negotiations concerning sovereignty disputes and indicates specific concern about the exclusion of the Inuit from the 2008 Ilulissat summit (Byers:2009). Thus the inclusion of these organisations in the Arctic Council was just to showcase concerns towards the indigenous population to assert political and legal rights on various issues like sovereignty over the NWP.

### **Summary and Conclusion**

The Arctic region was not accessible in the beginning of the twentieth century, yet three important treaties were negotiated till the end of the Cold War. Two of them were related to the environmental issue; one was the four nations treaty for the preservation and protection of fur seals signed in 1911 and another was the Agreement on the Conservation of the Polar Bears in 1973. The Treaty of Spitsbergen served as the basis of the Antarctica Treaty of 1959 but no treaty was signed for the Arctic region.

During the Cold War period all the Arctic nations were trying to resolve their issues within the Arctic region either by unilateral decisions or bilaterally. Though several issues especially environmental ones had emerged, none of the Arctic nations took initiative to address these issues multilaterally. In this background Canada wanted to improve its relations with the other Arctic nations including the former Soviet Union to seek cooperation on its sovereignty issue. Another reason was very clear that Canada wished to bring its sovereignty issue into the multilateral forum because it has difficulty in dealing with the United States which is against Canada’s sovereignty claim over the waters in the CAA. Canada’s Standing Committee in its report on Independence and Internationalism advised the Canadian government to improve relations with all the Arctic neighbours and try to negotiate in the direction to make the Arctic region a rule-based Arctic region. Similarly, Canada’s Defence White Paper of 1987 also suggested that Canada’s which is geographically positioned between two heavily armed superpowers required an international order in the Arctic

that is in Canadian interest. Any confrontation can prove to be catastrophic for Canada.

In this opportune time the Soviet President Gorbachev delivered his famous Murmansk speech which is regarded as a milestone in bridging the East-West gap and mitigating hostility among the Arctic nations which were divided into two hostile camps. This speech motivated all the Arctic nations but there was scepticism due to previous tensions. Canada found a right time and condition to negotiate for the high level political organisation for the Arctic. Another nation Finland was also eager to negotiate for the creation of such a treaty based on the Arctic environment because the former Soviet Union had dumped nuclear waste near the Kara Sea which was bordering Finland. Finland was unable to deal this issue bilaterally with the former Soviet Union. The indigenous communities were also against the Soviet action of nuclear pollution in the environmentally fragile Arctic Ocean which was directly a threat to their health and habitat. Other European nations were also in favour of a negotiation of any treaty which could address the Arctic environment because nuclear waste dumping by the former Soviet Union was causing more threats for the Nordic nations than the US and Canada.

In such a background it was clear that all the Arctic nations had a common cross-border problem related to environment which they wanted to address in a multilateral forum because countries like Finland found difficulties in dealing with Russia bilaterally. This led to the creation of the AEPS in 1993 – an institution based on soft international law – that was a Finnish initiative but Canada played a critical role in drafting and signing this and in including the indigenous organisations in it.

Canada's vision for a high level political institution to govern the Arctic region led the negotiation for the Arctic Council in 1996 and it subsumed the AEPS in it. The Arctic Council was launched in 1996 under the terms of the Ottawa Declaration on the "Establishment of the Arctic Council", focusing on issues that fit within the rubrics of environmental protection and sustainable development.

The Arctic Council according to the Ottawa Declaration is a high level forum established with the purpose to promote co-operation, co-ordination and interaction among the Arctic States and indigenous communities and other inhabitants on common issues – in particular the issue of sustainable development and

environmental protection in the Arctic. The establishment of the Arctic Council was a Canadian initiative which included all the eight Arctic countries and six indigenous organisations as the Permanent Participants and the observer status has been opened for non-Arctic nations and intergovernmental organisations and international nongovernmental organisations. Canada was the first country to chair the Arctic Council and the period of 2013-2015 was the second term to chair the Arctic Council. The negotiation to establish the Arctic Council was a challenging task for Canada because the United States was not willing to sign it because the security issue was also included in the mandate of the Arctic Council. Canada compromised to remove the security issue because it wanted to engage the United States in the Arctic Council. But the removal of the security issue from the mandate of the Arctic Council helped Canada to develop confidence with Russia which is a lone member of the Warsaw Pact treaty in the Arctic Council. Canada took this issue very sensitively and therefore no role to NATO has been assigned in the Arctic Council.

The role of the indigenous organisations has become prominent in the Arctic Council as they are the Permanent Participant in the Arctic Council but their power is not equal with the sovereign states, which undermines their position. Even Canada which has been advocating the indigenous organisations in AEPS remained instrumental in excluding them from the Ilulissat Declaration. The agenda of this meeting was to adopt an agenda for governing the Arctic Ocean, and Canada which has been claiming the sovereignty over the NWP by calling it historical based on the Inuit occupancy has excluded the Inuit from negotiation which revealed Canada's quite-a-different attitude towards the Inuit.

## CHAPTER VI

### SUMMARY AND CONCLUSION

The present doctoral thesis has focussed on Canada's Arctic policies in the period of climatic changes occurring in the Arctic region. The Arctic region, especially the Arctic Ocean, has become navigable, largely because of global warming. This has spawned a new geopolitical and geoeconomic game in the oceanic region. In the past, the frozen Arctic was ignored by the global community due to its harsh climate and inaccessibility.

Arctic is a semi-enclosed ocean surrounded by five sovereign nations (A5), which, during the era of Cold War, were the members of two most opposite alliances – the NATO led by the United States and the erstwhile Warsaw treaty led by the former Soviet Union. Importantly, the two rival superpowers, the United States and the Soviet Union, also happened to be the closest geographical neighbours here. Besides, until more recent times, other countries of the world were also not technologically advanced enough to initiate any economic or military activity in this Ocean.

The most unique feature is the political geography of this region: four out of five Arctic countries are NATO members; while it is Russia which has the largest Arctic territory and therefore, holds a dominant position in the Arctic region. Being the only non-NATO Arctic country, Russia's territorial strength has proved to be a crucial factor in the unfolding geo-politics and –economics of the region. Being the predominant Arctic nation, Russia seeks close relations with the other two major Arctic countries namely Canada and Norway. The Arctic remaining frozen until few decades back, no commercial activities were taking place here. Given the context of Cold War NATO and Soviet Union deployed their nuclear submarines in these deep frozen waters.

Arctic is warming twice as fast as rest of the globe and has reached a level of warming that is unprecedented in modern times. Rapid melting of ice has made projection of new and different geopolitical powers possible in the region. Now, the Arctic region is becoming important for hydrocarbon resources not only for the Arctic countries but for others too such as China, Japan and the European Union and others too. Not having jurisdiction in the Arctic region these countries have entered the

Arctic geopolitics through oil exploration and by building bilateral ties with the Arctic nations.

The United States Geological Survey in 2009 had predicted that the Arctic seabed is rich in hydrocarbon resources, gold, diamond, nickel, copper, zinc, etc. Its seabed contains an estimated total 22 per cent of the world's undiscovered conventional oil and natural gas resources. Arctic water is the richest in fish and marine resources. The opportunity to exploit the untapped energy resources is one of the primary drivers behind increasing international interests. Melting of ice melt has opened opportunities for commercial activities in mining, fishing, shipping, tourism, research, etc., making it feasible in terms of investment and technology.

It is asserted that the Arctic sea routes have become navigable, and thus it could connect the Atlantic and Pacific Oceans at least for few months in a year. The Northern Sea Route (NSR) or the Northeast Passage (NEP) runs through the Russian Arctic, and the Northwest Passage runs through the Canadian Arctic Archipelago. Russia claims sovereignty over the NEP and the Canada over the NWP. The United States and European Union counter their sovereignty claims by claiming these waters as international straits. The passage through these routes would be time-saving and consume less energy resources – and more countries are likely to support the US position. Thus, Canada and Russia in particular emphasise a lot on their sovereign territorial claims over their portions of the waters.

There is an ongoing competition for the territory and resources in the Arctic and the actors are more diversified as the several non-Arctic nations have become more actively engaged in the resources extraction. Now there are different categories of the Arctic actors which have their own claims and bases of these claims. First are the Arctic littoral nations – these are Russia, Canada, Norway the United States and Denmark which are all together called A5 and have their own Arctic policies and claims in the Arctic region.

Second are the indigenous people of these countries who have been living in the ice-covered region since time immemorial and share a common history of suppression, assimilation, displacement and deprivation from their sovereign states. The Arctic indigenous people are raising voice against their concerned governments and their

past and present policies towards the indigenous. Interestingly, a major chunk of the potential Arctic resources lies in their habitats.

Third are the non-Arctic nations having no jurisdiction in the Arctic continental shelf whose interests in the Arctic have been driven by the resources and the navigational routes and for that part of the Arctic Ocean which would be a common heritage of mankind. Apart from these non Arctic nations enjoy the freedom or rights of scientific research, navigation, overflight, fishing, laying of submarine cables and pipelines, and resource exploration and exploitation in the high seas, the Area and other relevant sea areas, and certain special areas in the Arctic Ocean, as stipulated in treaties such as the UNCLOS and the Spitsbergen Treaty, and general international law.

The non-Arctic actors like China, Japan and South Korea have shown a keen interest in the Arctic politics through heavy investment in mining and infrastructure of the Arctic nations and these countries are trying to influence the administration and politics of these countries. The interests of all the actors come into mutual conflict. As a result several claims and counter-claims have emerged and some of them are likely to emerge in the near future over the territory, resources and shipping routes.

The Arctic environment is fragile and vulnerable to oil pollution. This raises question about the feasibility of oil extraction and the environmental cost of extracting resources. If the oil spill takes place in the Arctic it would take much longer time to degrade in the cold water compared to the warmer regions.

Several countries including India have now entered the Arctic region for research on the climatic issues as the polar warming and the melting ice have impact on the global environment. In the case of India, climatic changes in the Arctic have a direct bearing on the monsoonal weather patterns – and thus to the lives and wellbeing of the people of India. In short, several actors and stakeholders have emerged in the Arctic region and the reasons for their interests are varied – the resources, climate, environment and navigation, tourism etc.

These developments have posed security and sovereignty issues before Canada. Now Canada's policy is more focussed towards the Arctic region to preserve Canadian interests. At present, Canada has three main interests in the Arctic region: (i) to attain sovereignty over its claimed territory in the Arctic; (ii) to attain sovereignty over the



Northwest Passage where Canada is currently facing various types of the sovereignty claims; and (iii) to create a rule-based multilateral order for securing national sovereignty and sustainable development in the Arctic region.. In particular, Canadian policies and sovereignty claims have depended a lot upon its capabilities. As the preceding Chapters have detailed, Canada has been slow and inconsistent in staking its sovereign territorial claims over the NWP. Its position has been in contradistinction to that of US which has refused to acknowledge Canadian sovereignty of the North West Passage and had as far back as 1969 ran a ice-sweeper across the Passage.

Canada has its national interest in the Arctic region. Canada has a weak military capability. Russian claims do not directly collide with Canadian sovereignty claims; yet enhanced economic and military activities by Russia remain a cause of concern. 'To be' or 'not to be' dilemma thus remain characteristic of Canadian cooperation and friction with US over the Canadian Arctic.

Capability limitation has made Canada craft its domestic policy to solidify its sovereignty claims over the islands and the waters in the Arctic Archipelago under internationally recognisable norms. Prior to World War II Canada's sovereignty concern was focused on land and post-World War II, it started focussing on the waters in the Arctic Archipelago. Canada had received its Arctic territory from the United Kingdom in 1870. The transfer of the Arctic territory was something in a manner different than that of the southern territories. The United Kingdom transferred the Arctic territory to Canada without any defined boundary and Canada was facing difficulties in notifying its territorial boundaries in the Arctic region. The Arctic islands which were transferred to Canada were either explored by the British or the French explorers. Some of the Islands were ceded by the French Government to the United Kingdom under the Treaty of Peace of 1763 and governed by the British authorities.

In short, Canada achieved its Arctic territory with an uncharted geography in the presence of thick ice packs and which was an unmanned territory. It was thus difficult to govern it, which became a major reason in subsequent years for its sovereignty over the Arctic facing challenges. At the beginning of the twentieth century, the decision of the Permanent Court of International Justice in the Eastern

Greenland Case solidified the Canadian sovereignty claim over the Arctic islands. Though Canada's possession over the Arctic territory was in compliance with the existing legal provision, the United States' non-recognition over the Canadian sovereignty over the Arctic territory presented further challenges for Canada. During World War II when the American President Franklin Roosevelt and the Canadian Prime Minister Mackenzie King signed the Ogdensburg Treaty to establish a Permanent Joint Board of Defense (PJBD) in 1946, it ended this challenge because the US by signing this treaty assumed the recognition of the Canadian sovereignty over these islands. During World War II, the United States constructed the defence infrastructure in the Canadian Arctic territory.

With the onset of the Cold War, Canada was in the NATO camp led by the United States. Canada's new threat was now the Soviet Union - the largest Arctic neighbour with nuclear weapons. Canada always apprehended a Soviet attack in the Canadian north and therefore collaborated to create the North American Air Defence Command (NORAD) to deter the missile threat from the former Soviet Union. But the United States which was using the Arctic waters to resupply the defence infrastructures started using these waters for its own strategic purposes and deployed the nuclear submarines, unmindful of the fact that these could undermine the Canadian sovereignty over these waters. Therefore, after 1940, Canada's concern regarding the sovereignty over the Arctic territories shifted from the sovereignty over the islands to the Arctic waters.

However, this significant concern and shift in Canadian position was never solidified until the legislative measures in 1970 when the American Super Tanker *Manhattan* sailed through the Arctic waters to test the feasibility of the Northwest Passage as a commercial sea route. Though the Canadian authorities were present during the voyage, the main issue was that the US called the Northwest Passage an international strait with unregulated shipping rights and refused to recognise Canadian sovereignty over these waters.

In response to the *Manhattan* voyage, the Canadian government introduced three legislations:

(i) First was the Arctic Waters Pollution Prevention Act of 1970; and it authorised itself to regulate shipping in the Arctic waters to protect the fragile environment of the Arctic.

(ii) Second was extending the limits of the territorial sea from three to twelve nautical miles which aimed to enclose the entrance of the Northwest Passage by making them territorial where the Canadian regulations could work.

(iii) Third, Canada abrogated its reservation to accept the compulsory jurisdiction of the International Court of Justice that had emerged due to the exercise of Canadian jurisdiction related to conservation and management of the ocean, exploitation of the living resources, pollution and contamination in the marine areas adjacent to the coast of Canada.

Canada's legislations faced severe criticism from the United States which called it to be against international law and proposed Canada to enter into a bilateral or multilateral negotiation to which Canada did not agree. During this period the Canadian government claimed sovereignty over the waters in the Northwest Passage but did not declare sovereignty – rather, the Canadian approach was 'functional' as it tried to attain its sovereignty through legislation on the environmental protection grounds and did not claim a clear-cut sovereignty to make a balance in its relations with the United States. The 'functionalist' approach was an acknowledgement of commitment-capability gap. In 1985, the *Polar Sea* incident made Canada realise that its rhetoric of sovereignty is only a legislative feat. Canada claimed its sovereignty in two ways – first by drawing a straight baseline and making the archipelagic waters internal in 1986; and, by further reinforcing this claim by calling it 'historical' on the basis of Inuit occupancy. It asserted that these waters are 'historical' as the Inuit have been using these waters and sea ice since the beginning and there is no change in this pattern. The waters remain essential to the livelihood and culture of the Inuit communities. This simple reason behind these acts was that the newly enclosed waters would then be entitled to give right of innocent passage through these waters, and Canada wanted to suspend any kind of international passage without its permission. To protect it from the opposition of the United States, Canada further attempted to make its Arctic waters 'historical'. For implementing this successfully, Canada used the indigenous identity of the Inuit; for this, it also accepted their

demand for creating a territory with a majority of the indigenous population and being governed by them, called Nunavut.

If the legality of the Canadian legislation is taken under consideration, the 1970 Arctic Water Pollution Prevention Act got accent in the UNCLOS III. The Arctic 234 of the UNCLOS III said that coastal waters have the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone. But Article 234 of UNCLOS III, which was actually an internationalisation of the AWPPA, never authorised the coastal states to exercise sovereignty.

The Canadian legislation of extending the limit of the territorial sea has also become a provision under Article 3 of the UNCLOS III. Article 7 of the UNCLOS provides for the following:

In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.

But UNCLOS remains ambiguous in defining the new emerging shipping lanes and the term “historical waters”. There might be two reasons behind this: first, when the UNCLOS III was negotiated, there was no scope that Arctic shipping lanes would soon become navigable; and secondly, that despite the Norwegian Case making it clear that a country can claim historical waters, and also what was accepted in the 1958 Geneva Convention for Territorial Sea that the countries can claim historical waters, neither Canada or Russia put forward a claim for making their Arctic waters historical or initiated negotiation for a more clear definition of the historical waters. Rather these two put in sincere efforts in incorporating Article 234 which gives exclusive rights to the coastal countries to regulate shipping in the frozen coast till 200 nautical miles for protecting the marine environment. These two nations started claiming the historical waters when they found that the rapidly melting ice has faded their ambition; what they had presumed after endorsing Article 234. But Russia and Canada both differ in their military capability. Russia is standing with a huge military capability, but Canada is dependent upon the United States for its Arctic security.

Thus the Canadian position is vulnerable to these geopolitical overtures and changes. Canada felt that its Arctic sovereignty was being violated when it came closer to the United States during World War II and the Cold War when the Canadian Arctic became a buffer between the hostility of Soviet Union and the US. Canada which was witnessing the military activities of both the United States and the former USSR in its Arctic waters apprehended that its Arctic waters had become vulnerable to the confrontation of these two superpowers.

Canada had several bilateral treaties on defence like NORAD, TRCOMMANT with the United States and found that the imperative of continental security is overwhelming its Arctic sovereignty. This resulted in Canada developing a policy dichotomy over the two interrelated issues of sovereignty and security in its relations with the United States. On the one hand it has been a partner with the United States, but on the other hand it also remains opposed to and apprehensive of the United States on the sovereignty issue. In AWPPA, Canada nowhere claimed its sovereignty over the Arctic. Rather it approached the issue indirectly in the name of protecting the Arctic environment. But the US reaction was strong and bitter which just reveals that in fact the United States needs the Canadian Arctic in its own interests and is not ready to accept any independent instance of Canada. Canada has also sought to assert its sovereignty claim by claiming the Arctic waters as historical by drawing a straight baseline. To fortify this claim, Canada created a new territory, Nunavut. In 1996 Through the creation of Nunavut as a new territory, Canada aimed to strengthen its claim globally that the waters in the Canadian Arctic are historical as they have been used by the Inuit since time immemorial and therefore they have the title over these waters; and also, they have ceded their historical rights to the Canadian state. By this method Canada presented that is claim of historical water is in consistency with the international norms.

In the 1980s, Canada took the view to strengthen its military defence in the Canadian Arctic by proposing to deploy more defence equipments like nuclear submarines and icebreakers so as to become self-reliant in Arctic security matters. This did not happen, as the government of Prime Minister Brian Mulroney found itself facing deep financial constraints. In 1988 during negotiating for the CUSFTA, the Arctic issue caused a deadlock – neither Canada nor the US felt like sacrificing the benefits from this agreement at the cost of the Arctic issue. Therefore, Prime Minister Mulroney

negotiated with the US president Ronald Reagan for any cooperative measures which could suit both the countries, without hurting the sentiments of the Canadian public for which the Canadian Arctic is closely tied with their identity. Keeping these facts in mind, both the countries signed the Agreement on the Arctic Water in 1988 before signing the CUSFTA in 1989. Under the term of this agreement both the countries agreed to,

Both governments undertake to facilitate navigation by their icebreakers in their respective Arctic waters and to develop cooperative procedures for this purpose;

Governments of both the countries agreed to take advantage of their icebreaker navigation to develop and share research information, in accordance with generally accepted principles of international law, in order to advance their understanding of the marine environment of the area;

The Government of the United States pledges that all navigation by U.S. icebreakers within waters claimed by Canada to be internal will be undertaken with the consent of the Government of Canada.

If the legality of the claims over the waters in the NWP is taken, then both Canada and the United States have their own grounds. The Canadian claim is based on the decision made by the International Court of Justice in case of the Norwegian Fishery Case of 1951 where the ICJ accepted Norway's side that if the coast of any country is indented, the straight baseline method can be adopted and the enclosed water would be considered internal waters and the coastal states would exercise authority over these waters. Even the most recent law of sea UNCLOS III method has also accepted the straight baseline method; but a new condition was introduced in this convention that the existing internal waters are under complete jurisdiction of the sovereign state but that newly enclosed waters would also be considered as internal waters, yet the right to innocent passage would exist through such waters. This made Canada present the alternative which is historical waters, which was provided by the ICJ in certain conditions.

The American claim is based on the ICJ decision in the Corfu Channel Case of 1949 in which the ICJ declared that a strait which connects the high seas and is being used for navigation is an international strait and unless prescribed in an international convention, there is no right for a coastal state to prohibit such passage through straits in time of peace. But this case has limited applicability in the NWP due to the

geographical feature of the NWP, which is not a single strait, rather one with several waterways.

Two questions emerge here: why Canada has taken too long in formulating its sovereignty claim over the waters in the Arctic on the basis of the Norwegian Fisheries Case and the other that why the United States has not made strong protests? The protest was about just sending a diplomatic note to Canada. This very simple argument can be made. These reveal that both the countries are aware of their weaknesses, therefore no one wishes to take this matter to the ICJ and another aspect of this are their bilateral relations on several other issues – so no loggishness on this issue can be allowed – and therefore, they chose a situation of ‘agree to disagree’ by signing the Arctic Water Cooperation Agreement in 1988, in which the US accepted that before sailing through the NWP it would seek prior permission of Canada but the notable aspect is that after thirty years of the treaty the US has never attempted to violate this agreement.

The geography of Canada which makes it sandwiched between the two great military powers has been helpful in strengthening its position against each other. Russia is the only Arctic country which has supported Canada’s sovereignty claim over the NWP because the Russian claim over the NEP resembles that of Canada. For the US it is a dilemma that if it aggressively protests the Canadian position, it has to oppose the Russian position also and this will create a strong diplomatic and military crisis. The presence of both the powers is creating a unique equilibrium in the international relations in the Arctic region, especially the portion called the Canadian Arctic. The United States is keen to protect Canada’s Arctic in case of a Russian attack; on the other hand, Russia’s sovereignty interest over the NEP is tied up with the Canadian sovereignty over the NWP. Therefore, it defends the Canadian sovereignty claim in its own interest.

During late 1980s Canada realised that a close bilateral relation with Russia might cause some issues in the Canada-US relationship, therefore it is better to engage Russia multilaterally and it would be helpful in promoting its Arctic interests on many issues. In the Murmansk speech Gorbachev made an indication that his country is willing to cooperate with the Western ally. Canada took this very cautiously and initiated the negotiations for a multilateral forum, the Arctic Environment Protection

Strategy (AEPS), with Finland and again negotiated for the Arctic Council. The Arctic Council is the multilateral forum which has been established as a result of Canada's efforts. Canada became successful in bringing two opposite powers together on the commonly shared issues of the Arctic like environmental issues, marine pollution and sustainable development and the other Arctic countries like Norway, Finland and the indigenous organisations promoted the Canadian steps because these countries were also troubled with Russian activities of polluting the Arctic with nuclear wastes but had difficulties in dealing with Russia bilaterally on this issue. The environment and sustainable development were the main issues on which both the states of the Arctic region and the non-state actors (indigenous organisations) both wanted a multilateral forum for discussing and resolving the challenges. By providing observer status to the non-Arctic nations, Canada also became successful in engaging the non-Arctic actors by providing them opportunities to work with the Working Groups and task forces of the Arctic.

The Arctic Council, which does not have a legal framework and has a limited financial structure, has brought the Arctic nations under one umbrella and has become globally important, which can be seen from number of applications for the observer status. Five states in Asia – China, Japan, South Korea, Singapore and India – received observer status to the Council in 2013. Currently, the Arctic Council is the highest level political forum which is a creation of Canada's middle power liberal internationalism.



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